

**The State of South Carolina
In the Court of Appeals**

Appeal from York County
Court of Common Pleas
Jean H. Toal, Circuit Court Judge

Appellate Case No. 2019-000649
Case No. 2013-CP-46-00368

RECEIVED
FEB 25 2020
SC Court of Appeals

Stephen R. Edwards, Individually
and as Personal Representative of the
Estate of Steven R. Stewart, ...Respondent,

v.

Scapa Waycross, Inc., ...Appellant.

**RECORD ON APPEAL
VOLUME TWO**

William P. Early (SC Bar No. 15657)
PIERCE SLOAN KENNEDY & EARLY LLC
The Blake-Grimké House
321 East Bay Street
Post Office Box 2243
Charleston, South Carolina 29413
(843) 722-7733

S. Christopher Collier, Esquire
Robert B. Gilbreath, Esquire
HAWKINS PARNELL & YOUNG LLP
4000 SunTrust Plaza
303 Peachtree Street NE
Atlanta, GA 30308-3243
Phone: 404-614-7400

Counsel for Appellant

COUNSEL OF RECORD FOR RESPONDENT:

Kathleen C. Barnes, Esquire
Barnes Law Firm LLC
13 Mulberry Street East
PO Box 897
Hampton, SC 29924
(803) 943-4529

Greg Hyland, Esquire
Hart, Hyland, Shepherd, LLC
207 East 1st North Street
Summerville, SC 29483
(843) 410-0711

Frederick Jekel, Esquire
Jekel-Doolittle, LLC
1512 Laurel Street
PO Box 2597
Columbia, SC 29201
(803) 888-7130

William Graham, Esquire
WALLACE & GRAHAM, P.A.
525 North Main St.
Salisbury, NC 28144
(704)-633-5244

INDEX

VOLUME ONE

Orders

1. Order Granting Second Amended Complaint entered November 18, 2013 p. 0001
2. Order on Post-Trial Motions entered March 25, 2019 p. 0006

Judgments

3. Verdict form, February 9, 2018 p. 0026

Pleadings

4. Summons and Complaint filed February 5, 2013 p. 0030
5. Amended Complaint filed May 31, 2013 p. 0057
6. Suggestion of Party Death filed October 23, 2013 p. 0072
7. Second Amended Complaint filed November 20, 2013 p. 0076
8. Answer to Second Amended Complaint filed December 18, 2013 p. 0093
9. Scapa Motion in Limine to Admit Bankruptcy Claim Forms as Admissions of a Party-Opponent filed December 18, 2017 p. 0103
10. Scapa's Motion in Limine to Exclude Expert Testimony on Causation p. 0119
11. Scapa's Motion for Setoff of Plaintiff's Settlement Proceeds p. 0141
12. Scapa Motion to Compel Complete Bankruptcy Forms filed December 18, 2017 p. 0146
13. Plaintiffs' Motion in Limine No. 2 Asbestos Bankruptcies: Trust and Plaintiff's Claims to Same filed December 18, 2017 p. 0154
14. Scapa Motion for Setoff filed December 18, 2017 p. 0158
15. Scapa Motion for Production of Plaintiff's Settlements and Payments with all Third Party Tortfeasors dated February 16, 2018 p. 0164
16. Scapa Motion for Judgment Notwithstanding the Verdict filed February 16, 2018 p. 0171
17. Plaintiffs' Motion to a New Trial Nisi Additur filed February 20, 2018 p. 0175
18. Scapa Memorandum in Support of Motion for JNOV filed March 22, 2018 p. 0184
19. Scapa Response to Plaintiff's Motion for a New Trial Nisi Additur filed April 6, 2018 p. 0194
20. Scapa Memorandum in Support of Motion to Reallocate Settlement Proceeds Filed July 23, 2018 p. 0199
21. Scapa Motion to Reallocate Settlement Proceeds filed July 24, 2018 p. 0203
22. Plaintiff's Response and Brief to Scapa's Motion to Reallocate Settlement Proceeds filed August 3, 2018 p. 0205
23. Notice of Appeal filed April 15, 2019 p. 0210

Transcripts

24. Pretrial Hearing Transcripts dated January 9, 2018 p. 0233

VOLUME TWO

25. Trial Transcript January 29 through February 7, 2018 p. 0408

VOLUME THREE

26. Trial Transcript January 29 through February 7, 2018 p. 0905
27. Trial Transcript February 7 through February 9, 2018 p. 1153

VOLUME FOUR

28. Trial Transcript February 7 through February 9, 2018 p. 1400
29. Post-Trial Motions Transcript July 11, 2018 p. 1647
30. Post-Trial Motions Transcript October 10, 2018 p. 1687

Exhibits

31. Court Exh 1 (chart) p. 1709
32. Defendant's Exhibit No. 1 (APG Trust Claim Form) (proffered) p. 1710
33. Defendant's Exhibit No. 2 (Leslie Trust Claim Form) (proffered) p. 1715
34. Defendant's Exhibit No. 5 (Incomplete Trust Claim Forms) (proffered) p. 1717

VOLUME FIVE

35. Defendant's Exhibit No. 5 (Incomplete Trust Claim Forms) (proffered) p. 1894
36. Defendant's Exhibit No. 12 (Marc Scarcella Report) (proffered) p. 2021
37. Plaintiffs Exhibit 1- Death Certificate (redacted) p. 2031
38. Plaintiffs Exhibit 3 - Mastercard 25A & B p. 2032
39. Plaintiffs Exhibit 4 - Mastercard 23A & B p. 2034
40. Plaintiffs Exhibit 6 - Report on Asbestos p. 2036
41. Plaintiffs Exhibit 7 -Document 71825 p. 2042
42. Plaintiffs Exhibit 9 - Scapa-Ponitt Memo p. 2046
43. Plaintiffs Exhibit 26 -Mastercard 10 A&B p. 2051
44. Plaintiffs Exhibit 27 - Mastercard 12 A&B p. 2053
45. Plaintiffs Exhibit 28 - Mastercard 14 A&B p. 2055
46. Plaintiffs Exhibit 31- photo p. 2057
47. Plaintiff's Exhibit 35 - photos (in color) p. 2058
48. Plaintiffs Exhibit 37 - Mastercard 8 A&B p. 2071
49. Plaintiffs Exhibit 38 - Mastercard 9 A&B p. 2073
50. Plaintiffs Exhibit 39 - Mastercard 26 A&B p. 2075
51. Plaintiffs Exhibit 40 - Mastercard 22 A&B p. 2077
52. Plaintiffs Exhibit 41 - Mastercard 19 A&B p. 2079
53. Plaintiffs Exhibit 42 - Mastercard 17 A&B p. 2081
54. Plaintiffs Exhibit 49- Mastercard 7 A&B p. 2083

55. Plaintiffs Exhibit 50 - Mastercard 11 A&B	p. 2085
56. Plaintiffs Exhibit 51- Mastercard 13 A&B	p. 2087
57. Plaintiffs Exhibit 52 -Mastercard 15 A&B	p. 2089
58. Plaintiffs Exhibit 53 - Mastercard 16 A&B	p. 2091
59. Plaintiffs Exhibit 54 - Mastercard 20 A&B	p. 2093
60. Plaintiffs Exhibit 56 - Mastercard 24 A&B	p. 2095
61. Plaintiffs Exhibit 57 - Mastercard 27 A&B	p. 2097

Other Materials

62. Deposition excerpts of Steven Stewart dated February 28, 2013	p. 2099
63. Deposition excerpts of Steven Stewart dated March 4, 2013	p. 2121
64. Day in the Live Video of Steven Stewart dated August 20, 2013	p. 2190
65. Deposition excerpts of George Hegler dated July 17, 2013	p. 2191
66. Deposition excerpts of Dr. Arthur Frank dated April 9, 2015	p. 2209
67. Deposition excerpts of Dr. Arthur Frank dated December 11, 2017	p. 2214
68. Deposition excerpts of Harry J. Merk, Jr. dated May 27, 1998	p. 2339

Certificate

69. Certificate of counsel	p. 2374

1 STATE OF SOUTH CAROLINA

2 COURT OF COMMON PLEAS

3 COUNTY OF YORK

4 2013-CP-46-00368

5 Estate of Steven R. Stewart

6 vs.

7 SCAPA Waycross, Inc.

8

9 York, South Carolina

10 Jan. 29th to Feb. 2nd, and Feb. 7th , 2018

11 Before the Honorable Jean Toal

12

13 APPEARANCES

14 For the Plaintiffs: Jekel, Graham, Hyland

15 For the Defendants: Young, Collier, Early

16

17 Reported by: Michael C. Watkins

18 Official Court Reporter

19

20

21

22

23

24

25

1	Voir Dire:	6
2	Pretrial Motions:	21
3	Opening Statements:	35
4	Stephen Edwards:	74
5	Catherine Kingston:	119
6	Arnold Brody:	190
7	Fred Steele:	258
8	James Millette:	346
9	Christopher DePasquale:	432
10	Harold Ward, Jr.:	498
11	David Harpole, M.D.:	572
12	Jim Doherty:	635
13	Tim Oury, M.D.:	720
14	Certificate:	745
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

VOIR DIRE

EXHIBITS

1		
2	1	Death Certificate
3	2	Last Testament
4	3	Mastercard 25A & B
5	4	Mastercard 23A & B
6	5	Document 71893
7	6	Report on Asbestos
8	7	Document 71825
9	8	Document 73575
10	9	Document 73483
11	10	Document 73342, Waycross Felt Rpt.
12	11-23	Photos
13	24	Dr. Frank CV
14	26	Mastercard 10 A&B
15	27	Mastercard 12 A&B
16	28	Mastercard 14 A&B
17	30	Dr. Brody CV
18	31	Photo
19	32	Dr. Millette CV
20	33	Document 71865
21	34	Document 73429
22	35	Bowater series
23	36	DePasquale CV
24	37	Mastercard 8 A&B
25	38	Mastercard 9 A&B

VOIR DIRE

1	39	Mastercard 26 A&B
2	40	Mastercard 22 A&B
3	41	Mastercard 19 A&B
4	42	Mastercard 17 A&B
5	43	Dr. Harpole's court drawing
6	44	Dr. Harpole CV
7	45	Medical Records
8	46	Cytology slides
9	47	Cytology and Pathology Reports
10	48	Bowater Photos
11	49	Mastercard 7 A&B
12	50	Mastercard 11 A&B
13	51	Mastercard 13 A&B
14	52	Mastercard 15 A&B
15	53	Mastercard 16 A&B
16	54	Mastercard 20 A&B
17	55	Document 73364.1
18	56	Mastercard 24 A&B
19	57	Mastercard 27 A&B
20	58	73461 Design 9862
21	59	Document 71893
22	60	Document 74244
23	61	Document 71815
24	62	Document 73263
25	63	Document 71837

VOIR DIRE

1	64	Document 71978
2	65	Document 717808
3	66	Document 73594
4	67	Document 71918
5	68	Document 71866
6	69	Document 73364.04
7	70	Document 71847
8	71	Document 71750
9	72	Document 71957
10	74	Life Expectancy Chart

11

12

DEFENSE EXHIBITS

13	1	APG Trust App. (redacted)
14	2	Leslie Trust App.
15	3	Designations of Frank's deposition
16	4	Designations of Frank's deposition
17	5	Trust claim forms
18	6	Stewart's Deposition
19	7	Mastercard
20	8	Oury CV
21	9	Carlson CV
22	10	Crapo CV
23	11	Bowater Mastercards
24	12	Scarcella Report (proffered)

25

VOIR DIRE

1 THE COURT: Good morning ladies and gentlemen of the jury
2 venire, the long process of qualifying you for service has now
3 come to the point where we'll talk about the particular case
4 for which we are picking a jury. I'll announce the case and
5 then I'll be asking you some specific questions that relate to
6 this case, and when I ask a question if you are answering any
7 affirmative if you will stand and give me your juror number.
8 My name is Jean Toal, I'm a special circuit court judge serving
9 senior status. For many years I was a member of the South
10 Carolina Supreme Court and served as its chief justice and now
11 I fill in a little bit in retirement and enjoy doing it and
12 delighted to be with you in the trial of this important matter
13 today. This case arises from a claim by the Estate of Steven
14 Redfearn Stewart, that he suffered exposure, occupational
15 exposure to asbestos, and that as a result of this exposure he
16 developed mesothelioma, a disease from which he ultimately
17 passed away. The suit is being brought by Stephen R. Edwards
18 individually and as personal representative of the Estate of
19 Steven Redfearn Stewart, that is the plaintiff in the matter.
20 The defendant in this matter is SCAPA Waycross, Inc., a
21 manufacturer of a component material used in the production of
22 paper at the Bowater Catawba Plant, a plant where Mr. Redfearn
23 -- well, Mr. Stewart worked for many years. I begin by asking
24 you, does anyone on this jury know Stephen R. Edwards, son of
25 Steven Redfearn Stewart? If so, please stand. Thank you, Mr.

VOIR DIRE

1 Stewart (sic). Is there any member of the jury panel that
2 knows or has any connection with the defendant, SCAPA Waycross,
3 Inc.? If so, please stand. Is there any member of this jury
4 that has any connection with Bowater? If so, please stand.
5 Your number?

6 THE JUROR: 124.

7 THE COURT: Say again?

8 THE JUROR: 124.

9 THE COURT: 124. And your name?

10 THE JUROR: Austin Lowery.

11 THE COURT: Lowery, very good. All right. And the
12 connection with Bowater is what, Mr. Lowery?

13 THE JUROR: They were a previous employer but I was laid
14 off.

15 THE COURT: Whose employer?

16 THE JUROR: Bowater was my employer.

17 THE COURT: All right, sir. Until you were laid off?

18 THE JUROR: Yes.

19 THE COURT: Very good, you may be seated. Has anyone
20 personally or has any member of your immediate family ever been
21 the plaintiff or the defendant in a civil lawsuit? If so,
22 please stand. Oh, I'm sorry, sir, I didn't catch my view over
23 there. Your number?

24 THE JUROR: Forty-seven.

25 THE COURT: Your name?

VOIR DIRE

1 THE JUROR: Charles Davis.

2 THE COURT: Was the participation by yourself or a family
3 member?

4 THE JUROR: My spouse.

5 THE COURT: Your spouse? And your spouse was a plaintiff
6 or defendant?

7 THE JUROR: Defendant.

8 THE COURT: Very good, you may be seated. Has anyone or a
9 member of jury family, so that means yourself or any member of
10 your family, ever worked with or around industrial sized dryer
11 felts? If so, please stand. Has anyone or a member of your
12 family ever worked with or around asbestos containing thermal
13 insulation? If so, please stand. Have you, a family member or
14 a close friend ever had mesothelioma, asbestosis, or any
15 asbestos related disease? If so, please stand. Your number?
16 I ask first to the lady in the pink vest, your number?

17 THE JUROR: 149.

18 THE COURT: And your name?

19 THE JUROR: Cathy Marshall.

20 THE COURT: And yourself or a family member who had the
21 disease and which disease?

22 THE JUROR: Well, my mom worked in asbestos, I don't know
23 where it fit into that but they have dealt with it.

24 THE COURT: Counsel, did y'all get that? Very good. You
25 may be seated, thank you, ma'am. All right, ma'am?

VOIR DIRE

1 THE JUROR: Number 4, Amy T. Arafalo.

2 THE COURT: All right. And the relationship between you
3 or a family member to these?

4 THE JUROR: It was a close friend, I lost him three years
5 ago to mesothelioma.

6 THE COURT: All right, very good, you may be seated. Does
7 anyone in the jury panel feel that you have been exposed to
8 asbestos? If so, please stand. Does any member of the jury
9 panel believe that a family member has been exposed to asbestos
10 other than the two commentaries I've already received? If so,
11 please stand. If there is anyone who would be unable to give
12 all parties in this case a fair trial based on the law and the
13 evidence as presented in this courtroom? Please stand. Is
14 there anyone who is so sympathetic that you would not be able
15 to follow the rules of law and set sympathy aside when
16 evaluating a case where the plaintiff died of cancer? If so,
17 please stand. Your number?

18 THE JUROR: 230.

19 THE COURT: Your name?

20 THE JUROR: Eric Threatt.

21 THE COURT: Yes, sir.

22 THE JUROR: My father passed away of cancer from Agent
23 Orange in Vietnam.

24 THE COURT: All right, sir. And do you feel that the
25 contraction of cancer by your father from Agent Orange and what

VOIR DIRE

1 transpired thereafter would make you so sympathetic that you
2 would not be able to follow the instructions I give you and the
3 law and evidence that's presented in the courtroom and arriving
4 at a decision? This is an honest question, there's no right or
5 wrong answer, it's just what your answer would be.

6 THE JUROR: I believe I would be able to be unswayed but I
7 wanted to disclose it for the purpose of honesty.

8 THE COURT: Fair enough. He would be fair and impartial
9 but wanted to disclose in the interest of fairness to both
10 sides, thank you, sir. And finally, is there anyone who has a
11 strong negative opinion of corporations that manufactured or
12 sold asbestos containing products? If so, please stand. Very
13 well. That concludes the questions of the Court, let me just
14 check my list one more time and see that I've covered all the
15 bases before we begin jury selection. All right. I want to
16 read a witness list to you all, and I begin with proposed
17 witnesses for the plaintiff, I will read each name, and as I
18 read each name if any member of the jury panel is related by
19 blood or marriage to any of these witnesses please stop me as I
20 announce -- after I have announced the name stand and we'll
21 take your information. Arnold Brody, Ph.D, Raleigh, North
22 Carolina, expert witness. Christopher DePasquale, Master in
23 Public Health, Compass Environmental, Kennesaw, Georgia,
24 expert. Mr. Stephen Edwards, plaintiff's son. Arthur Frank,
25 M.D. Drexel University, Philadelphia, Pennsylvania. David

VOIR DIRE

1 Harpole, Jr., M.D., Duke University Hospital, Durham, North
2 Carolina. Ms. Catherine Kingston, plaintiff's daughter. John
3 Maddox, M.D., Riverside Regional Medical Center in the
4 pathology department, Newport News, Virginia. James R.
5 Millette, Ph.D, Millette Technical Consulting, Lilburn,
6 Georgia, expert. Mr. Jerry Neely. Mr. Steve Rhodes. Pamela
7 R. Sinclair, M.D., Levine Cancer Center, Rock Hill, South
8 Carolina. Yes, ma'am?

9 THE JUROR: I have worked in the office with Dr. Sinclair.

10 THE COURT: All right. And your position there?

11 THE JUROR: I'm a laboratory technician.

12 THE COURT: Very good. And your number is?

13 THE JUROR: Five.

14 THE COURT: And your name?

15 THE JUROR: Melissa Bailey..

16 THE COURT: Thank you, ma'am. I want to consider this one
17 more question -- yes? Yes, I see one more standing and I want
18 to consider this one more question -- yes, ma'am?

19 THE JUROR: I'm number 250, Sharon Zellenack, I am a
20 patient of Dr. Sinclair.

21 THE COURT: All right. I think I've got a different
22 situation with a coworker in the office, but as a patient, is
23 there any certain thing about this relationship with Dr.
24 Sinclair as a patient which would cause you to in any way have
25 difficulty in rendering a fair and impartial verdict in this

VOIR DIRE

1 matter? If so tell me affirmatively.

2 THE JUROR: No, ma'am.

3 THE COURT: Very good, you may be seated. Mr. Fred
4 Steele. Mr. Steven Stewart, the plaintiff. Very good. And
5 finally Harold King Ward, Jr. This is a list of witnesses for
6 the defense, and again the same thing, I will announce the
7 name, you stand if you have an association or some knowledge of
8 any of these witnesses. Paul Carlson, C-a-r-l-s-o-n,
9 industrial hygienist. James Crapo, pulmonary medicine. Dr.
10 Tim Oury, pathologist. Mark Scarcella. James E. Doherty,
11 representative of SCAPA. Harry J. Merk, Jr., SCAPA
12 representative. Ivan J --

13 THE JUROR: I'm number 143.

14 THE COURT: And it's Mark Scarcella?

15 THE JUROR: No, I thought you said Harry Merk.

16 THE COURT: I said Harry Merk, M-e-r-k.

17 THE JUROR: That is my husband's uncle I do believe if
18 we're talking about the same one.

19 THE COURT: And would your relationship by marriage to Mr.
20 Harry J. Merk, Jr. in any way interfere with your ability to
21 render a fair and impartial verdict in this matter?

22 THE JUROR: No, ma'am, I don't really know him.

23 THE COURT: Very good, you may be seated. Ivan J.
24 Fernhead, SCAPA representative. David McGraw. Gilbert Small.
25 Thomas L. Wilson. Now, I will ask each of the lawyers involved

VOIR DIRE

1 to stand and give you their name, and the question I'll ask
2 each of you as the -- after the lawyers have all given their
3 names is whether you know any of the lawyers involved in this
4 case. For the plaintiff, Mr. Graham, you may begin.

5 MR. YOUNG: Your Honor, I'm sorry, there's a -- can I ask
6 you one thing before you go on?

7 THE COURT: Mr. Long (sic) I'm not finished with the voir
8 dire yet so I think you may want to wait until I've concluded
9 and then I am going to ask both sides what more needs to be
10 done.

11 MR. YOUNG: Thank you, Your Honor.

12 THE COURT: All right. Mr. Graham, you may begin.

13 MR. GRAHAM: Bill Graham of Wallace and Graham, Salisbury,
14 North Carolina.

15 THE COURT: That's the plaintiff's lawyer. Yes, sir?

16 MR. HYLAND: Greg Hyland from Summerville, South Carolina
17 with the firm of Hart, Hyland and Shepherd.

18 THE COURT: For the plaintiff.

19 MR. JEKEL: My name a Fritz Jekel, Jekel Law out of
20 Columbia, South Carolina.

21 THE COURT: For the plaintiff. All right. Yes, sir?

22 MR. YOUNG: Ladies and gentlemen, my name is Lane Young,
23 I'm from Atlanta, I'm one of SCAPA's lawyers. This is Cindy
24 Sanders, she's helping us today with jury selection.

25 THE COURT: And then we have another -- several other

VOIR DIRE

1 lawyers for defendant. Go ahead, sir.

2 MR. COLLIER: Chris Collier, also with Hawkins, Parnell
3 from Atlanta.

4 THE COURT: For the defendant, Mr. Early?

5 MR. EARLY: Thank Your, Honor. Will Early, Charleston
6 South Carolina with Pierce, Herns, Sloan and Wilson, also a
7 lawyer for SCAPA.

8 THE COURT: All right.

9 MR. BARR: Bill Barwick, I'm a lawyer for SCAPA from
10 Atlanta, Georgia.

11 THE COURT: All right?

12 MS. JACOBS: Tiffany Jacobs.

13 THE COURT: All right. Ms. Jacobs, your role for defense?

14 MS. JACOBS: Assistant to Ms. Sanders.

15 THE COURT: Very good.. Now, have I covered all
16 representatives of each side? I think I have. Before I
17 conclude voir dire, one final question for all members of the
18 jury panel, other than what you have disclosed so far, is there
19 any member of the jury panel by reason of the answers you have
20 given or for some other reason has any opinion or feeling about
21 this case such that you could not give each party and each side
22 a fair trial in this matter? If so, please stand. Very good.
23 Now, for plaintiff, are there any other additions or requests
24 with respect to voir dire that I have not covered?

25 MR. JEKEL: No, Your Honor.

VOIR DIRE

1 THE COURT: All right. Defense?

2 MR. YOUNG: Yes, Your Honor.

3 THE COURT: And it is something you wish to approach up
4 here about, that might be the thing to do. Mr. Jekel, why
5 don't you come join him?

6 (A bench conference was held.)

7 THE COURT: Ladies and gentlemen of the jury, you may
8 recall that I asked you previously whether any member of the
9 jury panel had a family member who had mesothelioma, asbestosis
10 or any other asbestos related disease. An affirmative response
11 was given by two members of the jury panel and I'm asking the
12 question again to give you one more chance, you two who
13 responded affirmatively or any other member of jury panel to
14 consider that question one more time, and for the members who
15 answer in the affirmative I first want to ask, is there
16 anything about that situation that would cause you to be unable
17 to render a fair trial to all sides in this matter? If so,
18 please stand. Then I ask the rest of you panel members, if
19 there again is any member of a family or a close relation or a
20 friend who has suffered from mesothelioma, asbestosis or
21 asbestos, anyone in that category? If so, please stand. And
22 therefore I ask one final time, are all members of the jury as
23 you are situated at the present time able to give each party a
24 fair trail in this matter without regard to any personal
25 connections you may have or personal feelings you may have in

VOIR DIRE

1 this matter? If so, please stand. Very good. All right.
2 That concludes the voir dire questions of all of you, and if
3 you will just be at ease for a moment, the next step is going
4 to be that the clerk will draw a list of potential jurors and
5 four alternates, and when the clerk has completed you won't be
6 able to tell much by the numbers that are given to me, but each
7 side will then strike until we receive a jury of 12 and three
8 alternates. Very well. Madam Clerk?

9 (Break in proceedings.)

10 THE COURT: Members of the jury panel, we will be at ease
11 for five minutes while the lawyers retire to their rooms to
12 make their final judgment about jury selection, it's now 12:32,
13 hopefully at 12:37 they will be back here. Be at ease for five
14 minutes, we'll see how closely they can adhere to that.

15 (A break was taken.)

16 THE COURT: All right. Ladies and gentlemen of the jury,
17 what will happen now is that beginning with the plaintiff each
18 side will make its strikes, you won't be able to tell anything
19 from these numbers as to who is actually going to be on the
20 jury because a different numbering system is used for the
21 strikes, but when the strikes are completed the clerk will read
22 out the names -- yes, ma'am? Excuse me, I'm sorry, let me
23 repeat that. The time has come now beginning with the
24 plaintiff for the two sides to strike a jury. You won't be
25 able to tell anything from the numbers they are using because

VOIR DIRE

1 the numbers are different numbers that are simply used for this
2 purpose of striking, but when the strikes are complete the
3 clerk will read out the names of jurors and you will bring your
4 materials and come and take your places in the jury box. The
5 clerk will then read out the names of four alternates, and the
6 four alternates will be in this grouping at the end of the jury
7 box, so when the first jurors come in, come all the way in and
8 let those four seats there be for the alternates. Very good.
9 Plaintiff, you may begin.

10 MR. JEKEL: Your Honor, we would excuse number 1.

11 THE CLERK: Number one.

12 MR. YOUNG: SCAPA would excuse number 12.

13 THE COURT: Number 12 for defendant.

14 MR. JEKEL: Your Honor, plaintiff's would excuse number
15 four.

16 THE COURT: Plaintiff number four.

17 MR. YOUNG: Your Honor, defense would excuse number five.

18 THE COURT: Defendant number 5.

19 MR. JEKEL: Plaintiff would excuse number nine, Your
20 Honor.

21 THE COURT: Plaintiff's number nine.

22 MR. YOUNG: Your Honor, defendant would excuse number
23 three.

24 THE COURT: Number thirty or three?

25 MR. YOUNG: Three, Your Honor. Sorry, I still have a

VOIR DIRE

1 cold.

2 MR. JEKEL: Your Honor, we would excuse number ten.

3 THE COURT: Plaintiff number ten.

4 MR. YOUNG: Your Honor, defendant would excuse number
5 eight.

6 THE COURT: Number eight defendant?

7 MR. YOUNG: Yes, Your Honor.

8 THE COURT: Plaintiff?

9 MR. JEKEL: Twenty-one.

10 THE COURT: Defendant?

11 MR. YOUNG: Your Honor, defendant would strike number 23.

12 THE COURT: Plaintiff?

13 MR. JEKEL: Twenty-six, Your Honor.

14 THE COURT: Plaintiff is 26. Defendant?

15 MR. YOUNG: Your Honor, defendant would strike number 25.

16 THE COURT: All right. Third alternate, plaintiff?

17 MR. JEKEL: Twenty-seven.

18 THE COURT: All right. Defendant?

19 MR. YOUNG: Your Honor, defendant will strike number 29.

20 THE COURT: Twenty-nine. And the fourth alternate.

21 Plaintiff?

22 MR. JEKEL: Your Honor, we'll excuse 30.

23 THE COURT: Plaintiff 30. Defendant?

24 MR. YOUNG: Thirty-one, Your Honor.

25 THE COURT: The strikes are now completed. Madam Clerk,

VOIR DIRE

1 you may call the names of jurors and the alternates. Listen
2 up, Counsel, the clerk will confirm your strikes.

3 THE CLERK: For the plaintiff I have the following
4 strikes: Number one, four, nine, and ten. And as your
5 alternate strikes I have number 21, 26, 27, and 30; is this
6 correct?

7 MR. JEKEL: That is correct.

8 THE CLERK: Thank you. For the defendants I have the
9 following strikes: Number 12, five, three, eight, and as your
10 alternate strikes number 23, 25, 29 and 31; is this correct?

11 MR. YOUNG: Yes, ma'am.

12 THE COURT: Ladies and gentlemen, if you hear your name
13 called --

14 MR. JEKEL: An issue of cause?

15 THE COURT: Sir?

16 MR. JEKEL: Can we talk about an issue of cause, a strike
17 for cause, Your Honor?

18 THE COURT: Pretty late in the process to talk about
19 cause, but --

20 MR. YOUNG: Yeah. Judge --

21 THE COURT: Y'all come to side bar.

22 (A bench conference was held.)

23 THE COURT: Madam Clerk, you may call the names of jurors
24 and the alternates. When your name is called please come up to
25 the jury box, go all the way to the end, bring your belongings

VOIR DIRE

1 with you, and then I have a few instructions before I give you
2 a lunch break. I'm going to give you a lunch break before you
3 start with the opening arguments. So Madam Clerk, please read
4 the names of the jurors and the at.

5 THE CLERK: Juror 18, Quntria McBride. Number 21, Wesley
6 D. Boan. Juror number 110, Shannon G. Kirby. Juror number
7 127, Elizabeth A. Lloyd. Juror number eight, Jennifer S.
8 Ballard. Juror number 60, Allen G. Fields. Juror number 225,
9 Martha W. Teague. Juror number 233, Toan Tran. Juror number
10 181, Dewayne A. Poling. Juror number 47, Charles L. Daniels,
11 Jr. Juror number 30, William T. Carico. Juror number 222,
12 Benjamin H. Stout. Serving as our first alternate, juror
13 number 116, Luke Lancaster. Serving as second alternate, Dana
14 Murphy. Serving as our third alternate, Teresa H. Berenyi.
15 And serving as the fourth alternate, juror number 152, Randy J.
16 Moss.

17 THE COURT: Welcome, ladies and gentlemen of the jury, I'm
18 going to dismiss you for lunch now. What you will do, and this
19 pertains every time you are gathered in the courtroom, you will
20 follow your bailiff who will take you to your jury room and
21 then you are dismissed for lunch. It's 12:55 now, let's plan
22 to be back here at 2:20. When you come to the jury assembly
23 room, when you come back in the first thing I want you to do is
24 to pick from amongst you someone who will serve as the
25 foreperson of the jury, and when that person is picked that

1 person will sit in the seat that's currently occupied by the
2 gentleman in the purple Polo shirt, golf shirt, that way that
3 foreperson can hand notes very easily to the clerk's office or
4 to me if that need arises. So if you'll now go to your jury
5 room, you haven't heard a thing about the case except for brief
6 questions, but please don't discuss matters about this case and
7 you are dismissed for lunch.

8 (The jury left the courtroom and the remaining panel
9 Was excused.)

10 THE COURT: All right. Counsel, if you will take your
11 seats, please, we've got a few housekeeping things before I
12 dismiss you for lunch. The first of which is that during the
13 striking of the jury after the jury had been qualified and
14 while we were in the midst of striking and had completed
15 striking so as to achieve of list of jurors as well as four
16 alternates, Mr. Jekel on behalf of the plaintiff approached the
17 bench to request that he be allowed to strike a juror for
18 cause, and that juror was number 18 on the venire. I don't
19 think the name needs to be placed upon the record but that was
20 juror number 18, and Mr. Jekel interposed an objection for
21 cause to this jurors service. Mr. Jekel, would you like to
22 place anything on the record in that regard?

23 MR. JEKEL: Yes, Your Honor. Given the fact that the
24 other judge qualified I didn't know when to raise it so I
25 apologize but with regard to juror number 18, it was the

1 employment at National Jimson Company that we believe was
2 cause, we didn't have an opportunity to ask if she was ever
3 involved in the manufacturing of asbestos containment products.
4 As Your Honor may know, National Jimson manufactured a lot of
5 asbestos products before bankruptcy and they still have
6 liabilities for that and that is why I thought that that juror
7 may need to be excused.

8 THE COURT: Very well. I denied the request to strike
9 that juror for cause as coming untimely in the process, and as
10 matters develop it may not be a factor in the matter. Very
11 well. I've asked the jury to be back in their seats at 2:20, I
12 would be prepared to bring them in and begin our opening
13 arguments. Let's talk a little about time, Mr. Jekel. Let's
14 talk a little bit about time for opening arguments.

15 MR. JEKEL: Your Honor, I should be -- I've been
16 consistently between 35 and 40 minutes, I assume that I will be
17 in that same time frame.

18 THE COURT: Very good. Mr. Young?

19 MR. YOUNG: Sorry Judge, Mr. Early, was talking to me, I
20 didn't hear what you said.

21 THE COURT: I'm just asking you about time for opening
22 statements to the jury.

23 MR. YOUNG: I'm confident that I can conclude in the same
24 amount of time as Mr. Jekel.

25 THE COURT: We'll have 40 per side then and I think that

1 ought to do it. Very well, thank you. Now, do y'all have
2 anything else that needs to be placed upon the record or asked
3 of me before I let you go for lunch?

4 MR. JEKEL: Yes. Hopefully over the lunch I have been
5 given a list of documents I seek to admit once we start the
6 trial, there might some matters of a limited number of SCAPA
7 documents that we may want to take up with Your Honor. Later
8 in the day we will have the Dr. Frank video deposition
9 objections that we would like Your Honor to hear. I've got a
10 marked up copy that we'll try to get to your clerk over the
11 lunch break, it's been marked up, Dr. Frank's deposition for
12 you, Your Honor, color coded, plaintiffs designations in
13 yellow, defendants objections, defendants counter and
14 plaintiffs objections.

15 THE COURT: That's fine.

16 MR. JEKEL: But we'll get that for your clerk at the lunch
17 break but if Your Honor may be available a few minutes earlier
18 there might be a couple of document objections --

19 THE COURT: My understanding you may want some
20 clarification in these matters in connection with your opening
21 statements to the jury, so they're going to take a minute or
22 two to select their foreperson, why don't I see you all here at
23 2:20, we'll take up the matters with respect to document
24 objections and then go forward.

25 (A lunch break was taken.)

1 THE COURT: Counsel, before we bring the jury in I have
2 had a chance to examine the deposition of Dr. Frank and so
3 after the opening and presentation of testimony for the day, I
4 understand Dr. Frank will be for tomorrow, we might want to
5 stay just a few moments and get that settled and then we'll be
6 completely ready to go, and any other matters that could be
7 dealt with expeditiously so that we can get right into the
8 trial tomorrow morning if that suits everybody. Very good.
9 Are y'all ready? Very good. Mr. Bailiff, you may bring the
10 jury.

11 (The jury returned to the courtroom.)

12 THE COURT: Please be seated, members of the jury.
13 Members of the jury, I understand that you have selected a
14 foreperson of the jury, has that name been announced? Please
15 rise, Madam Foreman, tell me your name and name.

16 THE JUROR: 225, Marla Teague.

17 THE COURT: Very good. Thank you so much, members of the
18 jury. Ladies and gentlemen of the jury, you may find I stand
19 sometimes, I don't mean to be domineering but I'm so short that
20 sometimes I can't see over to see the various things that are
21 occurring in the courtroom, so if you will be patient with me
22 about that. And at 74 I sometimes stretch a little bit during
23 the course of the proceedings as well, that will keep my
24 attention affixed on what is going on before us. We're about
25 to start the trial as you know, and as I've explained to you

1 before, I'm an acting circuit court judge with the privilege of
2 presiding over this important matter for you and for these
3 parties. This will probably be a little different from what
4 you may expect. Many of you may never have seen a live jury
5 trial, but I guess all of us have seen television trials and
6 they're always full of a lot of high drama and they're
7 compacted in to a short period of time and everything is of
8 equal significance. There will certainly be some riveting
9 moments in this trial but it's not a form of entertainment, but
10 it is one of the most fundamental institutions we have for
11 preserving the America democracy. We're the only country on
12 the planet that treats the jury trial as the center of our rule
13 of law. That doesn't mean that every controversy is tried by a
14 jury, but the values that a trial jury of your peers embodies
15 are basic American values that the rest of the world stands in
16 awe of, and I can tell you that as someone who has been a judge
17 for many years and advised emerging legal systems and emerging
18 democracies from many other countries. Our system isn't
19 perfect, no system is, but I can tell you that many aspire to
20 have the kind of a citizen driven jury trial system that we
21 enjoy in this country. At the center piece of the jury trial
22 is you, of course. You are a wonderfully diverse example of
23 this community, and your test, like mine, is with all of your
24 history and diverse background to look at this matter
25 objectively, fairly, listen to the evidence as it comes from

1 the witness box and render a verdict that speaks the truth.
2 Verdict is an interpretation in English of a Latin word
3 veredicto, which means to speak the truth. It's a slow and
4 deliberate process at times, sometimes it's a little
5 repetitious but that's the nature of things in connection with
6 a matter about which you're going to hear that involves a big
7 mixture of factual information for you to absorb both in
8 documents and in videos and in testimony read from the witness
9 stand and live witnesses, as well as the testimony of experts
10 in various fields that impact deliberations you're going to
11 have to make about this matter. You are officers of the court,
12 of course, you are sworn to uphold the integrity and fairness
13 of this system, our judicial system, as you search the truth,
14 and you should expect that these advocates can be professional,
15 competent and ethical, and I know them well enough to tell you
16 that they meet that standard for you. You've taken an oath to
17 reach a fair verdict to the best of your ability and you are
18 expected to be professional, reasonable and ethical. And
19 sometimes I find that jurors model good behavior when lawyers
20 can sometimes get a little bit outside of themselves,
21 overexcited, I find that jurors exercise the kind of fairness
22 and subtle common sense that really makes our system work. I
23 will try to uphold those virtues myself and be as professional,
24 calm and ethical as you would expect me to be. Now, in terms
25 of how we are to proceed, what will occur first is these

1 attorneys for the plaintiff and for the defendant will make an
2 opening statement. These opening statements are not arguments,
3 you're going hear the arguments at the end of the case where
4 the parties summarize for you the evidence from their
5 perspective and the law from their perspective subject to the
6 law as I give it to you, but these are an attempt on the
7 front-end to outline the claims and the evidence in support of
8 the claims. Evidence takes a lot of forms, it can be
9 testimony, it can be documents, it can be models, it can be
10 photographs, and you should pay close attention to all of it.
11 You're the sole finders of the facts, I cannot find the facts
12 nor anyone else in this courtroom. You are the ones who decide
13 in a collective group what the facts of this matter are, and
14 you shouldn't interpret anything I say as an attempt to try to
15 find the facts for you or read into any ruling I might make as
16 some attempt by me to send you some signal about what I think
17 the facts are. I respect your role as the finders of fact and
18 that is a role not shared with anyone else in this process. It
19 is your domain and your domain alone. Now, after all of the
20 evidence is presented these attorneys are going to make their
21 closing arguments, and the final remarks will be true arguments
22 where they really advocate their position for you, each side
23 will emphasize a part of the evidence that they think persuades
24 you. Keep in mind that opening statements and closing
25 statements are not evidence, they are the arguments of the

1 attorneys but you should give those arguments your undivided
2 attention. They've worked mighty hard to focus this matter for
3 you and to represent their clients in a way that makes sense
4 and gets you to the meat of the issues you are going to have to
5 decide. After the arguments are finished then it's going to be
6 my duty to explain the law to you, and that is the area in
7 which I am the decider. Sometimes that charge is a lengthy
8 process. This is a complicated case involving expert testimony
9 and so my charge will reflect the complexities of this matter
10 but hopefully will be something that will give you the
11 dimensions that you work with. I can tell you on the front end
12 that I generally give you a copy of the charges to take back
13 with you from the jury room, of course, I will hear from the
14 lawyers if they have some good reasons why that ought not to be
15 done in this case, but that is generally what I do. I will
16 also tell you that I allow you to take notes. Sometimes people
17 are allowed to take notes when they serve as a juror, sometimes
18 not, it's certainly not mandatory and it's not evidence and
19 it's not to be used to say, "Hey, I know better than you, my
20 friend along the jury, what was said because I wrote it down
21 this way." It's your own aid to help you sometimes just to
22 help you pay attention and keep focused, but it is sometimes
23 helpful when you are in a case like this that's going to take
24 more than just a couple of days to try, so if you care to make
25 notes you have the right to do so and I will allow that. The

1 notes should be secured in the jury room and not taken out of
2 the jury room, not taken home with you but if you wish to make
3 notes that's your prerogative. Now, after I charge these
4 issues and it is something that I am required to do by the law,
5 you will then return a verdict. During the course of the trial
6 the plaintiffs have the burden of proving their claims and they
7 must meet this burden by the greater weight or preponderance of
8 the evidence, and what we mean by the greater weight or the
9 preponderance of the evidence is this, if you can imagine a
10 traditional set of scales, and when the case begins the scales
11 are exactly even, and after all of the evidence is presented if
12 those scales should remain completely even after all of the
13 evidence is in then -- or even tipped slightly in favor of the
14 defendant then the plaintiff will not have proven their case
15 and you must find a verdict for the defendant. But if the
16 scales tip ever so slightly in favor of the plaintiff then the
17 plaintiff will have met the burden of proof and your verdict
18 will be for the plaintiff. Now, that may give you some pause
19 because you think, gosh, I heard about beyond a reasonable
20 doubt, that's a criminal standard in a criminal case, but the
21 preponderance of the evidence as I've explained to you these
22 scales of justice, that's the measuring stick in a civil case
23 which is what you are trying at this time. Now, I'm the only
24 person in the courtroom allowed to tell you what the law is and
25 you're the only people in the courtroom that can decide the

1 facts. I don't have the right to indicate to you at all which
2 way you should make your evaluation of the facts. I want to
3 tell you that from time to time lawyers are going to make
4 objections, it's part of what they have to do if they want to
5 preserve their position or have me consider their position and
6 rule with them they've got to make objections, and they do that
7 to call to my attention to some possible violation of the rules
8 that I've got to operate under just like they do. I don't get
9 to make the rules, that's for the legislature in the case of
10 statutes and for the South Carolina Supreme Court and the U.S.
11 Supreme Court in terms of case law. So I give attention to any
12 objection that they make, that's my responsibility as a judge.
13 I don't hold the attorneys' objection against them, they've got
14 to protect their record and we have rules to operate. Many
15 times I try to make these rulings as expeditiously as possible,
16 but there may be times when the matter is sufficiently complex
17 that the attorney may say objection and then say, "May I
18 approach?" And they won't have a more extended argument
19 outside of your presence because that wouldn't be appropriate
20 for you to hear the argument before I have decided whether the
21 evidence should be admitted, and so I may send you to your jury
22 room so that I can have these conversations on the record but
23 out of your presence to decide what is appropriate under our
24 rules for you to hear as evidence. I try to keep that to a
25 minimum, but it is part of the system of having to try cases so

1 it has to be done from time to time. Finally, I ask you to pay
2 close attention to all of the evidence. You will have to
3 evaluate the credibility, and that means the believability of
4 the witnesses. You are participating in a time-tested system
5 and it's extremely important for you to listen to all of the
6 evidence as it is presented. As you begin your deliberations
7 you cannot discuss this case with anyone including your fellow
8 jurors, your family, your friends, or anybody else until the
9 case is presented for your decision after the close of all of
10 the evidence, the charge by me and, of course, before that the
11 arguments by counsel. You'll become good friends during this
12 process, but you can't talk about the case until we give the
13 case to you for deliberations, and that's because if you start
14 deliberating midway you may tend to emphasize one piece of
15 evidence over another piece of evidence that may come in later,
16 so it's a question of fairness about how your very important
17 task of deliberations is conducted. Now, this includes not
18 discussing face to face, in telephone, in emails, in blogs or
19 in any other method of communication. You may not, and I
20 underscore and repeat this, you may not use a computer, a
21 cellular phone or any other kind of electronic device with
22 communication capabilities at anytime during this courtroom and
23 during deliberations. Now, break for meals and overnight you
24 can use those personal devices but you cannot use them to look
25 up things pertaining to the case. Why? That would seem so

1 normal, we've gotten so in the habit of just accessing
2 information that we have it, but it's because the information
3 you can consider and the only information you can consider is
4 the evidence that comes from the witness box and the law as
5 it's given to you by the Court. Now, tempting as it may be to
6 research something on your own for information, "Hey, I want to
7 know about these parties, I want to know about these lawyer,"
8 and so forth, "I want to see news accounts, I want to read the
9 news accounts of this case," if any there will be, or any other
10 topics, "Oh I want to research mesothelioma and find out what
11 the web tells me about that." In the old days when I first
12 began the practice of law all a jury was told at this point in
13 the preliminary charge by the judge was not to read the
14 newspapers but that's a pretty ancient way of getting
15 information these days in society. Now we have television, of
16 course, but we have some means of electronic abilities to do
17 research but this would be unfair to the parties and to the
18 system we've worked so hard to bring to you today. And you
19 might do this quite innocently, but we have to declare a
20 mistrial if we found out about it and you might imagine a case
21 with this technical complexity summonsing all of you for what
22 is going to be a trial, I hope not of an inordinate length, but
23 it's going to be a trial of some length to midway through find
24 that there's been a violation of these requests and directives
25 by the Court so that you have to try the whole case over again

1 would be an awful waste of resources for a lot of different
2 folks. I know you're going to comply with that. I thank
3 goodness I've almost never had a jury that did not and I've
4 been in the business a long time so I trust you to take your
5 responsibility that seriously. You and I are going to have to
6 try this case and perform our different roles on the basis of
7 what is in this courtroom and what comes out of this courtroom.
8 The attorneys and parties involved are not to talk to you at
9 all, they know that very well, and if you see anybody involved
10 in this case and they don't even say hello to you you'll say,
11 "Gosh how unfriendly is that?" But it's because of these rules
12 that you are not to be tampered with or influenced by any
13 outside information, so that is the reason that they keep their
14 distance from you in your very sacred roles as jurors. It's
15 important that you keep an open mind and not decide this case
16 until it is time for you to begin to deliberate it. Don't
17 prematurely make up your mind, that's awfully easy to say and
18 hard to do because first impressions are often strong
19 impressions, we all know that, common sense tells us that. But
20 it's important for you to exercise your responsibility and to
21 determine this case from all of the evidence that is presented.
22 And one further thing, on note taking, "Gosh, I wanted to take
23 notes but I didn't bring my pencil or I didn't bring any
24 paper," this afternoon is mostly going to be taken up with
25 opening arguments and some initial information, but don't feel

1 anxiousness, you'll have plenty of time, I assure you, to get
2 those notes started if that's what you wanted to do. Please
3 don't feel like "Golly, she says I can take notes and now I
4 feel like I've got to take notes, I don't even like to take
5 notes." It's purely up to you, it's just something to help if
6 that is the kind of material that would be helpful to you, you
7 decide, perfectly okay any way you decide it. The trial is
8 about to begin now, so thank you very much. If problems occur,
9 if jurors have questions I will tell you that we're in a little
10 different kind of -- but my normal course and in the days to
11 come will be to take a break in the morning, and of course,
12 we'll have lunch, then a break about midafternoon, so that
13 would kind of be the process but if needs develop and you need
14 a break, all you've got to do is indicate that to your
15 foreperson and we will take a break immediately, don't feel "Oh
16 my gosh, I've got to wait until they declares that midafternoon
17 break?" No. We want to keep you comfortable and keep the
18 folks on task at hand. Thank you very much for your attention
19 to these remarks and for your service in this very, very
20 important service and privilege really as a citizen of the
21 United States of America and the State of South Carolina.
22 Counsel, you may begin. I am reminded that you have not been
23 given the oath yet, so yes, that is extremely important. Madam
24 Clerk?

25 (The jury was sworn.)

OPENING STATEMENTS

1 THE COURT: Okay. Counsel?

2 MR. JEKEL: We're here because of SCAPA dryer felts.
3 SCAPA manufactured, sold and released into commerce asbestos
4 containing dryer felts used in the paper making process. You
5 will be an expert. Mind you, though, these dryer felts are
6 huge. These are large pieces of textiles, each one may contain
7 hundreds of pounds of asbestos. SCAPA sold these asbestos
8 containing dryer felts to Bowater paper mill where Steven R.
9 Stewart worked. SCAPA sold these asbestos containing dryer
10 felts without ever testing the asbestos yarns to determine if
11 they released fibers, without ever warning of the asbestos
12 content of these textiles, and without ever providing safe work
13 practices for working with the asbestos containing dryer felts.
14 Steven R. Stewart worked at Bowater. Steven R. Stewart worked
15 with SCAPA asbestos containing dryer felts. Steven R. Stewart
16 was exposed to asbestos from those dryer felts, and 40 some odd
17 years later, which is exactly when you would expect it, Steven
18 R. Stewart was diagnosed with a single tumor for asbestos
19 exposure, mesothelioma. On October 2012 Mr. Stewart diagnosed
20 with his mesothelioma, on August 23rd, 2013 Steven Stewart died
21 from his mesothelioma. SCAPA denies all responsibility. My
22 name is Fritz Jekel, and I along with Bill Graham and Greg
23 Hyland represent the estate of Steven Stewart through the
24 personal representative Steven Edwards, his son. The Stewart
25 family has brought a lawsuit against SCAPA for the pain,

OPENING STATEMENTS

1 suffering, death and loss of Steven Stewart. That lawsuit is
2 why we're all here today. And as the judge said, we're going
3 to prove some causes of action we've got -- and I want to make
4 sure -- we brought three major causes of action against SCAPA;
5 negligence, strict products liability and failure to warn.
6 Negligence. What is negligence? Negligence is the failure to
7 use that ordinary reasonable care that a like person or
8 manufacturer under similar circumstances would use. Strict
9 products liability is liability imposed when a product is
10 inherently and unreasonably dangerous when used in the manner
11 that it was intended. And failure to warn is just that,
12 failure to warn. We have alleged that SCAPA was negligent in
13 incorporating asbestos into dryer felts. You're going to learn
14 this, when SCAPA was making asbestos dryer felts they were
15 making non-asbestos dryer felts. When asbestos stopped being
16 used they found replacements. So incorporating a carcinogen in
17 your product and not testing it is why believe they were
18 negligent. Again, you're not going to see any evidence from
19 SCAPA that they tested these dryer felts to determine if they
20 released fibers, we believe that's wrong. These are textiles
21 with hundreds of pounds of asbestos in there. Strict products
22 liability. Again, these dryer felts were manufactured and made
23 with asbestos in them, and we'll talk about that in a second.
24 They were designed to have asbestos yarns in them. We believe
25 that when you use that product in its intended manner that it

OPENING STATEMENTS

1 releases asbestos fibers and it creates a potential for those
2 working with the dryer felts and around the dryer felts to
3 become exposed to asbestos when used in its intended manner, we
4 believe that makes the product inherently dangerous and
5 unreasonably dangerous such that SCAPA should be strictly
6 liable for the asbestos containing dryer felts. And last is
7 failure to warn. They didn't tell Bowater or the folks that
8 were working with the dryer felts, Steven R. Stewart, that the
9 dryer felt had asbestos in it. They didn't tell them when you
10 put it on, when you're working with the felt on the machine,
11 when you take it off of the machine you should follow these
12 safe work practices so you do not create an exposure to
13 asbestos, and that's what we have alleged. We have alleged
14 again that Steven Stewart worked with these asbestos felts, was
15 exposed to the asbestos fibers, got mesothelioma and ultimately
16 died from it. At the end of the jury trial, at the end of the
17 case after all of evidence comes in the family is going to ask
18 the jury to return a verdict, the only verdict that you can
19 return in a civil case is for money, and we will be asking for
20 a substantial sum of money to compensate for the pain,
21 suffering and loss of Steven R. Stewart. Now, you've probably
22 already experienced this but I wanted to talk a little bit
23 about the juror's role in the trial in general because it is
24 very unique, and I second Judge Toal's statement that we do
25 have the best judicial system in the world and your involvement

OPENING STATEMENTS

1 is critical in that and it is always my pleasure to present to
2 a jury. Now, the other thing that as the judge said, it's kind
3 of like a fish bowl in here, we're all going to be here eight
4 hours a day, you looking at us, us looking at you, us looking
5 at the evidence, but we're going to be here all day everyday,
6 and it's just kind of strange that when we're outside of here
7 or if we're at lunch we can't talk to each other. If people
8 look like they're running away from you, again, they aren't
9 shunning you, we just can't talk, and that's kind of odd for
10 people who are sitting so close to each other eight hours a day
11 for a full week, so that's a little unique. The other thing
12 that I want you to remember in this regard is this is the
13 Stewart's family only day in court, this is going to be their
14 only opportunity to prove the negligence, strict liability and
15 failure to warn of SCAPA, it's their only day in court to prove
16 the loss. And all I will ask is that at the end if the
17 evidence supports it that you give a full verdict in favor of
18 the Stewart family. In that same regard, Judge Toal has
19 indicated, I'm just an advocate. I'm going to help present the
20 evidence and I am the Stewart family advocate. Now, you may
21 not like me, you may not like my voice, you may not like my
22 suit. My shoes, whatever it is, what I am asking is don't hold
23 any animosity or anything that I have done wrong against the
24 Stewart family, it is their only day in court. The other thing
25 that I want to say is when the Stewart family came in here they

OPENING STATEMENTS

1 understood that you, the jury, collectively has the hardest
2 job. You will answer the hard questions, what caused Steven
3 Stewart's mesothelioma? Was it asbestos dryers from the dryer
4 felt? And they've accepted that. They are here to get your
5 collective judgment. You have the hardest job in this
6 courtroom and that's why it's important that you keep an open
7 mind and listened to the evidence. As we are sitting here and
8 you will experience this, we're in the courtroom eight hours a
9 day, I know all of the lawyers on the other side, I've known
10 them all for a long time, if at any point in time you might see
11 us chatting and laughing, I don't want you to forever think
12 that we the lawyers and the staff for the lawyers don't take
13 this seriously and aren't doing our best to present a case in a
14 coherent manner and the most efficient manner that we can. But
15 things happen, witnesses don't show up, you know, a legal issue
16 comes up with Her Honor, we will do our best but don't think we
17 aren't taking this case very seriously because we have. Again,
18 it's the Stewart family's only day in court. And I did want to
19 talk briefly, because again, I'm sure you've already realized
20 that this is nothing like TV and it isn't. On TV, on the legal
21 shows it's all neatly wrapped up in 30 minutes and that's not
22 going to happen here today. And I do want to briefly talk a
23 little bit about the burden of proof, because as Her Honor
24 said, the plaintiffs come in with the burden of proof on all of
25 those causes of action, and the burden of proof was the

OPENING STATEMENTS

1 preponderance of the evidence, the greater weight of the
2 evidence. And I have a confession to make, a guilty pleasure,
3 I like Law and Order, like most of you I watch that show, and
4 again, don't hold that against my clients if that bothers you,
5 but I've done this awhile and I heard jurors say "You didn't
6 prove it beyond a reasonable doubt." That's Law and Order,
7 folks, that's a criminal case. Again, in a civil case the only
8 thing we can ask for is money at the end of the day and the
9 only thing you can award is money, it's preponderance of the
10 evidence. Again, if the scales slip -- tip ever so slightly in
11 our favor we've carried our burden. An example I like to use
12 at this time of the year is if the nose of the football crosses
13 the first down marker it's a first down, the whole ball doesn't
14 need to cross that line. So let's talk a little bit about the
15 evidence. The first thing you've probably learned is this an
16 asbestos exposure case. Well, what is asbestos? Asbestos is a
17 naturally occurring mineral, it is mined from rock in quarries,
18 it is processed into fibers and other textiles. There are
19 three main types as you see; you've got chrysotile, amosite and
20 crocidolite, not surprisingly chrysotile is often referred to
21 as the white asbestos; amosite, brown; crocidolite, blue.
22 There's also further breakdowns, amosite and crocidolite are
23 referred to as amphiboles, and that has to do with the shape of
24 the fiber, and chrysotile is considered serpentine. Again, as
25 you can tell from the pictures the rock asbestos easily breaks

OPENING STATEMENTS

1 into fibers, okay? And it's the fibers that we really worry
2 about. And what is it that we know about these asbestos
3 fibers? First and foremost, they are all carcinogenic, they
4 all can cause disease. The first thing we know about asbestos
5 fibers, dangerous. The second thing we know about asbestos
6 fibers, because of properties of the asbestos because it was a
7 fibrous rock it was capable of being used in a variety of
8 products, today we're talking about dryer felts, but it was
9 also used in cements and insulations and other products, and
10 when the asbestos becomes liberated from these products into
11 little fibers they get in the air. And these little fibers,
12 what do we know about them? They're invisible, you can't see
13 them with the naked eye. Now, we're going to have scientists
14 and experts here who have put asbestos under the microscope and
15 will show you nice pretty pictures, but when that asbestos
16 fiber is flying into your mouth or your nose you don't see it,
17 you don't taste it, it's odorless, it's tasteless, invisible
18 and indestructible. Now, what does that mean? These small
19 little fibers when they get up there in the air they stay there
20 for a long time, they don't start breaking down until they get
21 into your body and you'll learn all about that. What else do
22 we know about these asbestos fibers? All cause disease, they
23 stay around for a long time, they can be very, very small.
24 Now, we're here to talk about asbestos exposure. The first
25 thing we have to do is kind of talk about how one becomes

OPENING STATEMENTS

1 exposed to asbestos. And I'm going to real briefly go over
2 some basic anatomy because it is important, a lot of people
3 don't understand how people become exposed to asbestos. Well,
4 it happens in your nose, your mouth, you've got your esophagus,
5 the bronchi that lead into the lungs. When we talk about the
6 lungs there's a few things that we need to know, the meat of
7 the lung, the lung itself is refer to at parenchyma. Now, your
8 lungs, you've got the bronchi tubes, the big tubes lead to
9 smaller tubes, lead to even smaller tubes until you get to the
10 alveoli, the little air sacks in the bottom of your lungs where
11 oxygen is changing with the blood. That all happens in the
12 lungs in the alveoli. Now, what else do you need to know about
13 the anatomy that is your lungs? Your lungs are covered by a
14 single cell almost like a Saran wrap. Your lungs sit in a sack
15 call the pleura, p-l-e-u-r-a, it's the lining of the lungs and
16 that just helps your lungs move throughout the chest cavity
17 smoothly without hitting bones and the like, that's the pleura.
18 So what happens with these fibers when they come in? They come
19 in through the nose and the mouth and they get into the lungs.
20 Now, they have two options, they can also move through your
21 body through your lymph node system, but what happens is you
22 breath these fibers in through your mouth and your nose, some
23 of them are going to get into your lungs, some of them are
24 going to go all the way deep down to the bottom of your lungs.
25 Some of these fibers are going to get expelled through the

OPENING STATEMENTS

1 body's natural defense mechanism, the cilia, you will learn
2 about all of that. But let's talk about the fibers that get in
3 there, what happened once they get there. Well, if the fibers
4 go to the very base, the alveoli of the lung, when those fibers
5 sit there they can go down to the lungs or they go out the
6 lungs, they can reach the pleura. So you've got these fibers,
7 they get in there, they can move around, they either go to the
8 base of the lung or the pleura. What happens when they are
9 there? They can do a few things. These fibers are capable of
10 causing cellular changes at a cellular level, they can mess
11 with the DNA in the cells, that's the first thing these fibers
12 can do. The second thing they do is they cause inflammation,
13 they cause irritation, these fibers that are sitting in the
14 alveoli, they cause irritation, that irritation ultimately
15 leads to scarring. So you can get scarring in the base of your
16 lungs or on the side of the plaques of your lungs. Now,
17 ultimately if you're exposed to enough asbestos you can get an
18 asbestos related disease, and what diseases are caused by
19 asbestos exposure, and there's a few of them, let's go over
20 them. Diseases caused by asbestos. And I'm just going to go
21 over these real briefly. You've got the pleural disease,
22 that's the outside lining of the lung. What happens is that
23 scarring, they're called pleural thickening, pleural plaques,
24 pleural calcification, that's the scarring on the pleura of the
25 lung. What's interesting about pleural diseases, it can be

OPENING STATEMENTS

1 disabling or not because it requires very little exposure to
2 the asbestos to cause it. The next disease that we're going to
3 talk about is asbestosis. Asbestosis is the scarring in the
4 air sacks at the base of the lungs. Interesting thing about
5 asbestosis is it's incurable and it's progressive, once the
6 scarring starts down there it doesn't stop and it's just going
7 to get worse. Asbestosis. Then we have lung cancers, and with
8 lung cancers we're talking about adenocarcinomas. These are
9 cancers that occur in the parenchyma of the lung. Lung
10 cancers. Now, what we learned is if you smoke cigarettes and
11 have occupational exposures to asbestosis your chance of
12 getting lung cancer are multiplied, it increases. And the last
13 thing that we're here to talk about is mesothelioma, and
14 mesothelioma is a cancer of the lining of the lungs, these
15 fibers get out to the pleura, they cause cancer. What happens
16 is that pleura starts to thicken and solidify and squeeze the
17 lungs to where you can't breath, that's what happens with
18 mesothelioma. The other thing about mesothelioma is it's
19 always pleural, you can get pleural mesothelioma, it's what we
20 have here, it's always fatal. There is no real good treatment
21 or cure for mesothelioma. The other thing that we know about
22 mesothelioma is there are only a few things in the world that
23 cause mesothelioma, but in the United States among men like Mr.
24 Stewart over 75 percent of those mesotheliomas are caused by
25 asbestos exposure, it's a -- generally you die within 18 months

OPENING STATEMENTS

1 of your diagnosis, and that's mesothelioma. I want to talk --
2 just a few more concepts that are important to use when we're
3 talking about exposure is dose response, how much is too much,
4 how much is going to make me sick. Well, asbestosis really
5 requires the most dose, but it's a very easy concept, the more
6 you're exposed to the higher your risk of developing any of
7 these diseases are, and that's a dose response relationship.
8 If you work with a product all the time and are exposed to it
9 more often your risk goes up plain and simple. The other
10 concept that I want to introduce is this of latency. All
11 asbestos diseases that we talked about follow a latency period.
12 What does that mean? Well, a day after you're exposed to that
13 asbestos you're not going to get sick, a month after you're not
14 going to get sick, it's the latency period from date of
15 exposure to disease onset, 25 to 45 years. The asbestos does
16 its damage and doesn't show up again for 40 years with the
17 disease, that's latency. It's with all diseases and it's what
18 you'll see in this case as well, it's latency period. Okay. I
19 want to talk a little bit about SCAPA and dryer felts -- and
20 that sun in the afternoon is bright, is it not? All right.
21 Moving on. Now, if we're going to talk about dryer felts the
22 first thing you need to understand is paper making. This is
23 the number one machine at Bowater, this is where Steven R.
24 Stewart worked, okay? And I'll give you a diagram in a second
25 but I just want to throw this out there, this is the dryer

OPENING STATEMENTS

1 section of the number one paper machine at Bowater and that's
2 really where we're focused in on. All right. That's the
3 dryer end. Very basic schematic of a paper machine and the
4 paper products, we go this way, okay? As you're going to here,
5 paper starts out wet with a pulp, right? You've got the wet
6 end of a paper machine, which you can probably see now in the
7 picture where you saw it, you've got the press end, the wet
8 press section and then the dryer felt section, okay? And the
9 dryer felt sections, you see these series -- those are heated
10 cans, and these big felts run through there carrying the paper.
11 So a dryer felt -- let's get back -- a dryer felt is a weaved
12 textile. The weave in the textile, you have a warp yarn and a
13 weft yarn, and that's just the directions of the yarn. But the
14 yarns are designed for the dryer section, you saw how big the
15 section was at Bowater, very simple schematic. But these dryer
16 felts act as asbestos containing little conveyer belts that
17 carry the paper product through the drying process, through the
18 dryer cans and the process, and when it comes out of the dryer
19 you've got whatever paper you were making, be it news print,
20 magazine paper, whatever type of paper you're making, cardboard
21 boxes, it all varies. But when it comes out the end of the
22 dryer section it is whatever paper you are making, and the
23 dryer felts that we're talking about are used in a situation
24 down here. And again, they're huge, thousands of pounds,
25 several pounds of asbestos, hundreds pounds of asbestos. Let's

OPENING STATEMENTS

1 talk about SCAPA. SCAPA of Waycross, Georgia, they began in
2 the 1950's sometime. But when they first started in Georgia
3 they weren't making all of the felts that they were selling in
4 Georgia and they had to import some of them from SCAPA
5 Blackburn because that's where the real SCAPA dryer felt
6 business started, Blackburn, England, and they started there in
7 1923. Now, some of you may say, "Why is this really all that
8 important?" Well, all those asbestos diseases that we talked
9 about, one of the things I didn't tell you is how long have we
10 known asbestos causes these injuries? And we've known for a
11 long time, and a lot of the knowledge started in England,
12 because as you probably are all aware the industrial revolution
13 started a little earlier in England than it did here in the
14 states and they were seeing these diseases develop in the
15 factories in England before we started seeing them here. What
16 else do we know about SCAPA and its use of asbestos? A,
17 they're spending millions of dollars a year on asbestos.
18 They're buying millions of pounds of asbestos yarn a year.
19 They are incorporating sometimes both the warp felt and the
20 weft yarns are asbestos containing, there could be over 1,000
21 pounds of asbestos yarns in a single felt. This was a company
22 that was buying asbestos every day, and you'll see it. You
23 won't see any records internally at SCAPA talking about
24 asbestos disease, what you will hear and what you will see them
25 talking about is "Where are we going to get more asbestos

OPENING STATEMENTS

1 yarn?" And this is in the 1970's. And I want to show you
2 something. You're going to learn this is volume 132 published
3 by the analysts at the New York Academy of Science, this is 700
4 pages of medical literature on the biological effects of
5 asbestos, 700 pages, all new literature, this was published in
6 1965. They had a conference in '64, they invited everybody to
7 New York City and they all brought their literature on asbestos
8 in 1964, it filled up 700 pages in 1965. And you'll see SCAPA,
9 in the 70's they are worried about, "Where are we going to get
10 more yarn? That's what we're worried about." They aren't
11 talking about the hazards of asbestos, they aren't talking
12 about do our felts used in the field release asbestos fibers,
13 no, you're not going see that testimony. What you will see,
14 though, is what does SCAPA know about fibers that they use in
15 these dryer felts? They wear out over time. Because remember
16 this, remember, throughout the process you've got heat, you've
17 got chemicals, you've got friction, you've got felts running
18 through these big canisters, that wears these felts out. SCAPA
19 knows all about that. You're going to see in their own records
20 they'll tell you this. Fibers and felts degrade. Now, that's
21 good for SCAPA because dryer felts need to be replaced and they
22 were replaced. These dryer felts had a useful life of six
23 months to maybe a little over a year, so they know they're
24 being used, they know they're wearing out, they know fibers are
25 coming off of them, but they aren't warning you that it has

OPENING STATEMENTS

1 asbestos in them, they aren't testing the product, that's what
2 we know about SCAPA. Now, I'm going to turn to talk a little
3 bit about why we're here, Steven R. Stewart. As was indicated
4 Steven Stewart worked at the Bowater Paper Plant. Steven
5 Stewart was born in Indian Land in August of 1961 or -- I'm
6 sorry, August of 1947, he graduated high school in Indian Land
7 in 1961. After high school he went off to East Carolina
8 University, he met a woman, fell in love, started to have a
9 family, moved back to York County in 1963. In 1963 Stephen
10 Edwards was born. But in 1963 Stephen Edwards went to work --
11 Steven Stewart, rather, went to work at the Bowater Paper
12 Plant. And again, Mr. Stewart just so you know, he spent -- he
13 worked at the Bowater Paper Plant from 1963 to 2002, and
14 throughout that whole period of time he was assigned one place
15 and one place only, machine number one at the Bowater Paper
16 Plant, he spent all of his time there, and you'll see, we've
17 got evidence there were plenty of SCAPA asbestos containing
18 dryer felts there. Now, Mr. Stewart was there for a long time
19 and he worked with those felts, and you're going to hear from
20 Mr. Stewart before he passed away he was able to give a
21 deposition in this case and you'll hear from Mr. Stewart
22 himself and he's going to tell you about how he worked on those
23 machines. Does this look familiar? That's the number one
24 machine I've been talking about, that's Steven Stewart. So he
25 was there, he worked on these machines. He's going to tell you

OPENING STATEMENTS

1 on in his own words what he did with it, how he installed the
2 dryer felts, how during his work on the machine there might be
3 a blow out of paper, when the papers is running through these
4 machines if there's a cut, if something happens to a piece of
5 paper suddenly the machine is still running so you're getting
6 paper going up all over the place and these guys are grabbing
7 high powered air, 60 pounds per square inch, and they're trying
8 to blow it to clear the felt so the paper can keep running and
9 you don't lose anything and you don't have to shut down the
10 machine. Now, that's one thing that would happen, but you've
11 got to clean these felts, and then these felts when they wear
12 out they have to be taken off, and that's -- he'll tell you how
13 he does it. Those are activities that caused exposures to him
14 on a regular basis to these asbestos felts. So while Steven is
15 here working at the Bowater, April of 1965 Catherine Kingston,
16 Stephen's sister, is born. The family, it's Steven, Lauren,
17 little Stephen and Catherine and they're here in York and
18 they're living the life. Things didn't really work out too
19 much with Lauren and Steven, they got divorced. Lauren went on
20 and met a new man and got married, and what Lauren went to
21 Steven R. Stewart and said, "Steven, I'm getting married, my
22 new husband would like to adopt the kids," Steven R. Stewart
23 said, "Okay, I think that's best for the kids," and I tell you
24 that because we have Stephen Edwards here even though he's the
25 biological son of Steven Stewart. So there was that. The

OPENING STATEMENTS

1 family remained close, and you'll hear from both Stephen and
2 Catherine about the family dynamic. Steven Stewart retires in
3 2002, 40 years at the mill and now he's retired, and he's
4 starting to fish and travel, and his kids live down in the
5 Charleston/Moncks Corner area, so he's able to travel down
6 there, Catherine has a couple of kids he loves to go see his
7 grandkids, Steven Stewart. So he is enjoying retirement, he is
8 enjoying the fruits of his labor, but then around 2012 he
9 starts getting back pain, doesn't know what it is, starts going
10 to doctors and they don't know what it is. They start looking
11 at x-rays and CT's, suddenly they've got to send him to Duke.
12 They send him to Duke, he's poked, he's prodded, there's
13 biopsies, there's more testing. On October 24th of 2012,
14 Steven Stewart is told you've been diagnosed malignant pleural
15 mesothelioma epithelioid type, again, single cancer for
16 asbestos exposure. So naturally Steven goes through the
17 process, how does this happen to me? Why me? The doctors
18 begin conversations, Steven realizes it is asbestos and they
19 bring the lawsuit. Unfortunately during the pendency of the
20 lawsuit on August 23rd Steven Stewart died a slow painful death
21 from this mesothelioma at 70 years old. He had a lot left,
22 that's what we're here to talk about today during the trial.
23 We believe the evidence is going to establish by the greater
24 weight of the evidence that SCAPA was negligent, that their
25 product was unreasonably dangerous, they did fail to warn and

OPENING STATEMENTS

1 that those problems allowed asbestos fibers to become
2 liberated, Steven R. Stewart to become exposed causing him
3 great pain, suffering, death. Thank you.

4 THE COURT: You may proceed.

5 MR. YOUNG: Ladies and gentlemen of the jury, my name is
6 Lane Young and I'm not contagious but I've been sick for about
7 a week so would y'all please bear with me? I'm going to do the
8 best I can to keep my voice up and to give you the information
9 that we believe you need to hear our side of the case. But
10 before I start, I want to tell y'all something, nobody here --
11 nobody is here to say that they don't feel bad about Mr.
12 Stewart passing away, it's not a claim, everybody is going to
13 feel bad about that when the case is over. And I'm not here to
14 be disrespectful to his family or to his lawyers or to anyone
15 else. It's very, very serious, ladies and gentlemen, when
16 someone passes away and we don't dispute that. But ladies and
17 gentlemen, as the judge told you lawsuits are about the whole
18 story, they're not about half of the story, they're about the
19 truth and ladies and gentlemen of the jury, that's why we're
20 here. The law says if someone sues you you can say, "Fine,
21 what do I owe? Just let me know," or you can say, "We didn't
22 do it, something else did it," and you can bring evidence. And
23 that's what's been going on for the last five years. And
24 ladies and gentlemen, it's just not the right story that there
25 weren't any other asbestos products out at Bowater. You're

OPENING STATEMENTS

1 going to hear from a lot of witnesses that SCAPA did not cause
2 or substantially contribute to Mr. Stewart's mesothelioma.
3 You'll also hear that the miles of thermal insulation out there
4 did, and I'm going to tell you right now as quickly and
5 succinctly as I can why that is. Mr. Stewart did spend his
6 career at Bowater, he never worked in any sort of textile
7 factory or making any sort of asbestos textile. And, ladies
8 and gentlemen of the jury, we are not just here saying take my
9 word for it, we are going to have evidence but it won't start
10 until Friday and some of it will be next week, and I ask you,
11 as the judge did, to please wait and hear what we have to say
12 because we do have a lot of evidence. Ladies and gentlemen,
13 Bowater was a big, big place, it wasn't just this little bitty
14 -- the area where the paper machine was. You're going to hear
15 the paper machines were enormous, as high almost as the ceiling
16 in this courtroom, and you're going to hear, ladies and
17 gentlemen, you know that paper machine that you saw? Behind
18 that on every -- at every dryer can where he said the dryer
19 felts were there was a steam line going in there that brought
20 steam to dry the paper that was covered with asbestos
21 containing thermal insulation. You'll hear that there were
22 thousands of feet of thermal insulation there, and you will
23 see, ladies and gentlemen of the jury -- that sun is pretty
24 brutal -- the dryer felts are right here. This is an area that
25 is extremely wet, extremely ventilated. This is what it looks

OPENING STATEMENTS

1 like, ladies and gentlemen of the jury, soggy, soggy paper pulp
2 going on a dryer felt getting dried out with ventilation being
3 sucked off this and out the roof, hundreds of thousands of
4 gallons of water going through this dryer felt every day. A
5 resin coated dryer felt that had to be resin coated because,
6 ladies and gentlemen of the jury, it was made for an exact size
7 section on these dryers and it had to keep its shape, if it
8 didn't it would run off and then you couldn't make paper. So
9 you're going to hear, ladies and gentlemen -- and I don't have
10 a picture of it right now, there's a steam line coming to each
11 one of these dryers running over to a boiler all of which was
12 covered with thermal insulation which was not resin coated, not
13 wet, not ventilated, and when they changed that out and drove
14 into it dust went everywhere and Mr. Stewart breathed that
15 dust. There was insulation on the equipment, insulation on
16 pipelines, insulation on the tanks. And ladies and gentlemen,
17 I take issue with one thing Mr. Jekel said, we'll talk about
18 that, there was some SCAPA dryer felts there but not a lot,
19 there are four other manufacturers of dryer felts, but the
20 thermal insulation was there the whole time. And you're going
21 to hear, ladies and gentlemen, the thermal insulation, you can
22 just crumble it with your hand, it's frail and the dust comes
23 out because it's not resin coated and it's not wet. You're
24 also going to hear, ladies and gentlemen, that everyone said
25 back then and now to keep people from breathing asbestos wet it

OPENING STATEMENTS

1 down, resin coat it, ventilate it, exactly what happened to the
2 dryer felts at Bowater. I mentioned the insulation wasn't wet
3 when it was cut, sawed or removed, it produced dust that you'll
4 hear Mr. Stewart breathed, there was no ventilation there and
5 it was used the whole time. And ladies and gentlemen, this is
6 important because you just heard something about Dr. Selikoff.
7 You're going to hear in this case, ladies and gentlemen, unlike
8 dryer felts, thermal insulation has been known to cause
9 mesothelioma for almost 60 years, and Bowater bought that
10 thermal insulation, SCAPA didn't have a single thing to do with
11 that. That insulation would be used no matter what kind of
12 dryer felt there was. And ladies and gentlemen, Bowater bought
13 the felts, they knew exactly what kind of felt they wanted.
14 They liked the asbestos ones because they lasted longer. They
15 never called up and said these are hazardous from a dust
16 standpoint, they used them without any complaints of any harm
17 or danger from them or anyone. And I want to mention this
18 quickly, I'll talk to you about this again, it is not true that
19 all of the asbestos fibers are the same. The thermal
20 insulation had in it what's called amphibole asbestos, and I'm
21 going to talk to you a little bit more in a minute, but
22 amphibole asbestos fibers looks like my pen. It's sharp, it
23 has got iron in it, it's essentially indestructible, and what
24 happens is it gets in, the body can't keep it out and it pokes
25 into the cells and causes mesothelioma. Dr. Selikoff, who

OPENING STATEMENTS

1 wrote that book that Mr. Jekel just showed you, he found that
2 10 percent of all of the workers who worked with thermal
3 insulation got mesothelioma, he never even studied a dryer
4 felt. Ladies and gentlemen, the issue is SCAPA doesn't dispute
5 that asbestos and the type of asbestos that was in thermal
6 insulation is harmful, but they do dispute that someone is
7 getting asbestos exposure from a soaking wet fully ventilated
8 resin coated dryer felt when they're working right next to the
9 thermal insulation all day, every day. SCAPA is a plant from
10 Waycross, Georgia and they did make dryer felts. This is a
11 dryer felt, ladies and gentlemen of the jury, it is big, but it
12 is definitely tightly woven, resin coated and it is certainly
13 not friable for giving off any dust. You are going to hear
14 from Jim Doherty, a SCAPA fellow, and he's going to tell you
15 that he worked making dryer felts, selling dryer felts, his dad
16 did, and that they always believed that the end use of dryer
17 felts in this wet, humid, ventilated, resin coated paper making
18 environment was safe and no one said any differently. It is
19 tightly woven as I said, often the entire felt was resin
20 coated. They were made completely different than thermal
21 insulation, which wasn't resin coated or dusty. And, ladies
22 and gentlemen, this is important, you will hear on the issue of
23 negligence, Uniroyal, one of SCAPA's yarn suppliers, wrote and
24 told them the resin coated yarns you're using in the dryer
25 felts are safe because they're resin coated and because of the

OPENING STATEMENTS

1 way they're used. The felt just had to be tough, ladies and
2 gentlemen, because it had to keep its shape because it went
3 through an exact space on the paper machine the whole time, and
4 if it got catty wampus it would go off to the side and would
5 have to stop and you couldn't make any paper. You'll hear from
6 plaintiff's own witnesses that no scientific articles ever
7 suggest dryer felts cause or contribute to mesothelioma,
8 whereas thousands of articles for almost 70 years have said
9 thermal insulation causes mesothelioma. Asbestos containing
10 dryer felts were never banned in the United States. It was a
11 good product, ladies and gentlemen. No one has ever written
12 that they were harmful, shouldn't be used, they were dangerous.
13 Now, ladies and gentlemen, this is kind of what goes on, this
14 is where the steam is and then you've got the paper and the
15 dryer fabric and it comes and goes like this. So the water
16 comes out, goes into the basement and giant amounts of steam
17 are created. And the other thing that's important that Mr.
18 Jekel showed you, remember when this is going on, ladies and
19 gentlemen, the hoods are down, so anything that might come out
20 of that dryer felt is either going to go away in the water or
21 be sucked out of the ceiling in the ventilation which you will
22 hear was 50,000 to 60,000 cubic feet per minute. The good
23 news, ladies and gentlemen, is facts are facts. We sold 72
24 dryer felts to Bowater, 23 out of them contained asbestos, not
25 a ton, but yes, there were some there, less than once a year.

OPENING STATEMENTS

1 And when our felts were being used Mr. Stewart was not doing
2 the installing and removing job, he was doing another job, so I
3 ask you to listen closely to the facts. I don't want to repeat
4 myself. There were thousands and thousands of gallons of water
5 going through the dryer felts every day, 50,000 or 60,000 cubic
6 feet of air being pulled out over of the roof of the paper mill
7 over the dryer felts. Mr. Jekel didn't mention this but I want
8 to talk to you a little bit about it. We did a test of paper
9 actually being made that showed that when you use the felt and
10 paper is being made the way it's supposed to be made there is
11 no fiber release from dryer felts, which shouldn't shock you
12 because of the water and the humidity and the resin coating and
13 all of that stuff, so what did the plaintiffs do? They hired a
14 fellow by the name of James Millette, he's from Atlanta, he's a
15 friend of mine and they said, "You know, test a dryer felt and
16 see if you can get some asbestos out of it." Well, he took a
17 little bitty piece of dryer felt like this and put it in a box
18 that was no bigger than this podium, maybe not even that big,
19 no paper being made, no ventilation, no humidity, and what did
20 he do, ladies and gentlemen? He blew directly on a small piece
21 of dryer felt for five minutes from inches away, and I ask you,
22 ladies and gentlemen, to listen to the evidence and see if
23 anybody at Bowater ever blew directly on a little bitty piece
24 of dryer felt not making paper, not wet, not humid, not
25 ventilated for five minutes. Even Dr. Millette admits his

OPENING STATEMENTS

1 tests did not represent real world mill conditions. It's
2 just -- we're looking for the truth and what's fair, ladies and
3 gentlemen, and what Dr. Millette did had absolutely nothing to
4 do with what goes on in a paper mill and does not suggest that
5 you would get any fiber release from a dryer felt if you were
6 using it in a paper mill, and there's no article that's ever
7 been written that says that happened within use in a paper
8 mill. I want to tell you a little bit more about our defenses.
9 These types of asbestos, crocidolite and amosite, are found in
10 insulation pipes. As I told you there are hard fibers,
11 straight fibers, rigid fibers and they have high fiber
12 persistence. Well, what does that mean? Well, you're going to
13 hear, ladies and gentlemen, from Dr. Brody, that the way he
14 believes -- nobody really knows, but the way he believes that
15 asbestos causes mesothelioma is that there's contact with the
16 cells in the pleura, constant contact and finally it starts an
17 improper cell division. And the reason, ladies and gentlemen,
18 that these fibers, unlike the chrysotile that is used in dryer
19 felts, had been found to be the primary cause of mesothelioma
20 is because they are indestructible, they stay in the body for
21 years and they're sharp and they poke into the cell, and you're
22 going to hear from a number of witnesses that it's the
23 amphibole fibers that cause mesothelioma. The chrysotile
24 fibers that were used in the dryer felts, they are wavy. And I
25 apologize, you guys have been having to listen to me cough all

OPENING STATEMENTS

1 day, and what happens, ladies and gentlemen, when you cough?
2 When the chrysotile comes in first it gets caught in your nose
3 hairs, then it gets caught where you turn to go down into your
4 trachea. But then, ladies and gentlemen, your air tubes,
5 breathing tubes, they're all lined with little cilia, little
6 bitty cilia, and that's what happens when you cough. There's
7 mucous constantly moving up that cilia -- I don't mean to gross
8 you out -- but it catches particles and expels them, it catches
9 particles and expels them. The theory is is that because
10 chrysotile is wavy it's more likely to get caught, and you'll
11 hear that 95 percent of any chrysotile anyone breaths gets
12 pushed out, and that's not true of the sharp spear like
13 amphiboles that just go straight down and don't get caught..
14 And then the macrophages inside your lungs, they're able to eat
15 the chrysotile because it doesn't have an iron core, so 95
16 percent of the chrysotile that anyone breaths in gets expelled.
17 And one other thing that's important, ladies and gentlemen, Mr.
18 Stewart had surgery with respect to his mesothelioma and at
19 that point in time the doctor could have looked at his lung
20 tissue to see what kind of asbestos was in his lungs and they
21 could have said, "Ah ha, it's chrysotile," and that would not
22 have probably come from the thermal insulation, or they could
23 have just said it's amphibole from the insulation and then we
24 probably wouldn't be here, but that test was never done. And
25 remember, ladies and gentlemen, it's the plaintiffs who have

OPENING STATEMENTS

1 the burden of proof and had the ability to do an investigation
2 to see what kind of asbestos was actually in Mr. Stewart that
3 might have caused his mesothelioma. I know y'all are tired,
4 I'm almost done, give me about five more minutes. This case is
5 important to our client, too, we don't get but one day in court
6 for this case either and I appreciate your attention. Ladies
7 and gentlemen, the plaintiffs have to prove that the asbestos
8 was actually released from the dryer fabric and breathed by Mr.
9 Stewart in a significant amount and is a substantial factor in
10 bringing about his mesothelioma, and that they were
11 unreasonable dangers, and that the scientific knowledge at the
12 time showed that there were. And there is just none of that,
13 ladies and gentlemen, nor do we believe there will be evidence
14 of any significant amount of asbestos exposure from dryer
15 felts. I want to say a couple of other things. A small amount
16 of the exposure of asbestos is not substantially dangerous.
17 You will hear there's asbestos in the ambient air, that
18 everyone has asbestos in their lungs, and that a real paper
19 making test showed no fiber released when felts were used
20 properly. No scientific article has ever said dryer felts
21 caused mesothelioma, thousands say thermal insulation did.
22 It's Bowater that allowed the thermal insulation to be used,
23 it's also Bowater that bought our felts. But ladies and
24 gentlemen, at the close of the case we're going to submit to
25 you that the fault here lies with Bowater and thermal

OPENING STATEMENTS

1 insulation and not SCAPA. Nothing SCAPA could have done would
2 have prevented Mr. Stewart to be exposed to asbestos from
3 thermal insulation and it caused his illness. And yes, ladies
4 and gentlemen, we will ask you at the end to award the
5 plaintiff no money against SCAPA. I want to mention two other
6 things to you. You will hear that Mr. Stewart was not healthy,
7 he had a number of other serious medical conditions which
8 affected his life expectancy and I'm not going to read them all
9 to you, we will go into that later. And Mr. Jekel did mention
10 this but it is unusual, ladies and gentlemen, to have a case
11 that the plaintiffs' stepfather did adopt them in 1972 and
12 remained their father until 2013. They called their stepfather
13 dad, and listen -- you'll just have to listen and see how much
14 time was spent between them during his life and illness, but
15 they weren't adopted back until shortly after his diagnosis.
16 So ladies and gentlemen, thank you very much, I know you're
17 tired, we appreciate you being here and we look forward to
18 trying the case with you. Thank you.

19 THE COURT: Thank you, Counsel. Ladies and gentlemen,
20 we'll now proceed into the trial of the case but you've been at
21 it for awhile and been very patient, I'm going to take a recess
22 now, it's 3:50 at the present time, try to come in here at 4:00
23 or shortly thereafter if you would. Please go to your jury
24 room.

25 (The jury left the courtroom and a recess was taken.)

OPENING STATEMENTS

1 THE COURT: I have been advised by the bailiff that juror
2 number 21, number six on the random strike, Mr. Wesley D. Boan
3 indicates that he may need to be excused because he "Knows too
4 much about Bowaters." Now, what I would propose to do is bring
5 Mr. Boan in, put him under oath and find out what the meaning
6 of this is. Fortunately we have four alternates and therefore
7 we have plenty of ability to deal with something if we need to
8 deal with it, but I don't know what this means. So gentlemen,
9 are y'all going to talk to each other --

10 MR. JEKEL: No, Your Honor, bring him in and we'll --

11 THE COURT: Very good.

12 (Break in proceedings.)

13 MR. JEKEL: He was laid off from Bowater before his
14 current job, he let us know that during the qualifications
15 process.

16 THE COURT: Yeah. Well, now he's amplified that in the
17 way I have indicated, and therefore my approach is going to be
18 to call him to the stand, put him under oath and find out what
19 he means by that and then we can make a determination as to
20 whether he should be dismissed from the jury room. Fortunately
21 we have four alternates.

22 MR. JEKEL: Your Honor, some of the things that I would
23 seek the Court to ask is if he ever worked with an asbestos
24 containing product, if he ever worked with thermal insulation,
25 if he ever worked on a dryer felt number on the one machine,

OPENING STATEMENTS

1 those would be any issues, Mr. Young may have others..

2 THE COURT: Mr. Young, do you have other suggestions?

3 (Break in proceedings.)

4 MR. EARLY: He was questioned during the qualification
5 process, he was very candid, we were aware of that. He was
6 asked obviously if he had any prejudice, if he could be fair
7 and I think he answered truthfully and I don't think we need to
8 explore that any further frankly, but I'm certainly glad to
9 abide by the Court's wishes.

10 THE COURT: Well, he is asking to be relieved from jury
11 service so I believe we've got to explore it to some extent but
12 that doesn't mean he gets dismissed, because the final question
13 is, and he has already been asked whether he could be fair in
14 spite of his connection with Bowaters, he said yes. We'll have
15 to see what he says now that he's thought about it.

16 MR. EARLY: Okay.

17 THE COURT: Very good. Bring the juror in, Mr. Bailiff.

18 (Juror Boan came into the jury room and was sworn.)

19 THE COURT: Mr. Boan, you have very candidly had a
20 discussion with our bailiff and he has brought that to me and
21 so I want you to tell me exactly what you were trying to
22 communicate to him.

23 THE JUROR: I know a whole lot about Bowater. I was a
24 summer student there back in the 80's before I went to college
25 and my daddy retired from Bowaters.

OPENING STATEMENTS

1 THE COURT: You know a lot of about Bowaters. Of course,
2 your status with Bowaters as I understand it was examined by
3 counsel for both parties when Judge Hall directed the initial
4 qualifications and you very candidly disclosed an involvement
5 with Bowaters and you were questioned about that, do you recall
6 that?

7 THE JUROR: Yeah. But I didn't think it would have that
8 much to do with Bowater since it was from another company.

9 THE COURT: Yes, sir. And I want to ask you a couple of
10 questions before I turn this over to further examination.
11 During your time you were an employee of Bowaters at one time.

12 THE JUROR: I was a summer student for 90 days.

13 THE COURT: In that period of time did you ever work on
14 paper machine number one?

15 THE JUROR: I did.

16 THE COURT: All right, sir. And did you work around
17 asbestos containing products if you know?

18 THE JUROR: No, ma'am.

19 THE COURT: You know that you did not or you don't know?

20 THE JUROR: I know I did not. I was in a core shop which
21 is where the core fiber is cut for the paper to roll onto.

22 THE COURT: I understand. So you were not out in the area
23 where plaintiff decedent was.

24 THE JUROR: No, ma'am.

25 THE COURT: Very good. All right. Mr. Boan, my last

OPENING STATEMENTS

1 question is this, with further information in the opening
2 statement and the questions I have asked you, could you put
3 aside any information you have and listen to the evidence as it
4 was presented and the law as I give it to you and render a fair
5 and impartial verdict in this case?

6 THE JUROR: I don't think -- I'm not sure about that, I
7 don't know.

8 THE COURT: All right, sir. If you're uncertain and you
9 are being honest with me I'm not going to have the lawyers ask
10 you any further questions. You have asked to be excused, have
11 you not?

12 THE JUROR: I have, I think it's best.

13 THE COURT: I understand and I appreciate more than I
14 could explain to you, your honesty and searching your soul
15 about this.

16 THE JUROR: Can I speak openly?

17 THE COURT: Yes, sir.

18 THE JUROR: I kind of think my father has some of this
19 felt in his lungs from Bowaters and that worries me, I don't
20 know if it was that felt or not.

21 THE COURT: I understand. You have explained your
22 position and I'm going to grant your request and allow you to
23 be excused from service on this jury with my thanks for your
24 honesty.

25 THE JUROR: I apologize, I'm sorry.

OPENING STATEMENTS

1 THE COURT: There's no apology needed, thank you so much,
2 sir.

3 (Juror Boan left the courtroom.)

4 THE COURT: Counsel, my records indicate that the first
5 alternate is Luke Lancaster, is that according to your
6 information and Madam clerk, is that according to yours.

7 THE CLERK: Yes.

8 THE COURT: Ms. Strait indicates that's correct with her
9 records. Is that in accord with what you all understands the
10 situation to be?

11 MR. JEKEL: Yes, ma'am, Your Honor.

12 MR. EARLY: Yes, ma'am.

13 THE COURT: All right. Counsel, here is what I propose to
14 do and I will hear you if there's any concern about how I plan
15 to handle this. I plan to bring the jury in at the normal
16 time, it's 4:03 now but that will give y'all a chance to be a
17 little bit refreshed before I start again of course, always.
18 But I'm going to -- when the jury is brought in they'll be
19 seated, I am then going to advise that Mr. Lancaster is now a
20 member of the regular jury panel and will sit with the regular
21 jurors, and I will indicate that the reason for that is that
22 Mr. Boan has been excused at his request, no troubles, no
23 problems but he has made the request and for the reasons that I
24 find sufficient I have excused him. Does that -- anybody have
25 any trouble with that?

OPENING STATEMENTS

1 MR. YOUNG: Agreeable.

2 MR. JEKEL: No, Your Honor.

3 (A recess was taken.)

4 (The jury return to the courtroom.)

5 THE COURT: Ladies and gentlemen of the jury, during the
6 recess one of your number communicated with me and I examined
7 him and as the result Mr. Luke Lancaster will now join -- he is
8 the first alternate, Mr. Lancaster, you will join the jury as a
9 regular member of jury, if you'll take a seat there in the jury
10 box. We have things that come up very unexpectedly from time
11 to time and that is why we picked so many alternates, you may
12 have thought that was kind of unusual but that's why we do it
13 in case unexpected things come up. Mr. Boan was excused from
14 jury service after I made the determination that that was
15 appropriate given issues that developed and therefore Mr.
16 Lancaster is a regular member of the jury. Other question I
17 have, I noted that of course we're showing these documents and
18 some of our alternates were kind of straining their head to see
19 them.

20 THE WITNESS: It's hard to see around the desk.

21 THE COURT: It is hard to see around the desk to the
22 screen and we're going to try to see if we can do something to
23 make that a little bit better, so if you will just be patient
24 with us we'll try to figure out something to do about that.
25 All right. Plaintiff, you may commence your case.

OPENING STATEMENTS

1 MR. JEKEL: We're going to introduce some evidence if it's
2 all right. We've got an agreement with counsel on the
3 introduction of some evidence so I'm going to identify some
4 documents that are going to be admitted into the record by
5 agreement of the parties.

6 THE COURT: All right, sir.

7 MR. JEKEL: Your Honor, the first document is the death
8 certificate of Steven Redfearn Stewart, that will be Exhibit
9 Number one.

10 THE COURT: How are you going to handle this?

11 MR. JEKEL: I'm going to publish just a few of them, Your
12 Honor, not all that are admitted today, but after some are
13 admitted I do plan to publish one or two.

14 THE COURT: Very good. Jury, he will be identifying these
15 that will be received into evidence and then you will be able
16 to examine them as the case moves forward.

17 MR. JEKEL: Certificate number one, Your Honor. Letters
18 testamentary, would be Exhibit 2, Your Honor. Exhibit 3, Your
19 Honor, is a Mastercard for a dryer felt, the Bates number for
20 the document is BWC 0025A and B, that will be Exhibit Number 3,
21 I'm sorry, Your Honor. Exhibit 4, Your Honor, would be another
22 Mastercard for a dryer felt that's BWC 0023 A and B. Exhibit
23 Number 5, Your Honor, is a document, it's got a previous number
24 of 71893, it is a September 22, 1976 memoranda, that will be
25 Exhibit 5. Exhibit 6, Your Honor, is a January 2, 1976 memo

OPENING STATEMENTS

1 with attachments, it bears the exhibit identifier 71816, that
2 will be Exhibit 6. Your Honor, the next -- Exhibit Number 7 is
3 a SCAPA document entitled degradation of dryer felts, that will
4 be 8 -- 7, sorry. And Your Honor, this is a SCAPA document
5 entitled felts and fabrics, a bulletin from SCAPA, that will be
6 number 8. Your Honor, next document will be -- it was
7 previously marked 73483, that will be Exhibit 9. And ten
8 lastly, Your Honor --

9 THE COURT: Exhibit 9 is what now?

10 MR. JEKEL: It's a SCAPA internal document, it beared the
11 previous number of -- yes, Your Honor, that's 9. And 10, it's
12 a felt specification, Your Honor, dated June 27, 1973, and that
13 will be Plaintiff's Exhibit 10, just Exhibit 10, Your Honor, I
14 apologize. Your Honor, I have noted these document have been
15 agreed by the defendants.

16 MR. YOUNG: I looked at them at lunch, Your Honor, it just
17 didn't seem like there were 10.

18 THE COURT: Take a look at them now instead of just
19 talking about it.

20 MR. YOUNG: Your Honor, I apologize, I just remembered
21 there being 10.

22 MR. JEKEL: Your Honor, we would move those into evidence.

23 THE COURT: Very good, admitted without objection.

24 (The documents were received as Exhibits 1-10.)

25 MR. JEKEL: And if I could get the Elmo. Plaintiff's

OPENING STATEMENTS

1 Exhibit 1, this is the death certificate of Steven Redfearn
2 Stewart, 69 years old, York County. Cause of death
3 mesothelioma. And it was released was there an --

4 THE COURT: Speak up some.

5 MR. JEKEL: I apologize, Your Honor. This section says
6 autopsy performed, no. The funeral home was Green Funeral Home
7 Northwest Chapel, cause of death was mesothelioma. This is
8 Plaintiff's Exhibit 3, this is a Mastercard machine one, first
9 bottom, felt NI962GRA. Just so you can see page two, it's got
10 the on date of 12/8/73, the off date of 9/1/74. Plaintiff's
11 Exhibit 4, machine one third, again the NI9265GRA felt. And
12 it's got on dates of '72, approximately 195 days, another one
13 went on in March of '78, it was taken out in February of '79.
14 Your Honor, this was a part of Plaintiff's 6. This is a
15 portion of Plaintiff's 6. "It is apparent that our supplies,
16 both miners and yarn spinners," this is January 2nd of 1976,
17 "will have severe problems in achieving the require dust count.
18 As a result they will either introduce extensive and expensive
19 equipment to meet the standards or go out of the asbestos
20 field. There are also indications from Europe that paper
21 makers are refusing to accept asbestos containing felts and
22 that the trend will undoubtedly extend to our customers. For
23 some 18 months we've been working with asbestos suppliers in an
24 attempt to produce alternative yarns to our current products.
25 SCAPA Dryers, Inc. have now decided to give top priority to

OPENING STATEMENTS

1 replacing asbestos yarns in dryer felts, and to be in a
2 position by mid-76 to offer the same designs with or without
3 asbestos." Again WRA, these are all felt and fabric designs
4 containing asbestos. Those are all asbestos containing felts.
5 WRA, SRA, GRA, there it is. 91256GRA, it's an asbestos
6 containing felt, Uniroyal supplier of felts, these are
7 different asbestos yarns. Turner Brothers. And then, Your
8 Honor, this was a portion of Plaintiff's Exhibit 7.
9 Deterioration of fibers in dryer felts by David P. Whitney,
10 SCAPA. Some of these are hard to read. "The deterioration of
11 fibers dependent on the chemical characteristics of the fibers,
12 and secondly on the conditions of heat, moisture and abrasions
13 under which the clothing is operated. The more common fibers
14 used in the manufacture of dryer felts and fabric are cotton,
15 asbestos," I believe that should say nylon including nomex
16 polyester, they've got various strengths on there. Then there
17 is the section on asbestos. "Asbestos has excellent resistance
18 to heat, is capable of preferentially absorbing acid and acts
19 as a sequestering agent for iron. It has one big disadvantage
20 in that by itself it cannot be spun into yarns with sufficient
21 strength to using that yarn in dryer felts, this is due to the
22 short length of asbestos fibers. It is therefore necessary to
23 incorporate other fibers in the yarn to give it the required
24 strength. Since asbestos yarns used in dryer felts do contain
25 other fibers their resistance to paper machine conditions is

OPENING STATEMENTS

1 governed to a certain extent by the properties of other
2 fibers." And then continuing on this document they talk about
3 the adverse conditions, again, this is deterioration of dryer
4 felts. "There are, however, four general conditions which
5 exist on a paper machine which can contribute to the
6 deterioration of dryer clothing. Heat. Heat in connection
7 with moisture degraded chemical conditions which cause physical
8 harm." And then the last document I wanted to show to the jury
9 is Plaintiff's Exhibit 8. A bulletin from SCAPA felts and
10 fabrics and its language. Felt conditioning, felt dryer.
11 "Conventional dryer felt. A multilayer low permeability
12 construction normally containing one or more two types of spun
13 yarn. You've got fibers. Any type of naturally or man made
14 fibers from which textile materials are made. The following
15 fibers are used: You've got the acrylic, you've got asbestos."
16 And again, what do they note? Asbestos. "A variety of
17 naturally occurring silica mineral fibers having excellent
18 resistance to heat and acid and capable of sequestering iron.
19 Due to the short length of asbestos fiber it is not possible to
20 spin a pure asbestos yarn with sufficient strength to warrant
21 its use in dryer clothing. It is necessary therefore to
22 combine asbestos with other fibers in order to reduce the yarns
23 of the required strength. Hence the resistance of asbestos
24 yarns to paper machine conditions is governed to a certain
25 extent by properties of the additional fibers." You have got

OPENING STATEMENTS

1 the weft, here's just a few other definitions, heat damage,
2 hydrolysis, mechanical wear, resin coated, let's talk about
3 that. The application of a thin film of synthetic
4 thermosetting resin to a felt, fabric or a yarn to approve
5 dimensional stability of a felt fabric and improve resistance
6 to machine conditions. You also did have pocket ventilation,
7 permeability and more. Your Honor, those are all that I'm
8 going to publish this afternoon.

9 THE COURT: Very good.

10 MR. JEKEL: And at this time I'm going to turn it over to
11 Mr. Hyland.

12 THE COURT: Mr. Hyland.

13 MR. HYLAND: Thank you, Your Honor.

14 MR. JEKEL: Plaintiff's would next call Mr. Stephen
15 Edwards.

16 THE COURT: Mr. Edwards, come around and be sworn, please.

17 The witness, STEPHEN EDWARDS, was first duly sworn and
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. HYLAND:

21 Q Good afternoon, Mr. Edwards. Can you introduce
22 yourself to the jury, please?

23 A I'm Stephen Edwards. I'm the biological son of Steve
24 Stewart through adoption twice again, I don't know how to
25 explain that. I'm a little nervous, please excuse me, and I'm

TESTIMONY OF STEPHEN EDWARDS

1 hard of hearing as well, I can barely hear you.

2 Q I'll try to speak up for you.

3 A Thank you.

4 Q How are you related to Mr. Steven Stewart?

5 A As I was just stating he was my biological father. He was
6 basically from Indian Land, he grew up in Indian Land, he went
7 to school in Indian Land, my aunt still lives in Indian Land
8 along with my uncle. My mother is from Moncks Corner, South
9 Carolina, that's where she was born and raised and that's where
10 I am currently living.

11 Q And where were you born?

12 A I was born actually in Moncks Corner in Berkeley County.

13 Q And where did you live as a small child?

14 A Please repeat the question.

15 Q Where did you live as a small child?

16 A As a small child? I lived in Rock Hill. As far as I can
17 really remember at 3524 Midwood, that's the house my dad owned
18 with my mother and from my memory forward my dad always kept
19 the house.

20 Q And you lived there with both your father and your
21 mother?

22 A I did until they divorced.

23 Q About what age were you when they divorced?

24 A That was probably about 1969 or '70, I was probably six or
25 seven, I guess. I was born in '63.

TESTIMONY OF STEPHEN EDWARDS

1 Q After your parents divorced did you live near your
2 father?

3 A I did for a short time. After my mother remarried they
4 went to a suburb of Houston and that's where I wound up for
5 quite some time before I went with the family again before I
6 was out of high school to Dallas.

7 Q Back in Rock Hill with your dad, what sort of memories
8 do you have with him there?

9 A In Rock Hill, you know, a lot of memories I have actually
10 have to do with him maybe taking me fishing or going, you know,
11 out to a little place and catching tadpoles, that type thing.
12 He was an outdoors type person, he enjoyed that. It's not
13 something I actually grew into, you know. He had a green
14 thumb. I mean, that's the type of activities we did. I was
15 young, I was small.

16 Q Did you share any hobbies in common or anything like
17 that?

18 A We did. My dad started me on coin collecting, I was a
19 little tike. And my grandparents actually had I guess what you
20 would call vending machines at different sites, and so we would
21 go over there and they would have a big bag just filled with
22 coins, and so he got me started on that. It was a hobby I have
23 kept my entire life.

24 Q All right. At this time period as a small boy you're
25 living in --

TESTIMONY OF STEPHEN EDWARDS

1 MR. HYLAND: And this has already been moved in -- this is
2 Plaintiff's Exhibit 11. It has yet to be marked but it is
3 being moved in without objection.

4 THE COURT: Counsel, he wears hearing aids and so do I and
5 when you drop your voice it is hard for him to hear and me as
6 well. Be sure you -- I don't care whether you think it's a
7 good volume or not, speak up so everybody can hear you.

8 MR. HYLAND: Yes, Your Honor, happy to do so.

9 Q What I've just handed you, the photo in front of you,
10 sir, whose in this picture?

11 A That is my dad by the car and that is me as a little small
12 child, I would say probably late 60's or maybe early 70's.

13 Q Did you ever ride around with your dad in places like
14 Rock Hill and otherwise?

15 A I did. My dad when he would run errands he would load me
16 up in the car or he would go by to visit some of the other
17 family members and he would load me up, I should say truck
18 because he mostly drove a truck. We would just ride around and
19 go visit. We would sit on the porch, visit with them, have a
20 drink, a lot of times it was a water or lemonade, just kind of
21 chat with the relatives. That was a lot more in Indian Land so
22 much than Rock Hill though.

23 Q You said your dad was an outdoorsy kind of guy. Did he
24 share any of that with you?

25 A Yes. In fact, he took me hunting. I will tell you it was

TESTIMONY OF STEPHEN EDWARDS

1 only one time, I was probably about six or so, but we went out,
2 and I know I scared off his deer, I'm positive I scared off his
3 deer. It was not something that was for me, that's just not my
4 nature, you know, but that is what he did. He took me out
5 there and I know I scared off the deer and I'm sure I
6 purposefully did it.

7 Q Okay. Do you remember ever going to the Bowater Plant?

8 A I did. I went there a few times as a small child
9 maybe one or maybe twice, I don't really recall that. I
10 remember seeing the paper rolling, I did see that. And then
11 the other time that I do recall, I went when I was older and
12 dad saw a box -- basically a controlled area that he worked at,
13 it was kind of like a shaft type thing, I guess that's the best
14 way to put it, it had controls so they could monitor things.

15 Q About how long was it after your mother remarried that
16 you moved away?

17 A After she remarried it was -- well, I know it was in '74
18 when we moved and so that was a couple of years, two or three
19 years.

20 Q And where did you move to?

21 A Please repeat.

22 Q Where did you move to?

23 A We moved down to a town called Nassau Bay, Texas, that had
24 to do with my stepfather's work. My mother was a school
25 teacher so of course she went to Webster, which was a local

TESTIMONY OF STEPHEN EDWARDS

1 school district.

2 Q Did you stay in touch during that time period?

3 A Did I stay in Texas? Yes, sir.

4 Q Stay in touch with your dad.

5 A In touch with my dad, I'm sorry, again, hard of hearing.

6 I did. It was mostly through letters, we did some phone calls

7 as well. Something to kind of bear in mind, you know, at that

8 time it really was like a phone, you didn't send texts or

9 anything which I personally liked better.

10 Q Going to the next photo I've got there for you, can you
11 tell me whose in this picture?

12 A Please repeat.

13 Q Can you tell me whose in this photo?

14 A Yes, sir, that is my father and that is myself.

15 Q About what age were you in that photo?

16 A I was probably right around 18 or 19.

17 Q So did you see your father at all from time to time in
18 between when you were seven or so and 18?

19 A I did. He did actually ride out when we first moved into
20 the Nassau Bay area, he rode out there. I don't think my
21 parents had a good enough relationship to where he was like
22 welcome to come by the house to see us, so it was kind of one
23 of those deals where he came by, he kind of did stuff with us
24 and we went back into the house.

25 Q Where did -- so when you were in Texas, had your

TESTIMONY OF STEPHEN EDWARDS

1 stepfather already adopted you at that point?

2 A I'm sorry, can you repeat?

3 Q Had your stepfather already adopted you when you moved
4 to Texas?

5 A That was prior, that was prior to moving to Texas.

6 Q And how long did you live in Texas after you were 18?

7 A How long did I live in Texas after I was 18?

8 Q Yes, sir.

9 A I lived there pretty much with the exception of a short
10 stint when I moved to Memphis, Tennessee, I lived there until
11 '96 when I moved to South Carolina.

12 Q In between that time did you stay in contact with your
13 father?

14 A I did. Distance and, of course, you know, costs, I was a
15 young man and I didn't have money to do anything so there was
16 limited visitation that we could realistically do. I mean, he
17 worked pretty much at the paper mill and I was basically
18 working in retail at the time and going to college.

19 Q Did you graduate college?

20 A I did.

21 Q Did your dad see you graduate?

22 A He did. He flew out for the graduation ceremony and all
23 of that, that was outside of Dallas where I graduated and he
24 definitely made a trip. He spent time with me at that time.

25 Q What is this a photo of?

TESTIMONY OF STEPHEN EDWARDS

1 A That is a photo of a '69 Mock One that my dad did give to
2 me.

3 Q And was -- that was around what time period did he do
4 that?

5 A I think that was about 1995 when he gave me that car. I
6 was definitely well along as an adult and it was a car I
7 honesty still wish I had.

8 Q And what about this photo here?

9 A That was a photo of myself and my father, that was at my
10 wedding, that was in 2003 and that was in Charleston.

11 Q And so I take it back here -- you moved to the
12 Charleston area what, around '95; is that right?

13 A '96 is when I moved, somewhere in the summer. I don't
14 recall the exact date but it was in the summer of '96.

15 Q And where is your sister living at that point?

16 A I believe at that point she was in Austin maybe, it was
17 Austin or she was living in the suburb of Dallas, I can't
18 remember. My memory is not as good it used to be and I have
19 been losing facilities in the last few years.

20 Q Do you still live in the same area? Where exactly do
21 you live?

22 A I live in Moncks Corner, South Carolina right now. In
23 fact, I live on the same street as the courthouse there.

24 Q And about how far away from Rock Hill is that?

25 A It would normally run me about three or three and a half

TESTIMONY OF STEPHEN EDWARDS

1 hours realistically to ride between the two. I'm kind of like
2 a pokey driver you would say.

3 Q And so after you moved to South Carolina were you able
4 to see your father more?

5 A I was, considerably more. And that was part of the reason
6 I did come back, it wasn't the sole reason but it was part of
7 the reason. You know, living in Texas we really didn't have
8 the opportunities to see each other like we probably would have
9 otherwise, I missed out on a lot of things that I would have
10 liked to have been there for. I think he missed out on knowing
11 me at certain time periods of my life a little bit. It's one
12 thing to say you live by someone and quite another to say put
13 it in a letter or whatever, because it's still not the same,
14 it's not the same. It was definitely -- when I got back we
15 definitely took the opportunity to kind of reconnect and get a
16 relationship going again, and we kept a solid relationship
17 through his passing.

18 Q Did he come down to visit you, you him? How did that
19 go?

20 A That worked both directions on that. Dad would come down
21 and he would stay at my house. After my sister moved there
22 with the grandkids he would come down and visit and stay with
23 her a lot of the time, grandkids, that's what I would do too,
24 and then other times I would come up. At one point he was in
25 Chester, South Carolina and so I would visit him in Chester,

TESTIMONY OF STEPHEN EDWARDS

1 and then he wound up back at the house in Rock Hill and that's
2 where I would come visit. And then in between, I mean, there
3 were times where just neither one of us would have enough time,
4 so we would go and just meet somewhere in Columbia right in
5 between for both of us, and a lot of times that would be a trip
6 over to the zoo or something like that. We would just kind of
7 eat together and spend the day, get lunch, that type of thing.

8 Q What sort of things did your dad like to do?

9 A Probably about the biggest thing that I would say through
10 his entire life was probably gardening. I remember as a child
11 actually going out and along the family property in Indian Land
12 and actually planting fields. I was a small kid, they didn't
13 do too much with me, I was having to drop seeds, but I remember
14 doing that. And dad had a real love for plants and such, he
15 had a real green thumb, just green, green thumb. My dad
16 enjoyed hunting, he did that his entire life as far as I know,
17 and that would have been what my grandfather would have taught
18 him I am sure.

19 Q Anything else? Did he travel at all?

20 A My dad did do some travel. He mostly kept regional
21 travel. He did do a trip overseas and he enjoyed that, it was
22 a visit to Germany.

23 Q Now, what about the coin collecting, is that something
24 that he kept up?

25 A My dad did collect coins. I mean, my entire life from

TESTIMONY OF STEPHEN EDWARDS

1 what I can recall he collected coins. There was a point where
2 he decided he was no longer going to do that and he did hand me
3 his collection at that point.

4 Q Is that something you still do?

5 A It is something I still do.

6 Q Was your dad a social guy?

7 A I'm sorry?

8 Q Was he a social guy? Did he have many friends?

9 A Did he have friends?

10 Q Did he have many friends.

11 A He was the type guy that you could be sitting in a
12 restaurant, you don't know him, he might say hi to you and just
13 start talking to you, he was just that kind of person. People
14 generally liked him, not all of the time but generally liked
15 him. I know when I would be at the house a lot of times people
16 would drop by and want to stop and check on him, especially as
17 he got older. He knew his neighbors real well and they knew
18 him. His next door neighbor, in fact, when he realized how ill
19 he was start mowing his yard, because my dad mowed his yard
20 until he just couldn't mow his yard anymore.

21 Q Well, what about that, about when did you find out he
22 was sick?

23 A When did I find out he was sick?

24 Q Uh-huh.

25 A That was approximately March or April of 2013. I found

TESTIMONY OF STEPHEN EDWARDS

1 out later that he had known it for awhile, and my dad was not
2 the type person who try to put that on Catherine and I, he
3 wouldn't want us to worry, we had our own things going on and a
4 lot of times it would be we would find out later that he
5 wouldn't tell us. So when I found out it was kind of a shock,
6 I didn't really understand what it was. I've not really been a
7 big TV watcher so I wasn't seeing all of this stuff about it.
8 I went without a TV for awhile, too, because I didn't need one.

9 Q This one over here, who is in this photo?

10 A In the front is Davis Kingston, that is my oldest nephew,
11 and my dad is behind him, that's actually in his backyard.
12 Actually behind my dad, and you can't really see that too well,
13 at least I can't, that's actually a swing that he has hung up
14 on a branch over there, it was a rope swing at one time, he had
15 a tire attached to it, and when it was time for the tire to
16 come down it just became a rope swing. The boys would go over
17 there as youngsters and just climb up and get on there and they
18 would have a good time. He would pile a bunch of leaves under
19 there in case they fall, that type of thing. He truly took
20 care of his yard.

21 Q Was it just a grass yard? What kind of property did he
22 have?

23 A What type of property?

24 Q What did he have in his yard?

25 A I'm sorry?

TESTIMONY OF STEPHEN EDWARDS

1 Q Did he have a garden?

2 A Yes, he did. That would not be visible in that photo. My
3 dad's house is approximately on an acre of land and the house
4 would -- if you were looking at the lot would sit more to the
5 left and he had a pretty good little hill rolling down front to
6 back, and then on the right-hand side he had an area that he
7 planted really with like tomatoes, okra, beans, different types
8 of beans. He had a muscadine rope, grape vines growing up
9 there, those were pretty substantial vines. He had a green
10 thumb. It's not something I ever inherited, I can't keep any
11 plant alive. He tried giving me a tree once, it died.

12 Q This photo here, about what time a year is that?

13 A What time of year?

14 Q What's your nephew holding?

15 A I'm sorry?

16 Q Do you remember what your nephew is holding in that
17 picture?

18 A That's an Easter egg, yeah. And I know my nephews and my
19 sister and my dad, they did Easter eggs together.

20 Q What about this photo here?

21 A That is a photo of my dad dying Easter eggs with his
22 grandkids, that is at his house.

23 Q When about would you say this was?

24 A I don't recall. It would have definitely been about
25 Easter.

TESTIMONY OF STEPHEN EDWARDS

1 Q How long was it between the fact when you found out
2 your dad having mesothelioma and when he passed?

3 A It was a fairly short time, it was definitely a lot
4 quicker than I would have liked. And again, I think it was
5 March or April that he told me, and he passed basically August
6 23rd of 2013, so it was just a matter of months. We actually
7 buried him on August 26th, the same year. When he told me, it
8 really was a shock, I really did not understand what exactly
9 was going on. I'm not a person that really understands medical
10 stuff and so it was kind of a learning thing for me.

11 Q After he got sick you said earlier something about the
12 neighbor mowing the grass, was he able to keep up with those
13 hobbies the same way?

14 A No. Probably about in 2012, and that's probably about the
15 first thing that was kind of odd, he started not feeling so
16 good, it wasn't really traceable, at least he didn't know it
17 was I guess, or at least he wasn't passing any of the
18 information to me. But no, he started having difficulty. And
19 I know it was hard for him because he really was a person -- he
20 would step outside -- he spent a lot of time on his back porch,
21 and he spent so much time out there he had a visor, the whole
22 thing that rolled out so he would just kind of keep shade. He
23 kept a misting fan out there for the hot days of the summer, he
24 spent long periods of time outside. He would work in his yard,
25 he loved doing that, it wasn't even work to him, it was more

TESTIMONY OF STEPHEN EDWARDS

1 "that's what I love to do," and that's what he did until he
2 couldn't, and when he stopped I think that was extremely hard
3 on him.

4 Q Around what time was it that he stopped doing those
5 things?

6 A He really seriously cut back, he kept thinking, "I can do
7 stuff, I can do stuff," and it would have been probably 2012 or
8 2013, he really did stop, he just couldn't do it. As time
9 progressed he just got progressively thinner and thinner. It
10 was noticeable because at times, you know, we might not be able
11 to see each other immediately for a month or two months and,
12 you know, then you see him it's like a significant loss of
13 weight and you have concerns.

14 Q Was he still able to come visit family in the Moncks
15 Corner/Charleston area?

16 A Did he continue?

17 Q Yes.

18 A .It actually came to where he couldn't do that, he just
19 couldn't do it. About the last thing that we actually did plan
20 to try to do, and he was going to try, he was going to meet us
21 at Riverbanks and we were just going to kind of take it easy.
22 We were just leisurely going to probably go through the gardens
23 and we were going to do that in May, and he called me he said,
24 "I can't go, I'm not feeling good, I can't go." And that was
25 something that we would do, I mean, that's something we would

TESTIMONY OF STEPHEN EDWARDS

1 do regularly in May.

2 Q What year was that? Was that 2013?

3 A That was 2013, that was the last time that we went, or
4 tried to go.

5 Q Were you able to still see him after that point?

6 A I was. When I found out what was going on, I mean, I
7 luckily worked for an employer that would let me take time any
8 time I needed to deal with it so I was traveling to Rock Hill
9 as much as I could. Something to kind of bear in mind, I've
10 got some other medical issues of my own and there were points
11 in time when I was not able to drive at all. I've got an eye
12 condition and it causes problems where I cannot see at all, the
13 sun becomes intolerable. But yes, I definitely did. I was
14 definitely visiting with him as much as I could.

15 Q Did he have anyone else that helped take care of him
16 when you weren't there?

17 A Yes. You had actually touched on neighbors coming by, he
18 was good friends with his neighbors. His across-the-street
19 neighbor his Jonathan Seikert (phonetically) and he'd been
20 there for years upon years, and he had been there after my
21 parents would have lived there for awhile, and my dad would
22 actually go over there -- my dad was kind of a little on the
23 mechanical end there too and so he would kind of go over kind
24 of and lend him a hand, just kind of do whatever needs to be
25 done. Well, Jonathan eventually ends up meeting a person he

TESTIMONY OF STEPHEN EDWARDS

1 marries and that is a person by the name of Michelle Seikert,
2 she was an absolute angel. She would come over and be our eyes
3 there, she really was -- she was our eyes on the day to day
4 what was going on. She would go visit with him. She would
5 bring her daughter over, my dad used to have tea parties with
6 her daughter, looking at him you wouldn't think he would be the
7 type to do a tea party but he did.

8 Q Was your dad involved in church at all?

9 A Very strongly so. He was a member of Calvary Baptist
10 Church. He'd been a member there for a long, long time, he was
11 very active from everything I've ever heard. He, in fact --
12 and I found out later after his passing, I mean, he was the
13 type person that if he had it and you needed it he would try to
14 give it to you. He would a lot of times -- and again, I found
15 a lot of this out later, it was -- he might be at the church
16 and it was mentioned to him that a family was going to lose
17 electricity and he would end up paying the bill, it was things
18 like that. His best friend, Jerry Neely, every now and then he
19 would run into financial difficulty and instead of Jerry having
20 to take his ring or other items down to like a pawn shop, he
21 would actually basically buy it. And I can tell you when --
22 before he passed my dad actually handed a box to me and said,
23 "These are things I want to go to people," and some of that
24 stuff was for Jerry and Michelle. And so after he passed I did
25 hand all of the items I was provided for dad, I tried to live

TESTIMONY OF STEPHEN EDWARDS

1 to the wishes he wanted.

2 Q Did he ever -- can you think of any other examples of
3 things he did for other people?

4 A Other things that he would do for other people?

5 Q Maybe take anyone in?

6 A Actually he did, he took at least two people in. He heard
7 they needed a place to live and he helped them get back on
8 their feet, two of them at least lived there for a substantial
9 amount of time. It wasn't just so much taking them in, he
10 would take them along with him sometimes. I remember in
11 particular -- and a lot of times where we would go, we would go
12 to Lizard's Thicket in Columbia for a meeting, I remember him
13 specifically bringing someone along and sitting them down,
14 paying for their meal, they went to the zoo, the whole thing
15 with us, they were included. And that also came for my
16 sister's kids, they had friends and they would go too.

17 Q Were you there when your dad passed away?

18 A I was not, I was actually at work. I had been there the
19 week before. I was actually scheduled to go up there that
20 evening, I was getting ready to leave work, in fact, when I got
21 the call that he had passed. And no matter how I knew it was
22 going to happen I wasn't prepared, I mean, there's no way you
23 can be prepared for that, it was a horrible thing. And, you
24 know, something -- I regret I was not able to be there, I
25 really do. If I had known I would have just left work, and

TESTIMONY OF STEPHEN EDWARDS

1 they wouldn't have done anything about that, they were bending
2 backwards to work with me to make sure I had my office covered
3 so I can do what I needed to do. It was hard because the other
4 person in my office, she was out on maternity leave at the
5 time.

6 Q If you knew the last time that you were with him, that
7 that was going to be the last time --

8 A No. I did not know that was going to be the last time.

9 Q If you did know?

10 A I'm sorry?

11 Q If you did know what would you think you would say to
12 your dad?

13 A I would tell him I loved him. I mean, he knew I loved him
14 but I would tell him again that I love him. My dad strongly
15 believed he was going to heaven and I would tell him I will see
16 you in heaven next.

17 MR. HYLAND: Thank you, sir.

18 THE COURT: Cross examination?

19 MR. COLLIER: Thank you, Your Honor.

20 CROSS EXAMINATION

21 BY MR. COLLIER:

22 Q Good afternoon, Mr. Edwards.

23 A Afternoon.

24 Q You said you'd been back in Moncks Corner since about
25 c1996?

TESTIMONY OF STEPHEN EDWARDS

- 1 A I'm sorry, could you talk a little bit louder, please.
- 2 Q I'm sorry. You said you'd been back in Moncks Corner
- 3 since about 1996?
- 4 A I have.
- 5 Q And prior to that you'd been out of state since roughly
- 6 1974?
- 7 A Correct.
- 8 Q And so that was about 22 to 23 years that you were
- 9 living in Texas or Tennessee or some place else, correct?
- 10 A That would be possibly correct.
- 11 Q Before this lawsuit was filed that we're here about
- 12 today you never discussed asbestos with your father, did
- 13 you?
- 14 A No, I did not.
- 15 Q And even once this lawsuit was filed your only
- 16 discussions with him were about asbestos generally rather
- 17 than about anything attributable to a particular company,
- 18 correct?
- 19 A That is correct.
- 20 Q Before this lawsuit was filed you and your father
- 21 didn't talk about his work at Bowater, did you?
- 22 A Not on any substantial basis, no.
- 23 Q For instance, you don't know when your father started
- 24 or stopped at Bowater, correct?
- 25 A I know approximately but that's an approximation.

TESTIMONY OF STEPHEN EDWARDS

1 Q And before this lawsuit was filed you don't really know
2 what he did at work at Bowater other than somehow assist in
3 the manufacturing of paper, correct?

4 A That's pretty much correct, yes.

5 Q You don't have any personal knowledge of whether your
6 father worked with or around any asbestos containing
7 products.

8 A I don't personally, no.

9 Q And your father never told you any specific
10 manufacturer of dryer felts that he worked around at
11 Bowater.

12 A No.

13 Q And the only reason that you know anything about the
14 company that we represent, SCAPA, is because they're a
15 defendant in this lawsuit, correct?

16 A That's how I basically found out about SCAPA.

17 Q You have no personal knowledge about what SCAPA is.

18 A I had no idea what SCAPA did.

19 Q And you have no personal knowledge that your father
20 ever worked around any product that was manufactured by
21 SCAPA.

22 A I have no personal knowledge of that.

23 Q You have no personal knowledge that any SCAPA product
24 that might have been at Bowater actually contained asbestos.

25 A I have no way of knowing that.

TESTIMONY OF STEPHEN EDWARDS

1 Q Your mother's name is Laura, correct?

2 A That's correct.

3 Q Your parents divorced in January of 1970 when you were
4 about seven years old?

5 A I think that's approximately correct.

6 Q After his marriage to Laura your father had two other
7 marriages that also ended in divorce, correct?

8 A Yes, that's correct.

9 Q And at the time of his divorce from your mother your
10 mother was granted custody of you and your sister,
11 Catherine, correct?

12 A That is correct.

13 Q And then your mom married Doyle Edwards in 1971 or
14 1972.

15 A Somewhere around there that would be correct.

16 Q After your mom remarried, Doyle adopted you and
17 Catherine as his children and the four of you lived together
18 as a family, true?

19 A That is correct.

20 Q And that's why your last name is Edwards even though
21 your biological father's last name was Stewart.

22 A That is correct, they were blending a family.

23 Q And Doyle adopted you and your sister, Catherine, to
24 build a life together with you and accept responsibility for
25 you and your sister's development, correct?

TESTIMONY OF STEPHEN EDWARDS

1 A I would say that's correct.

2 Q And after you were adopted you treated Doyle as your
3 father, correct?

4 A I did, that was encouraged.

5 Q And after your parents divorce in roughly 1970 you said
6 you continued to live in South Carolina until approximately
7 1974 when you were about 11 years old.

8 A I think I started 8th grade in Webster, it was 7th or 8th
9 grade, I don't really remember specifics.

10 Q During the four or so year period of time that you
11 continued to live in South Carolina after your parents were
12 divorced, you would see your father sometimes more often but
13 usually about once a month for either a night or weekend,
14 correct?

15 A Are you saying before we went to Texas?

16 Q After your parents got divorced and before you went to
17 Texas, yes.

18 A I don't know that I could so much qualify it like that. I
19 mean, I think that they would basically let us see him as much
20 as we could arrange, I guess, but I probably couldn't tell you
21 an exact number to that. But I would say at least once a
22 month, I would say that's at least fair.

23 Q During that four year timeframe once a month, possibly
24 more, I mean during that four year timeframe once a month or
25 possibly more.

TESTIMONY OF STEPHEN EDWARDS

1 A Yeah, it was probably over four years.

2 Q And so in 1974 that's when the family moved to Texas,
3 true?

4 A Yeah. That's when my mom, Doyle, Catherine and I went to
5 Texas.

6 Q And you lived in Texas until 1993 when you were about
7 30 years old.

8 A I believe that's about right. I think I went to Memphis
9 about then somewhere around there.

10 Q And for the roughly 20 or so years that you lived in
11 Texas you only saw your father from once every couple of
12 years to maybe as much as twice a year, correct?

13 A That would be a pretty fair assessment on that, yes.

14 Q And I think as you said in response to some of Mr.
15 Hyland's questions, your other contact with him during that
16 period of time would have been primarily letters.

17 A It would have been.

18 Q So in 1993 when you were about 30 years old that's when
19 you moved to Memphis, true?

20 A I think that's about right. I mean, I probably would have
21 to really sit down and look.

22 Q And you lived there for a year or two.

23 A No, I lived there a short period of time. My wife, before
24 we were married that's where she was residing at the time and
25 that's why I went there. The job market was terrible in

TESTIMONY OF STEPHEN EDWARDS

1 Memphis so I found a job in Dallas and that's why I moved back
2 there.

3 Q And so when you lived in Memphis, though, your best
4 recollection is that you only saw your father one time
5 during that period of time you lived in Memphis, correct?

6 A Yeah. But again, it was a very short period of time I was
7 there.

8 Q And then you moved back to Texas and that's where you
9 lived until 1996 when you moved back to South Carolina.

10 A That's correct.

11 Q During that timeframe between Memphis and when you
12 moved to South Carolina, you don't have a recollection of
13 whether you saw your father at all during that period of
14 time, do you?

15 A Between the '93 timeframe?

16 Q Between Memphis and 1996.

17 A Yeah. He actually gave me a car, I actually registered it
18 in Texas. The car that you saw the picture of earlier, that
19 was registered in Texas so that would have been after Memphis
20 that he gave me that car.

21 Q So you recall him coming to Texas on one occasion.

22 A That was me, I actually came to South Carolina.

23 Q The Moncks Corner area you moved to in 1996, Doyle
24 Edwards and your mom were also living in that area when you
25 moved back to Moncks Corner although I realize your mom had

TESTIMONY OF STEPHEN EDWARDS

1 passed away by that point in time, correct?

2 A My mother passed away prior to me moving back to Moncks
3 Corner, Doyle followed her later on and he ended up just
4 staying. That's what he ended up doing.

5 Q And between 1996 when you moved back and early 2012 you
6 would see your father every couple of months about a half
7 dozen times a year, correct?

8 A Probably at least that, yeah.

9 Q And generally during that timeframe he would be the
10 person who came down to see you or y'all would meet in
11 Columbia like you talked about rather than you coming up to
12 the Rock Hill area, correct?

13 A Well, you've got to bear in mind that I did go up to
14 Chester a good bit. I would say he predominately did probably
15 a little bit more of travel down our way because he was pretty
16 much working his schedule and his schedule is different from my
17 type of schedule and so he would have a little bit more free
18 time. When I was off work we would just kind of hang out and
19 do stuff.

20 Q Mr. Stewart never told you why he gave up his parental
21 rights to Doyle, did he?

22 A Did he ever tell me why?

23 Q Correct.

24 A I think it had to do with he was trying to basically give
25 us the opportunity to form a family, I mean, that's what I

TESTIMONY OF STEPHEN EDWARDS

1 think he was trying to do. That's a hard thing to do, I
2 wouldn't want to be in that position at all.

3 Q Did he specifically tell you that or are you
4 speculating?

5 A That's me speculating, that's what I believe.

6 Q And when Doyle passed away, though, he was your legal
7 father, correct?

8 A That is correct.

9 Q And you called Doyle dad.

10 A I did.

11 Q And you attended his funeral which was held in Moncks
12 Corner, correct?

13 A I did.

14 Q And you were readopted by your biological father, Mr.
15 Stewart, a couple of months before he passed away.

16 A That is correct.

17 Q And you don't recall whether you ever talked to him
18 about being readopted before he filed this lawsuit in 2013,
19 do you?

20 A I don't recall at this point.

21 Q So you and your sister were readopted in June of 2013
22 and your father passed away in August of 2013?

23 A He actually readopted us in July of 2013, mid-July.

24 Q And so y'all sped-up the process of this readoption due
25 to his diagnosis with mesothelioma.

TESTIMONY OF STEPHEN EDWARDS

1 A My dad wanted that and I always have been good with it.
2 It did speed it up, I mean, that kind of put a situation where
3 we kind of knew that's really what he wanted and it was
4 actually good. When we were adopted -- and you have to realize
5 this, when we were adopted we were minors and we had no say in
6 that really.

7 Q And one of the reasons for getting readopted by Mr.
8 Stewart was to avoid problems inheriting from his estate,
9 correct?

10 A He did adopt us partly because of that at that time,
11 that's what kind of sped that along because he did not want
12 there to be problems. He wanted to look after his family. He
13 has always considered us his children, he always has. I mean,
14 you know, even with hard times or whatever he would always
15 think of us.

16 Q But you chose not to take back the last name of
17 Stewart.

18 A That is correct.

19 Q I want to change gears here for just a minute. Your
20 grandfather worked in construction, correct?

21 A He did.

22 Q And he died of prostate cancer?

23 A I believe that's correct.

24 Q And your father had also been diagnosed with prostate
25 cancer at some point.

TESTIMONY OF STEPHEN EDWARDS

1 A He told me about it after the fact.

2 Q And he'd always been diagnosed with bladder cancer at
3 some point.

4 A He told me about that after the fact.

5 Q Did your father tell you about the skin cancers that he
6 had?

7 A I don't recall at this point.

8 Q Your father smoked cigars until about 2000?

9 A He did. He smoked the Swisher Sweets, and it was just a
10 few, though.

11 Q Did those stop in conjunction with one of these other
12 cancer diagnoses?

13 A I don't recall that.

14 Q And your father told you something about him having
15 another form of cancer in late 2012 but it wasn't related to
16 you that it was mesothelioma until the March/April timeframe
17 of 2013?

18 A I believe that's possibly correct on that.

19 Q And your father had already filed this lawsuit when he
20 told you about his mesothelioma diagnosis.

21 A It had already begun for awhile and I had no idea.

22 Q From the time that you learned of his diagnosis until
23 his death in August of 2013 over those seven or so months
24 you saw him about once a month and sometimes more than once
25 a month, correct?

TESTIMONY OF STEPHEN EDWARDS

1 A I would try to go up as much as I possibly could.

2 Q And that amounted to about once a month or sometimes
3 more.

4 A Probably more than that, it would have had to have been
5 more than that I think at this point.

6 Q You never took your father to a chemotherapy
7 appointment.

8 A I did not.

9 Q You never took your father to a radiation appointment.

10 A I did not.

11 Q You never took your father to any doctors appointments.

12 A I did not.

13 Q And your father when he passed away, he was in Hospice
14 care?

15 A He was.

16 Q And he had been there for about a week before he died.

17 A He was in there possibly a week before, it was probably
18 about two weeks really.

19 Q I think Mr. Hyland asked but you were not present when
20 he passed away?

21 A I was not.

22 Q And your sister was not either.

23 A She was not. Everybody was headed up there that day, we
24 had actually planned that in advance.

25 Q In fact, nobody from the family was there when he

TESTIMONY OF STEPHEN EDWARDS

1 passed away.

2 A No, we were not there.

3 Q And it was the neighbor that you had mentioned, I
4 believe Ms. Seikert, who actually called you and told you
5 about your father.

6 A She is the one that called and told us.

7 MR. COLLIER: Thank you, sir, those are all of the
8 questions that I have for you right now.

9 THE COURT: Redirect?

10 MR. HYLAND: Yes, Your Honor, thank you.

11 REDIRECT EXAMINATION

12 BY MR. HYLAND:

13 Q Is that your dad in this photo?

14 A That is.

15 Q And where is that?

16 A That's at the Bowater Plant.

17 Q Is that the plant you remember visiting with your dad?

18 A I remember going into the plant at Bowater a couple of
19 times.

20 Q Who do you consider to be your dad?

21 A I'm sorry, repeat?

22 Q Well, you called two men dad in your life, right?

23 A Uh-huh.

24 Q Who do you consider your dad?

25 A My dad was Steve Stewart, that's really my blood right

TESTIMONY OF STEPHEN EDWARDS

1 there. You know, he would not have tried to end our family
2 formation. I think that's what was going on, we were adopted,
3 he was trying to allow that to happen. And, you know, it
4 wasn't because he didn't want us or love us or anything like
5 that, it was because that would make our lives easier, I think
6 that's what it all comes down to. He was definitely my dad.
7 And, you know, I'm really glad, you know, that he was able to
8 actually ask me to be readopted. I know it made me happy, I
9 know it made my sister happy and it made him so happy. I spent
10 as much time as I could with my dad, honestly if I -- I
11 probably would have quit my job and come up and been here as
12 much as I could, if I would have realized that I probably would
13 have gone to Rock Hill eventually even. I had no idea what
14 type of diagnosis and what a death sentence it really was to
15 get that. I had no idea how fast it went, any idea of it. I'm
16 sorry, I'm rambling, I ramble.

17 Q And you were working the day that he died?

18 A I was working.

19 Q When your dad started going down hill --

20 A He did.

21 Q -- was he in pain?

22 A He was in excruciating pain. He went from a person like I
23 was describing where he would go outside and work in his
24 garden, he liked to kind of be piddling around the house, he
25 liked to fix things. He went to the point where he basically

1 had a recliner and he would sit in his recliner and that's
2 about all he could do. His dog, Buddy, would sit with him all
3 the time, that was his little baby, you know. But that's
4 pretty much what his life became, sitting in a chair, that's
5 what he could do. He just couldn't get out and about anymore.

6 MR. HYLAND: Thank you.

7 THE COURT: Anything further, Counsel?

8 MR. COLLIER: No, ma'am.

9 THE COURT: Very good. Thank you so much, Mr. Edwards.
10 All right, Counsel?

11 MR. JEKEL: Your Honor, is this a good time to break for
12 the evening?

13 THE COURT: It is a good time to break. Thank you members
14 of the jury, you have been very patient, it was a very, very
15 long day, we appreciate very much the professional approach you
16 have taken to your service. You will be dismissed now, court
17 will reconvene at 9:30 tomorrow morning.

18 (The jury left the courtroom.)

19 THE COURT: All right, Counsel, I know that we have the
20 redactions -- I know we have the objections, I guess, on Dr.
21 Franks' video and I will tell you at the outset I would like to
22 get that done now. I will tell you on the front end that I am
23 not inclined to excluded anything on either side in terms of
24 objections as I view it. I have read over the objections and
25 it is each side not wanting the expert to say things to help

1 the other side. This is an expert that y'all well know, he's
2 as well known to me as he is to y'all and anybody that deals
3 with asbestos knows Dr. Franks, knows that he's an expert in
4 the field, he has an approach to asbestos. Do y'all want to
5 consult with each other or listen?

6 MR. JEKEL: Well, Your Honor, instead of wasting your time
7 given your initial inclination, what I was going to suggest to
8 counsel is rather than put every single objection on the
9 record, Your Honor, that I might be able to make just a short
10 record in the morning. But as I understand it you've looked at
11 it --

12 THE COURT: I see nothing that falls afoul of the rules of
13 evidence, and I viewed the material I have looked about
14 primarily and the framework of the Supreme Court of South
15 Carolina Rules with respect to the ambit of expert testimony,
16 and I see nothing that gets close to the standards in Watson
17 versus Ford Motor Company that indicate when an expert is
18 beyond his training, education and experience. Franks'
19 testimony fit well within his training, education and
20 experience. It's simply one side doesn't want all of this old
21 past information about asbestos and what people knew when to
22 come in and the other side does want it to come in, and the
23 side that wants it to come in doesn't want a few of the things
24 that were brought out by defendant to come in. I am going to
25 be even handed with both side's experts, and I don't see

1 anything that offends the rules of evidence that I have looked
2 at. I could stand to be corrected if there's some burning
3 issue.

4 MR. JEKEL: Your Honor, and that's what I was going to
5 suggest, I know what my burning issue is but I'm prepared to
6 have Your Honor rule, I can put something on the record and get
7 Your Honor's ruling and we'll play the designations of the
8 parties. I just wanted to give Mr. Young an opportunity --
9 because he had objections to the plaintiff's designations and
10 then I had objections to his designations.

11 THE COURT: I understand.

12 MR. JEKEL: So I will have him go first.

13 MR. YOUNG: Your Honor, we had reduced our objections to
14 writing and it just seems to me it would be expeditious for us
15 to have to file this and have the record reflect --

16 THE COURT: Sure, I think that makes a good deal of sense.
17 And if you will hand a copy up to me then we will take a look
18 at it over night.

19 MR. YOUNG: I only have one copy, Your Honor, you can have
20 it but I only have one for the both of y'all.

21 (Break in proceedings.)

22 MR. JEKEL: Your Honor, we submitted our objections in
23 paper form to you to their designations as well.

24 THE COURT: Right. And I think you've got enough of a
25 record but if there's some burning, burning claim that you all

1 want to point to by way of a legal principle then --

2 MR. JEKEL: The one that I wanted to raise that Mr. Young
3 is -- because I'm prepared to just edit it as it stands, Your
4 Honor, and we'll play that, but I did want to raise that there
5 was some cross exam where they were showing Dr. Frank and
6 asking him about bankruptcy forms, and the large --

7 THE COURT: And as you know the bankruptcy forms are not
8 evidence, I'm not going to permit that, I did not permit that.
9 Mr. Early is still wanting to get on the record the ruling that
10 I made with respect to the Leslie and the A.P. Green and we can
11 wrap that all up in one, but I'm not going to permit that so
12 that needs to come out. I'm not going to permit anything --
13 and I'll be glad to give you a full ruling on it, but
14 essentially it's this: Certainly you can prove the empty chair
15 in a lot of different ways but you cannot prove the empty chair
16 in my view by simply putting forth the summons and complaint
17 which indicates what you claim and intend to prove. This
18 bankruptcy form, which includes two defendants -- two potential
19 defendants who were actually not named in this lawsuit, neither
20 Leslie nor Green were named as defendants in this lawsuit, so
21 they are here to try to suggest they are empty chairs. But all
22 the bankruptcy form does is do what a summons and complaint
23 does which does not go to the jury and does not constitute
24 evidence, nor would it meet the test of admission of a party
25 component sufficient to allow its admission into evidence to

1 prove the empty chair as to Leslie or A.P. Green. So that's
2 essentially my ruling and I think that covers it enough --

3 MR. YOUNG: Your Honor, I will get with Mr. Jekel.
4 There's some things within those answers that have nothing to
5 do with bankruptcy claims which need to stay in so we can work
6 it out. Judge, if we can just file this that would perfect a
7 record for us on the issue, but I understand you've already
8 ruled and I don't intend to replew that ground.

9 THE COURT: Very good, excellent. Before I adjourn court
10 for the day, anything further?

11 MR. JEKEL: Your Honor, they wanted to make a proffer as
12 it related to Steven Edward, they had told me about it, they
13 can make their proffer, I'm not going to interfere.

14 THE COURT: What is the proffer?

15 MR. EARLY: First of all, Your Honor, can I mark the two
16 claim forms that you just refused to keep in?

17 THE COURT: Will Early is going to mark as Defendant's
18 Exhibits the two pieces of material he sought to introduce into
19 evidence, one with respect to Leslie and the other with respect
20 A.P. Green and, APG, and they come out of forms that were
21 submitted by the plaintiff to bankruptcy trust.

22 MR. EARLY: Correct, Your Honor, whatever those numbers,
23 I'll do the APG as the first one, and the Leslie as the second
24 one. We had a phone conference the other day. Briefly I
25 believe it is an admission of a party opponent, it's not an

1 allegation and Mr. Graham on behalf of his client through both
2 of these said that his -- that the decedent was employed in
3 industry and occupation such that the decedent worked on a
4 regular basis in close proximity to workers engaged in one or
5 more of the several activities talked about in these forms, and
6 they're asbestos form. One would be the APG form, the second
7 would be Leslie, I understand your ruling, Your Honor.

8 THE COURT: Thank you, sir. And --

9 MR. HYLAND: This is with respect to kind of dove-tailing
10 into the bankruptcy trust issue to ask Mr. Edwards a couple of
11 questions because he is the executor of the estate with respect
12 to the bankruptcy trust submissions that have been made.

13 THE COURT: Right. And as I previously indicated I have
14 ruled not admissible, any information with respect to these
15 bankruptcy filings per Smith versus Tiffany and Mason --

16 MR. HYLAND: Right. And so I was going to proffer some
17 testimony from him with respect to how the compensation would
18 be paid out to the estate.

19 THE COURT: You know, all of that is not even pertinent if
20 it were otherwise pertinent because we are not at that stage.
21 Smith versus Tiffany says as clear as a crystal ball that I do
22 not get into that nor do I want to know about that until a
23 verdict is rendered in plaintiff's favor if that is the case,
24 and then the contributions among the Tort Feasor's Act would
25 come in and then we would get into those specifics. But you

1 are obviously wanting to insist on putting that in this record
2 when it should not be before me at the present time by my
3 ruling.

4 MR. HYLAND: Well, Your Honor, I thought from a judicial
5 efficiency standpoint as far as asking him while he was here --

6 THE COURT: I'm not going to allow you to ask him about
7 it, you can proffer -- have you got a deposition of his that
8 you want to use or --

9 MR. HYLAND: I have. There are a few questions from a
10 deposition and then --

11 THE COURT: It is 5:48 now, are we going to get into all
12 of these questions from a deposition that he has already given,
13 or just what have you got there?

14 MR. GRAHAM: Your Honor, excuse me, he is available
15 throughout the trial, he's not going anywhere.

16 THE COURT: He'll be right here, I don't know that we need
17 to do that right now. I'm not going to put him back on the
18 stand, you can proffer what it is you want to ask -- I'm not
19 fussing with you at all, and I know I'm tired, we all are,
20 please don't interpret that as denigrating what you're trying
21 to do. But it seems to me that an easy way to do it is just to
22 submit the material, you will be perfectly protected on the
23 record and I will rule when you submit it, how about we do it
24 that way?

25 MR. HYLAND: We'll do it that way.

1 THE COURT: Very good, thank you, sir.

2 (Court adjourned for the evening and resumed at 9:30
3 A.m. on Tuesday, January 30, 2018.)

4 MR. EARLY: I think our colleague is going to play Dr.
5 Franks' video deposition first; is that correct?

6 MR. JEKEL: I believe, yes, Your Honor.

7 MR. EARLY: I forgot yesterday --

8 THE COURT: Are you worried about me declaring him an
9 expert and find that expert testimony is needed and --

10 MR. EARLY: I'm not, Your Honor, it has nothing to do with
11 that. It has more to do with bankruptcy trust issue.
12 Yesterday I only put those other two -- the first two in, and I
13 understand Your Honor's ruling. But we had originally in our
14 motion in limine argued to include all of them and you ruled
15 against us in the motion in limine, and I have -- what I would
16 like to do if it's okay with the Court is mark all of these,
17 which would be -- which were used in our cross examination of
18 Dr. Frank which you have ruled out. And then also I think
19 yesterday I submitted to Jamie, your law clerk, our objections
20 to Dr. Franks, but what I think I need to do is submit our
21 original designations to Dr. Frank in his full deposition
22 transcript to go along with these for the record.

23 THE COURT: That's fine.

24 MR. EARLY: Is that okay with Your Honor?

25 THE COURT: Yes.

1 MR. EARLY: If I could make mark all --

2 THE COURT: Go ahead, get up with Mike and mark them all.
3 I know y'all are using those regular exhibit tags for exhibits
4 but when you've got an exhibit that is about a matter which was
5 contested then you should mark that as a defendant's exhibit.

6 MR. EARLY: Okay. And I think that's what I did
7 yesterday.

8 THE COURT: I know that's what you did on the other ones.

9 MR. EARLY: Yes, ma'am.

10 THE COURT: So keep on keeping on.

11 MR. EARLY: And for the record you overruled our
12 objections for the --

13 THE COURT: I overruled your objections, we're repeating,
14 but yes, all objections. I'm letting -- I overruled your
15 objections and I overruled plaintiff's objections and therefore
16 your designations and their designations will all come in --

17 (The bankruptcy records were received as Defendant's
18 1-5.)

19 (Break in proceedings.)

20 THE COURT: What is the next thing that's going to happen?

21 MR. JEKEL: Well, I was going to admit some documentary
22 evidence but we have another --

23 THE COURT: And the documents that you want to admit have
24 been exchanged previously with the defense and so far nothing
25 has been heard about objections.

1 MR. JEKEL: That's correct.

2 THE COURT: You know, when that comes up y'all are going
3 to have to have told me beforehand what kind of objections, if
4 any, you have, otherwise the documents are going to be admitted
5 and we're going to go forward. That's the purpose of the
6 exchange beforehand is to get these things sorted out
7 beforehand, and if we needed to have done that by coming early
8 to court today we could have done that, but we are not going --
9 my jury is already in there, we're 15 minutes past what I told
10 them would be the starting time, I'm not going to treat them
11 like that.

12 MR. JEKEL: Your Honor --

13 THE COURT: That goes for both sides, so Mr. Jekel, same
14 applies to you.

15 MR. JEKEL: Understood, Your Honor. The other thing I did
16 want to mention is at a break we had handed your clerk Hegler,
17 he is a coworker, there's a few objections in there that I
18 think -- there are very few objections --

19 THE COURT: Let me tell you something, I want this done
20 more expeditiously than this after we get through this little
21 bump in the road because I want this trial to proceed in a
22 seamless fashion. I am perfectly capable of coming up early
23 and I am perfectly capable of staying here late to get these
24 matters sorted out so that we can move in a smooth way for the
25 jury. Are we on the same page?

1 MR. JEKEL: Yes, Your Honor.

2 (Break in proceedings.)

3 THE COURT: Jury has sent this message: "Can attorneys be
4 sure to speak loudly as some juror members were struggling to
5 hear yesterday. Thank you." When you drop your voice, and
6 particularly when you use your microphone at counsel table
7 rather than the podium you really need to speak up and project.
8 I did pretty well yesterday but I have got some super hearing
9 aids. I notice that our final witness yesterday, who also
10 wears hearing aids, was having trouble and many of my jurors
11 were going like this so we really need to be mindful. I know
12 it's just battlefield conditions, we have to do the best we
13 can. Tell the jury we're going to do the best we can and if
14 they have problems I'll tell them to raise their hand.

15 (Break in proceedings.)

16 MR. JEKEL: Plaintiff's are ready, Your Honor.

17 THE COURT: Defense?

18 MR. YOUNG: Yes, Your Honor.

19 THE COURT: Bring the jury in, please, sir.

20 (The jury returned to the courtroom.)

21 THE COURT: Good morning ladies and gentlemen of the jury,
22 please be seated. I start off with an apology, members of the
23 jury, we had some housekeeping things to take care of here, I
24 think we are set to go now. We'll begin with some live
25 testimony, then we'll go into a video depositions and pursue

1 from there. I hear you very much on the subject of speaking up
2 so that you can hear, the acoustics are not good in this room
3 and I just want to reemphasize, I know what it is to have a
4 hard time hearing, if you are having a hard time hearing you
5 raise your hand, I'll know what that is and I'll know that they
6 need to bring their voice up. Mr. Jekel, you may proceed.

7 MR. JEKEL: Good morning, Your Honor, good morning ladies
8 and gentlemen. This morning before we begin with the live
9 witnesses we're going to publish -- we have this on this
10 morning so maybe it will be a little better for you. This is
11 Plaintiff's Exhibit Number 9. "Please send and return to me,
12 HM.

13 THE COURT: Mr. Jekel, it would be better if you turned
14 it --

15 MR. JEKEL: If I turned it right-side up.

16 (Break in proceedings.)

17 MR. JEKEL: All right, very good, there we go. April 9,
18 1976 to Harry Merks, SCAPA Dryers. "The following information
19 on asbestos may be of help to you. Please do not give out the
20 information from Turners to any asbestos suppliers or other
21 unauthorized personnel." This is a memo dated 8-4, I believe
22 that's '75. "Asbestos. Please find attached my writeup on
23 asbestos. I do not think it is necessary for this to go on our
24 notice boards, but it could be used at safety committees or
25 when an employee expresses concern at working with asbestos.

1 Also attached is a transcript of a tape slide package which TBA
2 are giving out to their personnel, this must be not be issued
3 outside the company without my permission." And you'll see
4 that there's an attachment, transcript on asbestos attached, it
5 is April 8, 1975. "The recent adverse publicity on the use of
6 asbestos may have caused some concern to our personnel within
7 SCAPA Porritt and I would like to detail the measures that we
8 have taken over recent years to try and combat the problem.
9 Many years ago I worked in the asbestos industry and was not --
10 was unaware of the possibilities --

11 THE COURT: "I was not unaware."

12 MR. JEKEL: "I was not unaware," thank you, Your Honor. I
13 apologize -- "I was not unaware of the possibilities of such a
14 disease being contracted in plants where the blending, carding
15 and spinning of blue asbestos took place. The generally named
16 disease of asbestosis is associated with the asbestos
17 technically known as" --

18 THE COURT: With blue asbestos --

19 MR. JEKEL: Thank you -- "technically known as
20 crocidolite. At SCAPA Porritt we have always used the white
21 form of asbestos technically known as chrysotile, all of the
22 recent concerning paper mill has referred to personnel working
23 with blue asbestos. In addition to using white asbestos yarns
24 we have been using resin coating to control dust off and we
25 damp asbestos before comp winding for these measures to cut

TESTIMONY OF CATHERINE KINGSTON

1 down on air born dust. Our testing laboratory has equipment to
2 measure the amount of dust in the atmosphere. While the
3 Factory Act states that fibers of certain sizes must be
4 measured, we at SCAPA Porritt record all sizes of fibers below
5 one over 250." And it is signed Mr. Ginsberg. Your Honor,
6 that's Plaintiff's Exhibit 9, that's already in evidence. At
7 this time I will turn it over to Mr. Hyland.

8 THE COURT: Mr. Hyland?

9 MR. HYLAND: Good morning, I hope everyone can hear me
10 okay. Plaintiff's would next call Ms. Catherine Kingston.

11 The witness, CATHERINE KINGSTON, was first duly sworn
12 and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. HYLAND:

15 Q All right, ma'am. Can you state your full name for the
16 jury, please?

17 A Catherine Kingston.

18 Q All right, ma'am. Now, how are you related to Steven
19 Stewart?

20 A I'm his daughter.

21 Q All right. How old are you?

22 A Fifty-two.

23 Q And I understand that you lived with Mr. Stewart in
24 Rock Hill as a young girl?

25 A Yes.

TESTIMONY OF CATHERINE KINGSTON

1 Q When you were in Rock Hill, did you ever have the
2 opportunity to go with your dad to the Bowater Plant?

3 A Yes, I did.

4 Q What do you remember about that?

5 A I was real young. I remember there was big roller things
6 and that's about it. Except when I left what was really neat
7 was there was a car wash and you had to go through a car wash
8 before you got outside, and I remember thinking, "Oh, fancy, it
9 must be dirty, it must be dangerous, why are they washing the
10 car?"

11 Q As a little girl?

12 A Yeah, as a little girl.

13 Q What kind of memories do you have of being in Rock Hill
14 with your dad?

15 A When I was little?

16 Q Yes, ma'am.

17 A Well, dad was always real gentle with me. I remember he
18 was also very pleasant with me. I remember being out in the
19 yard with him. I remember going and spending time with Aunt
20 Vicki and Uncle Bob and Gee-mom and Gee-paw and --

21 Q Who is Gee-mom and Gee-paw?

22 A Sorry, his parents, that's what we called them.

23 Q Those are your grandparents I take it?

24 A That would be his parents.

25 Q And where did they live?

TESTIMONY OF CATHERINE KINGSTON

- 1 A In Lancaster.
- 2 Q All right. I also understand that -- so you were a
- 3 young girl when your parents split up, right?
- 4 A Yes.
- 5 Q How long after your parents split up did your mother
- 6 remarry?
- 7 A Very quickly. It seemed like daddy was gone for maybe
- 8 just a few months and here comes Doyle, here comes dad, so very
- 9 quickly.
- 10 Q Are you referring to Doyle Edwards?
- 11 A Yes, my stepfather.
- 12 Q Okay. Well, what was it, about a few years before you
- 13 moved with your stepfather and your mother away from South
- 14 Carolina?
- 15 A Yes. Right after my mom and dad got -- Doyle got married
- 16 we moved to another side of the town, we spent a couple of
- 17 years there, and then we moved to Texas when I was eight.
- 18 Q And before you moved you still saw your dad?
- 19 A Oh yeah.
- 20 Q So after you moved to Texas did you still stay in
- 21 contact with your dad?
- 22 A Yes, it was not very much as I would like. There weren't
- 23 any cellphones back then and I don't think mom and dad really
- 24 encouraged him to call or put us on the phone, but he would
- 25 send cards on birthdays, Christmas and he would call always on

TESTIMONY OF CATHERINE KINGSTON

1 those times especially or in between. There was a lot of times
2 they would be talking about going to visit in the summer and he
3 did come visit us one time.

4 Q Did you ever have the occasion to visit with him back
5 in South Carolina?

6 A Yeah, that's what I was speaking about. We did get to go
7 back once, no twice, I went twice.

8 Q This is during what time period?

9 A I know that Stephen and I went once, but I went by myself
10 when I was 14. I didn't have any problem with flying so -- but
11 my brother, he didn't like to fly. I got to go spend time when
12 I was 14.

13 Q Okay. Do you remember much from that trip?

14 A Oh yeah.

15 Q What did you do then?

16 A Well, we did a lot of stuff together. He was showing me a
17 lot of his gardening things, I was getting into that a little
18 bit. He took me riding on his motorcycle, oh, that was so much
19 fun. I remember getting on there and he gave me a little
20 helmet to wear, and all the sudden I realized I had a
21 microphone and I could talk to him and I was a little chatter
22 box, so I was talking and he was driving on the road. I asked
23 him a question and he just kept driving and I was like,
24 "Daddy." And he goes, "Oh, what?" I go, "You turned me off,
25 didn't you?" He said "No," and he turned me back on. But that

TESTIMONY OF CATHERINE KINGSTON

1 was fun. We went to go visit the Bowaters again, and I saw the
2 whole plant that time and I remember a lot more.

3 Q Did he show you around?

4 A Yeah, he took me to the whole process. Here is the tree
5 and they'll chop it up and pull it up with water and cement and
6 then they did whatever they did and it comes out on those big
7 old huge roller things. I was standing right under them, they
8 were huge.

9 Q Was he proud of his work?

10 A Yeah. He introduced me to a coworker of his, and I think
11 he was real proud of it.

12 Q Now, about how long did you live in Texas, through what
13 age?

14 A I moved when I was eight, let's see, 23.

15 Q And you have some kids, right?

16 A Uh-huh.

17 Q Can you tell me their names and when they were born?

18 A Uh-huh. My first born is Davis Carl Kingston, he's 18, he
19 was born in '99, May 26th of '99. And my second child is
20 Stephen Kingston and he was born on January 23rd of 2001.

21 Q And are you married, ma'am?

22 A Yes.

23 Q So you were married at the time you had your children?

24 A Yes.

25 Q And did you stay with your husband, ma'am?

TESTIMONY OF CATHERINE KINGSTON

1 A No.

2 Q When did you and your husband split up?

3 A In 2003.

4 Q And did you stay in Texas after that?

5 A No. It wasn't a very safe marriage for the children and I
6 and so I needed to jump and I called my family and they were
7 like "Come on," so I came back to South Carolina.

8 Q And did your dad have anything to do with that?

9 A Yeah, he's actually the one that set it up. I tried not
10 to tell everybody about my problems, but as soon as I called
11 them they were like, "Okay, we'll find you a place." And daddy
12 came right on down to Moncks Corner where I decided to move to,
13 and he and Steve went shopping for a place for me to live, and
14 he would send me picture and would say, "What about this place?
15 What about that place?" He literally picked the house out over
16 the Internet, it was pretty cool, they set it up for me. They
17 were very helpful.

18 Q This is Exhibit Number 17 here, this is a photo. Can
19 you tell me what we're looking at here?

20 A Yeah. That's daddy's backyard and the grapevine arbor,
21 and of course there is daddy there and that's the two boys.
22 The one in the blue hat is the older one, that is Davis and
23 then little, Stephen, with the red hat. That was right when we
24 first moved here back to Moncks Corner after I got divorced, so
25 we came right up to visit, of course.

TESTIMONY OF CATHERINE KINGSTON

1 Q And how did you find a place to stay in Moncks Corner?

2 A Well, like I said, I needed to jump quick and so daddy and
3 Stephen, they spent all of the time -- they spent a lot of time
4 finding a place for me, and daddy helped me to get in the house
5 and Stephen helped me get --

6 Q When you said he helped you get in the house, did he
7 help you financially?

8 A Yeah. He set it up on his -- it was his house, basically
9 he bought it and did the financing and all of that, and then I
10 just paid the rent.

11 Q And going back to this photo, what is that behind the
12 boys there?

13 A What is that behind it?

14 Q Yes.

15 A Oh, like I said, that is a grapevine arbor, and then
16 behind that is the bushes that went over to my best friend
17 Allison's house.

18 Q Are those the bushes we heard about him trimming
19 before?

20 A Oh, yes, sir, they sure are.

21 Q Do you remember what type or what was growing on the
22 trellis up there?

23 A Muscadine grapes.

24 Q Okay. And is that something he can continue to do over
25 time?

TESTIMONY OF CATHERINE KINGSTON

1 A Yes, sir. He liked to grow a bunch of stuff. He grew
2 like fruits and blueberries and muscadines as well as like the
3 vegetable things, and then tons of flowers.

4 Q Was he -- it looks like he's getting away from the
5 camera. How was your dad with your boys?

6 A He was real good with them, the same with me, he was real
7 gentle with them. He was very pleasant with them, you know,
8 talking to them, interacting with them, he was very kind with
9 them.

10 Q This photo up there. Now, this is marked as Exhibit
11 13. Do you remember where that photo was taken?

12 A Uh-huh, that was Christmas right after we moved in. We
13 moved in August of 2003 and so that would have been Christmas.
14 And that's in Moncks Corner when he came down to see me. That
15 first picture was in the fall when we went up there, and then
16 Christmas he came down and we went to the little Christmas
17 parade in Moncks Corner and --

18 Q Was that with the boys or --

19 A Oh yes, of course.

20 Q What about this photo here?

21 A That is daddy and my youngest son, Stephen, and that's at
22 my house in Moncks Corner. Stephen was really interested in
23 reptiles, you know, through a phase and so daddy was looking at
24 the book with him, and then actually Stephen gave daddy this
25 for Christmas, and daddy had it on his kitchen counter. When I

TESTIMONY OF CATHERINE KINGSTON

1 went over to visit last night a friend that lives there, one of
2 the neighbors, got this and Stephen said, "Oh, take it with
3 you, it's your lucky frog." So --

4 Q And that was Exhibit Number 14. What about this photo
5 here?

6 A That would have been like later, like the next year, maybe
7 like Thanksgiving. That's in Summerville right down the road
8 from Moncks Corner and so he was visiting me again. We visited
9 in between that time, too. We went for Thanksgiving and went
10 for a walk in the park and Stephen was all interested in
11 looking at the fish and the turtles. Like I said, he was real
12 into those critters back then.

13 Q And this is Exhibit Number 15. What's Stephen looking
14 at right there?

15 A I believe it's probably a turtle.

16 Q And this is Plaintiff's Exhibit Number 16 -- I'm sorry,
17 rather Exhibit 16. Who is in this photo, do you remember?

18 A That's one of my favorite pictures, that's daddy wearing
19 his little hat for gardening and that is Davis wearing his hat.
20 Daddy put him up on the lawnmower and rode him around the yard,
21 they just thought that was really cool.

22 Q Is this in again --

23 A This is at daddy's house, that's his gardening shed, you
24 can see his little flowers.

25 Q Is it more flowers behind there usually or what?

TESTIMONY OF CATHERINE KINGSTON

1 A Oh my gosh, on the other side that would be the side
2 closest to you right now, there was tons of flowers, so pretty.

3 Q Did he have any favorite flowers?

4 A He had a lot of lilies I think, they're easy to grow.

5 Q So we heard from Stephen about killing plants. Did you
6 ever do any of the gardening with your dad or did you --

7 A I'm a gardening girl, me and daddy. That's -- I think --
8 besides grandkids, of course, that was the main way he and I
9 got to reestablish ourselves, we both had a real passion for
10 it. When daddy moved me into the house it was bare and every
11 time I went up there he would say, "Take this back and plant
12 it." And we would go through magazines and he said, "I'm going
13 to plant this," and I would say, "Yeah, plant that." And I
14 would say, "I like this." And so I take a bunch of stuff and
15 it is in my yard right now.

16 Q This is a photo that's Exhibit Number 18. Who's all in
17 that photo there?

18 A Well, that's daddy and his best friend, Buddy, his dog,
19 and there's little Stephen petting him and there's Davis
20 sitting there. And Davis had a little ear thing, he was always
21 playing with his ears, and for some reason he decided to pick
22 up a pacifier like a few months ago, he never used it as a
23 child. They were sitting in the big chair in the living room
24 at my house, even though it is his I call it mine, and they
25 were sitting there all the time. It is a real big chair with a

TESTIMONY OF CATHERINE KINGSTON

1 cushion and they would all squash in. When we got rid of that
2 chair Stephen cried.

3 Q When you say Stephen--

4 A Yeah, my son, he was all upset when we got rid of that big
5 chair, he followed me out as they loaded it up crying.

6 Q How long did your dad have Buddy the dog?

7 A He got Buddy when he retired, pretty much right after he
8 retired. And Buddy was with him the whole time, that was his
9 little buddy. And he was real concerned about Buddy after he
10 started getting sick, and he finally got to the point where he
11 said, "I can't take care of Buddy, I'm tripping over him, you
12 have to take him." because I was real good with dogs and I had
13 my Sampson dog. Right before he died I took him a couple of
14 months for daddy, and Buddy died within six months after daddy
15 died, it just broke his heart when daddy died.

16 Q This one here, can you tell, where is this picture
17 taken?

18 A Okay, that's in my backyard. Daddy put the fence up
19 around there for me so the kids wouldn't wonder off and fall in
20 the ditch, and he bought that play thing with the water and he
21 was out there playing in the water.

22 Q And Exhibit 20 is up here. Now, what's going on in
23 this photo here?

24 A Okay. Well, it's another visit to dad's house. Dad
25 became quite religious as he got older and Easter was really a

TESTIMONY OF CATHERINE KINGSTON

1 good thing for him and we loved Easter, all the Easter eggs, we
2 were always doing the Easter egg thing. That's them at daddy's
3 house visiting for Easter and dying Easter eggs.

4 Q Okay. Well, hold on now, I don't know if you can see
5 this right. Look a little --

6 A Oh no, sorry. Yeah. That was not an Easter visit, I was
7 just looking at the table, that was Davis' birthday so that
8 would have been in May and we were up there and visited daddy.
9 Those are a couple of cupcakes, sorry about that, I'm a little
10 nervous also.

11 Q I can imagine you are. What about photo -- what about
12 this?

13 A That was another birthday, that's Stephen's birthday. We
14 were visiting daddy and that would have been in January.

15 Q Around what year would you say that was?

16 A Probably 2004. Yeah. Stephen looks like he's about three
17 there, so probably 2004.

18 Q And what about this photo here?

19 A Okay. That's a Christmas photo and that's at daddy's
20 house, and that's Davis sitting there with daddy and Buddy in
21 the chair. You could see Stephen in the kitchen.

22 Q That was Exhibit Number 22. What about this one? It's
23 harder to see, but this is Exhibit 23. Can you tell me
24 what's in this picture?

25 A Okay. That's daddy's bike and the boys are sitting on his

TESTIMONY OF CATHERINE KINGSTON

1 bike, dad came down to visit, and he kind of got rid of that
2 bike when he started feeling bad. That is the only picture
3 that I had of the boys and the bike, but he came down to visit
4 the house and the boys thought that was cool. And that's my
5 dog, Sampson.

6 Q So you say that he used to ride his bike a lot?

7 A Yeah. After he retired he got involved in that Gold Wing
8 thing, he had a lot of friends and they would go riding around
9 town or, you know, in South Carolina. He planned big trips.
10 Like he went all of the way out to visit me in Texas, he went
11 to Canada. He had lot of fun on it. They were always doing
12 something.

13 Q Well, I would imagine he probably wasn't taking the
14 kids on a ride at this point.

15 A No, he did not. He did not let them -- they did not go
16 out of the driveway.

17 Q Was he able to when they got a little older?

18 A No, he'd already gotten to feeling bad. He got to feeling
19 bad five years before dying and he started -- that was the
20 first thing he gave up was the motorcycle, he just didn't feel
21 safe.

22 Q About when did you find out about his diagnosis of
23 mesothelioma?

24 A Well, it was after he'd already found out about it, he'd
25 already told Stephen too, and I think Stephen said he didn't

TESTIMONY OF CATHERINE KINGSTON

1 find out right away either. Daddy would try to -- I think he
2 tried to protect me the most maybe because I'm a girl, I don't
3 know, but -- I don't know. I can't remember the exact dates.
4 I know that he'd already found out about it and he'd already
5 started looking into "Here is what I'm going to do to do better
6 to stay healthier and I'm going to beat this thing." He
7 already had like an encouraging kind of a plan to tell me.

8 Q He had a what plan?

9 A An encouraging plan to tell me.

10 Q What do you mean by that?

11 A Well, so I wouldn't be so upset.

12 Q Oh, I see what you mean.

13 A Yeah.

14 Q So when he let you know that he had mesothelioma, could
15 you tell at that point how sick he was?

16 A Yes, because he had been getting sick a lot longer before
17 that. As a matter of fact, I know when he first started saying
18 stuff he said, "I don't feel right, something is not right,"
19 and I would say, "You're are just being a hypochondriac." And
20 he started looking into like healthier living and like taking
21 vitamins and supplements. He had to give up a lot of stuff,
22 motorcycle, but the gardening, that was the bad. He couldn't
23 come see us hardly, we went to see him. He was more tired
24 and -- when he gave up and started putting that gardening down,
25 yeah.

TESTIMONY OF CATHERINE KINGSTON

1 Q Was that hard for him?

2 A Well, yeah.

3 Q I understand at one point your dad had a big surgery,

4 can you tell me a little bit about that?

5 A The one where they did the lining on his lungs?

6 Q Yes, ma'am.

7 A Yeah. So he thought it would be a good idea to remove the

8 lining of his lungs since that was all messed up with the

9 mesothelioma, I thought it was a bad idea but I had to go along

10 with what he wanted. I thought it was like taking skin off

11 your foot or something, I don't know, just -- anyway, I didn't

12 think it was a good idea but I didn't tell him that. He was

13 saying, "Oh, it's going to make me they live like two to five

14 years longer." Anyway, so he set it up to go do this, and I'd

15 been having carpal tunnel for a long time and so I said, "Well,

16 I'm going to have my surgery," and that's when I decided to go

17 have the carpal tunnel surgery so I could have off work.

18 Because I'm self-employed as a barber and you don't take off

19 especially if you're self-employed with no child support stuff

20 like that, if you have to work you have to work and I've got to

21 take care of the kids so it worked out really good. I was

22 really, really grateful, I guess, that I got carpal tunnel so I

23 could have an excuse to take off for like a month. So I

24 scheduled that right before and they did that, and a few days

25 later -- as soon as I could get on the road to come up here --

TESTIMONY OF CATHERINE KINGSTON

1 we went before to talk to the doctors, I made a trip up before
2 then to talk to him about it, so --

3 Q You went with your dad?

4 A Uh-huh.

5 Q And that's a Duke?

6 A Yeah. I met the doctor and talked about it and stuff and
7 set it up.

8 Q So at that point who was your dad's health.

9 A It was bad, real bad. Like I said, long before he got,
10 you know, officially sick he was more down, you can see in the
11 pictures, you know? Right after I got here he was looking
12 okay, but years before they even diagnosed it he was not
13 looking good, you could tell something is going on.

14 Q So around what time period was the surgery up at Duke?

15 A Gosh. Well, like I said, I'm not good with dates so it
16 seems -- I don't know, it seems to me it was in maybe February?

17 Q Of 2013?

18 A Well, when did he pass? I'm sorry, it was 2014. So it
19 was that same year, he didn't live out the year.

20 Q How long were you up at Duke for the surgery?

21 A A week.

22 Q How was his recovery from that?

23 A It was terrible, he was hurting so bad. It was almost
24 embarrassing because he was cranky because he was hurting so
25 bad, of course they were very kind. It was awful.

TESTIMONY OF CATHERINE KINGSTON

- 1 Q You were there with him that entire time?
- 2 A Uh-huh.
- 3 Q Was he able to get around at all?
- 4 A No. As a matter of fact he was so sick that he told me I
- 5 was snoring one night and I was keeping him awake snoring, so I
- 6 felt so bad so I just started sleeping in the waiting room.
- 7 Q And was he in pain?
- 8 A Yeah. Like I say, he was in a lot of pain. Thank
- 9 goodness they were giving him a bunch of drugs, but he was
- 10 still in pain even with the drugs.
- 11 Q So after a week he gets discharged?
- 12 A Yeah.
- 13 Q And where did you guys go after that?
- 14 A I went back to his house, and I was fortunate enough to
- 15 spend another almost three weeks with him before I had to go
- 16 back to work.
- 17 Q How did those three weeks go? Did he get better
- 18 quickly?
- 19 A No, of course not, he was just super sick. He just stayed
- 20 in his easy chair, he wouldn't eat anything, couldn't hardly
- 21 walk. I would like try to get stuff that he liked into food,
- 22 put like little teaspoons of fiber, and I would beg him to eat
- 23 and drink. We had to squirt in his mouth just so he could
- 24 swallow. It was terrible.
- 25 Q Did he lose weight?

TESTIMONY OF CATHERINE KINGSTON

1 A Oh yeah. He was already like super skinny already and he
2 started like really slimming down a lot. He wasn't super
3 skinny right then but he got super skinny at the end before he
4 passed.

5 Q Was he always skinny?

6 A When he was younger he was skinny, we all were. And then
7 he was just a healthy weight for a long time for a grown-up
8 person and then he started picking up weight. Probably I guess
9 when I got out there he was probably at his heaviest.

10 Q When you say got out there --

11 A Sorry, when I moved from Texas to South Carolina again
12 with the kids in 2003, but he'd already started dropping some
13 weight in probably 2000, I don't know. In probably about 2010
14 he was actually looking really good, we thought he was looking
15 good but we didn't know it was because he was sick.

16 Q He had his dog, Buddy, when about was it that he had
17 you take Buddy?

18 A It was a couple of months before he passed. I didn't want
19 to take Buddy because that was his best friend and I was
20 barking with him, "You love Buddy, he gives you so much
21 comfort, he sits with you." And then he finally got stressed
22 because he was trying to make his point, "You take Buddy. I
23 can't take care of him, I'm tripping over him, you have to take
24 him."

25 Q At that point could he pick up around -- pick up after

TESTIMONY OF CATHERINE KINGSTON

1 himself around the house?

2 A No, not at all. We had neighbors coming by, the church
3 people coming by, everybody was really helpful, but he was
4 really sick. He just had to sit there. He even didn't like
5 the blanket to touch his feet, it would hurt him. And his
6 hands, he kept gloves on his hands because they were freezing.

7 Q He had to keep gloves on his hands, when was that?

8 A He started wearing the gloves about four months before he
9 died.

10 Q And was he still able to drive?

11 A I know that when I went up there -- I know that when I
12 finally took Buddy that was a couple of months before he died
13 and I'd gone to visit up there maybe a couple of months before
14 that maybe. I don't recall exactly how long ago it was, maybe
15 it was three months, I don't know, but Buddy was due for his
16 shots and he was talking to me about if things go really bad I
17 want you to keep Buddy, and so he went and got Buddy his shots
18 and got the medical records and all of that information. So he
19 drove then, he did drive then, but it was down the road to the
20 vet's office.

21 Q Did your dad ever get to take your son's hunting?

22 A No. But he did -- when we came to visit one time, they
23 were older than in that picture, but he drove us to -- we went
24 to Wal-Mart the other day and they said, "Oh, that's the
25 Wal-Mart we went to when daddy was here." I said, Let's get

TESTIMONY OF CATHERINE KINGSTON

1 the BB gun and I'll let you shoot targets with the BB gun.

2 Daddy was like, "Shoot that squirrel." I said, "Don't shoot
3 the squirrel." But that was fun.

4 Q So your dad visited pretty often in Moncks Corner?

5 A Yeah, especially at first. He was very much able to come
6 out and visit us first because I was working all of time and
7 had the kids and Steve was working. And his schedule, he was
8 retired so that was good, so he would come on down and visit
9 more than we would go up there at first, but, of course, that
10 had to switch.

11 Q Why did it have to switch?

12 A Well, because he started not feeling good. It was hard on
13 him to get on the road and come down as much.

14 Q Did your job allow you to see him much?

15 A No, not really. I had one of those work-alcoholic bosses
16 that didn't like anything, family, nothing, all he wants to do
17 is work constantly, he said one time he's going to have to die
18 before he retires. And even like taking off Black Friday, you
19 know, right after Thanksgiving was just -- like he would fight
20 with me and I would have to make a fuss to get off three days
21 at Christmas and stuff like that. It was irritating.

22 Q So how long were you able to see him when you were able
23 to see him?

24 A Well, he came down to see us in The Corner, he would stay
25 longer, you know, because he could, and he would just hang out

TESTIMONY OF CATHERINE KINGSTON

1 and do stuff around the house. He was always doing stuff. He
2 would go see Stephen, me and the kids when we got off work
3 and --

4 Q This is Exhibit Number 12. Is that with your dad?

5 A Uh-huh.

6 Q And when about was that taken?

7 A That photo was taken right after I moved here, it would
8 have probably been 2003 to 2004. He'd just set me up with the
9 house and I went up to -- I came up to see him. So this was
10 here and I came up to see him and I went to the ice cream
11 parlor and I snapped that pictures. I made a little book for
12 him with all of these little pictures of the kids and me and
13 him. I believe like the following Christmas or the Christmas
14 after that I saved up some pictures and I put them together and
15 I wanted to include that because I was thanking him in that
16 little book thing I made, a little photo book about being such
17 a good man to me and the boys.

18 Q And how did -- do you remember how your dad told you
19 about the mesothelioma?

20 A Well, he sat me down and he was telling me like a parent
21 would tell their kid if something bad was happening but it's
22 not too bad and he is going to be okay, and he already had
23 plans to be healthy and not to worry.

24 Q Did he know it was fatal?

25 A I assume he did, because if you look it up they say it is

TESTIMONY OF CATHERINE KINGSTON

1 like a year but he didn't tell me that, I had to find out on my
2 own. And he was saying, "No, no, that's not true because
3 they're going to do the surgery and that's going to give me an
4 extra two to five years." But he was just trying to protect
5 me, he didn't want to tell me anything.

6 MR. HYLAND: Thank you, Catherine. Please answer any
7 questions that Mr. Collier may have.

8 THE COURT: All right, defense, cross examination?

9 MR. COLLIER: Yes, Your Honor, thank you.

10 CROSS EXAMINATION

11 BY MR. COLLIER:

12 Q Good morning, ma'am.

13 A Good morning.

14 Q You mentioned that you have two children by the name of
15 Davis and Stephen; is that correct?

16 A Yes.

17 Q And both of them were born before you moved back here
18 to South Carolina, correct?

19 A Yes.

20 Q How does your son, Stephen, spell his name?

21 A S-t-e-p-h-e-n.

22 Q How does your brother, Stephen, spell his name?

23 A S-t-e-p-h-e-n, or he goes by Steve.

24 Q And how does your biological father spell his name?

25 A Daddy spelled his name S-t-e-v-e-n, I believe. He went by

TESTIMONY OF CATHERINE KINGSTON

- 1 Steve.
- 2 Q And ma'am, you've been back here in South Carolina for
3 about 15 years now?
- 4 A About 14 years.
- 5 Q And you moved back in about 2002, which was about six
6 years after your brother who testified yesterday, correct?
- 7 A Yeah. I moved back I believe it was 2003, I believe.
- 8 Q But prior to that you had been out of state for about
9 30 years.
- 10 A Yes. Well, I guess 28 years, yeah, I was -- seems like I
11 was like 36 years old or something. So it was eight years in
12 South Carolina, bunch of time in Texas, I went to Florida there
13 for a few years.
- 14 Q So 28 to 30 years that you were out of state.
- 15 A Uh-huh.
- 16 Q Ma'am, your grandmother, your maternal grandmother, she
17 had cancer, did she not? I'm sorry, your paternal
18 grandfather -- I'm sorry, your paternal grandmother had
19 cancer, your father's mother, correct?
- 20 A Yes. Gee-maw, yes.
- 21 Q And your father's father also had cancer, correct?
- 22 A Gee-paw, yes.
- 23 Q And your father, Steve, had prostate cancer, correct?
- 24 A Yes.
- 25 Q And he also had bladder cancer, correct?

TESTIMONY OF CATHERINE KINGSTON

1 A I didn't know about that.

2 Q And before your father had his surgery for the
3 mesothelioma that you talked about where you went up to
4 Duke, you had only been to one doctor's appointment,
5 correct?

6 A Yes, because he didn't tell me anything about that.

7 Q And after your father's surgery at Duke when y'all came
8 back to Rock Hill, you didn't go to any doctor's
9 appointments with him after that point in time, did you?

10 A Well, no. But I had just spent a month, I had to go back
11 to work, my boss wouldn't let me off.

12 Q And you never took your father to a chemotherapy
13 appointment.

14 A No, sir.

15 Q You never took your father to a radiation appointment.

16 A No, sir, but I would go afterwards.

17 Q And your father was in Hospice care when he passed
18 away.

19 A Yes, sir.

20 Q And you hadn't visited him while he was in Hospice, had
21 you?

22 A No, sir. I visited him right before and then they were
23 planning on coming up like a week and a half later when he got
24 off work.

25 Q And you weren't present when your father passed away,

TESTIMONY OF CATHERINE KINGSTON

1 were you?

2 A No, sir.

3 Q Ma'am, you mentioned I believe in response to Mr. --

4 A I'm sorry, go ahead.

5 Q You mentioned in response to one of Mr. Hyland's
6 questions that your parents got divorced in approximately
7 1970 when you were about four years old?

8 A Yes, sir.

9 Q And your father, Steve, had two subsequent marriages
10 that also ended in divorce, correct?

11 A Yes.

12 Q And your mom received custody of you and your brother,
13 Stephen, and then she married Doyle Edwards in 1971 or '72.

14 A Yes.

15 Q And after your parents divorced when you were still
16 living in South Carolina you spent the vast majority of your
17 time with your mother and Doyle, correct?

18 A Correct.

19 Q And after your parents divorced Doyle adopted you and
20 your brother as his children, correct?

21 A Yes.

22 Q And you took the last name of Edwards, correct?

23 A Correct.

24 Q And you kept that name until presumably you got married
25 yourself?

TESTIMONY OF CATHERINE KINGSTON

1 A Correct.

2 Q Your father never told you why he gave up his parental
3 rights to Doyle, did he?

4 A No.

5 Q And you called --

6 A But I was four. Oh, you mean later through the years?

7 Q And you called Doyle dad or daddy as well, correct?

8 A Yes, they made me.

9 Q And when Doyle passed away he was your legal father,
10 correct?

11 A Correct.

12 Q And you were readopted by Mr. Stewart shortly before he
13 passed away like we talked about with your brother
14 yesterday, correct?

15 A Yeah. That was a wonderful day, so happy.

16 Q And you and your father talked about how being
17 readopted by him would make it easier to inherit from his
18 estate if you had been adopted, correct?

19 A I don't remember if it was when he first initiated it. I
20 know he just said that he wanted me and -- he asked if it was
21 okay of course, and of course we were like, "Yeah." No one
22 ever asked me if I wanted to be adopted to Doyle, who I didn't
23 really like him very much, and then Doyle get mad at me if I
24 tried to call him dad -- I mean, if I tried to call him Mr.
25 Edwards and then he would say, "Y'all need to call me dad," so

TESTIMONY OF CATHERINE KINGSTON

1 then I started calling dad daddy. And he was talking about
2 readopting us and I was really happy about that. I think he
3 did mention something about "it will make it easier in case
4 there's any trouble if I pass," you know, passing it along.

5 Q So one of the considerations leading up to the
6 readoption was that it would be easier to inherit through
7 Steven Stewart's estate, correct?

8 A I guess so.

9 MR. COLLIER: Thank you, ma'am, those are all of the
10 questions I have.

11 THE COURT: Anything on redirect, Counsel?

12 MR. HYLAND: Just a couple of things.

13 REDIRECT EXAMINATION

14 BY MR. HYLAND:

15 Q What about the spelling Steven with a V or a PH?

16 A Yeah.

17 Q How did your brother end up with a PH, do you remember?

18 A I don't know. I think it just to make a differentiation
19 with Steve, I don't know. I don't know actually, I can't
20 answer that.

21 Q And so if I heard you correctly you called your
22 stepfather dad after a period of time?

23 A Uh-huh.

24 Q And what did you call your real dad?

25 A Daddy. I can't call them both dad because I don't know

TESTIMONY OF CATHERINE KINGSTON

1 who I'm talking about.

2 Q And what is your daddy --

3 A I'm sorry, when you say dad you mean Doyle, right?

4 Q When I said dad I was talking about your real dad.

5 A Daddy, okay, that would help me.

6 Q What did he mean to you especially as an adult?

7 MR. COLLIER: Objection, Your Honor, that's beyond the
8 scope of cross.

9 THE COURT: All right. In South Carolina we don't limit
10 redirect examination to what came out in cross, so the question
11 is proper. You may proceed.

12 Q What did your daddy, your dad, Steven Stewart -- was he
13 a friend? Was he a daddy? What did he mean to you as an
14 adult?

15 A Well, he was my dad, he was my daddy. I called him and
16 him and my brother both were just "come on," and they set me
17 up. And then he was a granddad to the boys and, you know, he
18 tried to guide us. He listened to us. We hung out a lot. It
19 was like I finally had a family because I didn't have a family
20 hardly when I moved out to Texas, we left everybody, and even
21 mom's family, and then dad's family, Doyle's family, they had
22 passed so I was kind of family-less sort of. That was sort of
23 cruel, you know. My mom died before the kids were born so I
24 didn't have anyone. But it was kind of cool that they did have
25 a granddad, you know.

TESTIMONY OF CATHERINE KINGSTON

1 Q And about how old were your boys when your daddy died?

2 A Well, 2014, so that would be like four years ago, so
3 Stephen would have been like 12 and Davis would have been like
4 14, or 11 and 13, something like that.

5 Q And how often do you think about your dad?

6 A A lot, especially since all of this stupid stuff is going
7 down, it makes me think of him more, which I guess that's good.

8 MR. HYLAND: Thank you, ma'am.

9 THE COURT: Very good, you may come down, Ms. Kingston,
10 thank you so much for your testimony. All right, Mr. Jekel?

11 MR. JEKEL: Your Honor, at this time I think we have
12 corrected any of the visual issues that we had earlier when we
13 were going to play the video deposition or, de bene esse, Your
14 Honor, of Dr. Arthur Frank.

15 THE COURT: Tell me how long that is going to take.

16 MR. JEKEL: It's an hour 20 minutes from front to back.

17 THE COURT: All right, let me talk to the jury a moment
18 before we begin.

19 MR. JEKEL: Your Honor, I'm corrected, the direct is an
20 hour and cross is an hour, so it's about two hours and 20
21 minutes.

22 THE COURT: That's a long time, and I've been very liberal
23 about how much I have permitted y'all to do.

24 MR. JEKEL: I thought it was much shorter.

25 THE COURT: All right. Let me talk with the jury for a

1 moment about expert witnesses. Ladies and gentlemen of the
2 jury, what I will do is this, I will give you a morning break
3 before you hear this video, needless to say if it goes on so
4 long if you need any further break we'll take one. Let me tell
5 you what we're about to hear before you take your break, we're
6 about to hear testimony from an expert witness for the
7 plaintiff. Our rules of evidence say if scientific or
8 technical or other specialized knowledge will assist the trier
9 of fact, and that's you all, to understand the evidence or
10 determine a fact issue, a witness who is qualified as an expert
11 by knowledge, skill, experience, training or education may
12 testify in the form of an opinion. Ordinarily an opinion is
13 not allowed to be expressed by a fact witness, but the
14 exception is a witness who is declared qualified by reason of
15 their education, training, experiences as I just explained, and
16 that person can testify and give an opinion about what the
17 evidence indicates in the area in which that person is declared
18 an expert, that's what we will be hearing from this individual,
19 Dr. Frank. Both sides agree that Dr. Frank is a qualified
20 expert and you will hear in the beginning of his testimony what
21 his field of education, training and experience is, but
22 basically Dr. Frank is an expert in occupational disease, his
23 specialty is asbestos and asbestos disease, and I find that he
24 is qualified. I find that this is an area of inquiry by you in
25 which expert testimony will help you understand the issues

1 surrounding asbestos and related diseases, and that this is not
2 an area that's in your common experience but rather an area in
3 which expert testimony may help you. And you evaluate expert
4 testimony when you evaluate any other testimony. You will
5 decide the weight to give this testimony, its credibility, its
6 believability and so forth. But you are permitted to hear
7 expert testimony in this area and you are permitted to accept
8 if you do and use in determining the issues in this case the
9 opinions given by expert witnesses. This won't be the first.
10 These cases are generally the battle of the experts and there
11 will be expert testimony in various fields on each side, but
12 that is what you are going to be experiencing. I am going to
13 allow you to take a 15 minute break at this time and then we
14 will come back and begin the testimony of Dr. Frank.

15 (The jury left the courtroom.)

16 MR. JEKEL: Your Honor, may I raise something?

17 THE COURT: Yes, sir.

18 MR. JEKEL: At pretrial, Your Honor -- you just heard
19 counsel twice for SCAPA go into his medical condition and I
20 just want to put on the record that at pretrial this was
21 subject to a motion in limine, Your Honor -- I'm looking at
22 page 158 of the pretrial, Your Honor, "So I would deny that.
23 Now, we've got health condition, relatives history, diseases,
24 y'all explain the relevance." You excluded that, Your Honor,
25 and I'm not sure -- you know, we would just seek to get an

1 instruction at the appropriate time from the Court to the jury
2 that until there's any relevance of the prior -- the other
3 medical conditions of the paternal father and the father's
4 father and the cancer history, we believe that that's
5 irrelevant and it's prejudicial and to exclude it and that we
6 would ask for an instruction to the jury at the appropriate
7 time on that, Your Honor.

8 THE COURT: All right. So -- fine, I'll take that into
9 account. That was inappropriate, it is beyond the scope. I
10 thought about that as the testimony was proceeding and made the
11 decision not to do that on my own. I just ask counsel to
12 adhere to the rulings that were made in limine about such
13 matters. Mesothelioma, at least as so far indicated, can only
14 be gotten by asbestos, and the fact that you may or may not
15 have other physical conditions has no bearing on the
16 contraction of asbestosis nor does a family history of cancer
17 or anything else, that is why I made the ruling as I did
18 because of the information that was presented at that time. I
19 heard in some of the objections that y'all made yesterday that
20 in 75 percent of the cases mesothelioma is caused by asbestos.
21 If it turns out that mesothelioma can also be caused by other
22 things we'll revisit this issue at that time. But at the
23 present time it would be my intention at the appropriate time
24 to instruct the jury that family medical history is not to be
25 considered in this matter. I don't see any point in doing that

1 right now. I think we need to evaluate that at the appropriate
2 time unless other evidence comes out as I've indicated I would
3 be willing to so instruct the jury. Mr. Early?

4 MR. EARLY: Well, Your Honor, I don't remember it like
5 that but I guess Chris just read it. I think Ms. Kingston also
6 just testified that up to five years before he was diagnosed
7 her dad was going down hill, so other medical conditions are
8 certainly going to come out with our medical experts
9 including --

10 THE COURT: Well, I don't know that other medical
11 conditions are -- caused him to go down hill but that remains
12 to be seen and apparently there's going to be other testimony
13 about it. I don't know how long he had had the mesothelioma, I
14 do know when he was diagnosed which was in 2012, died in 2013.
15 But the door is still wide open as to what he was suffering
16 from in those five previous years, that's why I said I'm going
17 to wait to see what develops. Very good. Anything else?

18 (A break was taken.)

19 THE COURT: I'm going to bring in the jury unless you tell
20 me otherwise. All right. Please bring in the jury.

21 (The jury returned to the courtroom.)

22 THE COURT: Ladies and gentlemen of the jury, please be
23 seated. You will see that I have tried to respond to your
24 latest note -- good, thumbs up, I hope this will be better. We
25 up here can still see perfectly fine so this is a good thing.

1 We'll now commence the testimony of Dr. Frank. Plaintiff?

2 MR. JEKEL: Yes, Your Honor, we present the deposition of
3 Dr. Frank via video.

4 THE COURT: Very good.

5 (At this time the video of Dr. Frank was played.)

6 MR. JEKEL: Your Honor, that concludes the direct, as I
7 have indicated there's cross examination, it's about the same
8 length as the direct.

9 THE COURT: All right. Well, this may be a good time
10 then, ladies and gentlemen of the jury, for us to take a lunch
11 break and so we will do that at this time. It is 12:30 now,
12 let's be back here at 1:45 if you can, you will go to your jury
13 room, you will leave your notebooks in the jury room and please
14 don't discuss the case, thank you so much.

15 (The jury left the courtroom.)

16 THE COURT: Counsel, one thing I do notice as we have read
17 through here although we have highlights on here as what is
18 supposed to be playing this thing is just playing through the
19 whole thing, it's not stopping and excluding the things that
20 were not highlighted, why is that?

21 MR. JEKEL: Your Honor, I'm not sure what version you are
22 looking at, we yesterday, counsel and I --

23 THE COURT: Y'all put some more stuff in here?

24 MR. JEKEL: No, we took stuff out, Your Honor. We've
25 edited --

1 THE COURT: Well, I'm looking at a transcript that's a
2 transcript of the whole thing that has certain things marked
3 and certain things not marked and so far there's been
4 relatively nothing that's been left out.

5 MR. JEKEL: Your Honor, we took a little out of the
6 direct, there are portions of the cross examine that we have
7 taken out.

8 THE COURT: Okay. Well, I'm gonna be looking closely.

9 MR. JEKEL: I understand, Your Honor.

10 (Break in proceedings.)

11 THE COURT: We've been going outside of the timeframe,
12 these experts are kind of testifying about the landscape of
13 asbestos so I'm not inclined to do very much with that, other
14 than I want to cut this down, this thing is way too long,
15 you've got way too much stuff designated.

16 MR. JEKEL: Your Honor, I have been cutting it, I cut it
17 last night, I want to get with counsel again, as I go through
18 it each time I'm cutting it out because I understand I can't
19 sit here for hours and read.

20 THE COURT: Now, let me ask you this, why is Bogalusa
21 paper mill sales relevant?

22 MR. JEKEL: Well, Your Honor, that was the mill in which
23 it was closed, Bogalusa is not relevant. I think what I wanted
24 to speak with counsel about is change --

25 THE COURT: How about Brown Paper, there's no Brown Paper

1 at Bowater.

2 MR. JEKEL: Or any paper mill, Your Honor. I think the
3 testimony is still relevant, the mill itself is not, and I
4 would agree to remove Bogalusa, call it a paper mill --

5 THE COURT: I'm not talking about just the one through
6 three letter thing, I'm talking about a big hunk of testimony
7 about something that's got limited pertinence to this. You
8 have got a whole lot of stuff about what happens to the mills
9 in question, I really wonder if we need to get into the rest of
10 that.

11 MR. JEKEL: I'll look at the Bogalusa. Some of the
12 testimony, though, Your Honor, talks about more in general
13 about SCAPA's practices and is not necessarily mill specific,
14 to the extent they talk about felt types, the SRA, the GRA,
15 I've included that, I have included testimony about the felt
16 types of products here. But again I'm going through that and
17 trying to cut as much out of it as I can and we will continue
18 this afternoon.

19 THE COURT: Well, I'm going to give Jamie over to those,
20 you have to see if we can first of all focus like a laser on
21 the things that really are important I'm talking about
22 objection wise, and second of all, beyond the objections see if
23 we can't slice down some of this material. This jury has been
24 very patient, this is tough on a jury.

25 MR. JEKEL: And Your Honor, in looking at all of the Merk

1 stuff there are many other volumes, I do believe that this will
2 be the only volume we read. There's a second volume that I'm
3 going through to try to cut it down and I've not cut it down
4 sufficiently enough for myself so I have not given it to
5 counsel, but this will probably be the only Merk testimony that
6 is read other than what the defense may read in its case in
7 chief.

8 THE COURT: Okay. Well, let's see how we go.

9 MR. JEKEL: Yes.

10 THE COURT: The jury is coming back to us at 1:45. I will
11 try to be around here and I'll get something quick and then
12 I'll be in my chambers in case y'all want to talk.

13 MR. JEKEL: Thank you, Your Honor.

14 (A lunch break was taken.)

15 THE COURT: Okay. Counsel, before we bring the jury in, I
16 take it we are at peace about what's going to be shown of Dr.
17 Frank so we know where we are with that, and then the next
18 thing is the short one, the Hegler.

19 MR. JEKEL: Hegler -- the parties have withdrawn their
20 objections, we are going to read it --

21 THE COURT: So that's going to be read. Who is going to
22 be read it?

23 MR. JEKEL: Mr. Hyland is going to playing the part of Mr.
24 Hegler, I will read both the plaintiff and defendant portions
25 unless defense counsel --

1 THE COURT: If the defense counsel wants to have one of
2 their folks read defense counsel's examination, of course, that
3 can be done.

4 MR. JEKEL: It can be.

5 THE COURT: And then you've got the Merk, and thank you
6 very much for your good work on Merk. It sounds like I've got
7 two things to rule upon, I can do that now before we start if
8 you would like or I can wait until the Merk becomes available.
9 It sounds to me like we're going to have another break before
10 we get to Merk, do you agree?

11 MR. JEKEL: I do, Your Honor.

12 THE COURT: Well, just remind me and let's go on and
13 dispose of the Merk objections on the next break. Okay.

14 MR. YOUNG: Your Honor, we would like Mr. Early to read
15 the defense questions in the Hegler deposition.

16 THE COURT: A wise move on your part, yes, we will do
17 that.

18 (The jury returned to the courtroom.)

19 THE COURT: We're going to conclude the deposition of Dr.
20 Frank at this time. Before we get started, is visibility
21 better? Very good. Let me know if there continues to be any
22 dilemmas about visibility or hearing or anything in connection
23 with these matters. And with that, Mr. Jekel, you may proceed.

24 MR. JEKEL: This is the cross examination of Dr. Frank.

25 (The video deposition of Dr. Arthur Frank continued.)

1 THE COURT: Counsel, stop for a minute. Counsel for the
2 plaintiffs and defendants, come approach me for a minute.

3 (A bench conference was held.)

4 THE COURT: Ladies and gentlemen of the jury, please
5 pardon that side bar, we've had a great deal of this discussion
6 about how much of these depositions to read and I wanted to be
7 sure we were still on track with what has been ruled upon and
8 agreed to, so you may continue now sir.

9 (The video deposition of Dr. Frank continued.)

10 THE COURT: Ladies and gentlemen of the jury, we're having
11 a few little technical glitches about how this deposition is to
12 be played and we still have some of it left to be played, but
13 apparently the editing has not completely reflected the rulings
14 that have been made about what is to be played and what is not
15 to be played. I am very, very mindful of your time, I don't
16 want you to be sitting around while they try to figure that out
17 so what we're going to do now is go to the final deposition
18 that they want to put before you today, and this one is going
19 to be read with the lawyers taking their part and one lawyer
20 representing the person who is being deposed and then a cross
21 examining lawyer be able to cross examine. So we're going to
22 interrupt Dr. Frank's testimony at this point to hear -- Mr.
23 Jekel, we cannot do that this way, I'm on the record addressing
24 the jury, you've got to wait until I address the jury, you get
25 that keyed up and some of you will retreat from the courtroom

1 and deal with this matter, we can't do it like this, it's
2 distracting to the jury and to the court reporter.

3 MR. JEKEL: Yes, Your Honor.

4 THE COURT: All right. What we're going to do now is read
5 the deposition of George Hegler and the deposition will explain
6 who he is, and after we finish the reading of that deposition
7 then we will come back and finish the video deposition of Dr.
8 Frank. Does everybody kind of understand where I am and what
9 I'm trying to do? As I say, I want to move this thing along so
10 y'all don't sit around while we get these others matters worked
11 out. All right, Counsel, you're calling Mr. Hegler to the
12 stand so let's proceed with who is going to be Mr. Hegler.

13 MR. JEKEL: Your Honor, this is the deposition of George
14 Hegler that was taken in 2013. Your Honor, just in terms of
15 the process --

16 THE COURT: Now, don't be springing around to that
17 microphone, speak right into it.

18 MR. JEKEL: Yes, Your Honor, I apologize. There are
19 designations to the plaintiffs, we will just read the
20 plaintiff's designations, then there will be cross examination
21 and Mr. Early will read the designation for the defendant.

22 (The depositions of George Hegler was read.)

23 MR. JEKEL: Your Honor, may we briefly approach? I hate
24 to do it?

25 THE COURT: I hate to do it as well, I'm not going to have

1 this.

2 (A bench conference was held.)

3 THE COURT: Sorry, ladies and gentlemen, I think we got it
4 right now. What we have got and to do -- and we haven't gotten
5 long into Hegler's and we will have to start it again. We had
6 some confusion about -- plaintiff has designated some pieces to
7 be read and defendant another, and what Mr. Jekel was doing was
8 just reading his designations, that doesn't make any sense for
9 y'all to have to then come back and hear chopped up testimony.
10 Mr. Jekel is going to read everything that was asked this
11 witness, Mr. Hegler, a coworker of Mr. Stewart on direct
12 examination whether he designated it to be read or counsel for
13 the defense, and then when that is done Mr. Early will come
14 forward and be the cross-examiner, which is the way that
15 deposition flows. So it will flow completely for you and not
16 chopped up in the way it's not really very understandable. All
17 right, Mr. Jekel, you may proceed.

18 MR. JEKEL: Yes, Your Honor. My deepest apologizes, I
19 thought we had agreed to do it slightly different.

20 (Continued reading of the deposition of George
21 Hegler.)

22 THE COURT: Mr. Jekel, are you planning to put these
23 exhibits up as you examine him about them?

24 MR. JEKEL: I don't know. Your Honor, I have the
25 pictures, I don't know if they've been shared with the defense,

1 they were not so I was just going to read it now and enter the
2 exhibits afterwards.

3 MR. EARLY: No objection, Your Honor.

4 THE COURT: No objection to the exhibits. I think just
5 put them on the Elmo and that will help what's all being said.

6 MR. JEKEL: I think they go this way now.

7 (Continued reading of the Hegler deposition.)

8 MR. JEKEL: Your Honor, that concludes the deposition.

9 THE COURT: Thank you very much. Mr. Early, you may come
10 down. Mr. Jekel?

11 MR. JEKEL: They are I am told -- should the jury --

12 THE COURT: I'll take care of the jury, just tell me where
13 you are.

14 MR. JEKEL: Well, we have a stipulation that the parties
15 entered that I can read or you can read, Your Honor, that we
16 wanted to go at this point, then we believe we'll have the
17 video ready to resume.

18 THE COURT: Very good. Well, what we'll do at this time,
19 jury, is you'll take your afternoon break and when we come back
20 we'll get the stipulation read for you and then go to the
21 conclusion of Dr. Frank's deposition. It's now 3:26, why don't
22 we be back about 3:40. Thank you so much.

23 (The jury left the courtroom.)

24 THE COURT: Before we get to Dr. Frank's deposition I knew
25 this was going to happen, the jury sent me another note. Okay.

1 Under the heading of my father's favorite expression it's
2 always something here is the latest, this is from the jury.
3 "May we be advised as to why Mr. Hegler did not testify in
4 person? The reason was given for Dr. Franks but not for Mr.
5 Hegler," so far so good. "And the testimony from Mr. Hegler
6 seemed to be for a different case. We appreciate your
7 guidance." You know what they're asking? They're asking about
8 all of these other companies that were named, and the reason
9 they were named in the Hegler deposition is because they were
10 still parties, now they're not parties and y'all think that
11 y'all can still use them as empty chairs and I am concerned
12 about that now and don't know exactly what to tell them,
13 therefore I'm not going to tell them anything, but I am going
14 to do some thinking tonight about that. Although y'all don't
15 believe in Smith versus Tiffany I am not going to put an end
16 run in here where I violate what the South Carolina Supreme
17 Court has said about the difference between empty chair and
18 bringing in people who are now settling parties. Everybody
19 that has been mentioned here is either a settling party or been
20 dismissed for one reason or another. I don't like that one
21 darn bit and I worried about it as all that testimony started
22 to be read, now the jury is concerned about it, because this is
23 not a dumb jury, this is a smart jury. So y'all may think
24 that's pretty cute but I don't think it's cute at all and I
25 think we're going to have to figure out some way to deal with

1 that. For the present time what I want to know is where is
2 Hegler?

3 MR. JEKEL: Mr. Hegler is deceased, Your Honor.

4 THE COURT: Mr. Hegler is deceased, that's all I'm going
5 to tell them. But I want some thought to be given to what
6 the -- how we steer between Scylla and Charibdes, between the
7 empty chair, which is legitimate and the defendant is entitled
8 to it and I have no qualms about that, but I have plenty of
9 qualms about settling defendants and dismissed defendants,
10 because those folks get taken into account if a jury verdict is
11 rendered when we have our final seance about offsets and this
12 kind of thing, and they're not in the area of legitimate empty
13 chairs in my view. Bowaters may be different. And I agonized
14 about that last time because Duke Power was the employer in the
15 Jolly case that I tried. I am concerned about this issue and
16 I'm not trying to say people are trying to deliberately skirt
17 around, but I know the defense does not like my rulings about
18 Smith versus Tiffany and I feel like that's what the case says
19 and what I am required to do, but both sides need to give some
20 thought about how we can navigate this. I don't want to put
21 something in here that ends up having to retry this darn case
22 for what is no real good reason. If we had an empty chair of
23 somebody different it would be a different kettle of fish, but
24 there's no good reason to have done this when you've got
25 another way to skin that cat and I'm concerned about that now.

1 MR. EARLY: Your Honor, you want to be heard on that now
2 or you said --

3 THE COURT: I want y'all to think about it and think about
4 what the law says and read Smith versus Tiffany before you just
5 one more time to try to persuade me that this is an empty chair
6 but not what is prohibited about that case.

7 MR. EARLY: I think the Machin case that was decided at
8 the exact same time as Smith versus Tiffany --

9 THE COURT: Machin, of course is the comp case.

10 MR. EARLY: Right. And the jury sent a note out in that
11 case and Justice Kittredge gave a specific instruction --

12 THE COURT: -- instruction to give them.

13 MR. EARLY: That's right, Your Honor. And I think if you
14 take out in that case the -- I think it was town was the order
15 in that case if I remember correctly.

16 THE COURT: Yes, it was.

17 MR. EARLY: I want to think about it as well, but I do
18 remember that charge was given based on a note in that case.

19 THE COURT: Exactly. And that's a very good point,
20 excellent point and that's why I say I'm not prepared to do
21 anything about it now but I think we need to all think
22 carefully about this. I want to preserve everybody's right to
23 object but please know that when I was requested in pretrial to
24 give some thought to ignoring or reversing or taking another
25 position on what's been ruled on by the South Carolina Supreme

1 Court I can't do that, I am a trial judge only and I must be
2 bound by what the higher courts say, so that's what y'all need
3 to connotate about.

4 MR. EARLY: And in that same line, Your Honor, we had the
5 phone hearing on Friday and you were talking about two
6 different entities if you will, you said you didn't want to do
7 that because of Smith versus Tiffany, but you said that was
8 only one block and we could connect those dots and I was under
9 the impression that this could be another block and we can name
10 another empty chair with other names.

11 THE COURT: Well again, please don't take what I say as
12 some permission to, "Oh, now she's changed her mind and we can
13 go back and ignore Smith versus Tiffany," we cannot do that, we
14 cannot do that. So I'm just saying give some thought to that,
15 we don't need to unnecessarily introduce into this case
16 something that's going to come back and bite us.

17 MR. EARLY: Yes, ma'am. Can we mark that note, Your
18 Honor?

19 THE COURT: We will mark this as Court's Exhibit 1.
20 (The jury returned to the courtroom.)

21 THE COURT: Members of the jury, please be seated.
22 Members of the jury, I want to take up two things with you, and
23 the first is I have your note which says, "May we be advised as
24 to why Mr. Hegler did not testify in person? The reason was
25 given for Dr. Franks but not for Mr. Hegler. And the testimony

1 for Mr. Hegler seemed to be for a different case. We
2 appreciate your guidance." What I am able to tell you now is
3 simply this, and it may not answer every question but this is
4 what I am prepared to give you at this time, Mr. Hegler is
5 deceased so that is the reason he is not testifying live. With
6 respect to anything else implied by the question, I can't
7 advise you about that at this time but I have it under
8 advisement as do the attorneys and we'll decide what further,
9 if anything, needs to be said about the rest of the inquiry.
10 Now, before we begin with -- or finishing Dr. Frank's
11 deposition I have a couple of advisements with you for planning
12 purposes for next week. We will not be holding court in this
13 case on Monday or Tuesday, so you have Monday and Tuesday free
14 for other things that you may want to do and then you would
15 come back on Wednesday prepared to complete the case this
16 coming week. In other words, we'll finish out this week, we're
17 kin of half way through this week, we'll finish out this week,
18 we will not be sitting on Monday and Tuesday, we'll come back
19 bright and early Wednesday, I'll give you advice as to how
20 early before we leave on Friday. On Thursday we will dismiss
21 court early, court will probably be dismissed around 3:30 and
22 then it's going to be a little bit flexible depending on
23 when -- how that -- or what will be the defense case at that
24 point where it is. And then we'll conclude the case we very
25 much hope on Friday which include closing arguments and your

1 deliberations and perhaps return a verdict. That's tentative,
2 it's not written in stone, but what is written in stone is that
3 you will not be expected to come to court on Monday and Tuesday
4 for next week so you have those two days for your own personal
5 purpose, hopefully that gives you a little relief from the
6 burden of having a two week trial. Thank you. All right now,
7 Mr. Jekel?

8 MR. JEKEL: Yes. We're picking up the cross examination
9 of Dr. Arthur, if you're following along we're on page 97 of
10 the deposition.

11 (The video deposition of Dr. Frank continued.)

12 THE COURT: Counsel?

13 MR. JEKEL: Your Honor, we discovered some things from
14 your ruling that we --

15 THE COURT: I've ruled on those things before.

16 MR. JEKEL: I know, that's why we stopped the tape.

17 THE COURT: All right. And frankly there's nothing in the
18 remainder --

19 MR. JEKEL: Your Honor, we're trying to get it to page 120
20 line 14.

21 THE COURT: When you get there I am going to explain to
22 the jury what the situation requires.

23 MR. JEKEL: Judge the way I'm -- we start it start on 130,
24 line six, then go to the recross, and end it at 132.

25 THE COURT: You're moving forward to page 130?

1 MR. JEKEL: Yes, Your Honor.

2 THE COURT: Excellent. While that is being done, let me
3 explain to you, jury, what's happening here, and it's tough,
4 they're trying to keep a whole bunch of balls juggling in the
5 air so you can understand that. Counsel is working mighty hard
6 to work through a lot of different depositions to try and place
7 the testimony that's relevant in this case and not to put
8 forward testimony that cannot be used for other reasons that
9 have to do with rulings I have made using cases under the South
10 Carolina Supreme Court as my guideline, which I must. One of
11 those things involves rulings by other courts that are not our
12 courts about the admissibility of a witness' testimony and
13 that's what they were into with Dr. Frank is what some other
14 courts may have ruled about his testimony, that's really not
15 pertinent for this case. You've got the ability to evaluate
16 these witnesses and decide issues of credibility and weight and
17 so forth as I have explained to you about expert witnesses and
18 as I explained to you about any witnesses for that matter. But,
19 one of the things that would not be appropriate to be used by
20 you -- certainly by you is rulings other than the rulings I
21 make about the admissibility of testimony, and that's not
22 something I made up on my own, that's something I believe is
23 required by the construct of the law that we have for
24 evaluating testimony and rulings of a trial judge. The rulings
25 that are going to be made here are going to be made by this

1 trial judge, it has to be that way. They're trying to get
2 through that and I think shortly will cue this up.

3 MR. JEKEL: Your Honor, I am just about there.

4 (Break in proceedings.)

5 (The remainder of the deposition of Dr. Frank was
6 Played.)

7 THE COURT: Thank you very much. It is 4:29, do you have
8 something else for our jury to do?

9 MR. JEKEL: Your Honor, I have the stipulation. Can I
10 hand it up to you or do you want me to read it?

11 THE COURT: I don't mind reading it if will you hand it up
12 to me.

13 MR. JEKEL: If you don't mind, Your Honor.

14 THE COURT: Members of the jury, a stipulation is
15 something that both sides agreed to and you may take as true
16 what both sides have agreed to stipulate. Diagnosis
17 stipulation. The parties agree that on October 24, 2012,
18 Steven R. Stewart was diagnosed with malignant pleural
19 mesothelioma epithelial variant, that's the diagnosis
20 stipulation. Medical bills stipulation. The parties agree
21 that the reasonable and necessary medical costs associated with
22 Mr. Stewart's mesothelioma are \$241,822.70. All right. Mr.
23 Jekel, you may continue. Just a second, let's put the
24 stipulation in the hands of our court reporter.

25 MR. JEKEL: Your Honor, there is the curriculum vitae of

1 Dr. Frank that we would have to have admitted as Plaintiff's
2 next in order, 24. We have a series of Mastercards, Your
3 Honor, if I could have the Elmo, these have already been shown
4 to counsel and agreed upon. This is Mastercard, this is
5 machine one type 2260 GRA, and the size is here, it was 139
6 feet by 238 inches. That will be marked as Plaintiff's 25,
7 Your Honor. This is Mastercard what I will refer to as
8 WBC0012A. And again, machine number one, second bottom, 165
9 feet by 239 inches, felt type 5175 SRA, and that one indicates
10 it was put on 6/10 of 1970. That will be 26, Your Honor.

11 THE COURT: Yeah. Mr. Jekel, it also says -- put it back
12 up there.

13 MR. JEKEL: Yes, Your Honor.

14 THE COURT: All right. This Mastercard is a card that
15 indicates a particular felt that was put on the machine at a
16 particular time; is that correct?

17 MR. JEKEL: Yes, Your Honor.

18 THE COURT: And does it indicate by type or number the
19 manufacturer or supplier of this equipment?

20 MR. JEKEL: Your Honor, we will prove that these are SCAPA
21 dryer felts.

22 THE COURT: You're contending these are SCAPA felts and
23 you contend that because of the numerical notations that are on
24 this card, right?

25 MR. JEKEL: Yes, your Honor.

1 THE COURT: All right. And the weft says that it's a
2 certain size polyester reinforced asbestos, correct?

3 MR. JEKEL: Yes, Your Honor, SRA, synthetic reinforced
4 asbestos, yes.

5 THE COURT: I just want the jury to understand what it is
6 you're putting up there.

7 MR. YOUNG: Your Honor, these are SCAPA felts and those
8 are our Mastercards, we agree to that.

9 THE COURT: Yes, I understand. And that's why I can't
10 understand why we wouldn't just say that these are SCAPA felts,
11 they were put on the machine at a certain point in time, the
12 Mastercard indicates that. He will go over that in more
13 details when he talks about it and indicates it has got
14 asbestos in them, right?

15 MR. YOUNG: Yes, Your Honor, we agree.

16 MR. JEKEL: Your Honor, this is VWC0010A and B, this is
17 another Mastercard, it is the second top position, again a 165 ,
18 feet by 239 inches, a 5175A SRA. And again it does say one and
19 a half poly asbestos ASB plus, and this was put on in '69. The
20 order date ship date -- if you look down here you can see where
21 it was taken on -- it was put on in '70, it's hard to see that
22 number actually.

23 THE COURT: It was taken off in '73, 12/20/73.

24 MR. JEKEL: But there was one put on in April of '75,
25 taken off in December of '75.

1 THE COURT: Right.

2 MR. JEKEL: That will be Exhibit Number 27. Your Honor,
3 just one more dryer felt. This is a VWC8A. This is machine
4 number one, second top and bottom, it's 165 feet by 239 inches,
5 it's a scafflo 50 felt which the jury will hear about. And
6 this one also has dates of service where it was put on on
7 December 18, 1972, ran for seven months, was taken out in July
8 of '73. That would be Plaintiff's Exhibit 27, Your Honor. And
9 I believe those are all of the documents that we're going to
10 enter this afternoon.

11 THE COURT: All right. Now, where do we stand in terms of
12 any further testimony today?

13 MR. JEKEL: We can start the Merk depositions, we would
14 prefer to just do that in one sitting, Your Honor, given its
15 length.

16 THE COURT: Of course I have some things to discuss with
17 you about that deposition afterwards. And we are going to make
18 every effort, ladies and gentlemen of the jury, to see that we
19 get this one ready and all rulings dealt with so we won't have
20 interruptions. But for the present moment in time you will be
21 out a little early today, we'll continue to work here to try to
22 get the remaining deposition up and cued for a way that makes
23 it run smoothly. Thank you so much again for what is some very
24 very, strong attention for a complicated case, it has its highs
25 and lows, it has its boring moments, but you all have been very

1 patient, I appreciate it. I know that both parties very much
2 appreciate your attention to this very important case, you will
3 be dismissed for the evening now. You may go to the jury room.

4 (The jury left the courtroom.)

5 THE COURT: All right. Now, we've got the issue of the
6 Merk --

7 MR. JEKEL: Yes.

8 THE COURT: All right. Now, on the Merk here are the two
9 issues I've got and y'all can tell me if there are others. One
10 is the issue of the testimony that begins on page 109 that
11 deals with the Bowaters Paper Mill, and plaintiff is wanting to
12 present that testimony and the defendant wants to take it out,
13 am I right?

14 MR. COLLIER: That would be correct.

15 THE COURT: All right, Mr. Jekel?

16 MR. JEKEL: Yes, Your Honor. First this section I
17 believe, why I believe it is relevant is the interaction
18 between SCAPA Waycross and SCAPA Blackburn, that even though
19 you could order a felt from SCAPA in Georgia a lot of times the
20 asbestos felt came from SCAPA Blackburn. To me the interaction
21 between Blackburn and Georgia is significant and is important
22 to the issue of notice of the hazards of asbestos. And what I
23 suggested, Your Honor, is instead of could Bogalusa, is could A
24 paper mill have ordered a 3984C in 1960 just to establish that
25 even though they were here in Georgia a lot of felts they were

1 selling they had to import from Blackburn.

2 THE COURT: All right. I've got some thoughts about that
3 but counsel for the defense, you go right ahead. Mr. Collier?

4 MR. COLLIER: Yes, Your Honor. I was just going to note
5 like he mentioned earlier, the Bogalusa mill is not an issue.
6 The 3984C felt is not an issue, that was not a felt that was
7 ever sold to the Bowater Mill, and there's no evidence that
8 there were ever any felts that were manufactured in Blackburn
9 that came to Waycross that went to Bowater, so we think that it
10 is completely irrelevant and misleading and prejudicial.

11 THE COURT: All right. And Mr. Jekel, in reply?

12 MR. JEKEL: It's not about the type of felt, Your Honor.
13 Again, it's about the support, the information and technology
14 that Georgia in the United States was receiving from Blackburn.

15 THE COURT: Is there any evidence one way or another about
16 whether felts from Blackburn UK came to Bowaters?

17 MR. JEKEL: Your Honor, going through the Mastercards in
18 my head I don't know that there's a felt that I have traced
19 back to Blackburn, the 5175 is the only one that I think but I
20 don't have any evidence of that. Our -- the reason why
21 Blackburn -- the interaction with Blackburn is significant is
22 truly on the notice of the hazards and what others knew about
23 asbestos disease and the like.

24 THE COURT: And, of course, we've allowed some information
25 in about England and Blackburn and that kind of thing.

1 MR. JEKEL: I will remove this designation, Your Honor.

2 THE COURT: You know, I think that's the wise thing to do,
3 Mr. Jekel, but we can say a SCAPA customer paper mill rather
4 than Bogalusa, but then we start to tamper with what is said.
5 There is plenty of other information in here about the
6 relationship between Blackburn UK and SCAPA Waycross.

7 MR. JEKEL: So we're going to take out, Your Honor, the
8 designation beginning on 109 and continuing through 110, that
9 is removed.

10 THE COURT: Very good. All right, now the next thing that
11 I've got on the list is --

12 MR. JEKEL: Was that 137?

13 THE COURT: That is 137 through 139.

14 MR. JEKEL: Your Honor, this is -- just from the
15 plaintiff's perspective on relevance, this is a theme. Again,
16 this is -- they're talking -- this quote here I don't deny,
17 they are talking about Blackburn, but the fact that SCAPA
18 Blackburn had a safety committee where they were discussing the
19 hazards of asbestos we believe is significant. We believe they
20 had knowledge of the hazards of asbestos and did nothing about
21 it.

22 MR. COLLIER: Your Honor, our position and the basis for
23 our objection to it is that it relates to the dryer felt
24 manufacturing facility as opposed to the end use of dryer felts
25 in a paper machine -- in a paper mill, which is where Mr.

1 Stewart worked. He did not work at a dryer felt manufacturing
2 facility and thus it is irrelevant and prejudicial.

3 THE COURT: Well, they are making a little bit different
4 argument, if you would respond to -- the argument is that they
5 had a separate safety committee at SCAPA Blackburn operation,
6 and so SCAPA, at least the UK operation, had a safety
7 committee. The exposure to asbestos was not considered by that
8 safety committee, right?

9 MR. JEKEL: Yes.

10 THE COURT: And so they had the vehicle for discussing all
11 issues of safety is what is being argued but they chose not to
12 discuss asbestos exposure. I don't think that the question
13 gets anymore specific than that about manufacture versus use of
14 the felts in another setting, but it's a question about what
15 the safety committee as they constituted responsibility was and
16 apparently investigating exposure to asbestos was not one of
17 those things. I'm inclined to say they could put that up.

18 MR. COLLIER: Your Honor, I think the distinction that I
19 was trying to make there is that what they're talking about
20 here in this section is in the dryer felt manufacturing
21 facility.

22 THE COURT: I understand. They run a manufactory and
23 Bowater runs a manufactory of paper and they use their product,
24 but in each case exposure to asbestos in your process is what
25 the safety committee is being projected to look at. And in the

1 case of SCAPA they did not explore in their safety committee
2 according to this testimony asbestos exposure by the employees
3 and that is an indication they think, or their attitude about
4 asbestos and safety exposure at this point in time when this
5 testimony targets it. I realize the two processes are
6 different but it really doesn't make any difference, they both
7 have to deal with what they thought was important from the
8 safety committee's standpoint to discuss in terms of the
9 protection of those who worked around their product whether it
10 be the manufacturer or the use of it in another manufacturer.

11 MR. COLLIER: Right, Your Honor. But what we're talking
12 about here is the incorporation of the asbestos containing
13 yarns into the dryer felts versus the end use.

14 THE COURT: Yeah. And what they contend is they shouldn't
15 have been doing that, it's very unsafe and they shouldn't have
16 been using asbestos containing yarns in the manufacture of
17 these SCAPA felts, and they should have considered in that
18 regard the impact of the exposure to asbestos. They didn't
19 consider it even in looking at the safety committee for their
20 own employees, and apparently that says something to their
21 standpoint as to whether they considered it in churning out
22 this material that would expose their employees to the
23 manufacturer and Bowater's use of it, that's what they're
24 attempting to explain or imply. I'm going to let it in, I
25 think it is relevant. What else?

1 MR. JEKEL: I believe, Your Honor, that is the last of the
2 Merk issues from the deposition of January 5th, 6th and 7th,
3 1998, and it might be the only Merk deposition that's read.

4 THE COURT: Well, I intrigue you to comb this one over and
5 see if you can shorten it.

6 MR. JEKEL: I've gone through it considerably, I've cut a
7 lot out when we were going through, and I'll look at it again,
8 and Your Honor, if it doesn't need to be in there it will not
9 be in there.

10 (Break in proceedings.)

11 MR. JEKEL: On Thursday the issues that we have for Your
12 Honor tomorrow are Mr. Smith's deposition, his video deposition
13 that he gave, that will probably be the issues that we
14 discussed with you tomorrow. In the morning we may have some
15 document issues --

16 THE COURT: Well, why don't we do the document issues now?

17 MR. JEKEL: That's fine with me, Your Honor, I've got a
18 couple here we can talk about. Your Honor, the first if I may
19 approach Your Honor and hand you a document --

20 THE COURT: Yes, of course.

21 MR. JEKEL: Again, Your Honor, as you can see this is a
22 document from Uniroyal. I think there was some discussions
23 from Mr. Young in his opening about all the things that
24 Uniroyal had said and done. One of the things they did was
25 perform testing for SCAPA in Georgia for its twisting

1 department and they got levels even with the resin treated
2 yarns during the manufacturing process, these are those levels.
3 They were taken by the yarn supplier and we believe relevant
4 too. Again, if there's issues in twisting in the machine room
5 we believe it put them on notice and that it should have forced
6 them to test the product in the field, putting it on the
7 machine, working with it on the machine. When you're getting
8 these levels you should have known that the asbestos yarns have
9 the propensity to release fibers and that's why this document
10 is relevant.

11 THE COURT: Very good. Mr. Young?

12 MR. YOUNG: Judge, I knew I had never seen this document
13 before. Judge, look at it.

14 THE COURT: Well, I see one thing that is very pertinent
15 received on there and it says received March 3, 1979, SCAPA
16 Dryers Inc. it was received by your client then.

17 MR. YOUNG: I don't dispute that. Judge, it says --

18 THE COURT: And I would very much assume therefore that
19 the way Mr. Jekel came into possession of this was from y'all.

20 MR. YOUNG: Judge, this doesn't have anything to do with
21 asbestos. It says, "Employers will assure that no employee who
22 is exposed to cotton dust and yarn manufacturing is exposed" --
23 this is not an asbestos document, that's why I'd never seen it
24 before. This is not really relevant to any issues in the case,
25 it is highly prejudicial and I would actually ask that it be

1 withdrawn. There's nothing about asbestos anywhere in this
2 document.

3 THE COURT: Mr. Jekel?

4 MR. JEKEL: He points out a great point and I'll leave
5 that in there, but it's still their yarn supplier in their
6 building doing sampling for fibers in them.

7 MR. YOUNG: But Judge, it doesn't have anything to do with
8 asbestos.

9 THE COURT: Does it have anything to do with felts that
10 were manufactured and sent to Bowater that contained these
11 various fibers including asbestos fibers?

12 MR. YOUNG: You can't say that from this, Judge. There
13 were a lot of felts that are just cotton felts and we don't
14 know that from this document. Those dots might be able to be
15 connected but not from this document. This is highly
16 prejudicial, Judge.

17 THE COURT: I hear what you say about the prejudice you
18 think ensues. Mr. Jekel?

19 MR. JEKEL: Your Honor, maybe Mr. Young has convinced me
20 that I am wrong and he is right and I just would withdraw it,
21 his argument is persuasive.

22 MR. YOUNG: Judge, it's just odd --

23 THE COURT: Mr. Young, when you win don't go beyond it.

24 MR. YOUNG: Keep your mouth shut.

25 THE COURT: That's right.

1 MR. JEKEL: The next one is Plaintiff's 71865. I have
2 Your Honor a copy, I apologize. This is just yarn purchases
3 this document indicates. This is 1963, they have a whole
4 section, Your Honor, on asbestos, and again I just -- 1963 on a
5 monthly basis SCAPA is purchasing 20 some odd thousand
6 dollars --

7 THE COURT: \$25,655 worth of asbestos yarn.

8 MR. JEKEL: In one month.

9 THE COURT: In one month. And it has got the months
10 detailed there, in December was 10,000, in November was 26,000,
11 I think all of that is very pertinent. What's the problem?

12 MR. YOUNG: Judge, we have not disputed that we sold
13 asbestos containing felts to Bowater, some of that has already
14 gone into evidence. This is simply a document to prejudice the
15 jury with some large amount of asbestos. If we said we weren't
16 selling asbestos containing felts I think it might be relevant,
17 but at the very least, Judge, the prejudice outweighs its
18 probative value. What is he going to say, you know, not only
19 did they sell felts but they bought all of this asbestos so
20 they must be horrible people? But it's not relevant.

21 MR. JEKEL: No, that's not the argument. The argument is
22 if that you're buying \$20,000 worth of asbestos, over one
23 million dollars of asbestos in a year that's a very important
24 product in your process, and when you're buying \$20,000 worth
25 of a known carcinogen a month and you don't test your product

1 we think that's significant.

2 THE COURT: I get your argument. All right, the document
3 will be admitted.

4 MR. YOUNG: Your Honor, the only number we have now is
5 71865.

6 MR. JEKEL: It hasn't been admitted.

7 THE COURT: It will be numbered properly.

8 MR. YOUNG: I just want to be able to perfect the record.

9 THE COURT: He's going to do what he does with the jury by
10 marking it and then publishing it to the jury tomorrow; isn't
11 that's right?

12 MR. JEKEL: That is correct, Your Honor. I think this may
13 have been -- this is the 73429. It's document 73429, I think
14 it is 1966, and it's a celebration of SCAPA is what it is, and
15 it talks about the history, Your Honor. You see the Bates
16 numbers on the very bottom right hand, I'm going to direct Your
17 Honor to a few locations that I think -- it's got a variety of
18 things that I think are relevant.

19 THE COURT: All right.

20 MR. JEKEL: The first of which is on page 20317.

21 THE COURT: I have it.

22 MR. JEKEL: And you see under the picture the origin of
23 SCAPA group. Now, SCAPA Waycross --

24 THE COURT: What I'm looking at is something that says
25 executive director of the origins of SCAPA group, right?

1 MR. JEKEL: Right. And if you look at the very first
2 sentence, "The origins of SCAPA Group. SCAPA Waycross is a
3 member of SCAPA Group," it's the last page of this document
4 that tells us that.

5 THE COURT: I have got you, that's one.

6 MR. JEKEL: That's one, Your Honor. The next item is a
7 photograph of some sales personnel including the South Carolina
8 sales personnel, this is item 20335.

9 THE COURT: All right.

10 MR. JEKEL: And Your Honor, on this page I've highlighted
11 a man that's in the background there, SCAPA in their
12 promotional materials were great about giving everybody credit.
13 On the next page that is John Chandler, he was the southeastern
14 sales representative for SCAPA USA. And again, this all goes
15 to how tightly they worked together.

16 THE COURT: His name was what?

17 MR. JEKEL: Jay Chandler, Your Honor.

18 THE COURT: I see him he is number 11.

19 MR. JEKEL: He's number 11, you've got it. And then
20 toward the back, Your Honor, and again this is -- there's SCAPA
21 in the USA, which I am not sure if that comes before or after,
22 but there's --

23 THE COURT: What is the number?

24 MR. JEKEL: I'm at 20347, it's safety at SCAPA. I do
25 believe again that that is -- again, they publicize the fact

1 that they're a safety company, yet their practices are not to
2 test their product.

3 THE COURT: And then what else?

4 MR. JEKEL: And then finally, Your Honor, two things --
5 we've got the very last page, 20352, it's SCAPA --

6 THE COURT: Yeah, it shows --

7 MR. JEKEL: -- Waycross, Georgia. It talks about SCAPA
8 Group being made up. There's some other -- one of the
9 objections they had is there's a listing of sales -- here it
10 is, Your Honor.

11 THE COURT: What number?

12 MR. JEKEL: 20339. A statistical assessment of SCAPA, and
13 there's a variety -- there's a listing of sales offices
14 throughout the world.

15 THE COURT: Yeah, I see it.

16 MR. JEKEL: There's SCAPA felts that are exported to the
17 globe, they've got that. They also -- one of the other things
18 is discovering and adopt the important functions of asbestos as
19 mineral for use in dryer felts.

20 THE COURT: Right.

21 MR. JEKEL: And those are all -- there might be a few
22 other things in there that I would read, but again, SCAPA is
23 not a mom and pop operation, it's a big company with offices
24 all around the world selling product around the globe --

25 THE COURT: Got you. All are admitted unless I hear

1 something from Mr. Young to the contrary.

2 MR. YOUNG: Well, Your Honor, he obviously wants the
3 document in for a prejudicial basis to --

4 THE COURT: Well, of course. Everything that doesn't say
5 y'all are great is prejudicial, that's not --

6 MR. YOUNG: Well, I think that he should at the very least
7 be asked to take out all of this stuff about offices everywhere
8 and says everywhere --

9 THE COURT: I'm going to admit all of the things he has
10 identified. My attitude on these things that are published by
11 a company I would generally let them in, that's their own
12 publication about what their status is in a certain moment in
13 time.

14 MR. YOUNG: Judge, we have bifurcated the trial and I
15 think the law is that the net worth of SCAPA is not --

16 THE COURT: Net worth is not anything that's contained in
17 here that I see so far.

18 MR. YOUNG: Well --

19 THE COURT: And net worth includes -- net worth, our
20 courts have defined it as what is regulated as a number, it's
21 not the size of the company, the size of the company can be
22 talked about in the liability phase.

23 MR. YOUNG: Judge, whatever point in time I would like to
24 be able to perfect the record with our objections understanding
25 Your Honor's --

1 THE COURT: Listen, I'm not going to go over this a lot,
2 you have objected to it. The biggest thing I can hear as a
3 real reason for objecting to it is that the portrayal of a good
4 size is something that some how indicates punitive damages and
5 the net worth -- and the net worth of the company. I don't see
6 that in the material that's been offered, I will admit it and
7 that's on the record right now. The only thing we are missing
8 is the number that's going to be put on these documents, but --

9 MR. YOUNG: It doesn't have anything to do with SCAPA
10 Waycross, Your Honor, and --

11 THE COURT: Well, it mentions SCAPA Waycross so I would
12 overrule that.

13 MR. YOUNG: And your Honor, we have the same argument
14 about safety and some manufacturing facility that has nothing
15 to do with Bowater.

16 THE COURT: I understand. Okay. All right.

17 MR. YOUNG: But you're overruling that one too, right?

18 THE COURT: I already did that, that's been done before.
19 What else, Mr. Jekel?

20 MR. JEKEL: Those are all of the documents that I've shown
21 to counsel and we wanted to argue, there might be one or two
22 more.

23 THE COURT: Now, anything else by either side?

24 MR. JEKEL: Not from the plaintiff, Your Honor.

25 THE COURT: Okay. Court will be in recess, we will see

1 each other -- I will try to be here quarter of 8:00 if there is
2 anything that comes up, we hopefully can start at 8:30 if we
3 have all of our jurors available.

4 (Court recessed for the evening and resumed at 8:30
5 A.m., on January 31, 2018.

6 MR. GRAHAM: Your Honor, we're going to put up Dr. Brody,
7 we have his slides loaded and that will run through
8 expeditiously. Then we are going to call from Mr. Fred Steele
9 is a coworker of Mr. Stewart's.

10 THE COURT: Well, the main thing I was concerned about is
11 we had talked about when we would put on the record the issues
12 regarding the empty chair and all that type of thing and I
13 think we need to do that at some point, I don't want to hold up
14 the jury. What's y'all's idea about that?

15 MR. EARLY: Your Honor, as to what we can get into going
16 forward?

17 THE COURT: Yes. I've got some real concerns, I've looked
18 at this thing in detail now, we're going to have a discussion
19 about this.

20 MR. EARLY: I understand. I don't think with Dr. Brody
21 it's going to be an issue, is it?

22 MR. COLLIER: I don't think so.

23 MR. EARLY: I don't think with Dr. Brody we're going to
24 put anything regarding bankruptcy or complaint or other
25 defendants with Dr. Brody.

1 THE COURT: It's the other defendants, it's the settling
2 defendants who've been mentioned that has got me very, very
3 concerned.

4 MR. EARLY: Your Honor, frankly we don't know who they are
5 because we don't know who settled the case.

6 THE COURT: Well, you can have a pretty good shot at it
7 because you know who was listed as defendants at the start of
8 the case and you know that SCAPA is the only one left that has
9 not been dismissed.

10 MR. EARLY: I understand that.

11 THE COURT: So you know that all of those entities are
12 settling defendants, they either settled for nothing or
13 something but they were let out of the case.

14 MR. EARLY: I understand.

15 THE COURT: And they fall in my view in the category of
16 settling defendants, defendants who were once parties to these
17 proceedings and the defendants as that term is defined by the
18 statute. And the big question is whether settling defendants
19 can be empty chair tortfeasors and I am concerned about that
20 and we are going to have a discussion about that, that's why I
21 had hoped that Mr. Jekel would be here a little bit early
22 because I was hoping we would do that.

23 MR. JEKEL: Sorry, Your Honor.

24 MR. EARLY: Your Honor, here is the real problem with it,
25 because we've got, as you said connect the dots, we've got

1 going forward not settling defendants, I don't know whether
2 they settled or not, but we've got sales records of other felt
3 manufacturers to Bowater and they've put in already these
4 Mastercards with regards to us, and I believe that we should be
5 able to put in sale records of other felt manufacturers.

6 THE COURT: Not if they were settling defendants, or
7 that's my current attitude about it. We've got to get into
8 that, we've got to march down this Smith versus Tiffany very
9 clearly. You don't get to have an offset made by the jury of
10 your liability on the basis of other settling defendants,
11 they're out of it and it's the duty of the Court to apportion
12 that liability. But those people are immune from any further
13 responsibility because they are settling defendants.

14 MR. EARLY: But as the issue of causation goes, Your
15 Honor, and the empty chair Smith versus Tiffany, the empty
16 chair in that case was a settling defendant. Mr. Mizzell in
17 that case settled the case and when Justice Kittredge --

18 THE COURT: Yes. But when they tried to do it we are --
19 I'm not going to get into this right now, but what I'm saying
20 is we've got to pick out a time of day when we do that.

21 MR. EARLY: Your Honor, I think we might need to take it
22 up before Mr. Steele is brought up.

23 THE COURT: Well, let's go on and get Brody out of the way
24 first so we don't keep the jury who came here on good faith.

25 MR. GRAHAM: A housekeeping matter, I'm having Mr. Steele

1 come in around 10:15 and we'll just let him be at ease until we
2 sort out our schedule, he just needs to get out by early
3 afternoon.

4 THE COURT: You're going to begin with Brody?

5 MR. JEKEL: Yes, ma'am.

6 THE COURT: Let's go on and get that done. Are you ready
7 to proceed?

8 (A break was taken.)

9 (The jury returned to the courtroom.)

10 THE COURT: Please be seated, ladies and gentlemen of the
11 jury. Thank you very much for being so promptly in your jury
12 room at 8:30 and I hope the reward will be we get out early
13 this afternoon so thank you very much for that. I hope you had
14 a pleasant evening. I have to confess that I did not do my
15 civic duty and watch the State of the Union, I watched Clemson
16 victoriously prevail over the University of North Carolina.
17 But we are now ready. And the way we will begin this morning,
18 we have the live testimony of Dr. Arnold Brody who is here and
19 he'll take the stand in a moment and then we'll proceed from
20 there with other elements of the plaintiff's case. So Mr.
21 Jekel?

22 MR. JEKEL: Good morning, Your Honor, good morning ladies
23 and gentlemen. At this time the plaintiffs would call to the
24 stand Arnold Brody.

25 THE COURT: Dr. Brody, you can keep your seat and get

1 comfortable. Ladies and gentlemen of the jury, there may come
2 times when Dr. Brody will leave his seat in the witness box.
3 Apparently the laser they've got to use does not show up on
4 this plastic screen so he's got an old fashioned pointer and if
5 he needs to he will take his hand-held microphone and his
6 pointer and go and approach the screen. We'll try to have it
7 move along smoothly and when he needs to do that while he will
8 just leave the podium -- leave the witness box but he will
9 still be under oath and he will go to the screen as he sees
10 fit. All right, Mr. Jekel?

11 MR. JEKEL: Your Honor, by the agreement the parties are
12 going to admit I believe it is Plaintiff's Exhibit 30, Dr.
13 Brody's CV?

14 THE COURT: Admitted.

15 The witness, DR. ARNOLD BRODY, was first duly sworn
16 and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. JEKEL:

19 Q Doctor, do you need a copy of that?

20 A No, I think I know what's on there.

21 Q All right, very well. Dr. Brody, I'm going to stand
22 back here so that I can make sure the jury can hear me. Can
23 you hear me?

24 A I can, yes.

25 Q Would you please introduce yourself to the jury?

TESTIMONY OF ARNOLD BRODY

1 A Sure. My name is Arnold R. Brody, B-r-o-d-y, Professor
2 Emeritus in the Pathology Department at the Tulane Medical
3 School in New Orleans, I was the vice chairman of the pathology
4 department in the medical school there for many years. I
5 retired in 2011. In 2012 I was honored the position of
6 emeritus professor and I continued that academic association
7 today.

8 Q Are you married?

9 A Let's see, 51 years and six grandkids, yes.

10 Q Outstanding. You mentioned you were a professor
11 emeritus, what are you a professor in?

12 A Well, that was pathology. Pathology is the study of
13 disease. I have had several faculty positions starting as an
14 assistant professor many years ago and then moving through the
15 ranks to full professor, and then when I retired I was honored
16 with the emeritus position at Tulane.

17 Q Why don't you take us way back when and walk us through
18 your educational background if you would, please.

19 A Sure. So after high school in New Hampshire I went out to
20 Colorado to do a Bachelor of Science Degree in Zoology, which
21 is the study of animals. I then went to the University of
22 Illinois where I received a Master's of Science Degree in
23 Anatomy, that was human anatomy, animal anatomy, that's where
24 we learn how all of our parts fit together and function;
25 muscles, bones, nerves, joints, that sort of thing. Then I

TESTIMONY OF ARNOLD BRODY

1 went back to Colorado to do a Ph.D, that's a doctorate, in
2 what's called cell biology. Every living thing is made of
3 cells, we need to understand how cells function. Every disease
4 has a target cell in which that disease was developed. I
5 focused on lung cells through my career and that was my
6 doctorate work in cell biology. And I did three years of post
7 doctoral study at Ohio State University and then started my
8 academic career as an assistant professor in the medical school
9 at the University of Vermont.

10 Q Can you tell the jury when you started to study
11 asbestos?

12 A So it was at the University of Vermont. We had a guest
13 visitor to the department, his name was Dr. Wagner, it looks
14 like Wagner but he is from South Africa, he pronounced his name
15 Wagner. Dr. Wagner had established in 1960 that asbestos
16 causes this cancer that you've heard about, mesothelioma. He
17 saw the work that I was doing as a young professor at the
18 University of Vermont, he invited me to come to work with him
19 in Wales in the United Kingdom which is where he was at the
20 time, and he had developed an animals model of the asbestos
21 diseases. Now, take any human disease and scientists and
22 doctors have developed models of these human diseases so that
23 we can study those, so that we can understand the process, the
24 disease process. He had developed an asbestos model, he showed
25 that when rats were exposed to asbestos they get all of the

TESTIMONY OF ARNOLD BRODY

1 diseases that people do; asbestosis, that's scar tissue, lung
2 cancer and mesothelioma. So I took this model after I worked
3 with Dr. Wagner, I came back to my next faculty position which
4 was at the National Institutes of Health and developed this
5 animal model, started publishing papers in the 1980's on
6 explaining how asbestos causes disease.

7 Q When did you start at the National Institute of Health?

8 A So that was 1978, I was there for 15 years. I was the
9 head of the lung pathology laboratory. Pathology, remember, is
10 the study of disease, so that was 1978. And then 1993 I was
11 offered a position as a full professor in the pathology
12 department at Tulane University Medical School, that's how I
13 got to Tulane and continued my research there supported by the
14 National Institutes of Health through competitive grants.

15 Q Were you still working with asbestos when you were at
16 Tulane?

17 A Yes, sure. And so as a professor in the medical school as
18 in any medical school across the country, the universities give
19 you a place to do your work but they don't pay for the
20 research, they don't pay for the materials and the graduate
21 students and the technicians and all of the materials and
22 things that we need so we have to compete for research dollars
23 from the National Institutes of Health. We write applications
24 and competing with the great schools in Boston and California
25 and everything else, and the National Institutes of Health

TESTIMONY OF ARNOLD BRODY

1 funds this research at a rate of about 15 -- 10 to 15 percent
2 of the applications get funded, so it's a very competitive
3 environment. So when I was at Tulane I proposed to continue on
4 my work with asbestos disease at the molecular level, in other
5 words which genes are driving these diseases, that work was
6 funded without interruption through my career, and as I say I
7 retired in 2011.

8 Q Now, when you were a professor at these various
9 institutions, were you doing research?

10 A I was doing basic science research and teaching medical
11 students and graduate students and faculty. The -- I had a
12 class for a group called the pulmonary fellows. These are
13 young doctors, these are physicians who were treating patients
14 but need further understanding of how the lung actually works
15 and the anatomic details of how the lung functions and so I
16 gave a class to them as well every few months.

17 Q Since 2011 in your retirement, are you doing any
18 teaching anywhere, Doctor?

19 A Well, I'm not teaching. I get invited to do talks at
20 various universities. I gave a talk just a few months ago in
21 Australia and also in London, and so I continue to lecture in
22 that regard and I teach juries from time to time, I am asked to
23 do that. But the research in the laboratory continues with my
24 group that I had at Tulane, so the people that I hired, the
25 young faculty at Tulane, are continuing that work and so we're

TESTIMONY OF ARNOLD BRODY

1 still publishing papers there.

2 Q So you've actually published some of the research that
3 you've done, Dr. Brody?

4 A You don't get to continue your work as a professor unless
5 you're publishing. You can't compete for research dollars
6 unless you publish your work in the peer review literature out
7 in the open medical literature so that anybody who is
8 interested can read it, so of course.

9 Q And how many articles have you published in the
10 scientific literature?

11 A So peer review papers, meaning they've been reviewed by
12 other scientists like myself, I have 154 pier review papers,
13 and I have 55 book chapters, invited proceedings and that sort
14 of thing.

15 Q Have you sat on editorial boards for these peer review
16 publications as well?

17 A Over the decades, absolutely, and I continue -- I remain
18 on two editorial boards currently active, one the American
19 Journal of Pathology and critical reviews in pulmonary medicine
20 as well.

21 Q Now, in addition you mentioned that you have taught
22 juries?

23 A I have. I have been asked to do this quite a few times.

24 Q Have you been found to be qualified as an expert
25 before?

TESTIMONY OF ARNOLD BRODY

1 A Yes.

2 Q And have you testified here in the State of South
3 Carolina before?

4 A A number of times, yes.

5 Q And you have testified in other places, have you not?

6 A I have, sir.

7 Q Before we go any further I want to make sure we're
8 clear, you are not a medical doctor, are you?

9 A I am still not a medical doctor, that's true. But it's
10 not unusual for Ph.D's like myself to be professors in medical
11 schools. Go to any medical school, South Carolina or anywhere
12 else, and you'll find Ph.D's like myself, we're teaching the
13 basic sciences to the medical students. They need to
14 understand the biochemistry, molecular biology, anatomy and all
15 the things -- the basic sciences before they go into their
16 clinical sciences, so that's what I did. That's what
17 scientists like myself do in medical schools.

18 Q Now, did you do some work with the National Cancer
19 Institute?

20 A Well, I have been to meetings sponsored by them, some of
21 their funding has supported my research over the years.

22 Q And what professional responsibilities do you have at
23 Tulane currently as a professor emeritus?

24 A Well, fortunately I have no responsibilities, that's one
25 of the nice things of being retired, I have a choice as to what

TESTIMONY OF ARNOLD BRODY

1 I can do. The emeritus position is an honor that allows you to
2 maintain your association with the university. In other words,
3 I'm on the pathology department website as a professor
4 emeritus, and then if you look back at what I have done at
5 Tulane you will see all of the papers I published at Tulane and
6 you will see the faculty that I hired there and my teaching.
7 So it's a result of what I did at Tulane and I have opted to
8 continue my association as I say with some of the young faculty
9 who are continuing their work.

10 Q The studies that you have done on asbestos, what were
11 you -- what were you looking at in the various studies as it
12 related to asbestos?

13 A So by the time I started my work it was clear that
14 asbestos caused these various diseases; asbestosis, lung cancer
15 and mesothelioma, that was established in the literature. But
16 when we start to ask questions that sound simple, like okay,
17 well, we know asbestos gets into the lung and causes disease,
18 but where does it go in the lung? The lung is a very complex
19 organ, where does it go? Just to say it lands in the lung is
20 not enough to be able to understand what it's actually doing.
21 So when I ask the first question where does it go to the lung,
22 I couldn't go to the library and find the answer, nobody had
23 the answer to that question, so I set up a series of
24 experiments to answer that question. Then when you ask the
25 question how does the asbestos injure the cells in the lung to

TESTIMONY OF ARNOLD BRODY

1 cause these diseases? No answers. And so those are the kinds
2 of processes that we go through. And now today we're in a
3 position where we ask, well, what are the specific genes that
4 are driving the disease lung cancer and mesothelioma? Because
5 these are genetic diseases, and that's where my research
6 continues and in a number of laboratories around the world
7 they're trying to establish the genetic basis for the asbestos
8 related diseases.

9 Q And have you made progress in that regard?

10 A Sure. Can I give you the precise answer? No. But we
11 know a lot about which genes are involved, we know a lot about
12 what those genes do. Now, for the disease asbestosis we've
13 come a long way. I mean, we can actually define the specific
14 genes based on my work and other scientists that are driving
15 the scar tissue response to as asbestosis. There's still no
16 known cure but there are some effective treatments.

17 MR. JEKEL: Your Honor, at this point we would move to
18 qualify Dr. Brody as an expert in cellular biology and the
19 effects of asbestos.

20 THE COURT: Without objection I will so qualify Dr. Brody
21 in the same standards I used and explained to the jury
22 previously when we qualified Dr. Frank, by reason of his
23 training, experience, education and research and the like he is
24 qualified as he has specified. Mr. Jekel?

25 Q Dr. Brody, how did you go about trying to answer the

TESTIMONY OF ARNOLD BRODY

1 questions of where does asbestos go and what does it do when
2 it gets there?

3 A Right. So the basic research that I have done and that
4 other scientists around the world do is carried out at
5 different levels of understanding. So to answer your question
6 we start with the epidemiology. Now, I'm not an epidemiologist
7 so I don't do that work which defines populations.
8 Epidemiologists look at populations of individuals, finds out
9 what they're exposed to, what they're getting sick from, but
10 that's the science that informs scientists like me where the
11 problems are, where to go, okay? So the epidemiologists
12 established who gets the asbestos diseases and who they are and
13 where they are. So then the next issue is -- the next level is
14 to have an animal model that recreates the disease that people
15 get, and so that's where my work starts. So we exposed -- so
16 we had these chambers about six feet high and four feet wide
17 that have an asbestos environment, we generate asbestos fibers
18 in this environment, rats and mice inhaled the dust, and as I
19 told you, get the same disease as people, and then we can go
20 ahead and follow the disease process. I can look at them to
21 find out where the fibers land, I can take the animals out an
22 hour -- at the end of an hour exposure, if any asbestos sits
23 there we can follow it. We can leave the animals in for hours,
24 days, weeks, months, I could take them out at any point and do
25 the various experiments that are required. That's the animal

TESTIMONY OF ARNOLD BRODY

1 level, then we can go to the cellular level. We can take cells
2 from animals and from people, put those cells in a dish and
3 with the right nutrients those cells will grow. You can treat
4 the cells, you can give them various agents and study how these
5 cells interact with asbestos. And then finally, which I
6 mentioned earlier, is the molecular level, that's the genetic
7 level, those are the genes that are driving these diseases and
8 that's where most of the research is today, that's in the last
9 probably ten years in the papers I've published are at the
10 molecular level.

11 Q It has been awhile since you were doing the studies on
12 the animals.

13 A Well, actually we just published a paper last year using
14 the animal model. Because we know that if people smoke
15 cigarettes and they're exposed to asbestos they're much more
16 likely to get a lung cancer, not mesothelioma but a lung cancer
17 than if they just smoked or are just exposed to asbestos. So
18 there's some kind of a synergy, some kind of multiplying effect
19 and we wanted to find out what that mechanism is so we used the
20 animals and they were exposed to asbestos and cigarette smoke,
21 and we learned a lot about the immune system and how that's
22 effected here. So I don't want to argue with you, but yes, we
23 used the model.

24 Q But you're still using it today. Is the animal model
25 commonly used in science?

TESTIMONY OF ARNOLD BRODY

1 A Oh absolutely. Name any human disease and there's an
2 animal model that helps us understand; tuberculosis, diabetes,
3 HIV, a whole series of viral diseases, we use animal models to
4 understand human disease.

5 Q And it's a pretty obvious reason why we use animals
6 instead of human beings, right, Dr. Brody?

7 A I would think it's obvious, of course.

8 Q Now, Doctor, you've got answers to some of the
9 questions about where asbestos goes and what it does when it
10 guess there, right?

11 A Well, that's what a number of my papers are about,
12 answering those fundamental questions.

13 Q And is that what you're prepared to tell the jury about
14 today?

15 A Well, you asked me to explain how asbestos causes disease
16 and how to use some of the pictures that explain that that come
17 from my work and other people's work, and it starts with where
18 the fibers land, how they move through the lung and then how
19 they finally cause the mesothelial cells to become cancer
20 cells.

21 Q And have you prepared a presentation that you believe
22 will assist the jury in understanding your testimony?

23 A Yes. These are pretty much the same slides I used for the
24 medical students. I use different vocabulary for the jury but
25 it's the same concept, and when I gave a talk in London

TESTIMONY OF ARNOLD BRODY

1 recently I used some of these very same slides and expect to do
2 again soon.

3 MR. JEKEL: Can we get the screen up? Your Honor, is it
4 permissible to show the jury Dr. Brody's presentation?

5 THE COURT: Absolutely.

6 Q Now, Dr. Brody, where are we starting in this story?

7 A Well, that's a good start.

8 Q Now Dr. Brody, I have a microphone down here for you.

9 THE COURT: Absolutely.

10 Q A microphone so you can be heard if you need it. So
11 what are we looking at in this slide, Doctor?

12 A Is this on?

13 Q You are on.

14 A Okay. Great. So I'm going to need three hands to do
15 this. Maybe I don't need this. Can you hear me over there?

16 THE COURT: No. You need that, Dr. Brody, because that
17 records into our system.

18 A All right, fine. So here we go. I'm going to start with
19 this diagram. Obviously this is a diagram -- I know you know
20 where your lungs are but I just want to remind you that when
21 you take a breath that air comes down this tube right here that
22 we call the trachea or windpipe, and you can feel the top of
23 your Adam's apple, that's at the top of the windpipe. When you
24 take a breath and the air comes down this series of tubes that
25 are called conducting airways because they conduct air down

TESTIMONY OF ARNOLD BRODY

1 into the lungs. And around the outside of the lung you see
2 this black line, and that black line represents the pleura,
3 p-l-e-u-r-a, a very thin membrane, Saran wrap thin membrane,
4 wraps around the outside of the lungs and makes the lungs
5 airtight like balloons. The kind of cell that lines the
6 outside of the pleura is called the mesothelial cells. Now,
7 mesothelial cells line the outside of the pleura, they line the
8 inside of the rib cage, they line the peritoneal cavity that
9 holds your stomach and your intestines. So the mesothelial
10 cells are found in various compartments of the body. If
11 somebody has a cancer of the mesothelial cells it's called
12 mesothelioma. Now, I'm going to take the asbestos through the
13 airways out to the pleura, and then I'm going to show you once
14 the fibers reach that mesothelial cell how those mesothelial
15 cells become cancer cells. Now, I call the mesothelial cells
16 here are the target cells. The target cells for mesothelioma
17 are these mesothelial cells because that's the cell type for
18 which the cancer develops. So we're going to start then with
19 the -- yeah.

20 Q So it starts with the breathing in of the asbestos
21 fibers.

22 A Right.

23 Q The nose and the mouth.

24 A Right. So this person, or the next rat that we see, will
25 be in an environment inhaling asbestos.

TESTIMONY OF ARNOLD BRODY

1 Q And where do we start after this?

2 A So I'm going to show you an instrument that we use to be
3 able to see these things, because many asbestos fibers are too
4 small for the average microscope to be able to see them so we
5 use what we call electron microscopes. I'm going to the next
6 picture. So this is an electron microscope that I've used in
7 my laboratory for many years, it's called a scanning electron
8 microscope, and I can take a piece of tissue as small as a
9 period at the end of a sentence and put that tissue into this
10 door right here in front of me. And at the top of this cone
11 there's what's called an electron gun, and there's a vacuum in
12 the cone, the electron gun generates trillions of electrons
13 that pass down through the vacuum and strike whatever tissue,
14 whatever sample I put in there, and then I can collect those
15 electrons that are recreating. The electrons pass over the
16 surface of the sample and recreate in the finest detail, it's
17 called the ultrastructural level, the details of that sample.
18 I then collect the electrons. And on the screen right in front
19 of me is an electron image or whatever I put into the
20 microscope, and then off the screen is the camera so I can take
21 a permanent image of whatever it is that I'm looking at. So --
22 let's back up for a second. So for example if I cut a piece of
23 tissue out of the lung, and you'll see the conducting airways
24 going up and you'll see the pleura running around the top, and
25 I cut this out and I put it into the microscope and I take a

TESTIMONY OF ARNOLD BRODY

1 picture of it and it looks like this. And you can see that the
2 lung looks kind of like a big sponge, it's a big sponge for air
3 obviously, not water, but all of these air spaces that you see,
4 that's where we exchange oxygen and carbon dioxide, and I'll
5 talk about that a little bit later. And you can see how thin
6 the pleura is, where I cut the edge of the pleura and you can
7 see the pleura running around the surface, and out here on the
8 surface are where the mesothelial target cells are. So I cut
9 the lung right across this and see the conducting airways going
10 up and -- go ahead.

11 Q Doctor, what type of magnification does the scanning
12 electron microscope give you?

13 A Well, this is low magnification, this is probably several
14 hundred times magnification, but some of these pictures you
15 will see it tens of thousands of times magnification. And in
16 order to see the finest details of the structures we're going
17 to magnify these things a lot. So for example, we're going to
18 talk for a minute about what are called defense mechanisms. So
19 as we all walk around in the environment we're inhaling a
20 variety of different things, and they typically don't make us
21 sick because we have a very good defense mechanism. So
22 bacteria, pollen, viruses, the few asbestos fibers that we're
23 all inhaling, they don't make us sick because we have nose
24 hairs and moisture in the back of our throat and other
25 important defense mechanisms that line our conducting airways.

TESTIMONY OF ARNOLD BRODY

1 So I'm going to focus the microscope right down on this airway,
2 it could be anywhere on here, it could be you, me, the rat, a
3 cat, a mouse, a giraffe, elephant, we all have these same
4 defense mechanisms that are protecting us from the particles in
5 the environment. So I'm going to fill the screen with what I'm
6 touching at the tip of this pointer and I would fill the screen
7 right here. So this now is what the surface of our airways
8 looks like, and you see this has human bronchiole. Bronchiole
9 is a small area, and in all of our airways; remember rats,
10 cats, dogs, giraffes, we all have these same structures. These
11 are little pear like structures, they're not really hairs at
12 all, they are extensions of the cell's surface cilia,
13 c-i-l-i-a, and these cilia constantly meet in a synchronized
14 wave like fashion. So if something lands on the surface of the
15 cilia it is swept up in our mouth so we can swallow it and put
16 it out. Now, there are cells here that don't have cilia, and
17 those cells make mucous, and you don't think about mucous
18 unless you have a cold or a smoker and then you're always
19 making mucous and that gets swept out of your mouth when you
20 cough, and that's constantly going on in our lungs. And the
21 source of the mucous are these cells that don't have cilia, and
22 these cells are also the target cell for lung cancer. So if
23 someone were to get lung cancer from smoking, that's these
24 cells that are target cells that become lung cancer. So
25 let's -- so you asked me about --

TESTIMONY OF ARNOLD BRODY

1 Q Doctor, I wanted to ask you about the little black mark
2 down there, can you tell us what that's all about?

3 A Right. So this is called a size marker, and the
4 microscope prints these on here so we can know how big and
5 small these things are that we're dealing with. So this line
6 we are seeing here represents ten microns, so that sign means
7 microns, so it's easy to see ten microns. Now, the question
8 for us is how big is a micron.

9 Q Thank you.

10 A It's easy to see ten microns when I magnify this tens of
11 thousands of times. So if you take your thumb in your
12 forefinger and you can make a little space you can just barely
13 see you've made just about a millimeter. So the human eye can
14 see without aide of a magnifying glass or microscope, the human
15 eye can see just about a millimeter. Now, take that millimeter
16 and divide it 1,000 times, so what you've done there is you
17 have made a thousand microns. So the human eye can see just
18 about 1,000 microns. You obviously can't see ten microns, you
19 can barely see 1,000 microns, but the microscope magnifies
20 these thousands of times and it's easy. And when you want to
21 know how long these cilia are for example, if in your mind's
22 eye you can stand these up and you see that these cilia are
23 about eight to ten microns long, and that's the same from
24 person to person, we all have about the same size cilia. So
25 let's back up for a second. I want to take us now past the

TESTIMONY OF ARNOLD BRODY

1 cilia and out into the gas exchange area of the lung. Because
2 when you inhale the fibers as I'm going to show you, many of
3 the fibers get caught in the nose, in the throat and get caught
4 by the cilia and the cilia are constantly being, as I said,
5 along with the mucous we have what's called mucociliary
6 escalator that escalates things up to our mouth. So during any
7 asbestos exposure or all of the time actually this escalator is
8 constantly moving things up into the mouth, but a lot of fibers
9 and particles go right past the escalator, are maintained in
10 the air flow and don't land along the escalator, and so
11 therefore it's carried out to the gas exchange area, and those
12 are the fibers that can get out to the pleura. I'm going to
13 show you how that happens, but for right now understand we're
14 going to take a look at some of the small air spaces in our
15 lungs where it's past the cilia cells. So let's go out here
16 past the cilia, so here is the end of the airway where it opens
17 up into the small air spaces, hundreds of millions of these air
18 spaces. If you think of each one of these air spaces as a
19 room, this courtroom is a good example, just take the ceiling
20 off and if you look down on the floor you see there's a carpet
21 or sort of carpet down there, I think, make believe carpet
22 squares, everyone knows what carpet squares are, if you think
23 of each carpet square as a cell covering entire floor and going
24 up over the walls into the next air space, you have a concept
25 of what lines all of our air spaces, hundreds of billions of

TESTIMONY OF ARNOLD BRODY

1 individual cells making a carpet that allows the movement of
2 oxygen and carbon dioxide. Because when you take a breath, the
3 air comes in this airway and fills these air spaces. You take
4 a breath, the room air comes into your lungs and the room air
5 has about 20 percent oxygen, the oxygen in the room diffuses
6 through the carpet and underneath the carpet blood is running,
7 that's where the blood is running in our lungs through the
8 small blood vessels underneath the carpet. And then the red
9 blood cells pick up their oxygen and carry it to your brain and
10 muscles and use it up, make carbon dioxide, the carbon dioxide
11 comes back to your lung and you exhale, then the carbon dioxide
12 comes out in the room and you share it with everybody else. So
13 that's going on in our air spaces all the time. Now, if you
14 inhale along with that asbestos or other kinds of particles
15 those can also get into air spaces, and we'll tell you about
16 that in just a minute. But let's take a look at -- I'm not
17 sure you can see, when I cut this open I cut out some holes in
18 the walls, it might be too far away to see that, but those
19 holes in the walls are where the blood runs through the walls.
20 So let's go into a single human air space and then park the
21 microscope right over one of these air spaces and take a
22 picture right down on the carpet. So this is now a single
23 human air space, and I'm outlining for you one of these carpet
24 cells, I call them carpet squares, nature doesn't make squares
25 for everybody, nature makes smooth surfaces. So this is a

TESTIMONY OF ARNOLD BRODY

1 carpet oval, it's another oddly shaped carpet cell over here
2 and then there are these smaller carpet cells here with these
3 little bumps on them. If the big flat carpet cells get injured
4 by anything, by infection or asbestos, we have these smaller
5 cells that actually grow and take their place. So all of us
6 have a repair mechanism that if you have damage to this carpet,
7 which is essential for controlling the movement of oxygen and
8 carbon dioxide, we have a repair.

9 Q Now, what kind of magnification are we looking at here,
10 Doctor?

11 A This is about 30,000 -- 20,00 or 30,000 times over the
12 normalcy. For example, this cell here is about ten microns,
13 you can barely see 1,000 microns with your naked eye. So we're
14 going to see in the next slide the last line of defense, I told
15 you that a lot of fibers go right past the cilia and land on
16 the carpet, and so we have another line of defense that
17 actually lives down on the carpet. And so I'm going to focus
18 the microscope right down here and you'll be able -- remember,
19 the cell has these bumps all over it so you're going to focus
20 right down here and then -- and now you can see the cell with
21 the bumps all over it, by now I have magnified this probably
22 40,000 or 50,000 times and you can see then the individual
23 components of the cell. Here is the carpet down here, then
24 there are a couple of other actors. There's this cell sitting
25 here kind of ruffled and not going anywhere, then there's this

TESTIMONY OF ARNOLD BRODY

1 cell with a tail end. This cell I caught in the act as it was
2 going after this pollen grain right here. This lung once
3 belonged to someone who was killed in a motorcycle accident, I
4 was on the involved in the medical examiner's autopsy and I
5 went in and prepared this person's lung so I could study it
6 with the electron microscope, and as I was going from air space
7 to air space looking for interesting things to show the medical
8 students, I came across these two cells sitting on the carpet.
9 Now, these are very well known, they are called macrophages,
10 macro means big, phages means eater, these cells control our
11 air space services and they can detect the presence of foreign
12 particles. So this person was rolling along on his motorcycle,
13 I'm sure he was inhaling a lot of things, one thing we know he
14 inhaled was this pollen grain right here which went zipping
15 right past the cilia and landed on the carpet. We don't want
16 anything on the carpet that could impede the movement of oxygen
17 or carbon dioxide and might injure the epithelial surface.

18 Q Doctor, that pollen, how big a particle is that in in
19 microns?

20 A Yes. So this pollen grains can be anywhere from .1 high
21 microns to four or five microns. So this cell along here is
22 about probably 50 microns long, so this is probably maybe one
23 micron. So the concept here is that this macrophage got a
24 chemical signal, and in my laboratory we discovered the
25 chemical signal that attracts macrophages to asbestos. I'm

TESTIMONY OF ARNOLD BRODY

1 sure the minute that asbestos lands in the lung macrophages are
2 attracted to the asbestos, the macrophages are trying to clean
3 the asbestos, the toxic fibers out of the lung, so I wanted to
4 know how the macrophages could find the asbestos. They don't
5 have eyes, nobody is telling them where to go. So there's a
6 chemical signal that's generated on the surface of the lung,
7 I'm not going to go into the details of how we discovered that,
8 it took some five separate publications and probably five years
9 to finally prove what that signal is, it's the same signal that
10 attracts pollen grain or to a piece of dust or an asbestos
11 fiber. And the macrophage then hones in on that signal and
12 finds that foreign particle here and it was going to envelope
13 that pollen grain and take it into the structure of the cell
14 and digest it, and not for nutritional purposes but to break it
15 down, and then the cell crawls up on to the escalator and every
16 time you swallow you swallow these macrophages that are
17 cleaning up everyday dust and particles from our lungs, and
18 that's going on all of the time. Now, they play a very
19 important role in getting asbestos fibers out of the lung, the
20 problem is that the asbestos, all of the asbestos varieties
21 including chrysotile are toxic, and the chrysotile kills the
22 macrophage and adds to the disease process that we'll talk
23 about as we go on.

24 Q So as I understand this, as an asbestos fiber gets in
25 there the body is going to send a signal to the macrophage?

TESTIMONY OF ARNOLD BRODY

1 A It's not so much the body will send it, it's a localized
2 chemical signal that sets up a pathway so the cells can find
3 the fibers.

4 Q So the macrophage will seek out that asbestos fiber,
5 but is it ever going to eat it?

6 A Well, it does but that's not a good idea for the
7 macrophage, but the macrophage doesn't have a choice. It
8 doesn't say, "This is not going to go good for me," so it picks
9 up everything as I'm going to explain in a little bit, it adds
10 to the disease process.

11 Q Continue on.

12 A So we've seen all the cells we need to see and what
13 happens when asbestos gets into the lung so we can talk
14 about -- now let's talk about asbestos. Now, this is
15 chrysotile asbestos, this is a bundle, meaning a bunch of
16 fibers, there's a bundle. And I have used crocidolite and
17 amosite, and I don't know how much you know about the different
18 fiber types.

19 Q We have heard about the three different fiber types,
20 Doctor, but you've used all three?

21 A I've used all three in my work. Chrysotile makes about 90
22 or 95 percent of the world's use so that's the kind I used most
23 in my laboratory, but as I said I have used all three.

24 Q Can I stop you there? When you say that chrysotile
25 makes up 95 percent of use, what do you mean, Doctor?

TESTIMONY OF ARNOLD BRODY

1 A Well, I mean if you take all the products around the world
2 that have asbestos and when you look at what asbestos type is
3 in those products it's chrysotile 95 percent of the time.

4 Q So you're showing us your chrysotile fiber button.
5 Why?

6 A Because I want you to see the nature of chrysotile,
7 because when chrysotile gets aerosolized it breaks down into a
8 wide variety of shapes and sizes, and so here you can see in
9 this bundle a wide variety of shapes and sizes. Now, size,
10 this is a -- there's a one micron bar down here, you can
11 probably see it better -- so this is a one micron bar. So if
12 you want to know how big and small these fibers are, you can
13 put this micron bar up against, for example, this fiber that
14 you've got five or six microns long, some of these are hundreds
15 of microns long as they go off the screen. Now, we can see
16 these small sizes because I magnified this 4,300 times, and
17 some of these fibers are about a micron wide, thick and then
18 breakdown into a half micron, breakdown again into a tenth of a
19 micron. Some of these are even less than a micron. You can
20 see some of them passing through here in the form of what is
21 know as fibrilla which are only tenths of microns. So the
22 point is that chrysotile asbestos is constantly breaking down
23 into smaller and thinner fibers. Now, this means as I will
24 show you when it gets into the lung, it's more likely to be
25 able to be transported to various areas of the lung including

TESTIMONY OF ARNOLD BRODY

1 the pleura. So if anybody tries to tell you that chrysotile
2 doesn't get into the lung or doesn't stay in the lung they're
3 wrong because we've done autopsy studies on people and shown
4 chrysotile at their autopsy at the end of their life, we've
5 done the same with the animals, we know the fibers get there
6 and we know they cause disease.

7 Q I want to just ask, the jury has heard the word
8 serpentine asbestos. Is chrysotile serpentine?

9 A Right, serpentine is the mineral. Just like with
10 crocidolite and amosite, mineral is -- that's a mineral.
11 Serpentine is a mineral. The only asbestos fiber type from
12 serpentine is chrysotile. And the reason it's called
13 serpentine, you have the word serpent in there, because when
14 you look at the ore as it is mined from the soil there are
15 veins of asbestos going through it in a serpent like character
16 so that's how the mineral got its name serpentine. And you can
17 see that, a number of these fibers have this curly or serpent
18 like quality and others of them are straight.

19 Q So there can be straight needle like chrysotile fibers
20 when they break off the bundle?

21 A Yeah, certainly, and you can see it here. Now, that's not
22 the predominant fiber that you see.

23 Q What else did you want to tell us about the chrysotile
24 bundle?

25 A Okay. So you see how the -- the various nature of the

TESTIMONY OF ARNOLD BRODY

1 fibers, so the question was when these fibers get aerosolized
2 so that they can be inhaled where do they go and what do they
3 do, so that's when we go to the animal model. So the next
4 couple of slides are from experiments that I did in my
5 laboratory, they're from publications and compared the
6 literature where we showed where the asbestos fibers land in
7 relation to these structures that I have just been showing you.
8 So let's look at the lung of a rat that's been exposed to
9 chrysotile asbestos for a single hour, and at the end of the
10 hour we take the animals out of chambers, give them an overdose
11 of anesthetic and then we take the lungs out and prepare them
12 like I've been showing you and we can then detail the various
13 components of the lung.

14 Q So what do we see here?

15 A So here is the end of the airway as it opens out in the
16 gas exchange, and you can see some of the small air spaces that
17 we've been talking about. But I want to focus the microscope
18 on this area of the lung right here, and this is one of the
19 billions of spots on this that I can point out and show you.
20 When we wrote our papers on this you can be sure we count the
21 fibers in hundreds of spots and added them all up and proved
22 what I'm saying is true. So I'm going to focus the microscope
23 on this spot right here, so this hole that you see right here
24 is actually this hole right here. So the area that we are
25 going to focus on is here, and let's look at that. So here

TESTIMONY OF ARNOLD BRODY

1 now, this is a ten micron bar, so that means this fiber is
2 about ten microns, and now you can see the carpet cells, you
3 can see on the carpet a whole series of asbestos fibers, some
4 are kind of long and curly, some are short and straight, some
5 you can see in the same array of fibers sitting on the cells,
6 and -- let me give you the big word for these cells, these are
7 called epithelial cells. Epithelial cells cover surfaces so
8 your skin is an epithelial, we call it epidermis, the carpet
9 cells are epithelial cells, and here then you can see sitting
10 on these epithelial cells are the whole array of shapes and
11 sizes that you saw a moment ago.

12 Q Doctor, did you want some water? I wanted to make sure
13 you had that, do you need that?

14 A I wouldn't mind the water.

15 Q Now, Dr. Brody, this is the lung of an animal?

16 A Yeah. You don't get to do this -- by the time we look at
17 the lungs of people who have been exposed to asbestos, the
18 asbestos has moved off of the surfaces, and I'm going to show
19 you how that actually happens.

20 Q So the purpose of when you open this animal up after
21 how much exposure?

22 A This is an hour.

23 Q An hour. But it was -- you did that to see if you
24 could find the fibers on the epitheliums?

25 A Yeah. We didn't know it was going to be sitting on the

TESTIMONY OF ARNOLD BRODY

1 epithelium, but we asked the question where is it and there it
2 is sitting. And then, of course, the question is, "Okay, where
3 does it go?" And actually during that first hour we showed
4 that there's a lot going on just during that first hour that
5 the epithelial surfaces respond very quickly to toxic
6 substances. So for example, these fibers, you can see part of
7 them here but some of them are covered, and you can see --
8 clearly you can see the fibers here but they're covered by the
9 epithelium here. You can see they're open here, you can see
10 the fibers and they're covered. What we discovered was these
11 epithelial cells very rapidly come over the top of the fibers
12 and shove them onto the carpet. Now, no one had seen these
13 before, we knew that there were fibers in this space. This
14 space underneath the carpet is a very well known part of the
15 lung, it's called the interstitial and it is where the blood
16 runs, there are a lot of fluids in there, it's where scar
17 tissue develops, asbestosis or any other kind of scar tissue,
18 so that's a well known space. What we didn't know was that
19 asbestosis gets rapidly picked up by these epithelial cells and
20 inserted into that interstitial space. Now, that's significant
21 because that puts the fibers into what's called the fluid flow
22 of the lung, and the fluid flow of the lung has two
23 compartments, one is blood, which I'm going to show you in a
24 second, and the other one is what's call lymph, l-y-m-p-h.
25 Lymph is a clear fluid that runs wherever blood flows in our

TESTIMONY OF ARNOLD BRODY

1 body from head to toe there is a lymph around it, and lymph is
2 very important in carrying cells of the immune system and in
3 carrying also -- helping control the blood pressure,
4 pressure -- fluid pressure in our blood vessels. So it's an
5 essential system of flow in our bodies and it turns out that it
6 carries a lot of asbestos fibers, so we're going to see how
7 that works. So in the next slide -- and again, this is one of
8 thousands of images like this I have taken over the years to
9 add up and explain and publish the papers on how this happened.

10 Q Can I ask you, how long did it take you to get to this
11 point in your research?

12 A Well, that's a good question. So we started the exposure
13 experiments in the late seventies, and I published the paper
14 that this came from in '81 or '82, something like that, so, you
15 know, years. And then to the next topic of proving where the
16 fibers go it's another couple of years, and then proving how
17 the macrophages find the particles, that's another -- these are
18 processes. You know, it's not just one topic going on in the
19 laboratory, there are multiple topics crisscrossing and helping
20 one another understand what we're actually doing.

21 Q Well, where are we in the lung here?

22 A So this is now again one example of where I use to explain
23 the fluid flow of the lung, so this is a few hours after the
24 exposure. The exposure is now going on for a couple of hours,
25 again, we take the animals out and give them an overdose of

TESTIMONY OF ARNOLD BRODY

1 anesthetic, okay? And now you can see a couple of different
2 things, you can see some small that look like doughnuts here,
3 well this is what are our red blood cells, they're not
4 doughnuts obviously, they look like doughnuts because they have
5 a depression, not a hole, they have a depression. And you also
6 can see some asbestos. You can see asbestos fibers over here,
7 most of them are covered, you can see a small fiber on its way
8 into the blood flow, you can see a small fiber over here that's
9 completely covered by the carpet, so this is a very dynamic
10 system. Some of the fibers moving into the blood, we published
11 that, we and other investigators have shown asbestos flowing in
12 the blood. But also these fibers that are moving into the
13 fluid flow, for example if I lifted up the floor, remember the
14 floorboard is covering the lung, you would see it's moist under
15 there, and it's moist under there because the lymph, it's a
16 clear fluid, and the lymph collects in small vessels, and if
17 asbestos gets into the lymph it can get into the small vessels.
18 Let me show you. So what's happening in here in all these
19 spots around the lungs where the asbestos is landing, some of
20 them are attracting macrophages, which I can show you in a
21 minute, others of them are getting down into the lymph flow and
22 therefore are in the pathways of pleura, some of are getting
23 into the blood and that's the one --

24 Q Doctor, I wanted to ask you, when you are doing these
25 studies on the animals you were not trying to recreate an

TESTIMONY OF ARNOLD BRODY

1 occupational environment for them, were you?

2 A Not a specific environment I don't. But the levels of
3 asbestos that they received were high concentration, sort of
4 like and insulator or reminder or something like that.

5 Q Why were you using such high concentrations?

6 A Well, the animals are short lived, they only live two to
7 three years, and so whatever happens in the animals that
8 happened with us happens more quickly than it happens in us.
9 Their metabolism is faster, biochemical reaction is faster.
10 And, in fact, it's really hard to get the animals to get a --
11 just like in people, very few people who are exposed to
12 asbestos get mesothelioma, well it's true in animals as well,
13 same idea. We have very good genetic defenses that we're going
14 to talk about in a minute that protect the animals so we want
15 to make sure they're getting a dose sufficient to cause injury.
16 We weren't trying to produce mesothelioma in these animals and
17 we didn't because we didn't design the experiments to do that.
18 It takes life long exposures in the animals, there are two or
19 three years to get a clinical mesothelioma. So what we opted
20 to do was to start at the beginning and establish the events
21 that we know will lead to mesothelioma in animals and people.

22 Q Thank you. So what do we see here other than the red
23 blood cells?

24 A Okay. So we're moving the fibers into the flow, into the
25 lymph flow, but I told you the macrophages were coming and here

TESTIMONY OF ARNOLD BRODY

1 they're, okay? So here is a group of macrophages one, two,
2 three, four, five, six, seven, and you can see they're kind of
3 sharing the asbestos fibers with one another and they have
4 followed that pathway that I told you that we discovered so
5 that they can pick up the asbestos fibers, and you can see they
6 come in here one at a time and group around the fibers. The
7 problem here is that these macrophages are dead, they have
8 holes in them, they're kind of shriveled up. This one is about
9 to die, it has got a fiber right through it. These cells are
10 quite bad, they still have some ruffles but they are not doing
11 very well. These macrophages are undergoing a toxic response
12 to the presence of the chrysotile asbestos, and it would be for
13 any other kind of asbestos, the fibers generate oxygen radicles
14 that are very toxic and cause genetic damage, and you could see
15 that happening right here. Now, when a macrophage is damaged
16 or injured it releases a series that are called growth factor.
17 We've published probably two dozen papers on growth factors
18 produced by macrophages, and those growth factors cause other
19 cells around the area to divide, to start responding to that
20 injury. When a cell is divided it's more likely to become
21 cancer cells, and you don't want cells dividing out of turn,
22 and we're going to go into that in just a moment, but that's
23 why I wanted to explain it. Chrysotile like any other fiber
24 type participates in the disease process through the macrophage
25 as well as getting it through the carpet cell itself.

TESTIMONY OF ARNOLD BRODY

1 Q I wanted to ask you, will fibers of all sizes if they
2 get into this location, cause the response of macrophage?

3 A Yeah, no question. Longer fibers are more dangerous than
4 short fibers. There seems to be some kind of cutoff, I don't
5 know if you've heard about the five microns.

6 Q They have not but that's why I was asking you about the
7 fiber size, Doctor.

8 A Well, some people like to make some kind of cutoff, say if
9 there are five microns are less they are not dangerous, well,
10 that makes absolutely no sense. Nature doesn't draw lines and
11 say, "Well, you are 5.1 microns so you are dangerous but you're
12 4.9 microns and you're not, that just makes absolutely no
13 sense. There's a biological spectrum, longer fibers are more
14 dangerous than short fibers, but short fibers, even fibers less
15 than two or three microns can generate oxygen particles, and
16 I'm going to show you by DNA, do all of the things that are
17 required to reduce damage from asbestos. All right. So we
18 know the macrophages are there, we know what they are doing,
19 now let's go back to the issue of lymph flow in the lung. Now,
20 this is called -- this is a Netter diagram. Dr. Netter,
21 N-e-t-t-e-r, Dr. Netter's name is down here, Dr. Netter has
22 given us atlases of the human body in health and disease. So
23 we, people who are at medical school, use Netter diagrams all
24 the time, and this is Dr. Netter's diagram that shows the
25 pattern of lymph flow in the lung. And you can see he's got

TESTIMONY OF ARNOLD BRODY

1 these very small vessels, many of which end at the pleura, and
2 if you look at the surface of the pleura you will see that
3 there's a pattern -- a network like pattern where the lymph is
4 flowing around the surface of the lung on the pleura. Now, the
5 question, of course, is is asbestos getting into the pleura by
6 way of this lymph flow, so one of the ways that we can know
7 that is by studying what are called lymph nodes. Lymph nodes
8 are small bundles of tissue that are found wherever lymph
9 flows, so head to toe, around the brain, the neck, your
10 armpits, your ankles, there are lymph nodes throughout. Now,
11 Dr. Netter is showing up some examples of lymph nodes around
12 the lung, and so these are called thoracic nodes because they
13 are in the thorax, in the chest. There's a series of lymph
14 nodes in the peroneal cavity, they're called mesenteric lymph
15 nodes. So there are different sets of lymph nodes. There are
16 lymph nodes in the armpits called axillary lymph nodes. So
17 investigators -- this is not my work now, but some
18 investigators studied the asbestos content of the thoracic
19 lymph nodes and mesenteric lymph nodes, and the peritoneal
20 cavity is the second most likely place to get a mesothelioma.
21 The lung is -- the pleura is the number one most likely place,
22 like 80 percent of all of the mesothelioma show up in the
23 pleura, and ten to 20 percent show up in the peritoneal cavity,
24 but there are a lot of lymph nodes down in the peritoneal
25 cavity. So these investigators studied the content of the

TESTIMONY OF ARNOLD BRODY

1 lymph nodes, the peritoneal and the people who were exposed to
2 asbestos, there was an increase number of asbestos fibers.
3 Now, the only way and that an asbestos fiber can get in a lymph
4 node is by being transported there in the lymph, the only way
5 fiber can get into a lymph node is by being inhaled, landing on
6 the carpet and being transported into the lymph flow.

7 Q Now, the studies on the lymph nodes, were those done
8 before your studies, Doctor?

9 A Some of them, but some were done contemporaneous to my
10 studies.

11 Q And what was it that made you suspect the lymph node as
12 a transporter, or the lymph rather as the transporter?

13 A Well, it has been known for a long time that the pleura
14 and that region around the pleura is well supplied by lymph.
15 So the question was -- as I'm saying, this is not my work, this
16 is excellent work done by other investigators who showed the
17 fact the lymph carries asbestos, and so the work that I did
18 showing that asbestos is transported into the pathway is just
19 part of that kind of work, so this kind of finishes that story,
20 then we'll talk about cancer. This finishes that construct of
21 asbestos getting into the pleura. If I cut a piece of tissue
22 out of the lung you will see the pleura on the right and you
23 see the lung tissue on the left, if I cut this out and I make
24 another diagram of that you'll see now the pleura on the right,
25 the individual mesothelial cells of the normal mesothelia, and

TESTIMONY OF ARNOLD BRODY

1 then this artist has a couple of asbestos fibers being inhaled,
2 coming down the airway as you'll see here, and like I show you
3 actually happens, right? And then the fibers come down and
4 they land on the carpet, and here is one being transported
5 through the carpet and into this interstitial space. And
6 that's a diagram, but remember -- if you remember this picture
7 that I took, the artist probably didn't know that I took this
8 picture of exactly that, on the fiber on its way into the flow
9 and that's exactly what we're seeing here. And then the artist
10 labels this as lymphatic fiber transport to the pleura. So
11 here are these lymphatic vessels as you see here, these are the
12 same ones that Dr. Netter is showing end at the pleura, in this
13 case carrying asbestos to the pleura, and now the fibers can
14 interact with the target cells, with the mesothelial cells and
15 produce a cancer mesothelioma. So I'm going to spend the rest
16 of the time talking about how asbestos having reached the
17 target cell causes those cells to become cancers.

18 Q I wanted to ask you, you talked about asbestosis and
19 inflammation. That happens at the base of the lungs,
20 correct?

21 A Well, it's happening all around the lungs, but the reason
22 you see it more in the base is because as people -- as we're
23 standing there is a gravitational effect and some fibers tend
24 to -- more fibers accumulate at the base of the lungs and that
25 turns into scar tissue which can be seen on x-ray which is more

TESTIMONY OF ARNOLD BRODY

1 predominant to the base of the lungs.

2 Q Will that scarring happen at the pleura?

3 A Oh, absolutely, yeah. That is called pleura plaque, I
4 have a picture that I can show you.

5 Q When we get there will you point it out?

6 A I will, yeah.

7 Q So the asbestos fibers can have the scarring effect at
8 the pleura as it has on the inside of the lung.

9 A Right. So when it's inside the lung in these areas around
10 the air spaces, if it's scarring along the walls of these air
11 spaces caused by asbestosis, scar tissue in the lung from
12 inhaling asbestos, and I can go through -- I'm not going to go
13 through all of the details of how asbestos causes scarring,
14 that's another lecture. But a lot of these fibers then reach
15 the pleura and can cause that same kind of scarring by the same
16 mechanism, and that's called pleural plaque or pleural
17 fibrosis. This is a normal pleura and you can see it's very
18 thin and shiny, and it's shiny because it's moist, and it's
19 moist for two reasons; one is lymph, there's a lymph out there.
20 You know, as you're sitting here breathing you're not feeling
21 your lungs rub up and down, or at least I hope you don't, that
22 you don't feel your lungs rubbing up and down against the
23 inside of your rib cage, and the reason you don't feel that is
24 because the mesothelial cells are secreting a very important
25 slippery substance that allows the lungs to slide easily up and

TESTIMONY OF ARNOLD BRODY

1 down the inside of the lung, as well as the lymph that's being
2 produced. Those two liquids keep the friction from occurring
3 so you don't have any friction as you're breathing. And that's
4 why a normal pleura looks moist and shiny. Now, this is what
5 the pleura looks like in a person who has a mesothelial tumor.
6 It is dramatically thickened and I'm sure there's some scar
7 tissue in here as well, I mean, you can't always separate out
8 the tumor from the scar if a person has a plural scarring that
9 means it will occur along the outside lining of the lung. If
10 it is diffused along the pleura it's called pleural fibrosis,
11 if there are patches of scarring it's called plural plaque, and
12 those are very common signs of asbestos exposure and asbestos
13 injury.

14 Q So you've got, though, a diagram of a mesothelioma
15 tumor here, we're not looking at a pleural plaque.

16 A That's correct. There might be a plaque under there but
17 you can't tell because of the tumors. If there were a plaque
18 here you would see it as a thickening on the outside of the
19 lung.

20 Q So what's next?

21 A Okay. So we're going to spend the rest of the time -- I
22 probably have about five or six more slides.

23 Q Excellent.

24 A And we're going to talk about how asbestos acts as a
25 carcinogen, a cancer causing agent. This slide is from the

TESTIMONY OF ARNOLD BRODY

1 cover of a conference -- proceedings of a conference that I was
2 at a few years ago, and I gave a talk at this conference, and
3 the conference focused on how fibers cause cancer, this is big
4 on board on carcinogen genesis formation, how the fibers can
5 cause cancer. As I say, I gave a talk at this conference and
6 we focused on cells, and I'm showing you some cells, but you
7 can't talk about carcinogen genesis unless you talk about the
8 molecular aspects. Molecular biology is the study of genes and
9 genetics. Cancer is a genetic disease. Cancer develops when
10 there are errors or mistakes in certain areas of genes, so I am
11 going to give you the simplest definition of cancer and then I
12 will explain it.

13 Q What is the simple definition?

14 A Cancer is the loss of control of the cell growth.

15 Q Cell growth?

16 A Cancer is the loss of control of cell growth. Cancer is
17 the loss of control of cell growth. So all of our cells are
18 under strict control at the rate at which they divide and
19 multiply. So for example when I took a piece of your skin and
20 I put it under a microscope I would show you that about 10
21 percent of your skin cells are divided, you're always losing
22 skin and you have to replace it at a low constant rate at about
23 10 percent. Your lung and your liver are about one percent and
24 you don't expect to have to replace the lung or the liver
25 cells, so that's a pretty low rate.

TESTIMONY OF ARNOLD BRODY

1 Q Doctor, does that cell growth, does that happen
2 automatically?

3 A Automatically, yeah. There are signals that keep --
4 because if you cut your skin that area around the wound, those
5 cells start to divide at 40 or 50 percent until the wound goes
6 back and closes and then it goes back to the normal 10 percent.
7 The mesothelial cells have a rate at one half of one percent,
8 they are a very slow growing group of cells that you shouldn't
9 have to be replacing them very often. We showed in our
10 laboratory after asbestos exposure that rate goes up about 20
11 or 30 fold in the mesothelial cells because of the asbestos
12 being in here and causing the injury around the pleura.

13 Q Is that problematic, the increased growth rate?

14 A I already told you once -- the answer is yes. I already
15 told you once that a dividing cell is more likely to become a
16 cancer cell, and the things I am going to show you now explain
17 why that's true. So one of the ways that we study that is by
18 taking cells out of animals, out of people and put those cells
19 in a dish essentially and then you can add the agents that
20 you're interested in. You can actually watch the cells and
21 give the cells the right nutrients and they will keep growing.
22 We've actually formed tumors in a dish with asbestos and so if
23 you know how to do these kinds of experiments you can follow
24 the process that leads to these changes. So let me preface
25 this a little bit, so here is actually two cells, there's one

TESTIMONY OF ARNOLD BRODY

1 on here, there's another cell here and some fibers that have
2 been added to these cells, you can see these small fibers here,
3 and the fibers you can see are excluded from the center circle
4 in the cell. In the center circle in the cell is called the
5 nucleus, and the nucleus contains all of our DNA, all of our
6 genes in every cell. Now, humans have about 20,000 or so genes
7 that make us what we are, genes are small segments of DNA and
8 each of these genes is specific to you and me. While we each
9 have genes that make hair grow on our arms the sequence of my
10 hair growing genes is just a little bit different than the
11 sequence in yours and that makes us different people. And
12 mice, which share about 95 percent of our genes, have genes
13 that grow hair but they're even different than yours and mine.
14 So these genes, these 20,000 or so genes that we have make us
15 what we are, about 100 or so of them are called growth
16 controlled genes. Now, cancer is caused when there are errors
17 or mistakes in a set of growth controlled genes. Now, I
18 already told you that cancer is the loss of control of cell
19 growth, and that is mediated, those changes in controlling cell
20 growth are mediated by these growth control genes. So here in
21 these cells you can see the fibers have been added but they're
22 not effecting the DNA because the nucleus is intact. The
23 nucleus is this center circle that contains all of the DNA, it
24 has a protected membrane around it. One of the things that
25 scientists have known for a long time is that when cells divide

TESTIMONY OF ARNOLD BRODY

1 they lose that protective membrane around the DNA. So we asked
2 in our laboratory what would happen if we added asbestos and
3 other agents while the cells were dividing? And here is what a
4 cell is supposed to do when it divides. Here are three cells,
5 one, two, three, here is that nucleus, the DNA will stay blue
6 so you can see where it is. The cell in the center is
7 dividing. This red stuff around it is called -- that is the
8 cytoskeleton cells, that keeps the structure of the cell. So
9 this cell is dividing, it has received a signal to divide, a
10 skin cell could be injured or a lung cell, could be any number
11 of reasons that a cell divides, it either gets old or has to
12 respond to injury. And what happens is we condense all of our
13 DNA in these reds, white reds or chromosomes, and the
14 chromosomes are bands of condensed DNA. Now, let me show you
15 what chromosomes look like. I can take these chromosomes and
16 spread them out. This is a human chromosome spread, humans
17 have 23 pairs of chromosomes lined up -- you've got one
18 chromosome from your mother, one from your father, lined these
19 up, you can see these light and dark bands, that's where all of
20 our 20,000 or so genes are distributed. Now, when I say 20,000
21 or so I say about 100 growth control genes, because we don't
22 know exactly how many genes we have and we don't know what
23 every one of them does. The National Human Gene Research
24 Institute is the most recent of the national institutes
25 developed and that's what scientists there are trying to do,

TESTIMONY OF ARNOLD BRODY

1 they're separating out as many of the individual genes as we
2 can sequencing them and finding out what they do, and we're up
3 to now about 80 something percent of knowing just where each
4 gene is and what it does. Now, the 100 or so growth control
5 genes that are central to the development of cancer are
6 distributed among these genes as well. In order for a gene to
7 function it must be on the correct place on the correct
8 chromosome. I will give you an example, and this is a gene
9 that we've studied in the laboratory, it's called the P53 gene,
10 and we know that it's found in the tip of human chromosome 17.
11 This gene has a nickname as the guardian of the Gnome. Now,
12 that sounds like it may play some important role. This gene,
13 if you have damage to other genes, the DNA, it stops the cell
14 from dividing. It's a tumor suppressant gene, it stops the
15 cell from dividing so that the cell can't pass on the mistakes
16 to the new cells that are coming so it's essential in
17 protecting us, and if it were not where it's supposed to be on
18 the tip of human chromosome 17 it wouldn't work to protect us.

19 Q So does that act as somewhat of a molecular defense
20 mechanism?

21 A Exactly what it is. It's a molecular defense mechanism
22 among a number of other genes that act as molecular defenses,
23 and whether or not one gets a tumor, whether or not they are
24 susceptible depends on how efficient your molecular defenses
25 are, that's the basis of susceptibility and whether or not a

TESTIMONY OF ARNOLD BRODY

1 person gets a cancer. Most people are not going to get cancer,
2 most people no matter how much asbestos they're exposed to,
3 don't get mesothelioma or lung cancer because of these genetic
4 defenses. Now, let's see how they work.

5 Q Let's do that.

6 A Here is what is supposed to happen. Here is the cell now
7 that the chromosomes have gathered and they're staying purple
8 this time so you can see them, you can see that the cell
9 skeleton is yellow this time and that the chromosomes now line
10 up and the idea is to make perfect copies of each chromosome
11 called faithful replication. Now, if there is this faithful
12 replication you'll get two new sets of cells, two new sets of
13 genes and two new cells called -- this is going on in all of us
14 all the time; skin, GI tract, lungs, whatever this normal cell
15 division is going on all the time. If there is an abnormal --
16 let's go ahead and do that, let's put asbestos in this. This
17 is from an experiment that we did in my laboratory along with
18 collaborates in the institution, and we took some of these
19 cells, again, there are a whole variety of different cells you
20 can use. In this panel A over here this is one of millions of
21 cells that we've just watched, didn't add anything, just saw
22 the normal rates of division, and you can see half of the
23 chromosomes go to one side, half to the other and you'll get
24 two new daughter cells. Now, over here in this dividing cell
25 chrysolite asbestos has been added and you can see there's a

TESTIMONY OF ARNOLD BRODY

1 chrysolite fiber here, another one here, both the chromosomes
2 have separated and you can see that most of the DNA is where it
3 is supposed to be in the newly developing cells. But some of
4 the DNA is bound to the surface of the fibers and that's why we
5 put the arrow heads on here because we're showing -- this is
6 from the publication so we're showing the reader here is where
7 some of the DNA is bound from the surface of the fiber, and
8 this produces a condition that you read up here called
9 aneuploidy. Now, I'll tell you more about aneuploidy in a
10 minute, but just understand, these are not cancer cells but the
11 door has been opened, and I am going to go -- I have two more
12 slides, this is the next to the last slide. These are
13 mesothelial cells treated with chrysotile, and in this case you
14 see a mesothelial cell, no asbestos, half the chromosome is
15 here and half here, we'll have two new daughter cells. Here
16 the daughter cells are essentially formed, you can see the two
17 daughter cells, but there is a fiber spanning the two cells and
18 there's some DNA bound to the surface of the fiber again
19 producing this condition aneuploidy. Aneuploidy means abnormal
20 chromosome separation. They are not cancer cells but the door
21 has been opened, meaning that if in this DNA that is bound to
22 the surface of the fiber in that cell, this cell or any cell
23 which this is occurring, if in this DNA are one or more of
24 those genetic defenses like P53 any of the other sets of genes
25 that have been discovered in this process that I won't go

TESTIMONY OF ARNOLD BRODY

1 through obviously, if any of those genes are not -- are in this
2 DNA and they're not where they're supposed to be they're not
3 going to function, and if they're not functioning to protect us
4 that opens the door to cancer. Now, one error is not enough,
5 two is not enough, three is not enough, we have multiple backup
6 systems. But aneuploidy cells die, and they die because we
7 have a genetic pathway called the cell death pathway. So let's
8 go to the last slide and I will summarize what I've told you,
9 and I also want you to understand what's going on in those
10 decades of malignancy. Why does it take so many decades for
11 this cancer to bring this person to the clinic? So let's
12 finish up with that.

13 Q So what do we see here, Doctor?

14 A So this is a diagram that -- on which you can see a
15 mesothelial layer that's been given to us, it's just a general
16 layer of cells, mesothelial cells with a single nucleus but
17 technically opposed to one another making sheets, a single
18 layer sheet over the surface of the pleura. Now, the artist
19 has a couple of lightening bolts coming in here and he says DNA
20 damage, I'm suppose they showed lightening because it causes
21 DNA damage. The point is we're dealing with the mesothelioma
22 so it's something from the environment, its asbestos has
23 reached the DNA and caused DNA damage, now the cell is
24 dividing. And one of the daughter cells is going up into the
25 upper left-hand corner here to die because this artist knows

TESTIMONY OF ARNOLD BRODY

1 very well that most cells with DNA damage die and you never
2 hear about them again. You go out and you get a sunburn, the
3 UV radiation has caused aneuploid in some of your skin cells
4 but you typically don't get melanoma because cells with genetic
5 damage die. You go out and smoke a cigarette, the airways of
6 people who smoke cigarettes are loaded with aneuploid cells,
7 most of them -- and this is not known from my work, this is
8 known from people who are studying these cells, and those cells
9 typically -- even most smokers don't get cancer but you're
10 going to take a chance. My point is that there are a lot of
11 aneuploid cells that are lining these airways because of the
12 genetic damage, that's there, and most of those cells -- the
13 reason these people don't get cancer is that most of these
14 cells die. So here is the example --

15 Q But not all of them.

16 A Well, not in a person who has cancer which is where we're
17 going with this diagram. So here you can see -- so the DNA is
18 pumped up, the cell is bubbled up, the cell is going to die and
19 there's a macrophage coming up here to clean up the mess.
20 We're talking about a cancer so the artist is giving us the
21 tumor, the artist has a surviving daughter cell, which of
22 course is a requirement of the cancer, and between this
23 surviving daughter cell and the tumor you've got to give me
24 about however many decades of latency you need. I don't know
25 what the latency is here, but typically they're 30 to 60 years,

TESTIMONY OF ARNOLD BRODY

1 somewhere -- it can be as few as ten years, it can be as high
2 as 80 years, but most of the cancer is in between 30 and 60
3 latency. So whatever it is between 30 and 60 years, let's just
4 pick 50 years.

5 Q Dr. Brody, Mr. Stewart worked at Bowater from '63 to
6 2002, there was asbestos containing products there but he
7 was diagnosed in 2012, so we have get a latency period of
8 right in that, is that unusual for you?

9 A No, of course not, that's exactly what I'm saying. And so
10 what's going on during that latency period, that's what I want
11 to finish right here. So think of that mesothelial surface
12 with one of the cells with an error in a gene that controls
13 cell growth. We have genes that repair DNA as well, we have a
14 whole series of DNA repair genes that if you've some DNA damage
15 and these enzymes are produced they can actually knit together
16 damaged DNA. So that's another example of a gene that protects
17 us, a genetic defense mechanism. So now picture the
18 mesothelial surface with a cell with an error in a gene that
19 controls cell growth. That cell now can sit there for months
20 just as looking and acting like a normal mesothelial cell, you
21 would never know it was there, one error is not enough to cause
22 a change into a cancer but the door has been opened. As I say
23 it's an aneuploid cell and eventually after months that cell
24 has to divide. I told you it has a growth rate of a half of
25 one percent so it's very low, but eventually it has to divide.

TESTIMONY OF ARNOLD BRODY

1 And so it divides, two cells, four cells, eight cells, 16, 32
2 making what is called a microscopic field of similar cells with
3 that one error, and one or more cells in that field gets hit
4 again, another asbestos fiber, another error in a gene that can
5 cause cell growth. That cell then sits there for months
6 looking and acting like a normal mesothelial cell and
7 eventually has to divide two, four, eight, 16, 32, 64 in
8 another field -- microscopic field with all of those cells
9 having two errors, and one or more of those cells gets hit. So
10 take a deep breath and just say think about that process
11 ongoing for decades, eventually a single cell with sufficient
12 errors of that person and with the errors in a combination
13 sufficient for that person grows out into this tumor, that's
14 why the artist who knows this topic very well made this all
15 this funny green color because it all came from a single cell
16 that grew out into this tumor that kept growing, remember loss
17 of control of cell growth, kept growing and brought that person
18 in.

19 Q Doctor, is that the last line?

20 A It is.

21 Q Well, if you want to get back in your seat --

22 A On my way.

23 Q Dr. Brody, we talked earlier, you mentioned that when
24 an asbestos cell interacts with a mesothelial cell it speeds
25 up the growth process.

TESTIMONY OF ARNOLD BRODY

1 A Yes. So what it does is it increases the number of cells
2 that are divided.

3 Q Okay. And that's why they might be vulnerable to the
4 DNA changes?

5 A Exactly.

6 Q All right. Now, the pictures -- when you were
7 introducing fibers into the cell division, is that when the
8 genetic changes happened?

9 A Well, they happened as the cell is dividing and the DNA is
10 then, making the genes more vulnerable to interaction with the
11 fibers. Not only -- I mean, I showed you pictures -- I showed
12 you pictures of the fibers actually binding DNA, and that's
13 been shown by a number of different investigators around the
14 world, but asbestos also generates what are called oxygen
15 radicals. These are high energy, short lived compounds that
16 have been known to damage DNA, that's not my discovery, that's
17 been known for many years. What we've found is that asbestos,
18 including chrysotile, other investigators showed that asbestos
19 generates oxygen radicals, we showed that chrysotile also
20 generates oxygen radicles, which as I say, we've known for a
21 long time damage DNA. So asbestos produces a double whammy if
22 you will on ways to produce cancer. One, it binds DNA and can
23 disrupt the actual position of where the genes are, and two, it
24 generates oxygen radicles which are known to cause genetic
25 damage.

TESTIMONY OF ARNOLD BRODY

1 Q Now, I want to talk a little about the bio persistence
2 of chrysotile. Do you know what I mean by that, Dr. Brody?

3 A Of course.

4 Q Can you introduce that concept to the jury?

5 A Right. So bio persistence means how long a substance
6 lasts in the body. So if you take an overall measurement of
7 different asbestos varieties as to how long they last when
8 they're inhaled, you'll find that crocidolite and amosite, they
9 are very long, it is called a half life, it's measured by how
10 long it takes for half of the material to be cleared. The half
11 life of chrysotile and crocidolite is months, years, decades,
12 and it has a very long half life. Chrysotile in the lung --
13 I'm separating the lung from the pleura now, the half life in
14 the lung is short, it's measured in days or weeks, sometimes
15 months, because as I showed you it breaks down, it's more
16 easily cleared but where is that asbestos going? Well, some of
17 it is going out of the lung, but a lot of it is going to the
18 pleura. And when some investigators studied which fibers were
19 concentrating in various aspects of the pleura and aspects of
20 the lung it found that the dominant factor in the pleura and in
21 the lymph nodes was chrysotile. And not only that, there was
22 some populations of asbestos fibers like chrysotile that we
23 found in the lungs of people at autopsy decades after they were
24 finished exposure. So there are many circumstance where
25 chrysotile is hanging around just as long as any other fiber

TESTIMONY OF ARNOLD BRODY

1 type, but under any other circumstances chrysotile is the
2 predominant fiber at the site where mesothelioma formation.

3 Q Doctor, I've got to do a little housekeeping with you.
4 I have asked you to appear for me and for your time here,
5 have I not?

6 A Yes.

7 Q And for you your time here are you compensated for your
8 time here today?

9 A I would hope so.

10 Q And this is not the first time you have done this type
11 of presentation for me, is it?

12 A No, of course not.

13 Q Now Doctor, do you have an opinion to a reasonable
14 degree of scientific certainty whether chrysotile asbestos
15 fibers can cause the problems that you just showed to the
16 jury?

17 A Yes, certainly, that's what they do. They cause all the
18 asbestos diseases, including mesothelioma, that's the
19 prevailing consensus among scientists around the world. There
20 are a few scientists with whom I agree with probably 99.9
21 percent of what they say but then they have an opinion that
22 chrysotile does not cause mesothelioma, I don't know where they
23 get that, that's against, as I say, the prevailing opinion of
24 the rest of world, but so be it.

25 MR. JEKEL: Dr. Brody, thank you, I'm going to turn it

TESTIMONY OF ARNOLD BRODY

1 over to defense counsel.

2 THE COURT: What I'm going to do at this point, jury,
3 we've had an enlightening discussion by Dr. Brody, it's a lot
4 of technical information, you've been at it for a good -- over
5 an hour now, I am going to give you a chance to go to your jury
6 room for about ten minutes and just kind of stretch and relax a
7 little bit and give Dr. Brody a chance to catch his breath a
8 little bit, and then we'll come back. It's 10:12 now, let's
9 try to be here about 10:25.

10 (The jury left the courtroom and a recess was taken.)

11 (The jury returned to the courtroom.)

12 THE COURT: Thank you, ladies and gentlemen of the jury,
13 please be seated. Ladies and gentlemen of the jury, we will
14 continue with the testimony of Dr. Brody and at this time Dr.
15 Brody will be cross-examined by the defense, Mr. Collier.

16 CROSS EXAMINATION

17 BY MR. COLLIER:

18 Q Good morning, Dr. Brody, it's good to see you again.

19 A Thank you.

20 Q Dr. Brody, you've been testifying in asbestos
21 litigation since about 1989, correct?

22 A I have one case in 1989 and I had a few cases in the early
23 nineties, that's right.

24 Q And 98 percent of the work that you've been doing over
25 the course from 1989 to the present has been for plaintiffs

TESTIMONY OF ARNOLD BRODY

1 attorneys like Mr. Jekel, correct?

2 A Sure. And I also testified for companies and asbestos
3 manufacturers and gave close to the same testimony, but what
4 you said is correct.

5 Q And Mr. Jekel asked you about being here today, your
6 hourly rate is \$575 an hour?

7 A That's right.

8 Q And your total income from your consulting and
9 testifying in asbestos litigation over the years has been
10 around \$5 million or so?

11 A Well, I don't think it's that much but something around
12 there.

13 Q And we're only a month into the year of 2018 at this
14 point in time, but how many times have you testified at
15 trial or by depositions so far this year?

16 A I have been in one trial and one deposition in January.

17 Q And do you have a recollection of how many times you
18 testified throughout 2017?

19 A I was averaging probably one or two trials a month, and
20 maybe one or two depositions a month, something like that.

21 Q Dr. Brody, I didn't hear anything during your direct
22 examination, you don't have any opinion specific as to Mr.
23 Stewart, do you?

24 A No, not specifically. But I don't expect that Mr. Stewart
25 or anybody else that developed mesothelioma is any different

TESTIMONY OF ARNOLD BRODY

1 than the process I described. This is a general description of
2 how people, including, of course, Mr. Stewart, developed
3 mesothelioma.

4 Q But the slides that you're going through today during
5 your direct examination, none of them were specific as to
6 Mr. Stewart, were they?

7 A No, of course not. But it's the same answer, right? I'm
8 not going to have a picture of Mr. Stewart's lung to make the
9 point I made about how asbestos causes disease.

10 Q You would agree that in order for asbestos to get to
11 the pleura and begin the process to cause mesothelioma it
12 first has to get out of a product that contained asbestos,
13 correct?

14 A Of course.

15 Q And then it has to be breathed by the individual?

16 A Right.

17 Q And then it has to get past all of the body's defense
18 mechanisms that you talked about this morning to get to the
19 pleura and where the cell division process and cancer
20 process starts, correct?

21 A Sure.

22 Q And over 90 percent of the chrysotile that anybody
23 breaths into the body is taken out by the body's defense
24 mechanisms, true?

25 A Well, I explained, right? So you like to talk about the

TESTIMONY OF ARNOLD BRODY

1 90 percent out of the lung, but remember chrysotile is the
2 predominant fiber at the pleura so that's not the fibers you're
3 talking about then.

4 Q Generally speaking chrysotile as opposed to amosite or
5 crocidolite has a very short path life in humans, correct?

6 A In the lung, right? So we have to separate what's going
7 on in the gas exchange to what's going on in the pleura.

8 Q And amosite and crocidolite have a much greater fiber
9 persistence in the human body as opposed to chrysotile,
10 correct?

11 A As I explained, yes.

12 Q So if you hypothetically breathed in -- you had
13 discussed on direct examination the concept of a half life,
14 correct?

15 A Correct.

16 Q So if hypothetically you breathed in two amosite or
17 crocidolite fibers, the half life would be the amount of
18 time that it takes for one of those two fibers to be removed
19 from the body.

20 A Right.

21 Q And for amosite or crocidolite it wouldn't be unusual
22 for that half life to be 20 or 30 years, would it?

23 A I agree.

24 Q The level of exposure that a person has to asbestos is
25 very important in investigating the causation of the disease,

TESTIMONY OF ARNOLD BRODY

1 correct?

2 A Sure, it's called dose response. The more a person is
3 exposed to it the more likely it is that they'll get a disease.

4 Q And the dose required to cause disease typically varies
5 with the intensity of the exposure, correct?

6 A Sure.

7 Q And the propensity of the dose to cause the disease is
8 also dependent to some extent on the fiber type, correct?

9 A Yeah, and the susceptibility of that individual, sure.

10 Q And you would agree that the amphiboles of asbestos,
11 the amosite and the crocidolite that you talked about
12 earlier today are more potent in causing mesothelioma.

13 A Yes. So that's an interesting concept. So on a fiber per
14 fiber basis the amphiboles, crocidolite or amosite, are more
15 potent than chrysotile but we don't know just how much potent
16 they are. So for example some investigator said that amosite
17 is 100 times more potent, then they did some more studies and
18 said, no, it's 10 times more potent, so I don't think we really
19 know. There is some investigators who have said it's very
20 close, they're really not very different, some say they are
21 three times more, I don't think we really know. But yes, it is
22 the amphiboles that are more potent on a fiber per fiber basis,
23 but understand that, it's what you're exposed to that causes
24 the disease. If you're exposed to chrysotile it causes it, if
25 you're exposed to crocidolite it causes it, amosite the same

TESTIMONY OF ARNOLD BRODY

1 issue.

2 Q And Dr. Brody, you would agree that amosite is the
3 fiber type that was typically found in the thermal
4 insulation materials in the 1960's and in to the early
5 1970's, correct?

6 A Well, I think so but that's not really my area of
7 expertise so I couldn't tell you that for sure.

8 Q Part of the reason that the amphiboles are more potent
9 is because among the amphibole population they're typically
10 longer fibers, correct?

11 A Yeah. So longer fibers as I said are more dangerous
12 than short fibers, and the amphiboles do have a higher
13 percentage of longer fibers, so yes, that would be one reason
14 they're more potent. Plus they also generate more oxygen
15 levels per fibers, so there are reasons.

16 Q And long fibers are also considered more toxic because
17 they're more difficult to clear so they don't get completely
18 enveloped by the macrophages that you were showing us.

19 A That's right.

20 Q And because they are larger they have a greater
21 concentration of iron particles as well, correct?

22 A Well, that's related to what I just said about generating
23 oxygen radicles, it's the iron in the fiber that generates the
24 oxygen radicles, it acts as a catalyst.

25 Q Background levels of chrysotile on the other hand have

TESTIMONY OF ARNOLD BRODY

1 never been shown to cause mesothelioma, have they?

2 A Background levels of any fibers type have never been shown
3 to cause mesothelioma.

4 Q You mentioned in your direct examination Dr. Craighead,
5 I believe?

6 A I didn't. I don't think I mentioned his name but I
7 certainly would be glad to do so. That slide that I showed the
8 movement of fibers, the diagram showing movement of fibers to
9 the pleura, that was from a chapter that Dr. Craighead wrote.
10 He was my mentor.

11 Q It was Dr. Wagner that you talked about on direct exam
12 I believe?

13 A It was, but I'm saying that I showed Dr. Craighead's
14 slides and he was a mentor of mine.

15 Q And Dr. Craighead was the person who gave you your
16 first job, correct?

17 A My first real job, yes, I agree.

18 Q And you know that Dr. Craighead did not believe that
19 chrysotile asbestos, like what was used in some of the dryer
20 felt, that that did not cause mesothelioma.

21 A Well, he did. You would have to -- he's passed away now
22 unfortunately but you would have to ask him why he changed his
23 mind. When I worked with him it was very clear that he knew
24 that all of fiber types caused mesothelioma, he did experiments
25 to show how chrysotile caused mesothelioma, so I don't know why

TESTIMONY OF ARNOLD BRODY

1 he changed his mind and we won't get to ask him. But -- that's
2 fine, I'll leave it there.

3 Q With respect to Dr. Wagner who you did mention on
4 direct examination, he was -- you would consider him an
5 authority as far as asbestos disease and causation is
6 concerned, would you not?

7 A No question.

8 Q And Dr. Wagner did not believe that chrysotile asbestos
9 caused mesothelioma, did he?

10 A Well, it's worse than that, okay? So you really want to
11 talk about that? My dear friend who has passed away, Dr.
12 Wagner, when I worked with him showed that chrysotile causes
13 mesothelioma in people and animals, and as he moved on into the
14 90's I guess it was maybe -- I don't remember when it was in
15 the 70's or 80's and now into the 90's, he developed an
16 association with certain companies and changed his mind. In
17 fact, he said that amosite was the only fiber type, not
18 crocidolite -- I'm sorry, I beg your pardon, I misspoke, he
19 said that the crocidolite was the only fiber type that causes
20 mesothelioma, not amosite, not chrysotile and, of course, no
21 one else on earth thinks that that's true. So I don't think
22 it's a really good idea to talk about what Dr. Wagner ended up
23 believing because it was way out, way off.

24 Q Dr. Brody, asbestos is a mineral, correct?

25 A Sure.

TESTIMONY OF ARNOLD BRODY

1 Q And there are natural outcroppings of asbestos in the
2 United States.

3 A Absolutely.

4 Q And there's also asbestos in the ambient air, the air
5 outside of this courtroom that everybody is breathing.

6 A Very little, a few fibers called background that are not
7 sufficient to cause disease.

8 Q But you do agree that the background levels that we
9 breath outside can cause there to be billions of asbestos
10 fibers in the lungs, correct?

11 A Yeah, but that's not a lot. You can get a billion fibers
12 into a thimble, and your lungs and mine would more than cover
13 the surface of this courtroom, we have a huge surface area of
14 lungs, so take a few billion fibers and sprinkle them around on
15 that surface area and it's not enough to cause disease.

16 Q And it's also your opinion that exposure levels that
17 are slightly above background levels for a short period of
18 time are not something that put someone at risk for disease
19 either.

20 A Well, that's probably true. There are agencies that say
21 there's no level above background that is safe, but as a
22 practical matter what you say is true.

23 Q Dr. Brody, you've told us about a number of studies
24 that you have done, you have not studied the ability of
25 encapsulated chrysotile fiber to become airborne and

TESTIMONY OF ARNOLD BRODY

1 inhaled, have you?

2 A True.

3 Q And based on your direct examination it would be a fair
4 characterization that you have researched asbestos and
5 asbestos related diseases for years, correct?

6 A That's obvious.

7 Q And it would be fair to say that the medical and
8 scientific knowledge concerning asbestos and its propensity
9 to cause disease is not based on just a single study.

10 A No, of course not, there are thousands of papers
11 discussing it.

12 Q We know a lot more about asbestos and asbestos related
13 disease and asbestos fiber types in 2018, today, than we did
14 back in the 1960's and the 1970's.

15 A Of course.

16 Q And you know that as a result of those types of
17 studies, for example OSHA's permissible exposure level for
18 asbestos has gone down over the last 45 years.

19 A Sure.

20 Q In the animal studies that you talked about earlier
21 this morning, you gave very high concentrations of asbestos
22 to the animals.

23 A Correct.

24 Q And some of the tests involved concentrations as high
25 as 1,000 to 5,000 fibers of asbestos per cubic centimeter of

TESTIMONY OF ARNOLD BRODY

1 air, correct?

2 A Right. It is very dusty, as I told you it was like a
3 insulator --

4 Q And you're aware, for example, that Dr. Selikoff who
5 we've heard a little bit about so far in the 1960's, he
6 studied insulators who had that level of exposure.

7 A That's right.

8 Q And you're aware that about 10 percent of the
9 insulators that he was studying in the 1960's contracted
10 mesothelioma.

11 A Yeah, very high percentage.

12 Q Very high percentage in the comparison to the general
13 population.

14 A Well, in comparison to any group ever studied.

15 Q And so it's been known for 50 years or so now that
16 thermal insulation materials cause mesothelioma.

17 A I agree.

18 Q Dr. Brody, the animals that you studied that received
19 large concentrations of asbestos, after they received those
20 large concentrations then in many of the studies they didn't
21 receive any further asbestos exposure at all.

22 A True.

23 Q And it caused scarring in their lungs.

24 A True.

25 Q And you looked at some of those animals' lungs I

TESTIMONY OF ARNOLD BRODY

1 believe you said up to a year later?

2 A Right.

3 Q And the animals did not contract mesothelioma.

4 A No. I explained that, right? In order to get a
5 mesothelioma in a rat or a mouse you have to expose them
6 through their life span, and then a very small percent, just
7 like in human populations, very small percent get the
8 mesothelioma. So we didn't design our experiments to do that,
9 those take huge amounts of money and resources, and at the end
10 you know that few animals got mesothelioma. What is more
11 important is to start the process. What is the process? Which
12 kinds of genes are damaged that eventually we know will end up
13 as a mesothelioma? So I told you that and it's not a surprise
14 that we didn't do that. If I -- so in order to do my work I
15 have to be supported by the National Institutes of Health, I
16 think I told you, it's a very competitive environment, about
17 ten or 15 percent get funded. So if I said I'm going to expose
18 the animals through their life span and I've got to expose
19 hundreds of them to get three or four mesotheliomas and I'm
20 going to see if they would get mesothelioma, I wouldn't get
21 funded because we know that that happens. What I did get
22 supported for was understanding these molecular events and the
23 sequence of events that gets the fibers there and causes
24 injuries.

25 Q So the answer to that question is that none of the

TESTIMONY OF ARNOLD BRODY

1 animals in your studies contracted mesothelioma.

2 A Yeah. But the way you say that sounds like you would
3 expect them to, so that's a very poorly worded questions.

4 Q Dr. Brody, you're not aware of any animal study that
5 involved an exposure of asbestos to the animal that was at
6 or below the current OSHA permissible exposure level of .1
7 fibers per CC.

8 A No, that wouldn't be a good experiment either. That's not
9 the kind of experiment that anybody has done because it
10 wouldn't be a good one, right? I told you, the animals lived
11 three years, if you start exposing them at .2 or .1 fibers
12 you're really not going to see much. There were some studies
13 down at .79 fiber per CC which is pretty low and they got lung
14 injury, they got some scarring, so -- please go ahead.

15 Q Dr. Brody, none of your studies involved dryer felts,
16 did they?

17 A Correct.

18 Q And you're not aware of any study in the medical or
19 scientific literature that indicates that working with dryer
20 felts caused or increased incidents of mesothelioma, are
21 you?

22 A That's true, I have not. But, you know, what is
23 interesting about that is that the lung does not discriminate
24 among sources of asbestos, so every population of people who
25 has been exposed to asbestos at levels of background for

TESTIMONY OF ARNOLD BRODY

1 extended periods, there's an increased risk of mesothelioma.
2 Now, I don't know anything about dryer felts, but if that
3 happens, if people are exposed to asbestos from dryer felts at
4 levels above background for extended periods they're at an
5 increased risk of mesothelioma, it doesn't matter if it comes
6 from a dryer felt or anything else.

7 Q You're not aware of any studies in the medical or
8 scientific literature specific as to dryer felts and their
9 propensity to cause mesothelioma?

10 A That is true and my answer is the same.

11 MR. COLLIER: Thank you, Dr. Brody, appreciate your time.

12 REDIRECT EXAMINATION

13 BY MR. JEKEL:

14 Q Doctor I have just a few questions and I'm going to
15 stay here if that is okay because it won't be long. You
16 were asked about clearance and I wanted to ask earlier, you
17 showed us a bundle of chrysotile fibers. Can you tell us,
18 will that chrysotile bundle breakdown into various fibers?

19 A Yeah. So let's start with the bundle, because that bundle
20 that you saw on the screen, if it stayed as a bundle and was
21 floating around -- if you walk into a room and you see the dust
22 particles floating around, if the light were just right and
23 that fiber bundle was floating around it would look like a spec
24 of dust, and if you can see it with your naked eye that means
25 it's too big to get past your upper defense mechanisms, it's

TESTIMONY OF ARNOLD BRODY

1 not going to go past the air ways. It's those fibers that
2 break down and break off those bundles, those are the ones that
3 get inhaled and reach into the lungs and do all of the things
4 that I was explaining. So yes, the bundles break down, yes
5 they get into the small fragments that can reach the pleura.

6 Q But that one bundle can break into how many fibers?

7 A How many fibers are there, thousands and then those break
8 down into thousands? So from that bundle alone I'm sure you
9 can get tens of thousands of particles.

10 Q And 90 percent of the fibers from that bundle if they
11 got into our lungs would be clear.

12 A They would, sure.

13 Q But 10 percent of them might get into the lymphs and
14 move around the lungs?

15 A Sure, exactly. Those are the ones that cause disease.

16 Q Doctor, I hate to ask this, how old a man are you?

17 A Let's see, I'm about to be 75.

18 THE COURT: Exactly my age, a mere child.

19 Q And you're still working, you're here today.

20 A Well, I'm still upright. Yeah, of course, I feel fine. I
21 play a lot tennis and try to keep up with my wife as a runner.

22 Q And what about the six grandkids?

23 A Yeah. The six grandkids, now that's hard to keep up with
24 I can tell you.

25 MR. JEKEL: Thank you, Dr. Brody, that's all I have.

TESTIMONY OF FRED STEELE

1 THE COURT: Anything further, Mr. Collier?

2 MR. COLLIER: No, Your Honor.

3 THE COURT: Thank you, Dr. Brody, you may come down. Now,
4 is this the witness about which we will have to have a
5 discussion about the --

6 MR. EARLY: I think when it gets up into cross
7 examination, yes.

8 (Break in proceedings.)

9 MR. GRAHAM: Your Honor, at the Court's pleasure the
10 plaintiff is ready to call a witness, Mr. Fred Steele.

11 The witness, FRED STEELE, was first duly sworn and
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MR. GRAHAM:

15 Q Good morning, sir. Will you please state your name for
16 the record?

17 A My name is Fred Steele.

18 Q Mr. Steele, are you from Rock Hill?

19 A Yes, I'm born and raised here.

20 Q Can you give us for the record your address and your
21 age please?

22 A My address is 2361 Ferncliff Road here in Rock Hill, and I
23 am 76 years old.

24 Q Are you married?

25 A Married.

TESTIMONY OF FRED STEELE

- 1 Q How long?
- 2 A Soon to be 60 years.
- 3 Q Congratulations, that's an achievement. Okay. Do you
- 4 understand why you are here today?
- 5 A Yes.
- 6 Q Do you understand that you're under oath and you've
- 7 been sworn to tell the truth and you will do that for us?
- 8 A That is true.
- 9 Q And have you ever testified in court before?
- 10 A No, I have not.
- 11 Q Are you nervous?
- 12 A Not really.
- 13 Q Okay. Good. So we're going to -- I'm going to ask you
- 14 some questions and then when I'm finished one of these
- 15 fellows over here will ask you some questions and we'll move
- 16 that way, okay?
- 17 A That's fine.
- 18 Q Okay. Now, did you at some point during your working
- 19 career start at Bowaters?
- 20 A Yes, I did.
- 21 Q When did you start at Bowaters?
- 22 A I started July the 8th of 1963.
- 23 Q And that's Bowaters as in here locally.
- 24 A Yes.
- 25 Q And when you started there what was your job? What was

TESTIMONY OF FRED STEELE

1 the first thing that they had you do?

2 A The first thing I had to do, I started off in coating and
3 finishing property and I started off as a utility.

4 Q What is utility job?

5 A Utility -- mainly utility's job was clean up, keep things
6 clean, make sure that everyone had the supplies that they
7 needed to do their job.

8 Q What did you do next in your career? Well, how long
9 did you spend in that job?

10 A I went to work July the 8th of '63 as a utility in coating
11 and finishing, and at that time my next job was where we put
12 the paper and placed it into the box cars or the trucks to be
13 shipped out, I probably started doing that I'm going to guess
14 the latter part of '63. And then I progressed through a
15 helpers job on what we called a super counters, and I worked on
16 the super counters as a helper I think it was until February
17 the 28th the best of my recollection of 1965 when I was
18 transferred up on the paper machine.

19 Q Which paper machine?

20 A Number one paper machine, I transferred up there. Even
21 though I was not on the bottom job in the department that I
22 transferred from, when you transferred we have to go to the
23 bottom job in the department that we're going to, so I was up
24 on the paper machine as a utility.

25 Q And did the utility job on the paper machine where you

TESTIMONY OF FRED STEELE

1 transferred to differ in any way than the previous utility
2 job that you had? Is it the same job essentially?

3 A It was a different environment.

4 Q Tell me what the difference was.

5 A It was a total different environment, because up on the
6 paper machine, the machine itself was -- oh gosh, it was longer
7 than this courtroom, very, very big. It had an operating
8 floor, had a basement and had a mezzanine what we called it,
9 and part of our job right there because this is where the paper
10 was formed, it had a tenancy in certain places in there to get
11 very, very dirty, and part of our job would be to take high
12 pressure water hoses and wash all that up, clean all of that
13 up, keep stuff wiped down. And then at the same time if
14 someone on a machine on the operating floor, if they needed
15 something in the store room or something like that, a supply of
16 any kind they would put -- blow the horn. They had a code, you
17 blow the horn and when we heard that horn we would come running
18 and see what was needed and go wherever it was to get whatever
19 supply that they might need.

20 Q At some point when you were working on the paper
21 machine number one after you transferred, did you come into
22 contact or come to know Steve Stewart?

23 A Yes, I did.

24 Q And about what time was that, if you recall, and what
25 was your job and what was his job at the time you came into

TESTIMONY OF FRED STEELE

1 contact with Mr. Stewart?

2 A When I came up on the machine after a short period of time
3 I was like everyone else, even though we would not work with
4 everyone we were each one assigned a shift, but I like everyone
5 else, we would know the other guys on the other shifts even
6 though we did not work with them on that shift, so I knew Steve
7 prior to when he and I started working together. But he and I
8 started working together, and as best I remember he and I
9 started working together it would have been somewhere in the
10 first part of 1968.

11 Q Okay. And you become -- you came to know Steve
12 casually because you were at the same mill.

13 A Yes.

14 Q You become more closely coworkers later on when you
15 were working on number one, fair statement?

16 A Yes.

17 Q Okay. Now, one of the things that I wanted to ask you
18 so you could explain it to the jury is, A, you already
19 reference part of it and that is the size of the paper
20 machine. This is a big machine, correct?

21 A Very, very, very, large.

22 Q And it's very long, true?

23 A Yes.

24 Q And a regular crew is how many fellows on a shift?

25 A Then regular crew at this point in time you would have two

TESTIMONY OF FRED STEELE

1 utility men, you would have -- and then the next job would be
2 what we called a fifth hand and you would have a fourth hand, a
3 third hand, a back tender, a machine tender, and then you would
4 have two people in what we call stock prep being an operator
5 and a tester.

6 Q Okay. Let me go back to the beginning. Utility is
7 essentially the clean up type of job, correct?

8 A Basically, yes.

9 Q That's to keep the area clean, neat, tidy and keep the
10 boss happy, correct?

11 A Correct.

12 Q So go through the other jobs that you referenced, and
13 explain it to the jury, please, what each one of those jobs
14 entails just briefly.

15 A Okay. So utility job, basically primary responsibility is
16 clean up. The fifth hand position right there, his main job is
17 when the machine was running was to make sure that there was an
18 empty spool so to speak to place into the end of the machine
19 when the roll of paper on the machine, when it was large enough
20 to be time to be when it was turned up. When it got to a
21 certain size then we went through a procedure right there where
22 we would put a new -- an empty spool in the machine and then we
23 would kick the old one out and it would begin wrapping up a new
24 spool in the continuous -- without any interruptions. So that
25 fifth hand job he had to have an empty spooler ready to go in

TESTIMONY OF FRED STEELE

1 there, and along with that part of his job, every fifth hand at
2 the beginning of the shift would make a -- he would make what
3 we call a tooling machine. He would start off in the very
4 beginning shift and he would go all over the machine looking
5 inside the dryers upstairs, downstairs, just looking to see if
6 he could see anything in there that might possibly be going
7 wrong, and if he saw something that was going wrong he would
8 come back and report that to the back tender.

9 Q And you wouldn't want any defects to appear in the
10 paper making process because that would cause there to be
11 defective paper by definition, correct?

12 A That's correct.

13 Q And so you're always trying to look to see if there's a
14 problem with the paper.

15 A That is correct.

16 Q All right. What does the other jobs that you
17 referenced, those job duties differ, can you explain that to
18 the jury, please?

19 A You had your paper machine, and the paper machine is where
20 the paper was actually made. And once the reel got large
21 enough it was taken off of the paper machine and it was placed
22 on a machine -- this was a very smaller machine that was
23 between the paper machine and the cutter. And the fourth
24 hand -- you had two people to work the re-reeler, one of them
25 fourth and one of them was the third hand. The fourth hand was

TESTIMONY OF FRED STEELE

1 the one that took the paper off the machine on the large spool
2 with a house crank and put it on to the re-reeler and the two
3 of them -- well, the fourth hand would mainly be the one that
4 would thread it up to where it could begin running again and
5 the third hand was the operator on that machine. For the
6 purpose of re-reeler, it had two purposes, mainly it was to --
7 first of all to take out any defects, any known defects. For
8 example, as the machine was running if for whatever reason if a
9 hole came through on the machine as it was being -- the paper
10 was being wound up, there was a detector on that machine back
11 there that could pick up those holes. And the timeframe that
12 we're talking about here, another job for the fifth hand would
13 be when that hole came through it would set off a buzzer, and
14 the fifth hand's job, one of his duties was to when you hear
15 that buzzer he would have to -- wherever he was run as hard as
16 he could and on the back side of the machine he had an already
17 made-up piece of paper that he would stick down in there as he
18 began to wrap up, and when that was taken off the machine and
19 placed onto the re-reeler, that's how the re-reeler knew that
20 there was a defect at certain point right there. So you would
21 slow down when that piece of paper was coming close to being
22 unwound and you would look for a defect to take it out, and so
23 that was -- well, that was one of the biggest ones is why we
24 had to run the paper through a re-reeler before it got to the
25 coater.

TESTIMONY OF FRED STEELE

1 Q So the next job that you described --

2 A Was a third hand job. And when the machine was running
3 and basically he had a good job basically, he sat there and
4 watched it run, whereas the fourth hand supposedly was to go
5 take his hand and actually walk from side to side of the paper
6 that was being -- as it was being wound up to see if he could
7 feel anything with his hand. He would feel the surface of the
8 paper as the reel got larger he would feel the sides of it to
9 make sure that there wasn't anything was sticking out. If
10 there was what we called a crack edge sticking out then that
11 was cause to immediately shut that down, because that would
12 indicate that it was stripped on that edge right there and
13 therefore it would not run through the coater, so we had to
14 take all the defects out.

15 Q So you had to check to the defects before it got to the
16 coating stage.

17 A Right.

18 Q Did Steve Smith (sic) have all of these jobs that you
19 described?

20 A Yes, every one.

21 Q Did you have all of these jobs that you described?

22 A Yes, every one of them.

23 Q Did you follow Steve Smith (sic) along your career?

24 A Steve was usually a job ahead of me.

25 Q What do you mean by that?

TESTIMONY OF FRED STEELE

1 A Okay. In progression when I became a fourth hand Steve
2 was a third hand, in other words he was a job ahead of me. And
3 as far as I know the best I can remember Steve and I started
4 working together, although, you know, I knew him before that
5 but he and I started working together when he was a third hand
6 and I was fourth hand on the shift right there, and we probably
7 worked together in that capacity for probably ten years.

8 Q Okay. And how long did you work at the mill until the
9 time you started until you retired, how long were you there?

10 A I went to work July 8th of '63 and I retired March 31st of
11 2001.

12 Q So quite a number of years.

13 A Yes.

14 Q You've been married longer than you worked there.

15 A Yes, almost.

16 Q Now, in the process of taking care of the paper machine
17 you stayed on the number one machine from the time you
18 transferred until you retired.

19 A I stayed on number one from probably February of '65 until
20 January of '86.

21 Q I'm sorry. When you left paper machine number one in
22 '86 where did you go in the mill?

23 A Bowater had installed a new paper machine and I was one of
24 the ones that was able to transfer from the number one paper
25 machine over to the number two paper machine to help start it

TESTIMONY OF FRED STEELE

1 up.

2 Q As far as you know did Steve stay on number one?

3 A He did.

4 Q Did you stay in contact with Steve?

5 A No, not basically. I would see him in passing but
6 basically we were in one building, he was on the number one
7 machine -- we was in separate buildings at the time.

8 Q Number two was in a completely separate building due to
9 its size.

10 A That's correct.

11 Q And as far as you knew Steve stayed on paper machine
12 number one until he retired.

13 A That's correct.

14 Q Now, you know, at some point a lawsuit was filed on Mr.
15 Stewart's behalf.

16 A Yes.

17 Q And that's why we're here today.

18 A That's correct.

19 Q And you know because you've been deposed by these
20 gentlemen that you gave a deposition and they asked you
21 about SCAPA dryer felts.

22 A Yes.

23 Q You recall that?

24 A Yes.

25 Q And you gave honest answers to those questions when you

TESTIMONY OF FRED STEELE

1 gave the deposition.

2 A Yes.

3 Q And then you were asked in your deposition do you
4 recall SCAPA dryer felts, do you remember that?

5 A Yes, I do.

6 Q And what did you say?

7 A Yes, I do, I do remember them.

8 Q Tell the jury from a paper machine worker point of
9 view, not an expert, you're a working man, a blue collar
10 man, what does a dryer felt, SCAPA dryer felt, what is its
11 function on the paper machine? Can you tell the jury what
12 the purpose of the dryer felt is on the paper machine and
13 the paper making process?

14 A Okay. Well, the paper machine had four dryer sections.
15 You had -- and each one of those sections had a top felt and
16 bottom felt. And the purpose of the dryer felt themselves was
17 to -- well, for one thing was as it traveled through the
18 machine right there was to keep the sheet of paper against the
19 dryers as it went through the process right there of it being
20 dry. Therefore the -- and as the sheet of paper right there
21 when it was first entered into the dryer section then the
22 moisture content on that would be very high, I have
23 forgotten -- I would say probably 60 percent, at least 60
24 percent so therefore there was a lot of drying that had to be
25 done. So the felts basically kept the paper against the dryer

TESTIMONY OF FRED STEELE

1 drums in order for the paper to be dried, and at the same time
2 it would absorb a certain amount of moisture from the sheets
3 itself.

4 Q So the purpose of the felt is to run through the
5 machine with the paper riding along losing moisture all
6 along the way.

7 A Correct.

8 Q And the purpose of the dryer felt was to dry out the
9 paper.

10 A That is correct.

11 Q And it did this by operation around the drums and so on
12 through the machine.

13 A That is correct.

14 Q So a dryer felt is a dry process with a lot of heat
15 involved.

16 A Yes, a lot of heat.

17 Q Now, in speaking about heat, there's other chemicals
18 that are used in the paper making process, I'm right about
19 that?

20 A Yes.

21 Q And at the paper machine number one when you're making
22 paper, are you issued any kind of safety gear or were you
23 required when you were working at Bowaters to at some point
24 wear goggles, or if you came into contact with chemicals can
25 you tell the jury about what you used at the plant?

TESTIMONY OF FRED STEELE

1 A If your job entailed chemicals, and we had various kinds
2 on the machine right there, then you would be issued rubber
3 gloves, goggles, a face mask, that type of thing for those.
4 But in the very, very beginning way back in this timeframe
5 right there, you know, safety was not as big then in the
6 beginning. Of course, everyone was encouraged to work safe and
7 not to be foolish in any way, but as far as being anywhere
8 close to being strict in the early sixties it wasn't that
9 strict.

10 Q You had gloves?

11 A If you needed them for a particular job, yes.

12 Q Did you have a set of gloves that you wore?

13 A Very rarely did I ever have to wear any.

14 Q Were there times in which you had to work on the
15 machine or near the drums where it was really hot?

16 A Yeah.

17 Q And did you wear gloves on that occasion?

18 A Well -- okay. As the machine was running a person in the
19 fifth hand position and then the person in the back end
20 position, in particular those two guys right there, they would
21 do what we call go through the dryers, and that entailed going
22 up some metal ladders to get up on an upper floor to observe
23 what was going on. Some people could tolerate the heat, those
24 really, really hot metal ladders easier than others, some
25 people had to have gloves and some people did not, and so --

TESTIMONY OF FRED STEELE

1 but the gloves were available if you needed them.

2 Q And protection against chemicals were available if you
3 needed it.

4 A Yes.

5 Q And at some point along the way I guess they provided
6 hearing protection?

7 A After some moment in time, yes.

8 Q Did you have to wear a hard hat all the time?

9 A No.

10 Q Now, if I showed you a picture based on your previous
11 testimony and your description, could you tell us whether or
12 not the paper machine that we've been talking about, would
13 you recognize that in a picture?

14 A I think so.

15 MR. GRAHAM: Your Honor, may I approach?

16 THE COURT: Yes, please.

17 Q Mr. Steele, I want to hold this so the jury can see and
18 so you can describe this picture. Have you seen this before
19 just this morning?

20 A Yes.

21 Q Sir, and I had asked you if you recognized this
22 depiction in this picture and what did you tell me?

23 A That is the number one paper machine.

24 Q Now, there's a fellow in the foreground over here in
25 the right in this picture, do you recognize that gentleman?

TESTIMONY OF FRED STEELE

1 A That's Steve Stewart right there.

2 Q And what is Steve Stewart doing there as best you can
3 tell?

4 A Based upon the date right there and everything -- well,
5 what it looks to me like is going on right there, it looks like
6 the machine obviously is down, it's not running right there and
7 it looks like they had been in the process of what we call
8 changing a wire. Because in the -- behind Steve right there
9 there was some what we call a poll buggy, you had to take the
10 polls -- as you install a new wire on the machine you had polls
11 that were inserted in there at various positions back there,
12 and in the process right there you would have to get to a point
13 where they were pulled out, so as you pulled them out and you
14 placed them on that particular buggy right there.

15 Q The buggy he is pulling.

16 A This buggy right here. What Steve is actually pulling
17 right there, he's got a little wagon like deal with a jack on
18 it right there that we could use -- evidently they were
19 changing the felt at the same time. A lot of times when you
20 changed a wire you're not only changing a wire but you changed
21 whichever felt needed to be changed, and this looks like it
22 could have very well been jacks that we would use at that time
23 to jack certain rolls up in order to get an old felt off and a
24 new felt on.

25 Q Okay. Now, also in this picture, Mr. Steel, there's

TESTIMONY OF FRED STEELE

1 some hoses, do you see those?

2 A Yeah.

3 Q Can you describe for the record and for the jury what
4 those hoses are and what -- how you use them?

5 A These are high pressure hoses and we would use those hoses
6 to wash down the entire machine, we would wash down the floors
7 and keep everything clean, we would wash down everything, I
8 mean everything.

9 Q Now why would you wash them?

10 A Because during the -- when the machine would be running
11 you could wash up just so much, but when the machine was down
12 then you could wash up everything and you could wash up
13 anything that had been built up over the X amount of time to
14 make sure that something didn't build up, fall off over in to
15 the machine as it ran and cause it to tear something off or
16 cause the paper to break.

17 Q So dirt and accumulated other material, you need to
18 keep an area clean as best you could in order to ensure good
19 quality paper.

20 A That is correct. And we had -- probably about maybe five
21 hoses as best I can remember from there back to where the
22 machine started.

23 Q And are there any compressed air hoses in this area?

24 MR. COLLIER: Objection, leading, Your Honor.

25 THE COURT: What is the objection?

TESTIMONY OF FRED STEELE

1 MR. COLLIER: I objected to it as leading, Your Honor, but
2 I can't really hear a lot of the questions and answers.

3 THE COURT: All right. Overruled, but if you need to get
4 to where you can hear well come right on up. Can the jury
5 hear? Very good.

6 Q All right. So Mr. Steele, I had asked you if -- this
7 is a water hose.

8 A That's a water hose.

9 Q Are there any air hoses that you would -- well, did you
10 use compressed air in the clean up process or blow off any?

11 A In this scenario right here the only way that air would be
12 used would be in all of the dryer sections. When the machine
13 would be down as it is there then you would use the compressed
14 air to go through what we call the dryer hoods and you would
15 blow off everything.

16 Q When you say you would blow off everything, what was
17 there to blow off? What were you blowing?

18 A We would blow off -- it would be all kinds of build-up on
19 the dryer frames, it would be maybe tiny pieces of paper, maybe
20 it would be paper fibers, it would be felt hairs, it would
21 be --

22 Q What's a felt hair?

23 A It would partial little fibers, we called it felt hair,
24 that's what we called it.

25 Q Would it be inaccurate or would it be improper to call

TESTIMONY OF FRED STEELE

1 it felt dust?

2 MR. COLLIER: Objection, Your Honor, leading.

3 THE COURT: Overruled.

4 A That would be a good description of it, we often called it
5 dust, that was our term for it.

6 Q You just used it generically as dust.

7 A That was the way we described it, yes.

8 Q So walk me through, and for the jury, are you inside
9 the hood when you're blowing this off?

10 A Yes. And it would be very, very dusty.

11 Q Now, in this picture it looks like, and you correct me
12 if I'm wrong because -- well, you correct me if I'm wrong,
13 but it looks like the doors are closed or down in this
14 setting.

15 A They're up.

16 Q The doors are up?

17 A Yes.

18 Q Point out the doors for me.

19 A These doors right here, they go up and down and the doors
20 are up now.

21 Q Okay. So normally these doors would be in this
22 position.

23 A Correct.

24 Q So the doors are up. And would you have already blown
25 off in this scenario or would that work still need to be

TESTIMONY OF FRED STEELE

1 done?

2 A Well, you would -- they would be in that position to blow
3 off, to what we call blow out the dryers.

4 Q Okay. So you put them in this position to blow out the
5 dryers.

6 A To blow out the dryers.

7 Q Now, describe for me -- I worked in a cotton mill, I've
8 never worked in a paper mill, but when you do a blow down
9 tell me to the naked eye can you see the dust?

10 A Oh yeah.

11 Q And can you give the jury a description about how thick
12 the dust is?

13 A Normally -- one shift may do it differently than the other
14 one, but normally --

15 Q How would you do it?

16 A Normally if they would say blow out the dryers or whatnot,
17 I would start at the first dryer section right there, and I
18 would probably start on the front because you had air hoses on
19 the front and the back.

20 Q Is this the front?

21 A This would be on what we call the front of the machine.
22 And I would start on the first section of the dryers and just
23 work my way all the way down to the very end.

24 Q And how long would that take you?

25 A Oh gosh, that would take -- it could take an hour

TESTIMONY OF FRED STEELE

1 according to how good a job you did, top and bottom it could
2 easily take an hour or more.

3 Q And was there anyone else helping you blow down or was
4 that a one man job?

5 A A lot of times there would be two guys.

6 Q Did Steve Stewart do that same job?

7 A I'm sure he did.

8 Q How are you sure he did?

9 A Because that would have been a job where Steve started off
10 as I did as utility, and blowing out and blowing down the dryer
11 felt is what would normally be a utility job, when the machine
12 is down that would primarily do a utility job. Maybe a fifth
13 hand might be involved in that, but usually it would be on
14 utility and fifth hand doing that.

15 Q Because utility in that job would be a clean up job?

16 A Yes, that would be part of it.

17 Q And you want the machine inside and out to be as free
18 of dust as it can be.

19 A Yes.

20 Q Because it would hurt the paper making process.

21 A That's correct.

22 Q And does the felt produce dust in this scenario?

23 MR. COLLIER: Objection, leading.

24 THE COURT: All right. That is not a leading question,
25 overruled.

TESTIMONY OF FRED STEELE

1 A The felts would contribute to a degree, yeah. The felts
2 would definitely contribute to the dust build-up.

3 Q In the blow down process, would you also have to use
4 the air when you would blow them down as you described from
5 the front to the back, would you also have to blow the
6 felts?

7 A Yeah. Because all of the dust would be -- as you blow
8 down the framework and everything a lot of the dust would
9 settle on the felts so we call it blow them off, blow them out,
10 whichever -- that would be two terms that we would use in that.

11 Q So you not only were blowing down the machine, you were
12 blowing down the felts?

13 A Yes.

14 Q And you were using compressed air to do that.

15 A Yes.

16 Q And would you blow directly on the felt or would you
17 blow to the side? You tell me how you did it.

18 A You would do both.

19 Q You would do both.

20 A Yeah.

21 Q Why would you do both?

22 A To make sure that you cleaned out -- got as much dust and
23 dirt buildup off the frame, off the felt. When you blew it
24 down you did not want to leave a large buildup so to speak
25 still lying on the felt for the start up.

TESTIMONY OF FRED STEELE

1 Q Because it would hurt the paper?

2 A Because it would very much hurt the paper, very, very
3 much.

4 Q All right. Now, up above here it looks as though I see
5 a lot of steel, a lot of lights. Is there anything else
6 remarkable about this photo that you would like to tell the
7 jury? Does that pretty much depict a regular day?

8 A That would pretty much depict a day where the machine
9 would be down doing what appears to be done by the people right
10 then.

11 Q Okay. Thank you. Are you doing okay?

12 A Yeah.

13 Q I don't want to wear you out. Do you need some water,
14 are you all right?

15 A I'm good.

16 Q We've talked about the felts and we've talked about the
17 blow down and we've talked about the clean up. Now, in
18 order for a felt to come off a felt has to go on.

19 A Correct.

20 Q Now, in brief, can you describe to the jury how a felt
21 goes on? I know they're heavy, could you just sort of give
22 the jury some idea about how large a SCAPA felt would be to
23 go on the number one paper machine and how you would put one
24 on? And sort of give us the Reader's Digest version.

25 A Okay. I have forgotten the width of those felts, I used

TESTIMONY OF FRED STEELE

1 to know the width and the length of each felt but I don't know
2 right now. But the felts would probably be approximately 200
3 and -- on a round figure I would say 240 inches wide, and the
4 length of each felt would determine as to what position they
5 would be going on. For example, the first bottom felt length
6 would be different than the second felt bottom length, but
7 overall length it would be close to 200 feet. That's a guess,
8 I don't remember the exact dimensions now.

9 Q Okay, approximately 200 feet?

10 A Approximately maybe, yeah.

11 Q I guess a football field is 300 feet, so --

12 A Well, it wouldn't be -- maybe 150 feet, I forgot exactly
13 the length of the felts, some would be longer than others.

14 Q Longer than this courtroom.

15 A The longest of the dryer felts would probably be from
16 where I am maybe to two-thirds of the way back, approximately.

17 Q About how wide?

18 A And approximately 240 inches, we usually measured it in
19 inches rather than feet.

20 Q So in order to put a felt on, did you use a crane?

21 A We would have to use a crane to get the felt in position.
22 They did not all go on at the same spot obviously, so you had
23 certain positions that had you to put the felt -- the new felt
24 in in order to get it on the machine.

25 Q All right. And these things are pretty heavy.

TESTIMONY OF FRED STEELE

1. A Yes.
2. Q How much did they weigh?
3. A They were heavy. That picture that you had right there it
- 4 showed the house crane, we would use that, we would use that
- 5 house crane to pick up the boxes -- the new felt -- we would
- 6 use this -- this is another one right there, we would use the
- 7 house crane. There's hooks right there, there and there and we
- 8 would use that to pick up the felt box, the new felt box itself
- 9 and to put it in the position where we needed it in order to go
- 10 on the machine itself.
- 11 Q All right, sir. Now, once a felt was in place you
- 12 would start the machine up and start the paper making
- 13 process, correct?
- 14 A Okay.
- 15 Q All right. Now, some felts ran for quite a while.
- 16 A Yes.
- 17 Q And some felts didn't run so long.
- 18 A That's true.
- 19 Q And some felts just wore out.
- 20 A That's true.
- 21 Q And when they wore out you had to take them off.
- 22 A True.
- 23 Q And why was that?
- 24 A Because if the felt was worn out -- if you discovered that
- 25 you had a felt that was worn out, if you did not take it off

TESTIMONY OF FRED STEELE

1 then it was going to tear off, and if it tore off it could do
2 significant damage to the machine itself and could cause the
3 machine to be down for who knows how long.

4 Q Did that ever happen while you were there?

5 A Yeah.

6 Q Could you describe for the jury sort of what goes on
7 when the felt goes bad?

8 A When the machine is running, and a machine was running
9 probably in this time I'm going to make a guess right then, the
10 machine at this time was probably running about 2500 feet a
11 minute, thereabouts. And I have been there when a felt would
12 tear off, and if you were down on the dryer end where I worked
13 primarily, if that felt tore off it would be like thunder, it
14 would be like boom-boom, and you would see the hood doors going
15 up. Because there was a break detector in there that would
16 cause it to shoot rope and the doors would start going up. All
17 the doors would start going up and you could see paper flying
18 and you would hear all kind of noises and everything, and
19 everybody, everybody, everybody would begin running as fast as
20 they possibly could down to that area right there to get
21 everything shut down. You hit the emergency stop buttons on
22 the dryers right there. In the meantime the people in the back
23 end of the machine, for one thing -- for example -- and the
24 people would begin immediately -- I mean shut down the pumps
25 which would be supplying the -- I'll call it the stock that the

TESTIMONY OF FRED STEELE

1 paper machine, everything is shut down as quickly as you
2 possibly, possibly can.

3 Q Because you don't want to do damage to the machine?

4 A The quicker you get it shut down the less damage you'll
5 do.

6 Q Will the process of the felt tearing as you described
7 cause there to be a release of dust from the felt?

8 A Yeah.

9 MR. COLLIER: Objection, Your Honor.

10 THE COURT: Just a second. What was the grounds of the
11 objection?

12 MR. COLLIER: Calls for speculation, Your Honor.

13 THE COURT: What was your question?

14 MR. GRAHAM: I asked if the tearing of the felt as he
15 described caused the felt to release dust.

16 THE COURT: Overruled, it's not calling for speculation.
17 He is asking a direct observation, a result of a direct
18 observation, so overruled.

19 Q Mr. Steele, let me ask you, when the incident you're
20 referring to where the felt tears and you shut the machine
21 down because you don't want it to get damaged, did that
22 tearing of the felt cause a release of the dust on the felt
23 on those types of occasions?

24 A Yes. You would -- as the hood went up you would see paper
25 flying out and you would see dust flying out.

TESTIMONY OF FRED STEELE

1 Q Where would it go, the dust?

2 A Just out into the operating room.

3 Q Would everyone breath the dust that was on the floor?

4 MR. COLLIER: Objection, Your Honor, calls for
5 speculation.

6 THE COURT: Overruled.

7 A They could very well. I mean, they would be subjected to
8 it, yes.

9 Q Now, in order for a dryer felt like on that occasion or
10 as you referred earlier to something, a felt was worn out
11 because it had run for awhile, did it lose weight as it went
12 through the life cycle of the felt in the paper making
13 process?

14 A Yes.

15 MR. COLLIER: Objection.

16 THE COURT: What's the foundation of the objection,
17 Counsel?

18 MR. COLLIER: Calls for speculation and lacks foundation.

19 THE COURT: He's asking him whether the felts lost weight
20 as they began to wear out as I understand it, he's asking this
21 witness for a direct observation. I don't understand how that
22 could possibly call for speculation, he's asking him for his
23 direct observation. You may answer the question, sir,
24 overruled.

25 A Yes, the felts would get thinner.

TESTIMONY OF FRED STEELE

1 Q Now, at some point in the process you would have to
2 remove the felt.

3 A Correct.

4 Q Now, in order to remove the felt could you again give
5 us a Reader's Digest version of how you do that process?

6 A Every felt, whichever felt it may be, that you were going
7 to take off, everyone knew at what position you had to place
8 that felt on the machine. What I'm saying is normally when we
9 took a felt off we would put the seam where the felt was coming
10 together, would seem together, we would put that at a certain
11 place in the dryers right there, and then we would cut that
12 seam out it, we would cut out the seam. The seam itself was
13 maybe the width of my finger here, but we would cut out maybe
14 12 inches on each side of the actual seam and save that, and
15 then we could begin to process of bumping the machine over and
16 threading that felt down through a particular gap, because it
17 was a certain place we had to put it down to a certain gap
18 where it would fall directly -- not on top of another felt but
19 fall directly into the basement.

20 Q And the basement was where all felts go to die.

21 A That's correct.

22 Q Now, the cutting process that you just referenced, can
23 you describe what you cut with?

24 A We cut it with what we call a Stanley knife.

25 Q Now, when you came to the courthouse today, did you

TESTIMONY OF FRED STEELE

1 bring one of those Stanley knives with you?

2 A I did.

3 Q And you showed it to the bailiff and the sheriff,
4 right?

5 A I did.

6 Q All right.

7 MR. GRAHAM: And Ms. Clerk, do you have that? Your Honor,
8 may I approach?

9 THE COURT: You may.

10 Q Mr. Steele, would you unwrap that for me, please? Will
11 you show that to the jury, please?

12 A (Witness complies.)

13 Q What is that?

14 A We call it a Stanley knife or a paper knife, either of
15 those were names for it, Stanley being the name of the knife,
16 paper being a paper knife that we used, everybody used it.

17 Q Now, that particular knife that you're holding in your
18 hand, did you buy that knife?

19 A I did not.

20 Q Where did that knife come from?

21 A This knife came from Bowater.

22 Q And did you use that on your job?

23 A In all likelihood I used this very knife when I was at
24 work at some point in time.

25 Q And what would you do with that type knife, and how

TESTIMONY OF FRED STEELE

1 would that knife interact with the paper felt that you
2 talked about when you were removing it? What would happen?

3 A Well, they would take this knife, and after we got the
4 seam of the felt in the position that it needed to be in, then
5 we would take this knife and just cut the bottom of it off and
6 then cut the top and -- cut that seam out with a knife just
7 like this.

8 Q When you cut along the felt, did that action of cutting
9 release dust from the felt?

10 A Oh, if you went across as you were cutting, if you were
11 really observant you could see -- as you went across you could
12 see that you disturbed whatever it was in the felt right there
13 as you went across it right there, dust would be a good name
14 for it I suppose, or --

15 Q Well, what did you call it?

16 A What did I call it?

17 Q What would you refer to it on the job?

18 A Build-up, just called it build-up.

19 Q Okay. And does this have a blade in it?

20 A Yes.

21 Q Okay. But the blade is not so you could push it out,
22 right? It's just --

23 A That's right, it's just like this.

24 Q So it's safe to carry around as it is right now.

25 A For right now. Everybody then -- most everybody, the

TESTIMONY OF FRED STEELE

1 utility people, the fifth hand, fourth hand, third hands,
2 probably those people -- everybody had a -- most of us made
3 some kind of little make-shift pouch that we could carry around
4 on our belt because it was so -- we used it so often.

5 Q Well, how often would you use it?

6 A Depending on the job you were on. If you were a fifth
7 hand and a lot of times fourth hand you would use it a good
8 amount. You would go through X amount of blades. Depending
9 upon what was going on on a given day right there, it's
10 possible -- it would be possible at rare occasions to have to
11 cut up an entire felt. You're talking about -- cutting the
12 spool and everything you're probably talking about six foot,
13 six or eight foot in diameter.

14 Q Why would you need to cut up the felts in the first
15 place?

16 A Cutting the felt?

17 Q Yes, sir.

18 A Because once we took the felt off of the machine and they
19 all wound up in the basement then we would cut it up and we
20 would stretch it out and ever how long it would take, then we
21 would it cut it again into manageable strips to where we could
22 fold it up and place it on a pallet and then someone would get
23 a truck and carry it out to the dumpsters.

24 Q So you would just throw it in the dumpster, or someone
25 would, utility probably, carry it out to the dumpster and it

TESTIMONY OF FRED STEELE

1 would get carried off.

2 A That's correct.

3 Q Now, were there occasions where -- you can just set
4 that up there. Now, were there occasions to where the felts
5 that you took off and they look like they still had some use
6 were recycled?

7 A Were they recycled?

8 Q Were they used for other purposes in the plant? Let me
9 ask it another way, were any other workers allowed to use
10 any of the felts that were taken off for any other purposes?

11 A There would be times where you would take a portion of a
12 felt that had been removed from the machine and you might take
13 that -- you may have a steam leak there at a joint and steam
14 blowing out and you might take that felt right there and wrap
15 it around that steam joint to where it could not blow out where
16 you didn't want it. And you may have a place where there is a
17 line or a valve or a pump that would need -- maybe the packing
18 is worn out and it would be what we call spewing out what we
19 call stock, and you would take that piece of that felt maybe
20 and cover that up to where it wouldn't spew out everywhere and
21 try and contain it and then you could very well put a water
22 hose right there and let it run continuously and wash that
23 right down the drain.

24 Q Mr. Steele, we talked about the blowing off process, we
25 talked about disposing of the felt and we talked about

TESTIMONY OF FRED STEELE

1 blowing down and so on and cutting it up. When you -- one
2 more thing about the cutting up, when you cut it up did you
3 grab it by your hand and cut it?

4 A Yes.

5 Q And so that was an entirely manual process?

6 A Yes.

7 Q And to cut up a felt, would that be a one man job, two
8 man job or --

9 A Well, it was usually at least, at least a two man job, and
10 depending on how much help you had at a given time if there
11 were at least two shifts of workers there then you might have
12 three, four or five people cutting it out and getting it out of
13 there quick. But other times the felt might lie there in the
14 basement until the machine got running and utility personnel
15 could get down there and stretch it out and cut it up into
16 manageable pieces.

17 Q When you say stretch it out, that's a two man job.

18 A Yes.

19 Q And you're manhandling the felt.

20 A Yes.

21 Q So take the felt off and let it go down in the
22 basement, that's where all felts go to die, and whenever you
23 get a chance you go down there and cut it up and it gets
24 disposed of.

25 A Yes.

TESTIMONY OF FRED STEELE

1 Q That's all a manual process.

2 A That's true.

3 Q I want to go back to the opposite end of the spectrum.

4 I want to go to the beginning when you put a felt on. I

5 understood and you explained to the jury there were these

6 drums and basically you're trying to weave the felt through

7 the machine so it can get going again.

8 A Correct.

9 Q Okay. At some point you have to join one end of the
10 felt to the other end of the felt.

11 A Correct.

12 Q Okay. Can you tell the jury how that is done? Explain
13 that to the jury the way you had explained it to me.

14 A Okay. Each felt needed to be in a certain position on the
15 machine in order for you to put it together, what we call
16 seaming it together. If the particular felt was a top dryer
17 felt then you would have to get out -- once you got the two
18 ends close enough together where you could begin the seaming
19 process then the new felt itself would have to be held in place
20 by either leaning against the felt and pressing it against a
21 particular dryer can and you would -- most of the time we would
22 position someone on top of the felt right there to keep it from
23 sliding backwards you would have to put and those people -- you
24 would actually be sitting and/or leaning against a new felt
25 while others of us would be putting the seam together.

TESTIMONY OF FRED STEELE

1 Q Okay. Just so I can create a visual, if this table
2 represents a can that you referred to, you're on one end and
3 I'm on the other, this can is a big drum.

4 A Yes.

5 Q And the felt and the paper run over that, dries it out
6 and so on, I have to lean over on the can and you have to
7 hold it in place and then the connection is made.

8 A It would take X number of people to keep the two ends
9 together in order for you to push the thread so to speak
10 through the loops that held it together, it would take
11 everybody you had to do that.

12 Q All right, sir. Now, are you wearing work clothes when
13 you're doing this?

14 A Just your regular clothes.

15 Q All right. So you've got a shirt on, T-shirt,
16 something like what Steve was wearing in this? Is this sort
17 of common?

18 A Yes.

19 Q So he's wearing jeans and a T-shirt.

20 A Yes.

21 Q Would that have been -- some of these other guys look
22 like they have a white shirt and jeans, is that a fair
23 statement?

24 A Yeah, that's true.

25 Q And would the application of the felt, the stitching of

TESTIMONY OF FRED STEELE

1 the felt to close it in order for it to be able to run the
2 loop, would that cause there to be dust from the felt on
3 your clothes?

4 A You would have -- yeah. You would have -- we call it
5 lint, whatever, yeah. You could have -- when you finally got
6 the job completed and you came down out of the dryers, then
7 yeah, you would have -- you could have had visible what we call
8 it, we call it lint on your clothes, yeah.

9 Q So y'all called it lint.

10 A We called it lint.

11 Q Okay. And at the end of the day before you got in your
12 car would you blow off?

13 A In a situation like that, yes, you would probably have
14 blown yourself off with the air hose out there.

15 Q And did other fellows on your crew, did you turn around
16 and blow -- did they blow your back off?

17 A Yeah.

18 Q So you would blow each other --

19 A We would blow each other off, yeah.

20 Q This stitching process, just to wrap this up, how long
21 would that process take, this is 220 inches, are you doing
22 the stitch manually?

23 A You're doing it manually.

24 Q Okay. What are you using to stick it together? Is it
25 wire, is it a piece of rope, what is it?

TESTIMONY OF FRED STEELE

1 A Well, to get the -- once you got the two ends together the
2 seam -- and you began what they called seaming process on that
3 you would have a wire liter that would be as long as the felt
4 is wide.

5 Q Okay.

6 A And you would start -- you would position the loops on
7 the -- the two looped together if you can imagine like so and
8 make sure that you had pulled them tight together in order to
9 push that wire through there. Some felts the loops for
10 whatever reason you wouldn't -- it could take a long time
11 because you did not want -- you did not want to have what we
12 call doubles in there, you wanted each loop to be, I don't know
13 how you say this, independent like so. You didn't really want
14 to have two together because if you've got a bunch of loops
15 together right there that could cause the felt to pucker, you
16 would have a pucker right there and it could cause it to wear
17 out quicker than it normally would, so you had to be very, very
18 careful to make sure that you got -- you didn't have doubles in
19 there. That made sense, I hope.

20 Q Yes, sir, I think we understand. Now, Mr. Steele, I
21 want to ask you a question, listen to me very carefully
22 here, at anytime did you ever see either in print or any
23 other fashion a warning on the felt, on the box that the
24 felt came in or any other thing having to do with the felt,
25 a warning?

TESTIMONY OF FRED STEELE

- 1 A No, nothing.
- 2 Q The felts came in wooden boxes; is that correct?
- 3 A Correct.
- 4 Q And the box -- would the box be stored in another part
5 of the plant from where we're referring to here in the paper
6 machine?
- 7 A The felt boxes would be normally stored down in the
8 basement area right there.
- 9 Q Where the felts go to die.
- 10 A Yeah, right outside of that place in the building.
- 11 Q Okay. So is it your testimony here today there was no
12 stenciled warning on the box?
- 13 A Correct.
- 14 Q There was nothing inside the box.
- 15 A Correct.
- 16 Q There was nothing -- no warning on the felt itself.
- 17 A Correct.
- 18 Q Did the felt have a wrapping to protect it in shipping?
- 19 A The best I can remember none of the felt would have been
20 inside of a wrapping or bag or whatnot.
- 21 Q I know it's been a number of years.
- 22 A To be perfectly honest I don't think they had a wrapping
23 around it I don't think.
- 24 Q So is it your testimony here today, Mr. Steele, that
25 you never saw a warning about anything on a SCAPA dryer

TESTIMONY OF FRED STEELE

1 felt?

2 A I never saw any kind of warning in any way, shape, form or
3 fashion.

4 Q And no one ever told you.

5 A No one ever mentioned it.

6 Q Now, let me ask you this, Mr. Steele, when did you
7 learn that SCAPA dryer felts contained asbestos?

8 A I don't know exactly.

9 Q I'm sorry, sir?

10 A I don't know exactly when I became aware of that, I
11 can't --

12 Q At some point did you become aware?

13 A At some time, yes, but I can't pinpoint a particular time.

14 Q Okay. Now, all of the jobs that you described; the
15 cutting, the removal, putting on the felt on the machine and
16 taking off of the felt off the machine, the sending the
17 dryer felt down in the basement, putting the felt on, did
18 Steve Stewart do all of those jobs?

19 A Every one of them.

20 Q And did he do those jobs in the same fashion in which
21 you described?

22 A Yes.

23 Q And did the interaction of the crews, were they always
24 typically the same?

25 A Basically, yes.

TESTIMONY OF FRED STEELE

1 Q So shift to shift the work didn't vary that much, or
2 did it?

3 A Very little if any at all.

4 Q All right, sir. Now, one of the things that you
5 testified to -- and I'm about to wrap it up -- one of the
6 things you testified to is you would cut the felts up and
7 sometimes you would use them for those leaks that you talked
8 about.

9 A Yes.

10 Q Did some of the fellows take some of the felt home with
11 them?

12 A Some people did.

13 Q What did they do that for?

14 MR. COLLIER: Objection, Your Honor, calls for
15 speculation.

16 MR. GRAHAM: I can rephrase, Your Honor.

17 THE COURT: All right.

18 Q Mr. Steele, did some of the fellows take the felts
19 home, parts of the felts that they had cut up, did they take
20 them home with them?

21 A Yeah. Some people would get a permit to get a piece of
22 felt, yeah.

23 Q Why did they do that?

24 A Well, some people would use that -- some people would have
25 a camper.

TESTIMONY OF FRED STEELE

1 Q I'm sorry, a camper?

2 A A camper, and they would get a large piece of this felt
3 and lie it down at the door of their camper that would go in
4 and out of their camper or something like that. Other people
5 would take it and cut it up into strips and place it in their
6 gardens for weed barriers, in the middle their garden rows as a
7 type of weed barrier. I don't know, other people might would
8 take some and place it if they had a barn or whatnot or an
9 outbuilding or whatnot as kind of a curtain, windshield type of
10 thing, or something of that nature.

11 Q Did you know whether Steve Stewart took any home or
12 not?

13 A I can't imagine Steven having taken any. I know where he
14 lived, I can't imagine he would have taken any.

15 Q Okay. And when you were transferred to the number two
16 paper machine on occasion you said you had testified you
17 would see Steve.

18 A It was awhile.

19 Q And when did you learn that Mr. Stewart was sick with
20 mesothelioma?

21 A Gosh --

22 Q Or how did you learn?

23 A I think -- well -- and I don't know when so far as year or
24 time or whatnot, but I think I learned about Steve had a
25 problem from one of our guys -- the first Tuesday of every

TESTIMONY OF FRED STEELE

1 month a few of us would meet at this place and have breakfast
2 and sometimes someone at a meeting like that made mention that
3 Steve had a problem, but to tell you exactly who may have said
4 that or when that may have been said I really don't know off
5 the top of my head. But that's --

6 Q Is this one of these breakfast meetings you might have
7 at Hardee's where fellows get together and solve all the
8 world's problems?

9 A Yeah.

10 Q And somebody just said --

11 A Somebody somehow or another had found out.

12 MR. COLLIER: Objection, Your Honor.

13 A I don't know who it may been or when it may have been.

14 Q You're not testifying here today to what they said, you
15 just learned it some way.

16 A That's the way I learned it.

17 THE COURT: I'll admit that.

18 Q Mr. Steele, was there a point in which you went to
19 visit Mr. Stewart?

20 A Yes.

21 Q Can you tell us about that visit and why you went?

22 A Well, Steve and I worked together for approximately ten
23 years side by side, day in and day out, and we worked -- that
24 was when he would be third hand and I would be fourth hand,
25 that was during that time and there were probably -- we worked

TESTIMONY OF FRED STEELE

1 together longer than that when he and I was -- we probably
2 worked there altogether, oh goodness, 12 or 14 years total,
3 that's a guess. And when I found out that Steve had this
4 problem, that he was having a problem, I just went to see him,
5 he didn't live that far from me and I went to see him to see
6 how he was doing and I visited with him I don't know how many
7 times in that process.

8 Q While he was sick?

9 A Yes.

10 Q How did he look when you first saw him?

11 A Well, the first time I saw him he didn't look all --
12 initially he didn't look all that bad, but then he began to --
13 from visit to visit to visit you could obviously tell that
14 things were not going well with him.

15 Q Would you talk about old times?

16 A Oh yeah.

17 Q Can you tell us about the last time you saw Steve?

18 A The last time I saw Steve -- the last time that I saw him
19 he was not having a good day. For one thing he'd lost X amount
20 of weight, he wasn't breathing very well, he was sitting in his
21 lounge chair wrapped up in a blanket and he said that he hadn't
22 been eating hardly anything.

23 MR. COLLIER: Objection, Your Honor, hearsay.

24 THE COURT: I'll allow it.

25 A And so we talked for awhile. We talked about some --

TESTIMONY OF FRED STEELE

1 well, we had had more than one conversations as to -- I don't
2 want to say -- we had one or more conversations so far as to
3 where he was going after this.

4 MR. COLLIER: Objection, Your Honor, hearsay.

5 THE COURT: All right, sir, I'll allow it.

6 A We had a couple of conversations along that line. But the
7 last days I saw him I can't remember whether we touched on that
8 or not, but all I remember is saying -- because I had -- Steve
9 was not doing well as I said and I was going to have to go out
10 of town, we had plans to go out of town, I don't remember what
11 day of the week that was, and I told Steve as we were talking I
12 said I had to go out of town and I told him, I said, "Steve, I
13 probably won't see you again," and --

14 Q What did he say to you?

15 MR. COLLIER: Objection, Your Honor, hearsay.

16 A He said -- I think Steve may have said "We'll see one
17 another again."

18 MR. GRAHAM: Thank you, sir.

19 THE COURT: All right. It's now time for cross
20 examination of Mr. Steele. And Mr. Steele, can you be with us
21 after the lunch break? We've got a few issues that the lawyers
22 need to go discuss before we continue with your cross
23 examination, can you hang on with us for a little bit?

24 THE WITNESS: Yes.

25 THE COURT: Very good. All right. Ladies and gentlemen

TESTIMONY OF FRED STEELE

1 of the jury, I'm going to let you go to lunch early, it is
2 12:04, be back at 1:20.

3 (The jury left the courtroom.)

4 THE COURT: Mr. Steele, you can come down from the witness
5 box, don't discuss your testimony with anybody while we're
6 taking a lunch break, please, sir. Lawyers, is this the
7 appropriate moment to talk about what we're going to say about
8 the empty chair and --

9 MR. EARLY: Once Mr. Steele exits the courtroom I think it
10 would be appropriate, Your Honor.

11 MR. JEKEL: Your Honor, may I take a minute to refresh
12 myself?

13 MR. GRAHAM: May I have the photo -- we will make it
14 obviously smaller, can I have that admitted as an exhibit?

15 THE COURT: Without objection the photo?

16 MR. COLLIER: I don't have any objection.

17 THE COURT: Without objection.

18 MR. GRAHAM: Exhibit Number 31.

19 (Break in proceedings.)

20 THE COURT: Just to set the stage, we have had some other
21 witnesses, in particular Mr. Hegler, that occasioned an inquiry
22 by the jury that, at least it seemed to me, might be curiosity
23 on their part about why other companies are being discussed in
24 terms of felt manufacturers, all of the companies that were
25 discussed as best I can tell are either dismissed or settling

TESTIMONY OF FRED STEELE

1 defendants. I have looked back at Hegler's testimony and every
2 one of the companies was named as a defendant in these
3 proceedings to begin with and then dismissed either because the
4 parties decided they had no liability or dismissed because they
5 settled, and so those are in the category of entities that were
6 defendants and then were taken out of the suit, they can't be
7 taken on the verdict form. And the question is how do you
8 square the prohibitions of Smith versus Tiffany? Because not
9 only can they not be put on the verdict form, you cannot ask
10 the jury to apportion any responsibility between them and the
11 defendants that are left in the suit, nor can you with empty
12 chair defendants who never were defendants in the suit -- empty
13 chair potential tortfeasors is what the statute says, you can't
14 ask the jury to make any determination about percent
15 responsibility based on their, the potential tortfeasors,
16 responsibility. As I understand what Smith versus Tiffany
17 says, it says that -- and it's interpreting the contribution
18 statute in part when it discusses this, it says that they can
19 be considered as empty chairs in connection with any defense
20 that defendant has that would attack the plaintiff's proof of
21 the case, the plaintiff's ability to meet its burden of proof,
22 and its burden of proof that the defendant that is remaining in
23 the case by its conduct is responsible for an injury which
24 caused damages. So that's what I've been wrestling with is how
25 to allocate those responsibilities. And I've looked back in my

TESTIMONY OF FRED STEELE

1 charge in Jolly and I don't know in light of what's been said
2 here whether I have done as complete of a job as I might do in
3 this case but we'll talk about charges later, the question is
4 how much can Mr. Steele be questioned about these other felt
5 manufacturers, and I think that's what it boils down to, or
6 other defendants who made thermal insulation or the like. Now,
7 I really can't remember who the moving party is, but what I'm
8 going to do -- the person who advocates for allowing this is
9 the defendant and so I'm going to turn first to Mr. Early and
10 ask him to present for the defendant on this issue.

11 MR. EARLY: Thank you, Your Honor. First of all this was
12 our motion initially, it was a pretrial motion in limine, and
13 then it was postured as a motion to admit the bankruptcy trust
14 funds. We have gone down that road, Your Honor has ruled and I
15 understand that, we respectfully disagree with that. You made
16 your ruling under Smith versus Tiffany and I told you then I'm
17 pretty familiar with that case because my firm was involved in
18 it. In Smith versus Tiffany Mizzell settled the case, and what
19 Justice Kittredge and his colleagues decided was that the
20 viable defendant in the lawsuit could not third party Mr.
21 Mizzell in and they couldn't put him on the verdict form, and
22 we understand that. But what they did say is is they made it
23 clear that the empty chair is alive and well, and in that case
24 in the context Mr. Mizzell was a settling party just like
25 Albany, just like Asten, several -- only dryer felt defendants,

TESTIMONY OF FRED STEELE

1 Your Honor, but throughout the list. So if you look at the
2 logic of Justice Kittredge and what he was dealing with in
3 Smith versus Tiffany you've got a very similar scenario. We've
4 got a settling defendant and we want to use them as the empty
5 chair, and I think Your Honor ruled that way at the motion in
6 limine. You said we couldn't put in the bankruptcy trust but
7 we could prove up evidence against those defendants, and they
8 were defendants, and we have the testimony of Mr. Hegler who
9 came in without objection as to those other defendants, Mr.
10 Jekel did not object to that, we did that. We've got sales
11 records, we've got other things to prove that these folks were
12 there. You just heard a witness testify only about SCAPA, and
13 if the jury hears that they will only think SCAPA was there and
14 that's not fair to us because there was a wealth of other
15 asbestos manufacturers at this facility where he was exposed
16 to. So that is the empty chair as I see it, Your Honor, and if
17 we're hamstrung and not allowed to do that then I think it's --
18 I don't know how we defend this case on proximate cause. If
19 you will just gave me one second.

20 (Break in proceedings.)

21 MR. EARLY: Apparently they also said in their opening
22 that SCAPA was the only dryer felt defendant, so we're
23 certainly wanting to attack their theory of the case. We have
24 records to show we were a very minor player in the overall
25 dryer felt family at Bowater. I think it was only -- the

TESTIMONY OF FRED STEELE

1 entire time he was there you're only going to hear there were
2 20 something asbestos felts, 23 asbestos felts during his
3 entire time. There were 60 something SCAPA felts -- 600
4 something felts total if you do the math, but 20 something of
5 those were asbestos containing felts somewhere at Bowater that
6 SCAPA provided. So Your Honor, I think it's -- not only is it
7 an empty chair -- it's a classic empty chair argument, because
8 just like in Smith versus Tiffany Justice Kittredge said
9 Mizzell is the settling party. And here we have settling
10 parties, defendants that were named, we have sales invoices, we
11 have Mr. Hegler who testified about all of these things,
12 presumably if we're allowed to cross examine Mr. Steele he will
13 also say that Mr. Stewart worked with and around other
14 products, some which were defendants in the case, some of which
15 may not have been defendants in the case.

16 THE COURT: And the defense that you are -- an empty chair
17 is the ability to support a defense to the actions by showing
18 that plaintiff has failed to meet its burden of proof. Now
19 specifically, how does that work in this context for you in
20 terms of introducing the other information about the other felt
21 manufacturers?

22 MR. EARLY: Well, not just the other felt manufacturers,
23 Your Honor, but the totality of everything --

24 THE COURT: We'll get to that, but --

25 MR. EARLY: Just the felt manufacturers, we'll do that

TESTIMONY OF FRED STEELE

1 first. So if my math is correct, and I think it is, it's
2 somewhere between 600ish felts from the total time he was there
3 if you do the math, we had 20 something of them. They have to
4 prove legal causation, factual causation, of which one is but
5 for SCAPA being there he would have still gotten mesothelioma,
6 and I think that helps us disprove their causation that they're
7 required to prove under strict liability, negligence and
8 implied warranty and in the regular --

9 MR. JEKEL: Your Honor, I thought we were operating under
10 a substantial factor causation which we've already established
11 with the dryer felts in Dr. Franks' testimony, but I want to
12 back up a little bit. Smith makes clear that a company like
13 SCAPA who has been in the litigation from the beginning and
14 sees Albany drop out, sees Asten drop out, sees Lockwood, the
15 purpose of the Joint Contribution Act was to let SCAPA know if
16 you want to draw the line in the sand, you want to come in here
17 and make Mr. Stewart prove that your product is defective
18 you're not going to get the benefit of other parties that
19 settled, they knew that coming in here that the purpose of the
20 Contribution Act was to promote settlement and not create a
21 situation where settling parties were getting on verdict forms
22 and may have a contribution there.

23 THE COURT: Let me stop you right there. Certainly the
24 Contribution Act would not allow them to put forward the names
25 of all of these other defendants as potential liable parties,

TESTIMONY OF FRED STEELE

1 because what the Contribution Act says is you don't get the
2 benefit of that. If you're a known settling party the jury is
3 going to be asked in the end under instructions to say do you
4 find that -- and I think substantial factor is the test under
5 Lauren that the use of the SCAPA products was a substantial
6 factor in Mr. Stewart's development of mesothelioma, and if you
7 render a verdict for plaintiff then you will be asked to decide
8 the percentage responsibilities of plaintiff and defendant only
9 and you will assign a percentage to each and that is how you
10 will do that, but you cannot assign a percentage of the
11 responsibility to any of these other felt manufacturers or
12 thermal manufacturers or anybody else. That's not what Mr.
13 Early was saying -- now, y'all either talk to each other or Mr.
14 Early is going to --

15 MR. EARLY: I'm sorry, Your Honor, I'm trying --

16 THE COURT: That's on your co-counsel, he needs to let you
17 -- wait a minute, Mr. Jekel, I'm turning to Mr. Early now.
18 What Mr. Early is saying is not that he's asking for the jury
19 to let SCAPA out on the basis, yeah, they may have put some
20 asbestos in the air but their percentage of responsibility is
21 very low, they can't do that. Because in the final analysis
22 all the jury is going to be allowed to do is decide the
23 percentages between the defendants left in the case and the
24 plaintiff. But he's saying that he wants to have the benefit
25 of being able to argue to the jury that the others were the

TESTIMONY OF FRED STEELE

1 cause and not SCAPA, and he's got a tough uphill road perhaps
2 for that because of the testimony of your experts say a little
3 bit is enough, but he's going to have experts that go through
4 all of this thing and say chrysotile is just like sugar, it's
5 wonderful, it's no problem until all of the rest of these
6 things are terrible and that's what really causes mesothelioma,
7 and the jury will have to decide which experts they want to
8 rely on. And then they will have to decide whether under the
9 instructions that SCAPA has to be a substantial factor in light
10 of all of these other things that were going on SCAPA is a
11 substantial factor, if so it doesn't matter whether they're the
12 only factor or one of many, it's going to be a contest between
13 them and plaintiff about the burden. But what Mr. Early is
14 saying is in order to make the determination of whether you
15 have proved your case, which is showing that SCAPA was a
16 substantial factor in causing Mr. Stewart to develop
17 mesothelioma, in that context they get to talk about all of
18 these other companies. Am I right about that, Mr. Early?

19 MR. EARLY: That is correct, Your Honor, and to combat the
20 assertion that they've already made that we were the only dryer
21 manufacturer there.

22 MR. JEKEL: I never said that, Your Honor.

23 THE COURT: I didn't hear that so I'm taking that off the
24 table, that's kind of urban legend in my view, we can go back
25 and look at that and check and see.

TESTIMONY OF FRED STEELE

1 MR. EARLY: If Fritz says he didn't say it I will take his
2 word on it.

3 THE COURT: I did not think that was said, I believe I
4 would have picked up on that, but we'll check that because that
5 should be corrected if it was said. I don't think you're
6 combating you are the only, I think what you are trying to do
7 is to combat substantial factors, and you're going to say we
8 were just such a little bitty part of it, we were not a
9 substantial factor and then the jury is going to have to decide
10 whether they believe the plaintiff's experts that a little bit
11 is a substantial factor or it has to be a lot to be a
12 substantial factor.

13 MR. JEKEL: And, Your Honor, I'm not sure that I disagree
14 with counsel but I don't know that manufacturer's names have to
15 be used, but I do think it's fair for him to say were there
16 other asbestos dryer felt manufacturers there, I think that's
17 the way they do it. They've got the problem is they're going
18 to come in and says chrysotile doesn't cause it and then
19 they're going to have to prove --

20 THE COURT: They're going to say -- all of the defendants
21 are going to say that.

22 MR. JEKEL: And they'll have to deal with that. If they
23 want to ask them if there were other manufacturers there I
24 think that's appropriate.

25 THE COURT: Well, they can ask about other manufacturers

TESTIMONY OF FRED STEELE

1 then what's the problem about listening -- what he's wanting to
2 ask Mr. Steele, who was a worker there, is what all names did
3 he see on the boxes, that's essentially what they're wanting to
4 ask. And what I'm saying is under the proper instructions
5 what's wrong with that?

6 MR. EARLY: I don't think anything is wrong with it, Your
7 Honor. I don't think Justice Kittredge said the other driver.
8 If he would have said Mr. Mizzell in that case, obviously it
9 was one person then, but he talked about parts, he talked
10 valves, and there's been thermal insulation talked about. This
11 is not --

12 THE COURT: I have a little more heartburn about your
13 thermal insulation and I will tell you why, we have
14 no quantification of that whatsoever nor any manufacturers
15 mentioned or anything else, and I don't know whether you're
16 talking about people that were defendants in this action or
17 not, I don't think there were any defendants in this action
18 that were thermal manufacturers but I could be wrong. Am I
19 wrong or right on that?

20 MR. GRAHAM: You are correct, Your Honor.

21 MR. EARLY: You're right about it but I will have a lot of
22 information about that, that's coming. We'll have a lot of
23 from DHEC about thermal insulation, you will see a lot of that.

24 THE COURT: In this claim.

25 MR. EARLY: In this case, in this plant, in this --

TESTIMONY OF FRED STEELE

1 THE COURT: Okay. Very good. Well then what I'm simply
2 going to say is this, just act with care about this issue.
3 What I'm trying to do is avoid -- we are in uncharted
4 territory. The South Carolina Supreme Court made these
5 decisions and there's been no interpretation since that time
6 and I'm just trying to steer between the rocks --

7 MR. EARLY: Your Honor, I'm not trying to go afoul of
8 anything, all I'm trying to do is, you know, a valid defense
9 that we're trying to set forth --

10 THE COURT: Their defense is all wrapped around the Morgan
11 Standard or the Henderson Standard of practice. They want to
12 show that when you put all of these other sources of asbestos
13 in there, if there's just a little tiny, tiny bit and y'all are
14 going to say a tiny bit is enough, that's essentially what
15 we've got going here.

16 MR. EARLY: That is for the negligent cause of action,
17 Your Honor.

18 THE COURT: Well, for other causes of actions there's an
19 even uphill road to climb, you're talking about strict
20 liability and things of that nature, we don't need that for
21 Steele.

22 MR. JEKEL: It caught my attention, it sounded like they
23 wanted to introduce documents from these other manufacturers..

24 THE COURT: I don't think that's what we'll do with Steele
25 but we'll cross that bridge when it comes to it.

TESTIMONY OF FRED STEELE

1 MR. EARLY: I don't know, I haven't chatted with my
2 colleague who is going to talk with Mr. Steele in a minute.
3 But we do have -- you've seen their records in evidence now
4 about our Mastercards, I don't know what the other guys call
5 them but we have similar records from Bowater showing all of
6 these other felts on paper machine --

7 THE COURT: Sure. I would bet that in your case those are
8 going to come in, and so far I'm not going to rule those out,
9 Mr. Early, I think that's legit again given the instruction
10 that is going to be given. So are we peaceful now about this
11 issue?

12 MR. EARLY: We're always peaceful, Your Honor.

13 THE COURT: I appreciate y'all putting up with me about
14 this, this is a tough issue, I have talked with all of my
15 colleagues on the circuit bench and we're all scratching our
16 heads about how to handle this.

17 MR. EARLY: I talked with one last night too, Your Honor.

18 THE COURT: I bet you did.

19 MR. JEKEL: All I would say is that SCAPA when they drew
20 the line in the sand, Your Honor, they knew all this and that's
21 why I think that the Smith ruling said none of this comes in.

22 THE COURT: Oh, they've drawn the line in the sand with
23 what they are rolling the dice with, it's going to be them and
24 the plaintiff and the percentage is going to be assigned
25 between two of them, it's not going to be assigned to all of

TESTIMONY OF FRED STEELE

1 these other people but it's going to be based on substantial
2 factors, and it's going to be you either win or lose, it's not
3 going to be --

4 MR. JEKEL: Thumbs up, thumbs down.

5 THE COURT: Yes, thumbs up or thumbs down.

6 (A lunch break was taken.)

7 THE COURT: Mr. Steele will be back on the stand, so if
8 you would like to come forward, Mr. Steele.

9 (The jury returned to the courtroom.)

10 THE COURT: Welcome back for this afternoon's testimony,
11 members of the jury, we will now begin with the cross
12 examination of Mr. Steele. Mr. Collier?

13 MR. COLLIER: Thank you, Your Honor.

14 CROSS EXAMINATION

15 BY MR. COLLIER:

16 Q Mr. Steele, you worked as a utility in the coating and
17 finishing department from when you started in the middle of
18 July of '63 until about February of '66; is that correct?

19 A I think it was '65. I pretty sure I worked on the machine
20 in '65 I think.

21 Q And one of your jobs as a utility worker was help
22 unload the box cars and get supplies?

23 A Yes.

24 Q Did you ever unload any raw asbestos fiber that was
25 being used in the paper making process?

TESTIMONY OF FRED STEELE

1 A I don't recall unloading anything like that, no.

2 Q Sir, when you transferred to the number one paper
3 machine you worked as a utility for about a year?

4 A Approximately, yes.

5 Q And Mr. Stewart was already working as a utility on
6 that paper machine when you got there, correct?

7 A Steve went to work on the machine initially and I did not
8 go up there until afterwards right there, whether he was a
9 utility at the time that I transferred up on the machine at
10 that specific time I'm not sure, although I know he did start
11 off as a utility.

12 Q And as a utility most of the work, or a lot of the work
13 was in the basement, which was in and around the pipes and
14 the pumps and the other motors and equipment that ran the
15 paper machine, correct?

16 A That is correct.

17 Q And you mentioned earlier today, this morning I
18 believe, that one of the things that was stored in the
19 basement was the dryer felts, correct?

20 A That's correct.

21 Q And in addition to SCAPA you recall there being
22 Lockport and Albany and Aspen and Mount Vernon dryer felts
23 down there.

24 A Yes.

25 Q And Mount Vernon was a big supplier of the mill,

TESTIMONY OF FRED STEELE

1 correct?

2 A They were a supplier, whether they were bigger than one of
3 other ones I do not know.

4 Q One of the main jobs of the utility worker was cleaning
5 up, correct?

6 A Correct.

7 Q You testified about being promoted to a fifth hand on
8 the paper machine, do you recall that?

9 A Yes.

10 Q And most of the work during normal operations, I think
11 is how you describe it, for a fifth hand was not directly on
12 the dryer section of the machine but it was on the reeler,
13 correct?

14 A It would be more of a dry end of the machine, yes.

15 Q And the reeler is on the very far end of the dry end of
16 the machine, correct?

17 A Yes.

18 Q Once you progressed in becoming a fourth hand on the
19 paper machine you weren't working directly with Mr. Stewart
20 at that point in time, were you?

21 A Yes, he and I were working side by side.

22 Q When you were a fourth hand and he was a third hand?

23 A Correct.

24 Q That was on the re-reeler that you told us about
25 earlier.

TESTIMONY OF FRED STEELE

- 1 A That's correct.
- 2 Q And that's even further down in the paper production
3 process, correct?
- 4 A Not really. We took the reels of paper off of the machine
5 and put with the re-reeler. If you're looking for a distance,
6 from the time we would take it off the re-reeler would be from
7 where I am to approximately middle ways of that -- those seats
8 right there approximately, where we would sit that real on to
9 the re-realer.
- 10 Q So that would be with 50 feet or so from the last
11 section of dryers?
- 12 A Probably from the last section of dryers?
- 13 Q Yes, sir.
- 14 A The last section of dryers probably so, maybe roughly,
15 yeah.
- 16 Q And then when you moved into the third hand position
17 that's roughly when Mr. Stewart advanced to the back tender
18 position, correct?
- 19 A Correct.
- 20 Q And the main responsibility of a back tender was
21 building the reel of paper on the paper machine, correct?
- 22 A Correct.
- 23 Q And the back tender was responsible for supervising the
24 dry end of the paper machine.
- 25 A Correct.

TESTIMONY OF FRED STEELE

1 Q And then when you became a back tender, was that in
2 approximately 1982, the early 1980's?

3 A Thereabouts, yes.

4 Q And at that point in time Mr. Stewart advanced to the
5 machine tender position, correct?

6 A Correct.

7 Q And the machine tender position is on the wet end of
8 the paper machine, correct?

9 A That's correct.

10 Q Would you mind showing us on the diagram or the
11 photograph that's right there next to you where the wet end
12 of the paper machine is?

13 A From that point right there, which is the beginning of the
14 press section back we referred to it as the wet end.

15 Q Yes, sir, thank you. And so the wet end would be from
16 the head box at the very start from the press section that
17 pointed out on that diagram right there.

18 A That's normally the way we would refer to it, yes.

19 Q And there were no dryer felts being used on the wet end
20 of the paper machine.

21 A That's correct.

22 Q Mr. Steele, it's your understanding that Daniel
23 constructed and installed the number one paper machine,
24 correct?

25 A As I understand it, yes.

TESTIMONY OF FRED STEELE

1 Q And it's your understanding that they were in charge of
2 the piping that was installed on the number one paper
3 machine.

4 A So far as I know, yes.

5 Q And they were in charge of the insulation that was
6 installed on the piping on the number one paper machine?

7 A So far as I know.

8 Q No one from Daniel has ever provided you with any
9 warnings about any hazards associated with any asbestos
10 containing materials that they might have installed on the
11 number one paper machine, did they?

12 A No, they did not.

13 Q And no one from Daniels provided you with any
14 information concerning work that they might have been
15 performing with asbestos containing materials on the number
16 one paper machine.

17 MR. GRAHAM: Objection, Your Honor.

18 THE COURT: What's the objection?

19 MR. GRAHAM: Foundation.

20 THE COURT: Overruled.

21 Q And you frequently had to clean up construction debris
22 that was left by the Daniels folks who were working on or
23 around the number one paper machine particularly back when
24 you were a utility worker, correct?

25 A No, not really. Construction was over so we didn't -- all

TESTIMONY OF FRED STEELE

1 of that was taken care of.

2 Q And Daniels came in and performed a maintenance on the
3 paper machine at various points in time, right?

4 A They had what we referred to as a big Christmas shutdown
5 and they would bring in large numbers of people.

6 Q And the utility workers when they came back to start
7 their shift after those large shutdowns, if there was any
8 remaining debris from the work that Daniels was doing, the
9 utility workers would be the ones to clean that up, correct?

10 A Yes.

11 Q Sir, you would agree with me that the paper machine
12 room is a very hot, humid and wet environment, correct?

13 A Yes.

14 Q And paper making is a very water intensive process.

15 A Very much.

16 Q Paper machine number one, the one that's pictured
17 there, alone used more than three million gallons of water a
18 day, did it not?

19 A Yes.

20 Q And the wet end of the paper machine as you pointed out
21 to us earlier, that included the head box, fourdrinier and
22 the press section, correct?

23 A Yes.

24 Q And so when the stock that you talked about a little
25 bit earlier today was coming out of the head box and onto

TESTIMONY OF FRED STEELE

1 the fourdrinier of the wire, it was about 97 percent water
2 and about three percent stock.

3 A It was closer to 99 percent of -- a head box consistency
4 usually ran maybe .6 or in that general range. I done forgot
5 exactly what it would be, but it would be closer to that.

6 Q Closer to 99 percent water?

7 A Yeah.

8 Q And additives like alum and dye and clay and retention
9 aids and titanium were added to the paper stock before it
10 came out of the head box, correct?

11 A There were a lot of additives to it. Some of the
12 things -- most of the things you mentioned right there would be
13 some, I'm not sure about the titanium at that point, I'm not
14 real sure about that.

15 Q But you would agree that alum and clay and other
16 retention aides were added to the stock before it came out
17 on the paper machine.

18 A Yes.

19 Q And those materials were then transported in some form
20 or fashion along the length of the paper machine to form the
21 end sheet of paper, correct?

22 A Correct.

23 Q And the paper machine, I believe you testified this
24 morning it was running at roughly 2,500 feet per minute?

25 A During the time that I was there probably that would be

TESTIMONY OF FRED STEELE

1 about the speed that we would be running at that time.

2 Q And when you're saying at that time, are you referring
3 to the --

4 A The time that I was there. I left in I believe it was
5 January of '86 and we -- I don't know exactly but we were
6 probably running in the neighborhood of 2,500 feet per minute
7 speed range.

8 Q That's pretty fast, right?

9 A For that machine, yeah.

10 Q And so after the pulp and water mixture leaves the head
11 box, the objective is to take the water out of the sheet of
12 paper, correct?

13 A Correct.

14 Q And I think you testified to this this morning that
15 even when that paper sheet leaves the wet end, leaves the
16 press section of the paper machine and goes into the dryers
17 it still has about 60 percent moisture content, correct?

18 A That's what I said, that could not be totally accurate.
19 That's been a long time and I don't remember the exact -- it
20 calculated moisture content as they entered the dryer section
21 right there but I think -- that's the number that come to my
22 mind.

23 Q It's still an extremely water intensive process at that
24 point.

25 A Very much.

TESTIMONY OF FRED STEELE

1 Q The entire dryer section of the paper machine,
2 machine number one, was enclosed by a hood, correct?

3 A Correct.

4 Q Would you mind showing on that photograph next to you
5 where the hood is just so the jurors can see it?

6 A Can I stand up? From where I'm pointing that would be the
7 beginning of the dryer section.

8 Q And so what it looks like is essentially a shoebox that
9 covers the dryers of the paper machine, correct?

10 A That's one way to put it, yes.

11 Q And the hood had doors that came down to the operating
12 floor level that could be open and closed like a garage
13 door.

14 A Correct.

15 Q And in the picture there that's next to you, the hood
16 doors are actually all open or raised, correct?

17 A Correct.

18 Q And there were doors on both the front side of the
19 paper machine, which is what we see there in that
20 photograph, and on the back side of the paper machine,
21 correct?

22 A The back side did not go up and down like that, they were
23 on the slides, but they could be opened.

24 Q So the doors on the front side of the paper machine
25 look more like a garage door and the doors on the back side

TESTIMONY OF FRED STEELE

1 of the paper machine look more like a sliding glass door
2 that you would have at your house.

3 A Yes.

4 Q And when the paper machine was running and paper
5 operations were going on the doors would generally be in the
6 closed position, correct?

7 A Yes, front and back.

8 Q There were four dryer sections on the number one paper
9 machine.

10 A Correct.

11 Q And each dryer section had a number of these dryer cans
12 that you were asked about during direct examination.

13 A Correct.

14 Q There were 50 or more of those dryer cans on the number
15 one paper machine, were there not?

16 A Yes. I forgot exactly, I used to remember how many there
17 were but I can't remember exactly what the number was now.

18 Q Dryer cans though were steam-heated to dry the paper.

19 A The first section, second section and the third section
20 were, and in the fourth section I think it was just the first
21 two I think it was that had steam in them.

22 Q But at least three of the sections of dryers had steam
23 heat coming into the dryer cans themselves.

24 A Yes.

25 Q And was there a power house on site or a boiler house

TESTIMONY OF FRED STEELE

1 on site that generated the steam that was used in those
2 cans?

3 A That's correct.

4 Q And there was a main pipeline that fed the steam from
5 the power house to the steam lines that ran to the back of
6 the paper machine.

7 A Correct.

8 Q And it's your recollection that it was about a quarter
9 of a mile from the power house to the paper machine,
10 correct?

11 A That would be close.

12 Q And there was -- that line, that steam line that came
13 from the power house to the paper machine room would have
14 been insulated to keep the steam hot, correct?

15 A Yes.

16 Q And there was a lot of pipe insulation that ran
17 throughout the mill, was there not?

18 A Correct.

19 Q And if Bowater has records that shows that there was
20 miles of asbestos containing thermal insulation removed from
21 the mill, that wouldn't surprise you at all, would it?

22 MR. GRAHAM: Objection.

23 A Could you repeat that please?

24 THE COURT: Let me find out what the objection was first,
25 Mr. Steele, thank you. What's the objection, Mr. Graham?

TESTIMONY OF FRED STEELE

1 MR. GRAHAM: Your Honor, we've gone from a lot to miles.
2 There's been no foundation that there was miles of anything.

3 THE COURT: Well, if he knows. But don't ask it one way
4 and then another right in the middle if you don't mind.
5 Counsel, don't confuse the witness by having asked him at lot
6 at one time and miles the other, just ask him one way or the
7 other. You can ask each question but don't squish it right in
8 the middle.

9 MR. COLLIER: I understand, and I changed to ask about the
10 records themselves so let me --

11 THE COURT: Well, he's not going to know about the records
12 at all, you're trying to get the records in by saying would it
13 surprise you. Just ask him what he knows about the miles of
14 pipe.

15 MR. COLLIER: Sure.

16 Q Mr. Steele, if you had to add up the total amount of
17 insulated pipe that was located out there at the Bowater
18 Mill, how would you measure that? Inches? Feet? Miles?

19 A In the beginning there were -- in the beginning most of
20 the steam line that I know about were probably wrapped with an
21 asbestos type covering so to speak, I can't tell you whether
22 they all were or not but some were.

23 Q Okay. Each of the dryer cans that we've talked about a
24 minute ago that was on the paper machine had an insulated
25 steam line running to it and an insulated condensate line

TESTIMONY OF FRED STEELE

1 running out of it, correct?

2 A Yes.

3 Q And you saw a damaged insulation on those steam lines
4 going into the dryer cans on a number of occasions, correct?

5 A I'll say that yes, I have seen that.

6 Q You also saw damaged insulation on the condensate lines
7 coming out of the paper machine.

8 A I have seen damaged insulation on the condensate lines,
9 yes.

10 Q And you've also seen steam leaks in both the pipes and
11 the joints that were attached to paper machine number one.

12 A I have.

13 Q Going back to something you testified to this morning,
14 generally there were eight dryer felts on the number one
15 paper machine, two on each section, correct?

16 A Correct.

17 Q And they would last on average about half a year give
18 or take?

19 A Average, probably. If you took all eight of them and
20 averaged them out that would probably be something like half a
21 year.

22 Q So in any given year there would be approximately 15 to
23 20 dryer felts that would have been used on paper machine
24 number one.

25 A I have no idea.

TESTIMONY OF FRED STEELE

1 Q The purpose of the dryer felts was to help transport
2 the paper through the dryers and also to remove the moisture
3 content from the paper sheet.

4 A Correct.

5 Q And all of these dryer felts were enclosed inside the
6 hood that you pointed out.

7 A Correct.

8 Q And inside of the hoods in these dryer sections it was
9 extremely hot and humid, correct?

10 A Yes.

11 Q And that was because of the amount of water that was
12 being used in the application of the steam heat to dry the
13 paper?

14 A Right.

15 Q And there were also ventilation fans, or I think
16 they've been described as man coolers that were located in
17 the front of the paper machine on the operating floor level?

18 A Correct.

19 Q Can you turn and see if there's one visible in that
20 photograph next to you, and if it is can you point it out to
21 the jury?

22 A I can't really see it well enough to see back behind there
23 so I don't know.

24 Q They were concentrated more so on the dry end of the
25 paper machine than the wet end of the paper machine?

TESTIMONY OF FRED STEELE

1 A The first one was located right where the first dryer
2 section began and there was the main cooler right there.

3 Q And so in that photograph there it's either -- it's
4 likely obstructed by something else that's in the foreground
5 of the picture?

6 A Yes. I can't see it from this position.

7 Q Okay. Those man coolers, they were huge fans, right?

8 A Yes.

9 Q And what they did was that they pulled cooler air up
10 from the basement to try and keep the operating floor at
11 some decent temperature.

12 A Yes.

13 Q And then there were also exhaust hoods in the roof and
14 the hood over paper machine number one during the timeframe
15 that you and Mr. Stewart worked there.

16 A Yes.

17 Q And you've seen the exhaust fans on the roof of the
18 number one paper machine?

19 A Yes.

20 Q And those were extremely large fans.

21 A Yes.

22 Q And they exhausted any place from 55,000 to 60,000
23 cubic feet per minute of air, did they not?

24 A I have no idea.

25 Q The exhaust fan ran regardless of where the paper

TESTIMONY OF FRED STEELE

- 1 machine was running though, correct?
- 2 A Correct.
- 3 Q And the purpose of those fans was to pull this moist
4 air that was being generated from drying the paper, it was
5 to pull that moist air out of the hood, correct?
- 6 A Yes.
- 7 Q And that was to help dry the paper, right?
- 8 A Yes.
- 9 Q And so if you held a towel or a T-shirt over one of
10 those fans on the roof of the paper machine building, would
11 that make the T-shirt or towel blow up straight in the air?
- 12 A I'm not sure whether we did that, maybe.
- 13 Q But it was a tremendous amount --
- 14 A If there were large fans and they were large, put it like
15 that.
- 16 Q And there was a lot of air that was being exhausted
17 through there, correct?
- 18 A Yes.
- 19 Q Even after the paper comes out of the end of the dryer
20 section of the paper machine, it still has three to five
21 percent water and moisture content, correct?
- 22 A Yes.
- 23 Q And the paper that was being made there at Bowater was
24 a white paper like what would be used in a magazine.
- 25 A Correct.

TESTIMONY OF FRED STEELE

1 Q So there was a tremendous amount of water that was
2 extracted from the paper sheet during the manufacturing
3 process.

4 A Correct.

5 Q Sir, with respect to paper machine number one, it
6 couldn't run without dryer felts being used on it, could it?

7 A That's true.

8 Q And when a dryer felt was changed the name of the
9 manufacturer would be on the box that the dryer felt came
10 in.

11 A Yes.

12 Q And as a third hand and a fourth hand you installed and
13 removed dryer felts that were made by Aspen?

14 A Yes.

15 Q And Albany?

16 A Yeah.

17 Q Lockport?

18 A Yes sure.

19 Q And Mount Vernon.

20 A Sure.

21 Q When a dryer felt was changed the person with the most
22 seniority would be the one who was operating the controls
23 rather than the person that was in there working around the
24 hot dryers, right, generally speaking.

25 A Not always.

TESTIMONY OF FRED STEELE

1 Q Was it generally the case, though, the higher people
2 were up on the line of progression, had the better jobs when
3 it came to doing something like a felt change?

4 A Not always. Because --

5 Q Well, with respect to the utilities that we talked
6 about earlier, they would be the people who were down in the
7 basement to catch the dryer felt and remove it from the
8 building, correct?

9 A Once it was totally off the machine lying in the basement,
10 yes, that was generally a utility job. But there would be
11 times -- circumstances would be where you had more people than
12 you normally would and you might have half a dozen people down
13 there all morning in various positions on the machine getting
14 rid of that dryer felt out of there.

15 Q And when you talk about somebody being up in the hood
16 helping to get the dryer felt out of the paper machine, that
17 was generally the fifth hand that was doing that work,
18 right?

19 A No.

20 Q Was that a utility person as well?

21 A Say it again.

22 Q When you were talking earlier today about taking off a
23 top felt, you mentioned that there were people up in the
24 dryer section and in the hood helping to get that top felt
25 off, would that have been a fifth hand or a utility person

TESTIMONY OF FRED STEELE

1 up there?

2 A Probably not, probably not. As the -- once the seam had
3 been cut and you were about to turn that section over to thread
4 that dryer felt off of the machine the -- it wasn't a specific
5 job for any one person, anybody could do that. In all
6 likelihood generally it would have been -- you would probably
7 have had back in one of the controls maybe a third or fourth
8 hand up there to guide it to and begin the process of guiding
9 it down through the machine. That's just a scenario that it
10 could be, it would not be a standard procedure every shift
11 every time.

12 Q And speaking of every shift of every time, the mill had
13 four shifts, correct?

14 A Correct.

15 Q And those shifts rotated over time, correct?

16 A Correct.

17 Q So you wouldn't work on every shift with Mr. Stewart.

18 A Everyone was assigned to a particular shift; A, B, C or D.

19 Q Right. But felt changes could happen on any shift,
20 they didn't necessarily happen on a certain shift every
21 time.

22 A Oh, no.

23 Q Sir, with respect to the felt changes that's occurred,
24 they tried to do those as quickly as possible because if the
25 machine was down the mill wasn't making any money?

TESTIMONY OF FRED STEELE

- 1 A Correct.
- 2 Q And the initial cut that takes the felt off of the
3 machine that only took one to three minutes, right?
- 4 A Once you got the seam in the position that you wanted it
5 and you would take the tension off of the felt, the actual
6 cutting of the seam right there would just be two or three
7 minutes or -- two, three or four minutes.
- 8 Q And you would agree that the used felts had a different
9 appearance than the felts did, correct?
- 10 A Yeah. The used one did, yes.
- 11 Q And it was common knowledge to know that when the felt
12 was taken off the paper machine it had a coating to it,
13 correct?
- 14 A A coating?
- 15 Q A coating to it on the felt itself from the pulp?
- 16 A Yeah, coating build-up, whatever.
- 17 Q I believe you did call it a build-up in your testimony
18 earlier this morning. And some component of that would have
19 been the pulp and the stock and the alum that was used in
20 the paper making process, correct?
- 21 A I'm sure all of those things would probably make up part
22 of that coating or build-up on the felt.
- 23 Q And that would also include pitch and paper fines as
24 well?
- 25 A Yes.

TESTIMONY OF FRED STEELE

1 Q Sir, you would agree that paper making is a dusty
2 process, correct?

3 A A what?

4 Q Paper making is a dusty process?

5 A Yes.

6 Q And when a paper break on the paper machine happened,
7 the paper machine crew would blow across the width of the
8 paper machine from the front of the machine to the back of
9 the machine, correct?

10 A Mostly, yes.

11 Q And that was done to avoid hitting the guide ropes that
12 were on the operating side of the machine, correct?

13 A Yeah. There would be times when you would have to go from
14 the back that you would do in a different manner than what you
15 would do from the front.

16 Q And the purpose of blowing across the width of the
17 paper machine would be to dislodge any of the pieces of
18 paper that might have gotten broken when the paper broke,
19 correct?

20 A Correct.

21 Q And in the width of this paper machine, and I know you
22 didn't remember the exact width of it but we're talking
23 about something that's approximately 20 feet wide, correct?

24 A Yes.

25 Q And the main goal of using that air to blow out the

TESTIMONY OF FRED STEELE

1 machine was to get the scraps of paper so that it would go
2 down into the basement or some other area where they could
3 be cleaned up and you could thread the new sheet through
4 without running the risk of breaking it, correct?

5 A Correct.

6 Q So when a felt was installed on a paper machine unless
7 you saw the box that it came out of you wouldn't know who
8 made the felt just by looking at it, would you?

9 A That's correct.

10 Q And when a felt is removed from the paper machine you
11 wouldn't be able to tell who manufactured that particular
12 felt that was being removed, could you?

13 A That's correct.

14 Q And you wouldn't be able to tell whether or not a felt
15 contained asbestos just by looking at it, would you?

16 A I wouldn't have, no.

17 Q You don't ever recall seeing the name SCAPA on a dryer
18 felt that was out of its box, do you?

19 A You mean after it had been run?

20 Q After it had been taken out of the box there was
21 nothing on a felt itself that said SCAPA.

22 A I don't know whether they -- when we first took one out of
23 the box I'm not sure that they had the name stenciled on the
24 box or not, I don't recall.

25 Q You just don't know one way or the other.

TESTIMONY OF FRED STEELE

1 A Whether or not you could tell it was SCAPA or any other
2 brand, no, I don't know. I don't know whether the name was
3 stenciled onto the felt itself not, I don't know.

4 Q Sir, you can't testify that a SCAPA felt ever tore off
5 of the paper machine, can you?

6 A I cannot tell you specifically, no.

7 Q And sir, you can't testify to whether any SCAPA dryer
8 felts that were used at the mill contained asbestos, can
9 you?

10 A I cannot tell you that I knew that there was asbestos in
11 that felt until way, way, way after the fact when I first knew
12 that and I don't know when. But to -- after the fact I knew
13 that we had some felts with asbestos in them.

14 Q Yes, sir. And I'm not asking you about felts
15 generally, I'm asking you about SCAPA specifically, you
16 can't testify that any SCAPA felt that was used at the mill
17 contained asbestos, can you?

18 A I cannot verify that, no.

19 Q Mr. Steele, there were a number of other tradesmen that
20 worked around paper machine number one in addition to the
21 crew that operated it, correct?

22 A True.

23 Q There were millwrights that worked around paper machine
24 number one.

25 A True.

TESTIMONY OF FRED STEELE

1 Q And it was the responsibility of the production folks
2 to valve out a pump or other equipment if a millwright
3 needed to work on it, right?

4 A Correct.

5 Q And valving out a pump or other piece of equipment
6 would have been one of Mr. Steele's (sic) responsibilities,
7 correct?

8 A . At some point in time. I'm sure he did that at some point
9 in time.

10 Q You did that at points in time in your career.

11 A Yes.

12 Q And you followed the same progression line that Mr.
13 Stewart did.

14 A Yes.

15 Q And millwrights, one of the things that they did was
16 repack pumps.

17 A Correct.

18 Q And you've seen, or you remember seeing Mr. Stewart in
19 the area helping when packing and pumps was being replaced,
20 do you not?

21 A I don't remember any specific incident or not when I would
22 have seen that but I would not have been surprised, no.

23 Q And there were pumps in the basement of the number one
24 paper machine area where both you and Mr. Stewart worked as
25 utility workers, correct?

TESTIMONY OF FRED STEELE

1 A Yes.

2 Q And you remember Goulds as the manufacturer of one of
3 the pumps that was associated with one the number one paper
4 machine.

5 A I remember the name.

6 Q And most of the stock pumps that were used in
7 connection with number one were Goulds pumps.

8 A I don't know for sure, I remember the name but I don't
9 know that.

10 Q And at a utility person in the early to mid 1960's, is
11 one of the jobs of the utility person would be cleaning up
12 behind the millwright if the millwright didn't clean up
13 their own mess, correct?

14 A If he didn't do that, yes.

15 Q And, sir, pipe fitters and insulators also worked
16 around paper machine number one.

17 A Correct.

18 Q And you saw insulators removing insulation from pipes
19 and pumps, and cutting insulation being installed back,
20 correct?

21 A I know that they did that. I seen the breed line on the
22 floor and whatnot around the job area, but sit there and watch
23 them do it, I don't remember watching any of them actually
24 performing that work.

25 Q The mill had some of its own insulators and then they

TESTIMONY OF FRED STEELE

1 had contractors that came in and did that work as well,
2 correct?

3 A I know we had some guys that were insulators. I don't
4 know if we had outside contractors that did that on a regular
5 basis or not, I don't know.

6 Q And another job of a utility person such as you or Mr.
7 Stewart particularly in your earlier days lower down on the
8 line of progression would have been to clean up any debris
9 that insulators or pipe fitters might have left behind,
10 correct?

11 A True.

12 Q And back in those days in the 1960's that work was done
13 with brooms and air hoses generally, correct?

14 A Yeah, broom, air and water hoses.

15 Q Sir, do you know what OSHA is?

16 A Yes.

17 Q You understand that it's a government agency that came
18 into effect while you were working at the mill?

19 A I do.

20 Q And you worked at the mill before OSHA came into
21 effect, correct?

22 A Yes.

23 Q You're not aware of the mill making any changes to
24 protect its workers from asbestos exposure after OSHA went
25 into effect, are you?

TESTIMONY OF FRED STEELE

1 A I can't speak mill wide, but I don't know that on the
2 paper machine we did anything different that I could recall.

3 Q You never saw or read the NOLS asbestos policy while
4 you were working at the mill, did you?

5 A I don't remember. I probably did but I don't remember.

6 Q You never saw any signs in the mill that identified
7 areas that contained asbestos, did you?

8 A No.

9 Q But you do recall seeing the folks come in some time
10 before 1986 dressed in white overalls and putting up
11 plastic-around areas and removing some of the insulation
12 from these steam lines in the basement, correct?

13 A Yes.)

14 MR. COLLIER: Sir, thank you for your time, I appreciate
15 it.

16 THE COURT: Any redirect, Mr. Graham?

17 MR. GRAHAM: Very briefly, Your Honor. May I approach?

18 THE COURT: Of course.

19 REDIRECT EXAMINATION

20 BY MR. GRAHAM:

21 Q Mr. Steele, let's go back to our picture. Is this a
22 pipe?

23 A Yes.

24 Q Is that pipe insulated?

25 A No.

TESTIMONY OF FRED STEELE

- 1 Q Is that a valve?
- 2 A Yes.
- 3 Q Is that valve insulated?
- 4 A No.
- 5 Q This fan Mr. Collier pointed out, where was it pulling
6 air from?
- 7 A The basement.
- 8 Q The basement. Because it was cooler in the basement.
- 9 A Yes, sir.
- 10 Q So you guys can get cool.
- 11 A Yes, sir.
- 12 Q And what was in the basement?
- 13 A Boxes, felt boxes and everything else down there.
- 14 Q That was the basement where the dryer felts went to go
15 to die.
- 16 A Yes.
- 17 Q So it was pulling air from the basement where the dryer
18 felts went to go to die.
- 19 A Yes.
- 20 Q Sir, would that fan bring dust up from the basement
21 into y'all's work area?
- 22 MR. COLLIER: Objection, Your Honor.
- 23 THE COURT: What's the --
- 24 MR. COLLIER: Speculation.
- 25 THE COURT: Overruled.

TESTIMONY OF FRED STEELE

1 MR. GRAHAM: Your Honor, I didn't say --

2 THE COURT: I overruled.

3 Q Okay. Sir, did that bring -- would that bring dust up
4 from the basement into y'all's work area if there was dust
5 in the basement?

6 A If there was dust in the basement, yes, it would.

7 Q And it would blow on you guys?

8 A Yes.

9 Q Mr. Collier asked you about Daniels. Do you know what
10 Daniels used as far as materials in the mill?

11 A No.

12 Q Did you ever work for Daniels?

13 A No.

14 Q Did you ever know any of the Daniels workers?

15 A No.

16 Q Mr. Collier asked you about the compressed air, do you
17 remember that?

18 A Yes.

19 Q And he was asking whether or not you blew across the
20 felt, do you remember that?

21 A Yes.

22 Q And why would you have done that?

23 A Why would we blow across the felt?

24 Q Yes, sir.

25 A To make sure that you cleaned everything in there out, any

TESTIMONY OF FRED STEELE

1 dust, any piece of paper, any trash, any contaminate whatsoever
2 you blew it off of the felts.

3 Q Okay. And were there occasions whether in operation or
4 in shut down where you would blow the other way?

5 A Yes.

6 Q And did you do that often?

7 A On occasions when the machine was down and they were going
8 to be down with enough time to do that.

9 Q Okay. I didn't ask you earlier, but about how much is
10 the pressure -- what is the PSI, pounds per square inch, on
11 that nozzle when you were blowing, if you know?

12 A Oh my goodness, I don't know what PSI it would have been
13 but it was high. It was so much so that if you didn't hold it
14 just right it would beat you to death, it would slap you all
15 over the place. It was very high pressure.

16 Q If you were to blow that American Flag that's sitting
17 in the corner, would it blow it straight out?

18 A Oh, yeah.

19 MR. GRAHAM: Mr. Steele, that's all have. I just wanted
20 to say on behalf of the Stewart family thank you for your time.
21 I know you've got to go on a mission trip and that's all we
22 have for you today, thank you again on behalf of the family.

23 THE COURT: Thank you, Mr. Steele, you may come down. All
24 right plaintiff, call your next witness.

25 MR. JEKEL: Your Honor, at this time the plaintiff's would

TESTIMONY OF FRED STEELE

1 call James Millette to the witness stand.

2 THE COURT: Now ladies and gentlemen of the jury, this is
3 Dr. James Millette, he's another expert witness offered by the
4 plaintiff. And the same observations obtained with him as with
5 the other expert witnesses you have, the parties have agreed he
6 is an expert in the fields that Mr. Jekel will specify when he
7 asks some questions, and I have determined from the information
8 I have gotten that he has the necessary experience, expertise,
9 training and qualifications to speak and give you expert
10 opinions in his fields of expertise.

11 MR. JEKEL: Your Honor, by agreement the parties have
12 agreed to the admission of Dr. Millette's CV, which will be
13 marked as Plaintiff's 32, Your Honor.

14 (The CV was received as Exhibit 32.)

15 The witness, DR. JAMES MILLETTE, was first duly sworn
16 and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. JEKEL:

19 Q Would you please introduce yourself to the jury,
20 please, sir?

21 A Yes, I'm James R. Millette.

22 Q Dr. Millette, where are you from?

23 A I live in Atlanta, Georgia.

24 Q And what is your current professional status?

25 A Well, I'm working part-time as a research and consultant

TESTIMONY OF JAMES MILLETTE

1 in the areas of material science. I'm board certified as a
2 forensic engineer and I do work -- a lot of work with materials
3 using microscopes to analyze different kinds of things.

4 Q Would you give the jury just real briefly your
5 educational background, please.

6 A I have a Bachelor's Degree in Physics from the University
7 of Dayton from Dayton, Ohio, and a Master's Degree from
8 Environmental Science from Miami University Oxford, Ohio, and a
9 Ph.D from the School of Engineering, University of Cincinnati.

10 Q And what is your Ph.D in? I'm sorry?

11 A It's in engineering dealing with -- my Ph.D dissertation
12 was dealing with asbestos and corrosion of asbestos material.

13 Q Can you tell the jury what a material scientist does?

14 A A material scientist is one studies how things are made,
15 what they're made of, and then also what happens when different
16 forces are engaging those particular materials. So you might
17 look at a brick and the material scientist would then dissect
18 the brick and determine what it's made off, and then looks at
19 what happens if you hit the brick with a hammer, what actions
20 occur, and then look at what those pieces are that come out so
21 that someone else could then make a decision on whether this
22 brick was what you want to use for a particular application.

23 Q And what are the tools of the trade if you will for a
24 material scientist like yourself?

25 A Well, for me it's primarily different microscopes. I have

TESTIMONY OF JAMES MILLETTE

1 used light microscopes, and some of you may have used a light
2 microscope at some point. I've also used a lot of electron
3 microscopes with one that's called a transmissional electron
4 microscope and one that's called a scanning electron
5 microscope.

6 Q Are you familiar with a phased contrast microscope?

7 A Yes, that's one of the types of light microscopes. It's
8 used primarily for catching fibers, asbestos fibers, that's one
9 of the things I've used it for.

10 Q Now, Dr. Brody was here earlier and he talked about
11 scanning electron microscope. Have you ever used one of
12 those?

13 A Yes, I have.

14 Q Any other tools of the trade that you would like to
15 talk about with the jury?

16 A Well, we also use something called a polarized light
17 microscope, and that is one where you use the different
18 characteristics of light as they go through a crystal to using
19 the, first, to identify things; and secondly to learn something
20 of their characteristics.

21 Q Now, you indicated that your Ph.D thesis was on
22 asbestos. Do you remember what specifically it dealt with?

23 A Well, it dealt with asbestos cement materials and
24 corrosion of those materials. When they make an asbestos
25 cement pipe they would put asbestos in where the cement had

TESTIMONY OF JAMES MILLETTE

1 interaction to the kinds of asbestos, and if the water that
2 flowed through that pipe was corrosive, or were soft water, it
3 would start to deteriorate the cement. But the asbestos which
4 is not affected by that would then just end up in the water
5 flowing through it.

6 Q Have you consulted for any government agencies on the
7 issue of asbestos?

8 A Yes, I have.

9 Q And have you consulted for defendants in asbestos
10 litigation before?

11 A Yes, and I'm currently involved with some of them as well.

12 Q After you became a Ph.D walk through your employment
13 history for us if you will.

14 A I actually after I finished my Master's Degree I worked --
15 began working at the Environmental Protection Agency research
16 center in Cincinnati, I started as an intern and then became a
17 physical scientist. Eventually toward the end I was the
18 chairman of the electron microscope facility there where I was
19 working on a variety of projects dealing with initially
20 asbestos and then other kinds of articulates. And then I went
21 from there and -- I worked 11 years with the EPA, and then went
22 to work for a company in Atlanta called McCrone Environmental
23 Services, which was looking for someone who could run their
24 electron microscope group, and there I worked primarily on
25 asbestos and a whole range of different kind of materials, not

TESTIMONY OF JAMES MILLETTE

1 only solid materials but also water and dust and air samples.
2 We also looked at beer and wine for some of the different
3 projects, and lung tissue, a variety of different things. Then
4 in 1985 I left that company and with two others formed our own
5 company that did all kinds of analysis using microscopes, and
6 was with that company for 24 years before I retired.

7 Q Not all of your work has been with asbestos, has it?

8 A No.

9 Q We're here to talk today about fibers release. Can you
10 tell the jury when you talk about fiber release what you
11 mean?

12 A Well, generally it's a question of whether this particular
13 product allows fibers to be released and then what is the
14 action that causes that. And in some particular cases the
15 action might be rather aggressive, it might have to be that you
16 cut it with a power saw or something, in other situations just
17 touching the material will cause fibers to come off, and so
18 that's the two extremes of what I look at as fiber release.
19 Sometimes it's just handling it and will it come off on your
20 hand or some other sampler, or will it go into the air and we
21 breathe it in. And so those are the kinds of tests I might do
22 to determine whether a particular product will release asbestos
23 fibers.

24 Q As it relates to asbestos, does fiber release impact
25 exposure?

TESTIMONY OF JAMES MILLETTE

1 A Yes, it does.

2 Q How so?

3 A Well, certainly if the fibers are not released then there
4 is no exposure. And so the more that fibers are released the
5 larger the exposure is to an individual who is doing the work
6 or is in the vicinity of somebody else doing the work.

7 Q Have you studied asbestos containing materials to see
8 about this fiber release issue before?

9 A Yes, I have.

10 Q Can you tell the jury some of the products or types of
11 production you've looked at for asbestos fiber release in
12 the past?

13 A Well, I've looked at a variety of asbestos products
14 similar, like I talked about earlier, asbestos cement pipe.
15 Not only do the fibers come off the water in certain
16 circumstances, but if you cut it as some of the men did and
17 they're replacing that pipe, if you cut it with a power saw
18 then you produced fibers in the air which people would then
19 breath. I also looked at certain types of products that might
20 be in the building, for instance, acoustical plaster that
21 contained asbestos, and if they removed that using scrapers and
22 things like that fibers would be released. If people working
23 with asbestos containing material breaks, the ground breaks or
24 a sander breaks fibers would be released into the air. And floor
25 tiles, people go in and use a buffing sander and they sand that

TESTIMONY OF JAMES MILLETTE

1 floor tile it may contain asbestos, the current ones don't but
2 at one period of time there were a number that did, then those
3 will release asbestos into the air, and I've studied a variety
4 of those in various circumstances.

5 Q Now, we're here to talk about dryer felts. Have you
6 studies dryer felts for asbestos release?

7 A Yes, I have.

8 Q Have you studied SCAPA dryer felts for asbestos
9 release?

10 A Yes, I have.

11 Q Doctor, have you authored any publications in the peer
12 review literature?

13 A Yes, I have.

14 Q Now, did you author a paper on any of your dryer felt
15 studies?

16 A Yes. I had a paper published in Microscope in 1999 that
17 was peer reviewed that published a portion of the work that I
18 have done on that subject.

19 Q Do you sit on -- have you sat any on editorial boards
20 for peer review journals?

21 A Yes. And in fact, last month I received one from the
22 Journal of Occupational and Enviromental Hygiene, an article
23 that someone else had submitted and they asked me to peer
24 review that for publication.

25 Q Are you familiar with this, Dr. Millette? Can you see

TESTIMONY OF JAMES MILLETTE

- 1 this?
- 2 A Yes, I am.
- 3 Q It's entitled settling asbestos dust sampling and
4 asbestos -- or settled asbestos dust and analysis. Is this
5 yours?
- 6 A Yes, I'm one of the coauthors of that book.
- 7 Q What did y'all address in this book?
- 8 A In that book we were looking at the question of if some
9 asbestos dust was released in the air some of it may be
10 breathed in, but much of it may end up settling out on the
11 floor or on somebody's clothing or some other place. And then
12 the question is what happens to that when you resuspend it.
13 Are there ways in that that you can analyze that dust to see if
14 there is asbestos in it to start with and get some sort or
15 quantification. And then secondly, what are the activities
16 that might cause that to be put back into the air and people
17 breath it.
- 18 Q That concept of a fiber of dust being on the ground and
19 the getting back in the air, what is that referred to?
- 20 A It's called resuspension.
- 21 Q Do you also call it re-entrainment?
- 22 A They are called re-entrainment, yes.
- 23 Q And you studied that as it relates to asbestos fibers?
- 24 A Yes, I did.
- 25 Q And if there were asbestos fibers on this floor, would

TESTIMONY OF JAMES MILLETTE

1 we be able to see it?

2 A No, probably not.

3 Q The asbestos fibers, can you tell the jury what kind of
4 activities may cause them to be resuspended into the air?

5 A Well, any type of activity, cleaning kinds of activities,
6 sweeping or vacuuming without a HEPA vac. Many of you may be
7 familiar that current vacuums primarily say they are HEPA vac,
8 meaning they are high efficiency particle absolute vacuums that
9 collect a lot of very small particles and those would tend to
10 be very efficient when you are collecting asbestos. But if you
11 had another vacuum like a shop vac you could be pulling the
12 fibers in but they would be coming out the exhaust because they
13 wouldn't be caught by a regular type filter. It would also be
14 for any kind of activity that involved strenuous or active
15 disturbance of the dust. And you could have some depending on
16 the situation where he was walking through an area that had a
17 lot of asbestos in it would create a dust cloud that a person
18 could then breath.

19 Q Have you studied these asbestos fibers when they become
20 suspended in the air, how long they could stay there?

21 A Yes.

22 Q And can you tell the jury a little bit about what you
23 found?

24 A Well, it depends a lot on the size of fibers. The larger
25 fibers would tend to settle out quickly, but some fibers that

TESTIMONY OF JAMES MILLETTE

1 are smaller may be in the air for days just from one active
2 resuspension.

3 Q I've got to ask you, Doctor, what do you consider a
4 long asbestos fiber?

5 A Speaking as a microscopist as well as looking through
6 microscopes that is a relative term, but for us a long or large
7 fiber would be something over ten micrometers in length. A
8 micrometer for those of you that are familiar with a ruler,
9 usually one side is inches, the other side is millimeters. If
10 you divide the millimeters by 1,000 then that's a micrometer.
11 So ten micrometers is a very small size, not something that you
12 would generally see if it's a thin particle when you looked at
13 it without a microscope.

14 Q In that same regard, Doctor, you said something,
15 smaller fibers may remain entrained for longer times. What
16 do you consider a small fiber?

17 A Well, something in the range of maybe five micrometers but
18 very thin, something that might have a thinness of less than a
19 micrometer in diameter.

20 Q I want to talk a little bit about microscopy here for a
21 minute, and we talked about phased and contrast microscopes.
22 How are those contrast microscopes different from
23 transmission electron microscopes?

24 A Well, phase contrast microscopes are a light microscope,
25 and the capability of light microscopes is pretty much limited

TESTIMONY OF JAMES MILLETTE

1 to about 1,000 times magnification, you can only put up so many
2 lenses and put them together. If you go to an electron
3 microscope you can go to millions of times magnification so
4 you're able to see things that are much smaller. With a light
5 microscope and a phase contrast microscope something that is
6 less than a quarter of a micrometer would be invisible, with a
7 transmission electron microscope you could see that easily. So
8 when you're looking at sets of fibers that we collect -- and if
9 I could show an air cassette if that's all right?

10 Q Sure.

11 A This is an air cassette that we use to collect air
12 samples. Inside you can see kind of a white filter at the back
13 of this thing about the size of a quarter, and we take off this
14 end and we attach that to a hose which goes to a pump. We pull
15 the air through this filter and we attach the filter somewhere
16 in the breathing zone with the person who was doing the work so
17 that we can then collect the particles. We know how fast we're
18 pulling the air through so we know how much volume of air we
19 can pull, so we can then count the fibers that are on this
20 filter and then calculate how many fibers there are in the air
21 around that person, how many they would be breathing if they
22 weren't wearing a respirator. So when we use the filters here,
23 when we first looked at them with a phase contrast microscope
24 we count the fibers that the standard methods tell us to count
25 which are longer than five micrometers in length. And because

TESTIMONY OF JAMES MILLETTE

1 we can only see those greater than a quarter of a micrometer we
2 can only count those. If we take that same filter or another
3 piece of it we can then put it in the electron microscope and
4 we can see all the fibers that are present, and there may be
5 100 times more fibers than we can see with the electron
6 microscope than we can see with the phase contrast microscope.

7 Q And we might see some pictures later on where I might
8 ask you to show the jury, demonstrate that difference if we
9 can but I want to move on for a second. Can you tell the
10 jury what equipment or tools other than microscopes you had
11 in the laboratory that you used to study asbestos fiber?

12 A Well, we would also use various chemical testing
13 capabilities for materials that might be present, and then we
14 would have organic chemical testing facilities as well so we
15 could look at resins and coatings and plastics and items that
16 aren't metals or one of the non-metal elements. With our
17 microscopes you have not only the ability to see things, but
18 with the electron microscopes you also get information about
19 the chemical composition. You have what is called an x-ray
20 analysis system which gives you information about what that
21 particle is consistent with. So for instance if I aim the
22 electron beam at an asbestos fiber I would get an x-ray
23 spectrum which would show me silica, because all the asbestos
24 fibers contain silica. It might give me iron, it might give me
25 calcium, it might give me magnesium, and from those I can tell

TESTIMONY OF JAMES MILLETTE

1 which kind of asbestos it is in addition to the fact that it is
2 asbestos because of what it looks like.

3 Q And have you worked with all three major types of
4 asbestos in your career?

5 A Well, there are five -- or six, actually six regulated
6 types, and then there are a number that are not regulated that
7 are also asbestos which are long fibrous minerals, and I have
8 worked with many of those, yes.

9 Q As it relates to dryer felts, how many times have you
10 studied dryer felts?

11 A Well, I've looked at I would say over 100 different
12 samples of dryer felts and different analysis of the -- either
13 different dryer felts or the same dryer felt under different
14 conditions.

15 Q And you said you published a study in '99 on dryer
16 felts, right?

17 A Yes.

18 Q Did you do further work with dryer felts after the year
19 2000?

20 A Yes, I did.

21 Q And what was the purpose in looking at those dryer
22 felts, both of those, in '99 and after 2000?

23 A Well, it was first to determine the content of the dryer
24 felt, whether it contained asbestos, and then secondly to
25 determine whether fibers could be released over the dryer felt.

TESTIMONY OF JAMES MILLETTE

1 In both -- the two main release tests are handling the
2 materials or touching it, or in the case of using a sampler you
3 can use something like a Post-it note, which as you know
4 doesn't have much of an adhesion. If you put scotch tape on a
5 wall sometimes that will peel the paint right off because it's
6 got a lot of adhesion, but a Post-it doesn't. So if a Post-it
7 note releases fibers, if fibers are caught on that Post-it note
8 when you touch something you know it has to allow where did he
9 touch it. We also did a test where you put some water on your
10 finger and then touch the dryer felt and see if fibers would
11 come off that way. The second type of testing we did was
12 actually to get an air sample. When you blow the samples of
13 dryer felt with compressed air, and so --

14 Q Can I stop you for a second?

15 A Sure.

16 Q We are going to go through both sets of testing in just
17 a second, I just wanted to ask you, were you able to make
18 some conclusions about asbestos fiber release in a dryer
19 felt as a result of your studies?

20 A Yes.

21 Q Have you testified in litigation before, Dr. Millette?

22 A Yes, I have.

23 Q And have you been found to be an expert by courts
24 around the country?

25 A Yes, I have.

TESTIMONY OF JAMES MILLETTE

1 Q I wanted to ask you before we qualified you as -- I
2 wanted to ask you, other than the asbestos fiber release
3 tests that we're here to talk about today, have you done any
4 other interesting testing or analysis in your career that
5 you would like to talk to the jury about?

6 A Well, I have all kinds of stories, we've got all sorts of
7 different kinds of samples. One that may be of interest was a
8 stain called Ralph. And it was number of years ago, I believe
9 it was the courthouse in Lexington County, South Carolina where
10 they put in new carpeting, and one of the staff members there
11 saw there was a spot about the size of a quarter, they went out
12 and they cleaned it up with some water. And three days later
13 they came out and the spot was bigger and it was dark and they
14 said, "Well gee, this is kind of odd," and they started calling
15 it -- they cleaned it up again. They came back another three
16 days and it was bigger again, and so the people in the staff
17 there started calling it Ralph the Stain. And they brought in
18 some experts. The environmental person in the county went in
19 and looked at it and said this must be mold since it is
20 growing. So they brought in a mold specialist and he said,
21 "No, it's not mold." So the environmentalist found our
22 laboratory and we said, "Yes, we'll be glad to look at it." He
23 dug out a piece of the carpet, drove it to Atlanta, we looked
24 at it and found that this material was dark and a lot of it was
25 common dirt, it was like dirt from outside, skin cells from

TESTIMONY OF JAMES MILLETTE

1 people, pieces of plants, pieces of clothing, but there was
2 also some sticky stuff there. And we had, using another type
3 of microscope called an infrared microscope, looked at the
4 sticky stuff, determined that it was a sugar syrup kind of
5 material. So what we determined was that somebody had spilled
6 like a Sprite or something like that on the carpet, people
7 walked on top of it, it picks up the dirt, makes it look like a
8 stain, somebody goes out with just water and cleans it and it
9 just spread out the sticky stuff and cleaned up the dirt. So
10 the next people that walked on it make the sticky stuff again
11 dark and stained and it happened several times. So as our
12 report said, this was a stain called Ralph, it was actually a
13 stain that accumulated each time people walked over it with
14 regular kinds of dirt. And we got a call -- I got a call from
15 The State newspaper reporter asking me for this tale and I
16 explained what we had done and everything and she was very
17 disappointed that it wasn't extraterrestrial or some kind of
18 terrorist activity. I think she hoped it would be some kind of
19 great story. It was somebody who spilled some Sprite and
20 didn't clean it up properly.

21 Q So that was Ralph?

22 A That was Ralph, yes.

23 Q Now, Dr. Millette, do you charge a fee for your time
24 coming to testify today?

25 A I do.

TESTIMONY OF JAMES MILLETTE

1 Q And you are doing that today.

2 A Yes.

3 Q And I have asked you to come to court and testify
4 before, have I not?

5 A Yes, you have.

6 MR. JEKEL: Your Honor, at this time I would like to move
7 to qualify Dr. James Millette as an expert in material science
8 and asbestos fiber.

9 MR. YOUNG: No objection, Your Honor.

10 THE COURT: No objection by the defense, and I find that
11 by reason of his training, education and experience Dr.
12 Millette is qualified an as expert in material science,
13 specialty asbestos.

14 Q We know you've done two sets of dryer felt testing, but
15 I want to ask you a couple of questions. Have you ever been
16 to the Bowater Paper Mill in Catawba, South Carolina?

17 A No, I have not.

18 Q Have you ever been to the paper making plant?

19 A Yes. When I was a child on some trip, my grandfather used
20 to work at a paper making plant in Adams, Massachusetts and I
21 have been there. And then at Georgia Tech. they have a small
22 system that they run for experimental work, it's a miniature
23 version of a paper mill.

24 Q Did you ever go to a paper mill as part of the dryer
25 felt testing?

TESTIMONY OF JAMES MILLETTE

1 A No, I did not.

2 Q Does that cause you any concern as it relates to the
3 validity of your test results?

4 A No. I think to the extent that I can talk about fiber
5 release and the composition of dryer felts there's no need to
6 go into the actual facility.

7 Q Now, I would like to talk to you about the 1998
8 testing, and I've got a picture of a sample here. Is
9 this -- are you familiar with what we're showing the jury
10 right now?

11 A Yes, I am.

12 Q This is from your 1998 dryer felt testing?

13 A Yes.

14 Q Let's talk about, did this felt have asbestos -- number
15 one, did the felt that we just showed the jury, did that
16 contain asbestos?

17 A Yes, it did.

18 Q And again now I would like you to tell the jury, you
19 did testing on that felt to determine if it released fibers,
20 correct?

21 A Yes, we did.

22 Q Can you walk us through the type of tests you did on
23 this felt?

24 A Well, on this particular felt we did a test where we
25 pushed it with a Post-it note to see if fibers would come off,

TESTIMONY OF JAMES MILLETTE

1 and indeed fibers did come off.

2 Q So the first thing was got a sticky end of a Post-it
3 note. Did you do anything to the felt before you put the
4 sticky note on it?

5 A We cleaned it to make sure that there were no loose fibers
6 that might have accumulated from something else so that the
7 fibers that we saw would be indeed from the felt itself.

8 Q Did you take a picture of the fibers off the Post-it
9 note?

10 A Yes, we did.

11 Q Is that -- I'm trying to find the right picture,
12 Doctor. I'll hand you these, maybe you could tell me. So
13 you put the felt on the Post-it note. So then you took the
14 Post-it note and you put it under what microscope?

15 A This is under the scanning electron microscope.

16 Q The SEM that Dr. Brody showed us.

17 A Yes.

18 Q What type of magnification do we see here?

19 A This is a fairly low magnification, it is 400 times
20 originally. There is a small R which is not easy to see in the
21 middle of the fiber -- it's about the width of the fiber on the
22 left-hand side, the large bundle that you see there.

23 Q Are you saying it's right there?

24 A Yes. The width of the fiber is -- this is a ten micron
25 bar, it is about ten micrometers in width. So fibers of that

TESTIMONY OF JAMES MILLETTE

1 size would be fairly small, they would be seeable with a light
2 microscope. And you can see there that the asbestos fibers are
3 bundled and they become smaller and smaller as you take them
4 apart, similar to if you have a round of spaghetti and you
5 start to disperse the spaghetti it becomes individual fibers.
6 But then imagine if you take that one stalk of spaghetti and
7 divide that into fibers, and that's what asbestos does is it
8 gets finer and finer as you disperse it.

9 Q Are those asbestos fibers?

10 A Yes, they are. All the fibers that you see there is
11 asbestos fibers.

12 Q What type of asbestos fibers are those?

13 A They are chrysotile asbestos.

14 Q Now, and that's just from the Post-it note.

15 A Yes.

16 Q What other testing did you do in 1999 on that felt?

17 A Well, on the felt that was similar to that, not exactly
18 that one, we had two felts, one that was a loose weave and one
19 that was a tight weave, meaning that's how tight the fibers
20 were together, those we tested to see if blowing with
21 compressed air would produce fibers --

22 Q How did you do that? How did you set that up in the
23 laboratory, the blowing of air onto the felt?

24 A We used something called a glove box. This is a metal box
25 and it follows protocol, the protocol that was used by the

TESTIMONY OF JAMES MILLETTE

1 Consumer Product Safety Commission in 1985, and also by the
2 Environmental Protection Agency to study particles release --
3 asbestos particle release. And what you have is a glove box
4 and it has a glass in front of it, it's about as big as maybe
5 half the size of where I'm sitting now, maybe it's a little bit
6 smaller than a full desk you might say, and about two or three
7 feet high and about two and a half feet deep. And then you
8 have plastic gloves or rubber gloves that allows you to move
9 things on the inside and this way you could control particle
10 release. So if you've got asbestos you are releasing that into
11 the rest of the room so the people there have been exposed.

12 Q Doctor, can I ask you, did you invent the glove box?

13 A No.

14 Q You mentioned that it was part of a methodology from
15 the Consumer Product Safety Commission.

16 A That's correct, yes.

17 Q Do other scientists regularly use glove box in doing
18 this type of testing and analysis?

19 A Yes.

20 Q So you've got the glove box, what happens next?

21 A Then we allowed the samplers that I showed you here, we
22 put those in. We had the pumps attached to the sampler. Then
23 we also had a compressed air line that came in so that we could
24 blow compressed air on the dryer felt to see if fibers would be
25 released into the air.

TESTIMONY OF JAMES MILLETTE

1 Q How long did you blow air on the felt?

2 A Well, the overall test was five minutes. Part of the time
3 we were blowing air on the felt and part of the time we were
4 stopping so that we could see if the particles were in the air,
5 and we did see that the -- could see particles in the air. If
6 we shined the light in from the sides so you could see better
7 the dust that you see in the air. And then we collected these
8 air samples after five minutes and took a look at using
9 microscopes how many fibers were present there.

10 Q I need those photos again, Doctor. Did you take some
11 pictures of what you found in the cassette?

12 A Yes, I did.

13 Q And that was figure one, was it not?

14 A Yes.

15 Q Doctor, do you see what we had displayed?

16 A Yes.

17 Q Can you tell the jury what we see here?

18 A This is a transmission microscope image, a piece of the
19 filter that's now been put into a transmission electron
20 microscope and the individual fibers that you see there are
21 asbestos fibers. And there are some other chunks of things
22 that were some of the other materials in that felt that are
23 also in the air. But the largest fibers that you see there
24 would be the smallest fibers that you could see with the light
25 microscope. So if I were to look at this same area with a

TESTIMONY OF JAMES MILLETTE

1 light microscope, all of those thin fibers would disappear and
2 you wouldn't see those.

3 Q Would we see this fiber on a PCM?

4 A Yes.

5 Q What about these fibers?

6 A Those you would not.

7 Q Okay. What is this, Doctor?

8 A That's a micro bar indicating that that is five
9 micrometers end to end of that area, so it gives you some idea
10 of the sizes of some of those fibers there.

11 Q Doctor, I want to ask you, in this result did you find
12 what you believed to be respirable asbestos fibers in the
13 sample?

14 A Yes, there were many.

15 Q What else did you do with this piece of felt?

16 A Well, we did the counts and determined the concentrations.
17 And then we cleaned the chamber and did another test with a
18 second felt, a loose weaved felt, both of these felts didn't
19 appear to have any residue, no resin or coating of any kind,
20 and so we looked at those. They both have been used and we
21 looked at where the fibers would come off again with the second
22 felt and blowing it with compressed air.

23 Q So you took both of the felts and you subjected them to
24 blowing.

25 A Right.

TESTIMONY OF JAMES MILLETTE

- 1 Q We saw the results of one. Did you take a picture of
2 the results of the second felt blowing results?
- 3 A Yes.
- 4 Q Was that sample number 132?
- 5 A No, this is from the 2003.
- 6 Q The 2003?
- 7 A The other would be just a single looking fiber. That's it
8 I think, yes.
- 9 Q This sample SA0005.
- 10 A That's correct.
- 11 Q And this is what you got when you blew the open weave
12 felt in 1999, '98?
- 13 A Yes.
- 14 Q Why is this significant, Doctor?
- 15 A Well, it shows -- and this is just one area, we found lots
16 of areas that look like this -- but you can clearly see one
17 large bundle of fibers and a few smaller ones. The
18 concentration in the air for blowing this felt wasn't as high
19 for blowing the closely woven felt, but there was still a very
20 significant number of fibers.
- 21 Q Well, let's talk about that. What were your results of
22 blowing the air on the fibers, what did you find?
- 23 A Well, in both of the felts we found over 30 fibers per CC.
24 And when we talk about a CC, it's a cubic centimeter of air,
25 about the size of a sugar cube. What we do is we take the

TESTIMONY OF JAMES MILLETTE

1 volume of air that we pull through the filter, and we know what
2 a volume is, and then we can do a calculation based on what we
3 count on the filter to know how many fibers there were in a
4 cubic centimeter of air, and that's just the standard way of
5 comparing different kinds of values of air concentrations.

6 Q Now, I want to make sure we're clear, when you move the
7 air on there and you've got 30 fibers per CC, are you using
8 that to say that anybody blowing a felt would have
9 experienced that?

10 A No. I'm not trying to say that's the number that they
11 got, but I can say that they got a snoot full, they got a lot
12 of fibers.

13 Q And you found the fiber -- you found 30 fibers per CC
14 in both fibers?

15 A Over 30 fibers for each. The higher one was closer to
16 over 50 I think for one, and then the other was 30 or 40 in
17 that range.

18 Q And when you look at them under the microscope, did
19 they both show respirable chrysotile asbestos fibers were
20 released?

21 A Yes, they did.

22 Q Did you do further testing in 1999 on these felts? We
23 talked about the Post-it note, the blowing --

24 A Just the finger touch test that showed the fibers came off
25 if you touched it with a wet finger.

TESTIMONY OF JAMES MILLETTE

1 Q And why a wet finger?

2 A Well, one of the questions raised was that if you have
3 moisture in the system you might expect that there would be
4 some reduction in fiber release, because moisture tends to keep
5 fibers constantly. If you add enough water to a system then
6 fibers get heavier and they tend to fall out faster. So we did
7 another test just to see if it indeed prevented fibers from
8 coming off and it really didn't for any amount. We had a
9 humidity of 60 percent in our testing of these two felts, which
10 is a fairly significant amount of humidity. If you were to
11 have 60 percent humidity in your home this morning but it was
12 20 degrees outside, you would have had water on your windows
13 because it's that much of a condense out.

14 Q I think we all understand humidity in here. Doctor,
15 what was the asbestos content of the felts that you tested
16 in 98-99?

17 A As I recall I believe there were 25 percent and 30
18 percent.

19 Q Do you know who the manufacturer of the two felts you
20 tested in '99 were?

21 A No, I do not.

22 Q What conclusions did you draw from your testing in
23 1999?

24 A I drew the conclusions that, first of all the fibers --
25 you could see asbestos fibers when you looked at the felts.

TESTIMONY OF JAMES MILLETTE

1 They were on the surfaces of these materials, these felts. If
2 you touch them or if you used a Post-it note fiber would come
3 off. If you handle those felts you would definitely get fibers
4 off, and then if you blow the fibers with compressed air you'll
5 get lots of fiber that come off into the air, and if you were
6 to be in the area where these fibers came off or if you were in
7 the area where fibers had come off from handling had settled
8 down and they were resuspended, you would get fibers that you
9 breath in.

10 Q And I just wanted to ask you, before you did this
11 testing did you talk with people? Did you consult with
12 people on how to set this up?

13 A Yes, I did.

14 Q Can you tell the jury a little bit about that?

15 A Well, I talked to some of the workers that worked in the
16 area to determine their use of compressed air, and they talked
17 about using 60 to 100 PSI, pounds per square inch compressed
18 air. We chose the lowest amount, 60 pounds per square inch in
19 our testing. I also had talked to researcher who I had known
20 when I was at the EPA -- NIOSH, National Institute of
21 Occupation Safety and Health, John Dement is his name. And I
22 asked Dr. Dement whether he would look over the protocol for
23 what I was doing with the glove boxes and see if he had any
24 suggestions, and we talked and he didn't have any significant
25 changes in what we were doing. He thought that what we were

TESTIMONY OF JAMES MILLETTE

1 doing was a reasonable approach to looking at fiber release
2 from dryer felts.

3 Q You prepared your data, you wrote up your results, then
4 you submitted it to Microscope Magazine?

5 A That's correct.

6 Q Did they reject it?

7 A No, it was published.

8 Q When you did the test you said you cleaned the felts
9 beforehand. Did you examine them to determine if they
10 appeared to be in a normal condition?

11 A Yes. We examined them to see if they were damaged. We
12 also took tape, duct tape and duct taped the edges, because if
13 you have a piece of felt and it's cut, the edges are, of
14 course, frayed. And so in order to make sure that the fibers
15 we saw if we did get some in the air would not be from those
16 frayed ages, we covered those with duct tape. We looked at the
17 surface to make sure that there were no rips, tears or places
18 where they appeared to be damaged in any way either from what
19 might have happened on the paper making machines or since they
20 were older felts perhaps there might be some damage from just
21 bacterial or biological damage of cloth, not the asbestos part
22 but something else in there, and we didn't see any evidence of
23 that either. So they looked like although used they were
24 certainly usable pieces of asbestos textile.

25 Q Do you believe that if you had not duct taped the

TESTIMONY OF JAMES MILLETTE

1 . frayed edges of the felts that the results would have been
2 higher or lower as it relates to fibers released?

3 A Well, I suspect they would have been higher because those
4 edges are a lot more releasable than the main part of the
5 material.

6 Q Was the testing expensive?

7 A I don't remember what the total was but it was in the
8 \$10,000 range, I believe.

9 Q Who paid for that testing?

10 A It was one of the law firms that I worked for.

11 Q So that testing -- or you got the felts for that
12 testing as a result of some litigation?

13 A Yes. And as with all of the projects that we work on
14 we're allowed to publish the results regardless of how they
15 come out. In this case they came out and were helpful to our
16 client but they don't always happen that way.

17 Q Did the source of funding influence in any way the
18 results or the conduct of your test?

19 A No.

20 Q Do you believe that the fact that the piece of felt
21 that you put in the glove box was relatively small when
22 compared to an operational felt, that that affects your
23 results in any way?

24 A Not in terms of the fibers coming off.

25 Q Okay. Let's fast forward to 2003. Do you recall

TESTIMONY OF JAMES MILLETTE

1 testing additional dryer felts in 2003?

2 A Yes, I do.

3 Q And if I understand it you had two felts to test; is
4 that correct?

5 A Yes, that's correct.

6 Q And is it true that both of these felts were SCAPA
7 felts?

8 A Yes. They were actually the same felt, one had been used
9 and one was unused.

10 Q Let's just quickly talk about the used felt. Can you
11 tell the jury what you know about where that felt was used?

12 A It was used in a pilot plant study sponsored by SCAPA up
13 at Western Michigan University. They hired a group to do a
14 study where they put it on a pilot plant paper making machine
15 that would be much smaller than a real paper making machine and
16 run a lot less of a speed but to do some of the same kinds of
17 things, and then they took some samples. We got a sample of
18 the material that was unused and then also one that had been
19 through this process to look at and examine and then we did
20 additional tests on them.

21 Q You understand that the felt type you studied in 2003
22 was a 5175 type felt from SCAPA?

23 A Yes.

24 Q What are we looking at here, Doctor?

25 A Here we're looking at the unused felt, and what we see are

TESTIMONY OF JAMES MILLETTE

1 essentially the warp of the felt itself. The warp is the line
2 of, I guess, the textile fibers and essentially in the
3 direction of the paper making machine, then the weft are the
4 ones that go across, so it's a weave of these two. Some of
5 these you can see were polyester and then there's also the
6 asbestos fibers that you can see there as well. And the ones
7 that appear to be kind of opened up or loose looking, those are
8 the asbestos fibers.

9 Q I have another picture of this same felt, it looks like
10 it's a little higher magna or blown up. Is that the same
11 felt, Doctor?

12 A Yes, it is.

13 Q And that's a SCAPA 5175?

14 A That is correct, yes.

15 Q Did it contain asbestos?

16 A Yes, it did.

17 Q What kind of asbestos?

18 A It contained chrysotile asbestos.

19 Q Do you know what percentage chrysotile asbestos this
20 felt was? Do you recall?

21 A I don't recall off the top of my head, I don't.

22 Q I have another picture. You said you had a used felt?

23 A Yes.

24 Q Again, was it a 5175 SCAPA felt?

25 A Yes. It's the same felt actually, just a different piece

TESTIMONY OF JAMES MILLETTE

1 of it that had been run through this pilot plant paper making
2 machine for about a month, about 30 days, I believe. I
3 realized that I do have a report, which shows that the felt
4 contained 45 percent chrysotile.

5 Q Thank you. Now, I think this might be a little better
6 picture, Doctor. I notice some dark brown on some of the
7 higher edges of the felts, do you see that, Doctor?

8 A Yes, I do.

9 Q What is that?

10 A Well, that's the evidence of degradation of the felt after
11 running through the paper making machine, that's actually heat
12 degradation on that part of the felt.

13 Q Doctor, so you have these two felts, you looked at
14 these felts. Now, let me ask you this, the SCAPA 5175 felt
15 that you studied, did you look to see if the yarns were
16 resin coated?

17 A Yes, we did.

18 Q Were they?

19 A They were not. There's no evidence of resin coating on
20 this particular fiber.

21 Q All right. So we've got two SCAPA felts. What did you
22 do with those felts, sir?

23 A One of the felts, this last one here, the used one, we did
24 the same test as we had done before where we blew air in the
25 glove box, used compressed air to see if the fibers would come

TESTIMONY OF JAMES MILLETTE

1 out.

2 Q And what happened?

3 A We did see fibers come off. Again, over 30 fibers per CC
4 in the air that was in that glove box I collected using these
5 air cassettes.

6 Q Did you change anything in the testing you did in 2003
7 from 1999, did you change anything?

8 A Well, we did two things that are a little bit different.
9 One thing was we put water on the felt and then put it on a hot
10 plate and let it dry so it would be similar to a felt being wet
11 and then drying, and then we also used more random orientation
12 of the nozzle as we shot the compressed air at the felt. In
13 the first one we would shoot the air mostly at 90 degrees, some
14 different, but in the second testing we did it in all different
15 angles and it would be random.

16 Q The time, was it still five minutes, Doctor?

17 A Yes.

18 Q Did your results indicate that free respirable
19 chrysotile asbestos fibers came off when you hit the SCAPA
20 felt with high pressure air?

21 A Yes.

22 Q Did free respirable chrysotile asbestos fibers come off
23 the SCAPA felt when you put the Post-it note on it?

24 A Yes.

25 Q Did you do any other testing on these felts?

TESTIMONY OF JAMES MILLETTE

1 A No, I don't believe so.

2 Q Doctor, do you have an opinion to a reasonable degree
3 of scientific certainty as to whether resin coating you have
4 seen on other SCAPA felts can prevent respirable fibers from
5 being released?

6 A Well, the resin coating you have to realize is not a total
7 encapsulate. When we talk about an encapsulate, I mean coating
8 everything so when you touch it it won't release anything. In
9 the resin coating that they have for these different types of
10 yarns and so on, the outside might have a light coating, but as
11 soon as you work that, as soon as you turn it then the inside
12 would be releasable as non-coated fibers.

13 Q These asbestos yarns that are not resin impregnated,
14 the resin doesn't go all of the way through the asbestos
15 yarn?

16 A That's correct, yes.

17 Q And you indicated something else that the fibers were
18 not fully encapsulated; is that correct?

19 A That's correct. There were some areas in which there was
20 no evidence of coating and other areas where we did see some
21 resin coating.

22 Q I want to go back. What was your opinion as to whether
23 the resin coatings prevent respirable asbestos fibers from
24 being released from the SCAPA felts?

25 A They do not prevent the fibers from being released to any

TESTIMONY OF JAMES MILLETTE

1 extent that I could see.

2 Q I want to go over -- I have sent you some documents,
3 internal documents relative to SCAPA and felt wear, have I
4 not?

5 A Yes, you have.

6 Q And I'm going to just put a couple of documents up to
7 show the jury what I may have said. Was this one of the
8 ones that I gave you, Doctor?

9 A Yes, it is.

10 Q Was this one of the ones I gave you?

11 A Yes, it is.

12 Q I think I might have given you another one.

13 A Yes, you did.

14 Q All right. And can you tell the jury briefly, what was
15 the substance of those internal documents that I gave you?

16 A Well, the substance talked about degradation of the dryer
17 felts, and this was a concern obviously of an older
18 manufactured material. And as the owner of a paper plant, how
19 often do you have to replace these things? Why are they
20 falling a part? What are the problems with that? And so the
21 reports talk about the fact that, you know, asbestos dryer
22 felts, it's not the asbestos that's being damaged necessarily
23 by environmental factors such as heat but heat will damage some
24 of the other components and those then cause the asbestos
25 fibers to be released because the overall felt is not as

TESTIMONY OF JAMES MILLETTE

1 strong. There are also physical factors that are involved. In
2 addition to the heating component, which heats the paper to dry
3 it out, there's also other rollers that help these dryer felts
4 come back to the start because it's one big long continuous
5 thing, if those get corroded or if those have any other
6 problems you will end up with a rough surface that then digs
7 into the dryer felt and causes it to be worn away. And so you
8 can have both physical factors and chemical factors and heat
9 factors that cause the dryer felts to be deteriorated.

10 Q Would it -- I'm sorry, Doctor, were you finished?

11 A Just one last thing. The papers concluded that it wasn't
12 the asbestos that was being hurt by the chemical factors, it
13 was the other parts that might cause the dryer felt to fail.

14 Q And when there is dryer felt degradation and wear, what
15 happens in terms of fiber release, or how does that impact
16 the potential for asbestos fiber release?

17 A Since the asbestos fibers are not as hurt by these things
18 they're not dissolved, they are then released in the area
19 around the paper making machine either into the air or into the
20 dust that may be around it.

21 Q Doctor, do you have an opinion whether asbestos fibers
22 can be released before a dryer felt ever runs through paper
23 machine, for example, during installation?

24 A Yes.

25 Q What is your opinion?

TESTIMONY OF JAMES MILLETTE

1 A Well, my opinion is the handling of a dryer felt will
2 release fibers onto the peoples' hands and therefore it will be
3 then rereleased into the air. And then other activities
4 dealing with putting the installation in where you're attaching
5 it, you're pulling it, rubbing it will also release some
6 fibers.

7 Q We heard some testimony earlier today about the use of
8 high pressure air in Bowaters in South Carolina to clean out
9 the blow outs and clean up the paper mill in general. Do
10 you have an opinion whether that type of activity can cause
11 asbestos fibers to be released from SCAPA asbestos
12 containing dryer felts?

13 A I do.

14 Q And what is that opinion?

15 A I believe that yes, you could have fibers blowing off when
16 you blow it with the compressed air, and it would vary
17 depending on how close the compressed air was to the surface
18 and how much fiber opening, if you will. Some of the fibers
19 you saw in some of the pictures, you could see where there were
20 toxic fibers and those are very rarely released as opposed to
21 those that were tightly bound.

22 Q But would the fibers be released in both instances?

23 A Yes.

24 Q We heard some testimony earlier today when these dryer
25 felts got old and worn the guys would cut them up to get

TESTIMONY OF JAMES MILLETTE

1 them off the machines. Do you have an opinion whether
2 cutting an asbestos dryer felt will release asbestos fiber?

3 A Yes.

4 Q What is that opinion, Doctor?

5 A I believe that cutting the asbestos dryer felt will indeed
6 release asbestos fibers. You can't cut the yarns without some
7 of these fibers being released.

8 Q Doctor, based upon your testing, knowledge and
9 experience, do you have an opinion to a reasonable degree of
10 medical scientific certainty as to whether the installation
11 of asbestos dryer felt will release asbestos fibers?

12 A Yes, I do.

13 Q And what is that?

14 A Yes, I believe they do.

15 Q I've given you some information about some specific
16 felts at Bowater, have I not?

17 A Yes, you have.

18 Q And I'm going to show the jury real quick, this is
19 Plaintiff's Exhibit Three.

20 THE COURT: Mr. Jekel, are we at a convenient point --

21 MR. JEKEL: We are at a convenience point.

22 THE COURT: I notice you're hitting a new topic and this
23 might be a convenient time for the jury's afternoon break. And
24 so let's see, it's 3:11 now, members of the jury, you'll have
25 your afternoon break now, come back and be ready to go by 3:30.

TESTIMONY OF JAMES MILLETTE

1 (The jury left the courtroom and a break was taken.)

2 Q Dr. Millette, I haven't shown you these before but the
3 jury has seen this, this is Exhibit 26. And this is a
4 master card for a felt type from Bowater and it says that
5 5175 SRA. We have Exhibit number 27, another 5175. Now, I
6 wanted to -- you've got -- the 5175 that you've studied,
7 what was the weft again, Doctor?

8 A It's polystyrene.

9 Q A nylon, is that --

10 A Yes, a nylon.

11 Q Now, I did show you some dryer felts, other master
12 cards, did I not, from Bowater. This is the first bottom, a
13 NI9265 felt. Now let me ask you, have you ever looked at
14 one of those felts from SCAPA?

15 A Yes, I have.

16 Q All right. So you've had hands-on experience with a
17 sample of this felt?

18 A That's correct.

19 Q And there was another 9265 GRA at Bowater as well, this
20 was 143 feet by 139 inches. Had you seen that before?

21 A Yes, I have.

22 Q And I also gave you copy of Plaintiff's 10, the jury
23 hadn't seen this, and I wanted -- this says new felt report
24 felt type N1N265 GRA. Can you tell the jury what
25 information on here is of significance to you?

TESTIMONY OF JAMES MILLETTE

1 A Well, this is a quality report from the laboratory of
2 SCAPA's manufacturer dated 1973, and it tells you something
3 about the construction of the felt. You'll notice it has a
4 column for warp and for weft, and then it tells you what the
5 front and the back, the face and the back of these felts for
6 that particular part. And then you'll see that it says
7 Uniroyal ADMC 7.97 face, that's a warp, and that is an asbestos
8 containing yarn that's used. And then on the weft side it
9 always is a Uniroyal, which is the producer of the yarn, and
10 that's a little different value, an AMIRG -- it looks like an
11 eye testing -- 6.10. That indicates that it's a two ply
12 asbestos and a treated fiber glass. And so that particular
13 part of the cross thread if you will is a little different
14 construction than the other side. And then the backing on
15 the -- this particular felt is a Daylon (phonetically), which
16 is a synthetic fiber, so it does not contain asbestos.

17 Q Now, it has got percent of yarn in felt, is that
18 significant to you, Doctor?

19 A Yes. That helps you understand how much of the felt is
20 actually asbestos containing. When you first look on the first
21 part of the first column that's the Uniroyal, again it tells
22 you it's 38.1 percent asbestos in that particular yarn. Then
23 if you look across it says that the other side is 40.4 percent
24 of that particular yarn, but remember, that part of that yarn
25 is fiber glass, there's asbestos fiber glass together. There's

TESTIMONY OF JAMES MILLETTE

1 other information that tells me that that's -- the non-asbestos
2 component is usually about 20 percent. So 80 percent of that
3 40.4 percent is the asbestos particle. So by taking both of
4 those and you can add them together and it turns out that you
5 have 38.1, and I forgot what the --

6 Q Do you have notes on this, Doctor? If have you some
7 notes. Because I did want to ask you in the NI9265 GRA
8 felt, what is the asbestos content of that felt?

9 A So using 80 percent, that would be 70.4 percent of the
10 total felt is asbestos, 70.4.

11 Q Now, I want to ask you about weight. Is that
12 significant to you?

13 A Yes. If you want to know how much of the overall felt is
14 asbestos you need to know something about how much of the area
15 the felt weighs. The other sheet we look at tells you the
16 length and the width, so that gives you the area of the felt.
17 And then if you multiply it times this weight per square foot
18 and that will tell you how many ounces of asbestos you have.

19 Q Let's do that, Doctor. I've got Plaintiff's Exhibit 3
20 here and we've got the NI9265 GRA felt, first bottom, 207
21 feet by 239 inches. Now, based on Exhibit Number 10, if I
22 understand correctly you can tell us how much asbestos is in
23 that particular felt?

24 A Yes.

25 Q Can you walk the jury through that math, please?

TESTIMONY OF JAMES MILLETTE

1 A Well, if you take the length and the width and you have to
2 convert the inches into feet, so you divide that by 12 and
3 multiply times the 270 feet you'll end up with 2,848 square
4 feet of dry felt, and then if you use the value that determined
5 ounce per square foot, which is six percent. So we can then --

6 Q Six ounces --

7 A Excuse me, six ounces per square feet, then you can tell
8 how many ounces there are of asbestos. And then we'll correct
9 that from the fact that the felt is only 80 percent asbestos
10 and not the entire felt. So if we do that we end up with 6.86
11 ounces of asbestos, which relates to 1,088 pounds of asbestos
12 in that felt. So in that one dryer felt, which was 207 feet
13 long and 239 inches wide there's about a half a ton of asbestos
14 in that.

15 Q How many asbestos fibers are in a half a ton of
16 asbestos, Doctor? Can you tell the jury that?

17 A Yes. The EPA had determined at one point in trying to
18 calculate that same kind of thing that there are 200 asbestos
19 fibers per nanogram of product material of the asbestos
20 material. And so if we convert the nanograms to the pounds
21 then we can tell you that there are 99 quadrillion asbestos
22 fibers in that one piece of felt. And a quadrillion is -- we
23 have thousand, the next one is a billion, the next is a
24 trillion and then quadrillion, so it would be a number with 15
25 zeros behind it.

TESTIMONY OF JAMES MILLETTE

1 Q Ninety-nine and 15 zeros, Doctor; is that right?

2 A Yes.

3 Q Now, we can do that same math with the other felt.

4 Have you done that math in the other felt?

5 A Yes, I did.

6 Q Can you tell the jury in the exhibit number -- I think
7 that's three, in Exhibit Number 4, the other 9265 felt, how
8 many pound of asbestos were in that felt? And it was 143
9 feet by 239 inches?

10 A Right. So it is shorter than the other one so we end up
11 with 752 pounds of asbestos in that felt.

12 Q And how many asbestos fibers is 752 pounds of asbestos?

13 A Sixty-nine quadrillion.

14 Q Sixty-nine and 15 zeros?

15 A Yes.

16 Q Doctor, is it your opinion to a reasonable degree of
17 scientific certainty that contact, blowing and removal of
18 these felts can cause asbestos fiber release?

19 A Yes.

20 Q And that's for anybody that did those activities,
21 right?

22 A Yes. I think anyone who did the same kind of activities
23 we talked about; handling, blowing, using a knife to cut it
24 will cause fibers to be released.

25 MR. JEKEL: Dr. Millette, those are all of the questions I

TESTIMONY OF JAMES MILLETTE

1 have, I'm sure the defense will have some.

2 THE COURT: Very good. Your witness?

3 MR. YOUNG: Thank you, Your Honor.

4 CROSS EXAMINATION

5 BY MR. YOUNG:

6 Q Dr. Millette, good afternoon.

7 A Good afternoon.

8 Q We spoke earlier, I haven't seen you in a long time.

9 A Yes, that's correct.

10 Q You know that I'm Lane young, I'm one of the defense
11 lawyers.

12 A Yes.

13 Q Okay. And we just both happen to be from Atlanta.

14 A That's correct.

15 Q Coincidence for lack of a better word. You mentioned
16 to Mr. Jekel that you were charging for your time but you
17 didn't give us an amount. Am I correct that your new hourly
18 rate with Millette Technical Consulting is \$500 an hour?

19 A That is correct, yes.

20 Q And do you charge -- still charging \$220 an hour to
21 travel?

22 A No, it's \$500 an hour for everything now.

23 Q Traveling here, testifying, going home.

24 A That's correct.

25 Q All right, sir. Are you able to tell the ladies and

TESTIMONY OF JAMES MILLETTE

1 gentlemen of the jury what you think your total charges for
2 just this case will be?

3 A Probably about \$17,000, something like that. That would
4 be the work that went into putting together reports, the power
5 points and other things, as well as time here.

6 Q Dr. Millette, I think you've already said this, but we
7 can agree that dryer felts were designed to assist in the
8 drying of paper pulp into paper, correct?

9 A That is correct, yes.

10 Q And you have no information from any of the work you've
11 ever done that just using a dryer felt and making paper and
12 nothing else is going on, that there's any fiber release
13 from the felt, correct?

14 A Just -- well, I showed that there was fiber release from
15 handling the material.

16 Q I'm talking about just running through machine and
17 making paper.

18 A No, I don't have any information about that.

19 Q I may have misunderstood what you said earlier, but it
20 would be correct, would it not, to tell the ladies and
21 gentlemen of the jury that the total charges for all the
22 testing that you just told them about was in the
23 neighborhood of \$100,000, not \$10,000, correct?

24 A The work that we did in doing the experiments, yes.

25 Q It was \$100,000.

TESTIMONY OF JAMES MILLETTE

1 A For that and all of the other examinations, that's
2 correct.

3 Q And those monies were paid to you by plaintiffs
4 lawyers.

5 A Well, it was to consultants and I was an employee of the
6 company.

7 Q It was paid to your company by plaintiffs attorneys.

8 A Yes.

9 Q None of that was funded by scientists or research
10 facilities, correct?

11 A That is correct.

12 Q Or paper Mills.

13 A That is correct.

14 Q In fact, no paper mill ever came to you and asked you
15 to do any sort of investigation about a dryer felt, correct?

16 A That is correct.

17 Q Mr. Jekel asked you about the microscope article that
18 you publish with respect to your test, do you recall that?

19 A Yes, that's correct.

20 Q It was 1998?

21 A 1999.

22 Q Almost 20 years ago?

23 A Yes.

24 Q To your knowledge that's the only article that has ever
25 been written in the medical or scientific literature that

TESTIMONY OF JAMES MILLETTE

1 deals with potential fiber release from a dryer felt,
2 correct?

3 A That's correct.

4 Q No other scientist before or since has been asked to
5 write such a paper.

6 A Well, I don't know, maybe they've been asked but no one
7 has had one published.

8 Q I'm sorry, no other paper has been published.

9 A As far as I know that's correct.

10 Q I apologize, that was a bad question. When the
11 plaintiffs lawyers came to you and asked you to look at a
12 dryer felt, was that 1997, is that right, 1998?

13 A Yes. I think we received 20 dryer felts that individuals
14 that she was working with, the attorney, had talked to others
15 and they had these samples of dryer felts, we looked at 20 and
16 two of them contained asbestos.

17 Q So 18 did not.

18 A That's correct.

19 Q And at that point in time you had been consulting in
20 the asbestos cases since 1987; is that right?

21 A Yes. I think the first -- or one of the first was with
22 the attorney general's office with the State of Maryland that I
23 was hired to do asbestos analysis for them.

24 Q And you'd actually been consulting or investigating
25 asbestos one way or another since 1974; is that correct?

TESTIMONY OF JAMES MILLETTE

- 1 A That is correct, yes.
- 2 Q And it was not until the late 1990's that you were
- 3 asked to look at a dryer felt?
- 4 A That is correct.
- 5 Q Is that fair? Over the years you have testified in
- 6 court on a number of occasions, correct?
- 7 A Yes, I have.
- 8 Q And you've consulted with a number of different
- 9 plaintiffs firms about a number of different products?
- 10 A That's correct, yes.
- 11 Q And have been -- your company has been compensated for
- 12 that.
- 13 A That is correct, yes.
- 14 Q I understand your wife owns your new company.
- 15 A That is correct, yes.
- 16 Q Hopefully you'll get some of the money.
- 17 A I hope so.
- 18 Q You mentioned slightly that in addition to the fiber
- 19 release testing you do what's called bulk sample analysis?
- 20 A Yes.
- 21 Q Okay. And that's where you look at a particular
- 22 product and you can determine the type of asbestos that was
- 23 in it.
- 24 A And the concentration, that's correct, yes.
- 25 Q And I think you've already said this, but we can agree

TESTIMONY OF JAMES MILLETTE

1 that the only thing that was ever found in the SCAPA felt
2 you looked at was chrysotile, right?

3 A That's the only type of asbestos found, that's correct,
4 yes.

5 Q You've also done fiber release testing for products
6 like gaskets and packing.

7 A I have, yes.

8 Q And you know that there were gaskets and packing used
9 at Bowater when Mr. Stewart was there, correct?

10 A I understand that, yes.

11 Q And you would anticipate that when those products were
12 manipulated by the workers that there would be fiber
13 released into the air.

14 A Depending on what they did, it's possible, yes.

15 Q And if Mr. Stewart was in the area of that work he
16 would have breathed that asbestos, correct?

17 A It is possible.

18 Q You certainly testified in the past that there are
19 ranges of levels of fiber release from the installation and
20 removal of gaskets and packing, right?

21 A Well, if the asbestos -- I don't know enough about this
22 particular case to know whether he was working with gaskets and
23 packing that was asbestos containing. I know that there were
24 pumps and valves at the plant, I just don't know what they were
25 composed of in terms of gaskets and packing.

TESTIMONY OF JAMES MILLETTE

1 Q In the 60's and early 70's you would anticipate they
2 would have contained asbestos, at least a number of them,
3 correct?

4 A They could. The ones that were dealing with steam, yes,
5 it's possible.

6 Q Well, they were dealing with steam at the Bowater Paper
7 Mill, correct?

8 A Yes. I just don't know the details of which and where.

9 Q I think you've already told us this, but we can agree
10 that certainly in your experience not all dryer felts
11 contained asbestos.

12 A That's correct, well, certainly the current ones don't.
13 And then at some point in the 1970's I think most of the
14 asbestos ones were phased out.

15 Q But even before then a percentage did and a percentage
16 didn't, that's your understanding, correct?

17 A Yes. Very early in the 1920's they were non-asbestos
18 containing then, and then in the 1920's they started using
19 asbestos.

20 Q Dr. Millette, you would agree with me that a great deal
21 of water was taken out of the paper pulp in the process of
22 making paper.

23 A That's correct, yes.

24 Q And the amount of water in the dryer felt when it's
25 being used in the paper mill would affect it's ability to

TESTIMONY OF JAMES MILLETTE

1 release fibers, correct?

2 A Yes, that's correct.

3 Q And you would agree with me that wetting of the
4 asbestos containing product has been something that has been
5 recommended for literally decades to decrease the potential
6 for asbestos fiber release.

7 A That is correct, yes.

8 Q The potential for fiber release and the potential for
9 asbestos exposure would vary from job to job function too,
10 and be based on a number of work place factors like
11 ventilation, presence of water, humidity, things of those
12 types, correct?

13 A Yes. There are a variety of factors and an indicating
14 monitor can give you an influence of how much a person would be
15 exposed to, that's correct.

16 Q You have never been to Bowater.

17 A I have not.

18 Q You don't have any information about the type or level
19 of ventilation over the dryer sections of the paper machine
20 number one at Bowater in the 60's and the 70's, correct?

21 A Nothing in detail, that's correct.

22 Q And you've never seen anyone actually changing out a
23 dryer felt in a real paper mill; is that correct?

24 A Not that I can recall.

25 Q And you have never seen any testing that was done to

TESTIMONY OF JAMES MILLETTE

1 see whether or not the weight of a dryer felt -- asbestos
2 containing dryer felt was more or less after it had been
3 used making paper and taken off the machine, is that fair?

4 A That's correct.

5 Q It would be your understanding that as the dryer felt
6 is used in making paper, that the paper pulp and chemicals
7 and that type of thing would build up in the dryer felt.

8 A They could. Of course, some of the dryer felt may be
9 deteriorating or be lost, I don't know how that would balance
10 out.

11 Q But you've never done an investigation that would
12 enable you to say whether some of the dryer felt was lost or
13 not lost during its use on the paper machine, correct?

14 A I've not done those measurements. I was using the
15 documents from SCAPA and other groups looking at deterioration.

16 Q You would agree, would you not, that there has to be
17 significant exhaust over the dryer sections so that the
18 moisture can be drawn away and the paper can dry.

19 A Yes, I would think so.

20 Q In your glove box test you made no effort to replicate
21 the actual ventilation or humidity or wetness of a felt that
22 was actually used at Bowater, correct?

23 A Not at Bowater. We had values of humidity that were in
24 the range of what is reported for paper mills in general, but
25 not specifically Bowater.

TESTIMONY OF JAMES MILLETTE

1 Q What was the level of humidity at Bowater in the area
2 of the dryer section of the paper machine number one in the
3 60's and the 70's?

4 A Well, I said I don't know specifically about Bowater, but
5 the data that I have seen suggests levels of 30 to 90 percent
6 in the running of the thing. And one of the papers, the early
7 papers suggested that you would have a lot of moisture at the
8 beginning, and then by the time you got to the end of the paper
9 run the paper and the felt with the cotton drying with the
10 moisture content of approximately five percent, and so you
11 would have a varying indication at the end, which makes sense.
12 You start out with very wet paper and by the time you're done
13 you would have paper that's about the wetness of this paper
14 here, so you can roll it up, otherwise it wouldn't work very
15 well.

16 Q Dr. Millette, what was the temperature of the dryer
17 cans in the dryer section of paper machine number one in the
18 60's and the 70's?

19 A I don't know.

20 Q But you would agree with me as a scientist that if it's
21 hot enough to dry paper that it's a strong likelihood that
22 when the water comes out of the paper pulp through the dryer
23 felt onto the dryer can there's going to be steam and
24 humidity created.

25 A Yes. As I said, the humidity changes as it gets less and

TESTIMONY OF JAMES MILLETTE

1 less wet, so it goes from 90 or 100 percent down to five
2 percent throughout the process.

3 Q And you don't have any information from any source as
4 to where Mr. Stewart may have been on any given day in that
5 process, correct?

6 A That's correct, I don't know his exact whereabouts.

7 Q And you don't know how much water usage there was at
8 Bowater in the 60's and the 70's, correct?

9 A No, I don't.

10 Q The paper slurry starts out about 50 percent water,
11 correct?

12 A Yes.

13 Q And can you tell the ladies and gentlemen of the jury
14 what that would look like? In opening I had a little wet
15 piece of paper --

16 A I'm trying to think of something. I think most people
17 know when you take a paper towel and you make it all wet it's
18 soggy, and maybe toilet paper would be better because it has a
19 looser kind of feel to it. But if you put that in water and
20 drain all the water out so that it doesn't drip, then you're
21 probably around 50 percent maybe at that point.

22 Q I think you described it in the past as mushy. I know
23 that's not a scientific term, but is that a good term?

24 A Yes, that's fine.

25 Q None of your tests involved the actual making of paper,

TESTIMONY OF JAMES MILLETTE

1 correct?

2 A No, that wasn't the intent of what we were trying to. We
3 were trying to determine whether fibers are released when
4 you're hit with compressed air.

5 Q And nothing was ever moving in your test.

6 A No. Other than the compressed air, no.

7 Q Dr. Millette, you haven't participated in any study
8 that relates to an association between the use of an
9 asbestos containing dryer felt and the development of an
10 asbestos related disease, correct?

11 A That's correct. I have no opinions today about the risk
12 of disease.

13 Q You have looked at some books about dryer felts and
14 paper making, correct?

15 A Yes, a number of resources, yes.

16 Q And you found nothing in those books that indicated
17 there was a hazard to using asbestos containing dryer felts,
18 correct?

19 A Again, I'm not here to testify about hazard, I don't
20 recall anything specifically.

21 Q In the paper that you published for Microscope you
22 indicated it was peer reviewed. You did not indicate in
23 that paper that the testing described therein had been paid
24 for by plaintiffs attorneys, correct.

25 A That is correct, yes.

TESTIMONY OF JAMES MILLETTE

1 Q And no dryer felt manufacturer or paper mill had any
2 input into that paper.

3 A That is correct, other than the publications that they may
4 have produced and my reliance on them.

5 Q There are 11 papers cited in your bibliography, do you
6 recall that?

7 A Yes.

8 Q And it would be correct that none of those papers
9 referenced in any way asbestos fiber release from dryer
10 felts.

11 A Yes. As I think we've established, mine was the first
12 paper that talked about that.

13 Q You told us that in your glove box test -- and Judge
14 wanted me to say, this is not an asbestos containing dryer
15 felt, this is just our little sample -- but in your glove
16 box test you blew air on a piece of felt about this size,
17 correct?

18 A Yes.

19 Q And you did it for five minutes give or take.

20 A Yes. It was off and on for five minutes, that's correct.

21 Q Have you ever calculated how long it would take you to
22 blow for five minutes on an entire dryer felt?

23 A No, I have not. And it's my understanding that when they
24 would do a blow down work that they wouldn't be drying --
25 blowing down the entire dryer felt, just a portion of it where

TESTIMONY OF JAMES MILLETTE

1 the paper had broken they wanted to clean it up.

2 Q It would take a really long time, right?

3 A To do the entire dryer felt, yes, I would think so.

4 Q And I think you said in your first test you were
5 blowing primarily at a 90-degree angle.

6 A That's correct, yes.

7 Q And then you said something about in the second test
8 you put some distilled water in the little square?

9 A Yes, we did. We put water on the surface and then put it
10 on a hot plate to dry it off, so it was similar to the
11 situation of a dryer felt that he used.

12 Q There is no similarity at least that you saw between
13 distilled water and the chemical filled water that came out
14 of the pulp and went through the dryer felts and at Bowater,
15 correct?

16 A Well, they're both water and water contains some
17 additional chemicals, that's correct, at Bowater.

18 Q Certainly weren't using -- you wouldn't call that
19 distilled water that was coming out of the paper pulp, would
20 you?

21 A No. It was probably more acidic, probably more chemically
22 active than the distilled water would be.

23 Q After the distilled water was put on the felt it was
24 then allowed to dry?

25 A Right, on a hot plate as I said.

TESTIMONY OF JAMES MILLETTE

- 1 Q You don't have any measurements of the blowing angles
2 that you used in your second test, correct?
- 3 A No. Except that they were random and they were all at
4 different angles, primarily not at 90 degrees. As I recall in
5 Mr. Stewart's deposition he talked about using random angles
6 when he was blowing it.
- 7 Q Dr. Millette, the paper is going through the paper
8 machine with the dryer felt like this, correct?
- 9 A Yes.
- 10 Q Big roller cam?
- 11 A Yes.
- 12 Q And a paper break is when the sheet breaks and it
13 doesn't keep going through the machine, right?
- 14 A That's correct, yes.
- 15 Q So there's paper build-up and paper fines down here but
16 the dryer felt keeps going.
- 17 A That's correct.
- 18 Q And they have to clear these paper fines and things out
19 so they can rethread the sheet and it won't break again.
- 20 A That is correct, yes.
- 21 Q And what they're trying to do is get this material out
22 of the paper machine, correct?
- 23 A Yes.
- 24 Q And you looked at Mr. Steele's depositions, did you
25 not?

TESTIMONY OF JAMES MILLETTE

1 A I believe so, yes.

2 Q He just told the ladies and gentlemen of the jury that
3 typically they would blow across the machine to get all of
4 those paper fines and dirt and stuff out, and that's
5 consistent with what you've seen, correct?

6 A No. I wasn't here for his testimony, I don't know what he
7 said. And what I recall in Mr. Stewart's deposition was he
8 said they pretty much had to use the direction wherever they
9 had to to get the stuff out, that it wasn't just over the top
10 kind of thing.

11 Q Dr. Millette, that's not what I asked you. Did you
12 read Mr. Steele's deposition to prepare for your opinions in
13 this case or not?

14 A Well, about four years ago, yes.

15 Q Assume for me that he testified earlier today that they
16 would blow across the paper machine to get the paper and
17 materials out, right?

18 A Okay.

19 Q Okay. And you and I have agreed in the past that if
20 you're blowing parallel to the dryer felt as opposed to on
21 it you would not expect there to be any significant fiber
22 release, correct?

23 A Well, I don't know if I said no significant -- it would
24 depend on whether the air of the flow actually interacted with
25 the felt. If it didn't interact with the felt then I would

TESTIMONY OF JAMES MILLETTE

1 agree that you wouldn't find any fibers.

2 Q Would you turn to page 69 in the transcript that I gave
3 you up there?

4 MR. YOUNG: Your Honor, I have a copy for you.

5 THE COURT: What is this?

6 MR. JEKEL: Your Honor, this is a transcript from some
7 other action.

8 MR. YOUNG: It is his testimony.

9 THE COURT: This is Dr. Millette's testimony in another
10 case?

11 MR. YOUNG: Yes, Your Honor, it's for impeachment.

12 THE COURT: And you're trying to impeach him? What page
13 are you on?

14 MR. YOUNG: Page 69, Your Honor.

15 MR. JEKEL: What line, Mr. Young?

16 MR. YOUNG: Seventeen to 23.

17 MR. JEKEL: Your Honor, I don't even think he has --
18 objection, Your Honor. I don't believe he's actually asked the
19 same questions or gotten an inconsistent answer yet.

20 THE COURT: What is the question, Mr. Young?

21 MR. YOUNG: Dr. Millette --

22 THE COURT: Mr. Young, what was the question you asked Dr.
23 Millette, not what you --

24 MR. YOUNG: I don't remember, Judge, but I can ask him
25 another.

TESTIMONY OF JAMES MILLETTE

1 THE COURT: Yeah, you can. I'm just trying to focus on
2 his objection and what it is you're asking.

3 MR. YOUNG: Well, I withdraw that question and ask a new
4 question and hopefully we can get on the same page.

5 THE COURT: I wasn't trying to trap you, I'm just trying
6 to get a sense of what it is you're asking.

7 Q Dr. Millette, if someone just blew parallel to the
8 dryer felt as opposed to any angle you would not anticipate
9 that you would find very much fiber release if any, correct?

10 A As I said before you wouldn't find very much because
11 there's not much interaction with the surface of the felts. So
12 if you blow it in such a way that you never interact with the
13 surface of the felt then I don't think you're going to get a
14 lot of fibers blown.

15 Q Do you know whether or not they stop the paper machine
16 during a paper break?

17 A Generally, yes. I think it would be very difficult to do
18 while it was running. It would be dangerous for one thing
19 because you've got this thing running at a very high speed, 300
20 feet per minute or whatever it is, or 1,000 feet per minute.

21 Q If it's going I think Mr. Steele said 2,400 feet per
22 minute, you certainly wouldn't be up there with your arm
23 trying to blow on the felt while it was moving, correct?

24 A I wouldn't think so, no. You would get that testimony
25 from somebody who was actually there but I wouldn't think you

TESTIMONY OF JAMES MILLETTE

1 would just for safety reasons.

2 Q The pieces of dryer felt that you tested did not have
3 any paper pulp material or any other build-up on them from
4 the paper making process, correct?

5 A Not that I can see in the first two that were used, and
6 the last one. There was some evidence of some degradation,
7 some burn marks, but no evidence of paper that I could see.

8 Q And certainly none of them had been soaked with gallons
9 and gallons of water before you did your test.

10 A Well, the last one -- maybe not gallons and gallons, it
11 depends on how many you think -- how many gallons went through
12 that pilot plant that ran through for 30 days, I don't know how
13 many gallons went through but that would have been however many
14 it was.

15 Q I'm talking right before your test, you didn't take a
16 pitcher of water and dump it down the dryer felt piece.

17 A That's correct, yes.

18 Q The Post-it note test you mention for the ladies and
19 gentlemen of the jury, those felts weren't wet either,
20 correct?

21 A That's correct, they were dry.

22 Q And the finger test felts were not wet either.

23 A They were wet, because you would put water on your finger
24 and touch it to the surface, at that particular point it was
25 wet.

TESTIMONY OF JAMES MILLETTE

1 Q And you put one drop of water on your finger.

2 A Yes.

3 Q But the felt itself was not wetted before the test?

4 A No. Because we were only interested in the interaction
5 between the size of your finger on that particular part of the
6 felt, not the entire felt.

7 Q And there wasn't any humidity or ventilation involved
8 in the Post-it note or finger test, correct?

9 A That is correct.

10 Q And certainly no paper being made.

11 A No.

12 Q Dr. Millette, you're familiar with the OSHA permissible
13 exposure level for asbestos, correct?

14 A I am generally. It's not a particular area that I have
15 testified about, but yes, in general.

16 Q It has gone back down over time, but down in the 1970's
17 it was at five fibers per cubic centimeter of air, correct?

18 A At one point it was. I don't know what date it was that
19 it changed, it's now .1 I believe.

20 Q And that's what's called a time-weighted average?

21 A No. A time-weighted average would be what OSHA uses to
22 make that comparison to see -- not what the exposure was but to
23 see if you have gone over a regulatory limit.

24 Q Right. But the OSHA PDL of five fibers per cubic
25 centimeter of air back in the 70's, that was meant to be a

TESTIMONY OF JAMES MILLETTE

- 1 time-weighted average, correct, for the day?
- 2 A Yes. I'm not the person to ask that, I'm not a certified
3 industrial hygienist but that's my understanding.
- 4 Q None of the numbers that you gave the ladies and
5 gentlemen of the jury were a time-weighted average based
6 upon an eight hour workday, correct?
- 7 A That is correct.
- 8 Q And with regard to the installation and removal of
9 dryer felts, you're not aware of any study showing that the
10 installation or removal of dryer felts would release
11 asbestos fibers in excess of the OSHA PDL; is that right?
- 12 A At that time that's correct.
- 13 Q With respect to the finger testing and Post-it note
14 test, you don't have any data to give us with respect to any
15 asbestos that was actually in the air at that time, correct?
- 16 A No, that's not the intent of my test. It's a way to show
17 if it comes off on your hand.
- 18 Q So there was nothing done during the Post-it note or
19 finger test that would allow you to say that there was some
20 level of asbestos in the air that someone might breath,
21 correct?
- 22 A That's correct, that was the intent of the test.
- 23 Q You mentioned re-entrainment with Mr. Jekel, do you
24 recall that?
- 25 A Yes.

TESTIMONY OF JAMES MILLETTE

1 Q You would agree with me that any conclusions about any
2 amount of asbestos that might be re-entrained into the air,
3 that you would need to know what was actually in the dust
4 that was being re-entrained, correct?

5 A Yes, it would vary. The amount of the air, of course,
6 varied depending on how much is in the dust.

7 Q When is the last time that you did any dryer felt
8 testing?

9 THE COURT: I couldn't hear that.

10 Q I'm sorry. When was the last time you did any dryer
11 felt testing? Was it 15 years ago?

12 A At least ten, I think. I would think we did some
13 examination about ten years ago.

14 Q You've never taken any air samples in a paper mill,
15 correct?

16 A That is correct, yes.

17 Q And you showed the ladies and gentlemen of the jury the
18 cassette earlier.

19 A Yes.

20 Q And the best way to ascertain whether there was or was
21 not any respirable asbestos from use of a dryer felt would
22 be to put the cassette on the worker while he was doing the
23 work and take air sampling, correct?

24 A That is correct. Since they stopped making them in the
25 70's we had no opportunity to do that later to figure that one

TESTIMONY OF JAMES MILLETTE

1 out.

2 Q You haven't ever worked -- I think you've already said
3 it -- you've never done any air sampling in a paper mill at
4 all, correct?

5 A That's correct.

6 Q There is asbestos in the ambient air, correct?

7 A Probably not in this ambient that you could measure, but
8 in earlier times in certain areas there would have been.

9 Q You never had an opportunity to meet Mr. Stewart; is
10 that right?

11 A Unfortunately no.

12 Q Never talked to any of his coworkers.

13 A That's correct. I read their depositions but never talked
14 to them.

15 Q Was today the first time you'd ever seen a picture of
16 the Bowater paper mill?

17 A Probably not. I think there was one early on in this
18 case, which is five or six years old.

19 Q Never seen paper being made at Bowater.

20 A No.

21 Q And I think you've already said, you don't know what
22 speed the machine ran at.

23 A I think you just told me it was 2,400 per minute or
24 something like that.

25 Q And Dr. Millette, would you agree with us that Mr.

TESTIMONY OF JAMES MILLETTE

1 Stewart's employer, Bowater, had a responsibility to provide
2 him a safe work place certainly after OSHA came into effect?

3 MR. JEKEL: Objection, Your Honor, it's outside the scope
4 of his expertise.

5 THE COURT: I'll allow it.

6 A I have no opinion in that regard. I've not studied the
7 requirements of employers during said periods of time.

8 Q You saw nothing in anything you reviewed that indicated
9 that Bowater felt -- or that Bowater warned Mr. Stewart
10 about asbestos at all; is that right?

11 A You.

12 THE COURT: You're dropping your voice Mr. Young and I
13 can't hear the question.

14 Q You saw nothing in anything you reviewed that indicated
15 that Bowater had given Mr. Stewart any warnings about
16 asbestos at all.

17 A Not that I can recall in his depositions.

18 Q You haven't looked at any abatement records from
19 Bowater, correct?

20 A That is correct.

21 Q You know what an abatement record is, do you not?

22 A Yes, when you're talking about asbestos abatements.

23 Q I am.

24 A Yes.

25 Q Do you know whether or not thermal insulation was

TESTIMONY OF JAMES MILLETTE

1 abated from the Bowater paper mill?

2 A I don't know.

3 Q You don't know how many asbestos containing dryer felts
4 were sold by SCAPA to Bowater while Mr. Stewart was there,
5 do you?

6 A No. I remember seeing a page that showed maybe 20
7 different felts, I don't know if they were all SCAPA but they
8 were quite a number that was.

9 Q You would go with the SCAPA rep as to the number of
10 felts asbestos containing and non-asbestos containing; is
11 that correct?

12 THE COURT: Unless he's seen them I don't know if he can
13 say that.

14 MR. YOUNG: I withdraw the question.

15 A I can look at the data if you presented it but I don't
16 have anything at this point other than that one machine that I
17 saw.

18 Q Assume for me, Dr. Millette, there were approximately
19 288 dryer felts used on paper machine number one from 1963
20 from 1981, will do you that?

21 A Okay.

22 Q You certainly have no information that they all came
23 from SCAPA, correct?

24 A That is correct, I don't.

25 Q And your recollection is there were about 20 asbestos

TESTIMONY OF JAMES MILLETTE

1 felts from SCAPA during that time?

2 A Well, I saw a sheet of paper that had 20 on it but I don't
3 know if that was all of them.

4 Q You know that there were Albany felts there, Lockport
5 felts there, Mount Vernon and Asten felts there.

6 A I recall there were other felts there, I don't remember if
7 all of those were included in his deposition but I remember the
8 Mount Vernon and Albany, I believe.

9 Q Have you looked at some of their felts as a part of
10 their testing?

11 A Yes, I have.

12 Q Your opinions about those I assume would be the same as
13 the ones about SCAPA?

14 A Yes, they would be if they were asbestos containing.

15 Q Did you see anything in any of the materials that you
16 reviewed that indicated that Mount Vernon was the popular
17 dryer felt manufacturer at Bowater?

18 A Not that I recall.

19 Q To your knowledge OSHA never required a warning on an
20 asbestos containing dryer felt, correct?

21 A Well, that's not really my area of expertise but I'm not
22 aware of any.

23 Q Dr. Millette, do you know where the forginear section
24 is on the paper machine?

25 A Well, I did a number of years ago. I would have to admit

TESTIMONY OF JAMES MILLETTE

1 I didn't go all of the way through the paper making information
2 that I learned and read through all of that.

3 Q To your recollection there were no dryer felts used in
4 that section of the machine, correct?

5 A I don't remember. I don't think so but I don't remember
6 for sure.

7 Q You would anticipate that a paper mill like Bowater in
8 the 60's and the 70's drying paper would have had insulated
9 steam lines, correct?

10 A I don't know. It's certainly possible but I don't know
11 what they would have used for insulation.

12 Q Well, in the 60's and the 70's asbestos containing
13 thermal insulation was a primary use of insulation on steam
14 line and high heat areas, correct?

15 A Well, I know that's true for Navy ships, steam ships and
16 certain types of other factories, I can't really say that I
17 know that for sure for paper making companies.

18 Q You know who Paul Carlson is, correct?

19 A I believe he was the industrial hygienist that was
20 involved in the test in Western Michigan, I don't know him
21 personally.

22 Q And you're aware that he did testing at a paper mill
23 with and without asbestos containing dryer felts and the
24 asbestos level in the air was the same either way. Do you
25 recall that?

TESTIMONY OF JAMES MILLETTE

1 A No, I don't recall that.

2 MR. YOUNG: Your Honor, can I have just one second?

3 (Break in proceedings.)

4 MR. YOUNG: Thank you, Dr. Millette, hopefully we'll see
5 you at home.

6 THE COURT: All right. Redirect, Mr. Jekel?

7 MR. JEKEL: Very brief, Your Honor, just a few questions.

8 REDIRECT EXAMINATION

9 BY MR. JEKEL:

10 Q Dr. Millette, this is not the first time you've seen
11 Mr. Young in court, is it?

12 A That's correct.

13 Q Has Mr. Young ever shown you any SCAPA testing for
14 fiber release from their own dryer felts? Has he ever shown
15 you that?

16 A No.

17 Q Didn't today either, did he?

18 A No.

19 Q Were there any technological impediment to doing the
20 type of testing that you did back in 1965 when they were
21 manufacturing these felts?

22 A No.

23 Q I want to be sure we're all clear on this, I didn't pay
24 for any of the testing that we talked about here today,
25 right?

TESTIMONY OF JAMES MILLETTE

1 A None of the testing, no.

2 Q And when they're putting on that 1,000 pound felt with
3 over 1,000 pounds of asbestos, that machine is not running,
4 is it?

5 A No.

6 Q It is not dumping water anywhere, is it?

7 A No.

8 Q When they take it off is the maching running?

9 A No.

10 Q Is there any water running through it at that time?

11 A No.

12 MR. JEKEL: Doctor, thank you very much.

13 THE COURT: Thank you, Dr. Millette, you may step down.

14 All right, Mr. Jekel, where are we now?

15 (A bench conference was held.)

16 THE COURT: Ladies and gentlemen of the jury, we have a
17 final technical deposition to be read, you've been awfully
18 patient today and have been very, very attentive to what is
19 some very technical information, sometimes you've been more
20 attentive than I've been attentive, my hats off to you for
21 that. What we're going to do is dismiss you at this time with
22 thanks for coming in early. I'm wondering, Madam Forelady,
23 whether you could briefly poll the members of the jury when you
24 get back and see if 9:00 would be okay for a return tomorrow
25 morning. And with that you're dismissed for the day, don't

1 talk to anybody about the case. Thank you so much.

2 (The jury left the courtroom.)

3 THE COURT: Okay. Gentlemen, where are we? Are there
4 things that I can help resolve?

5 MR. EARLY: I think there are a couple of things, Your
6 Honor, one of which is Mr. Merk's --

7 MR. JEKEL: We are good on that.

8 THE COURT: I'm kind of thinking Mr. Jekel and Collier is
9 resolved Merk, am I right?

10 MR. JEKEL: There are just a couple type of lines that got
11 marked and some didn't.

12 THE COURT: Those are things you will probably be able to
13 settled.

14 MR. EARLY: They gave us a list of witnesses they intend
15 to call tomorrow, one of which is a guy named Harold Ward who
16 is not on their most recent witness list.

17 THE COURT: What I have about Ward is this, and I had
18 wondered about that and we can take it up at this time and see
19 what is to be done, I had a typed witness list that was given
20 to me but it had on in penmanship Harold King Ward, Jr. and
21 that's what I have given several days ago.

22 MR. EARLY: The reason it was penned in there, Your Honor,
23 is because they took him off of their witness list and we were
24 preparing -- I left from Charleston and these gentlemen left
25 from Atlanta, we didn't bring his deposition so we don't have

1 it. He wasn't on the witness list.

2 THE COURT: Well, that part -- y'all have got a big
3 operation, you can get his deposition I'm not worried about
4 that. Was he originally listed as a witness?

5 MR. GRAHAM: Your Honor, if I could be heard on that. Mr.
6 Ward was listed as an original witness, and then when we had
7 your pretrial --

8 THE COURT: I was hacking on you to try to cut down on
9 your witness list.

10 MR. GRAHAM: You did and we did, he was one that we moved
11 over here and then we put him sort of in the holding pen, and
12 we were trying to confirm -- this gentleman that testified
13 today, Mr. Steele, and then Mr. Rhodes, and Mr. Rhodes has gone
14 both with a cold and AWOL on us, so what we were trying to do
15 when I penned that in for the reason we were qualifying is I
16 took Mr. Ward out of the bull pen, take Rhodes out, put Ward in
17 Mr. Rhodes' place. So the original design was to have two fact
18 witnesses and that would leave us with still two fact witnesses
19 and in this case Ward would replace Rhodes.

20 THE COURT: Well, it looks like you've got three fact
21 witnesses besides, of course, the decedent's two children and
22 that is Mr. Neely --

23 MR. GRAHAM: Mr. Neely was friend of Mr. Stewart, he's not
24 a coworker and so I don't think we're going to call him.

25 THE COURT: Be that as it may, are we going to have him or

1 are we not going to have him?

2 MR. JEKEL: No, Your Honor.

3 THE COURT: What you've got now left as I see it is Dr.
4 Harpole, Dr. Maddox --

5 MR. JEKEL: Dr. Maddox is not coming, Your Honor.

6 THE COURT: So strike him off. You've done Dr. Millette
7 Neely is gone, Rhodes is gone, Dr. Sinclair.

8 MR. JEKEL: Gone.

9 THE COURT: Mr. Steele has been done, you have the
10 plaintiff's video and Ward is what you've got left.

11 MR. JEKEL: Yes, ma'am. And DePasquale.

12 THE COURT: So you've got DePasquale, Harpole, Ward and
13 the decedent.

14 MR. JEKEL: Yes, ma'am.

15 THE COURT: Talk to me.

16 MR. EARLY: I've already said the one reason, but the
17 other reason I think it's cumulative. I think we've got the
18 decedent's deposition, he'll obviously be providing information
19 regarding Bowater. We've already read in the gentleman, Mr.
20 Hegler, we've had Mr. Steele today, so that would be three
21 coworkers and we believe that's cumulative. Mr. Ward, as I
22 understand, he is going to overlap exactly what Mr. Steele did
23 today, so I'm not sure what else we need with regards to that
24 that we don't already have, once again he was not listed.

25 THE COURT: Well, I'll put he was not listed aside, he was

1 listed, he was unlisted, y'all took his deposition, I'm not
2 real concerned that y'all are disadvantaged from that
3 standpoint, but how many about overlapping and cumulative,
4 guys?

5 MR. GRAHAM: Your Honor, I understand the feeling. Mr.
6 Ward is going to testify about a specific event having to do
7 with the SCAPA dryer felt, it was elicited in his testimony --

8 THE COURT: And it's been covered in the deposition that
9 was taken?

10 MR. GRAHAM: Yes, ma'am.

11 THE COURT: I'm going to allow it. Okay. We've got that
12 hash settled and we've got four witnesses left for y'all.

13 MR. GRAHAM: Yes, ma'am.

14 THE COURT: What else, Will?

15 MR. JEKEL: The deposition objections of Mr. Stewart.

16 MR. EARLY: Right. I'll have to let my colleagues handle
17 that, but we do have -- there are some issues to take up with
18 the regards to decedent's depositions himself, designations,
19 counters, et cetera.

20 THE COURT: That's the video of the decedent.

21 MR. EARLY: Well, there are several. We've got a couple
22 of things. I think they're going to play the video --

23 MR. JEKEL: It's de bene esse.

24 MR. EARLY: -- the trial deposition. He was deposed in
25 the discovery deposition and we also have some testimony from

1 his worker's comp. deposition that we've designated. I had
2 talked first about this and we would like to play it all, I
3 believe it's in your case in chief.

4 MR. JEKEL: I don't think so. We're going to play the
5 plaintiff's video dep. in our case, if they want to read in
6 these other depositions in their case no objection.

7 THE COURT: Are you going to read them in or play the --

8 MR. EARLY: I think they're all not videoed, so -- it's a
9 discovery video as well. It was taken at the same time and his
10 de bene esse, I assume.

11 THE COURT: You had a deposition that's videoed and then
12 you have a de bene esse that was videoed, and then what is this
13 written deposition?

14 MR. JEKEL: Well, all I know, Your Honor, I was not aware,
15 I was looking at the paper transcripts of all of this stuff, I
16 was unaware that the discovery deposition was videotaped so
17 there is no reading of the deposition.

18 THE COURT: It's all on video.

19 MR. EARLY: Everything will be video except a portion of
20 the worker's comp. deposition, Your Honor, obviously this was
21 his deposition, we had questions, he will talk about empty
22 chair stuff. So other than --

23 THE COURT: Well, that comp. deposition is a different
24 question. I'm not going to mix that into this because we will
25 want to talk about that, I want to be sure exactly what is

1 being said so I'm not going to make any decision right now
2 about that, I'm not saying no by any means but let's put that
3 issue to the side. Will, I think the best thing to do is just
4 to play what you want to play and let him play what he wants to
5 play.

6 MR. EARLY: I agree with that.

7 THE COURT: If he's got some burning things to tell me
8 about the comp. when it comes to that about what it has got in
9 it, I don't know anything about it.

10 MR. EARLY: We'll just do that in our case in chief, we'll
11 study that and we'll talk about that between now and then.

12 MR. JEKEL: So, Your Honor, I need to look back over the
13 discovery dep. to see if there was anything that we need to
14 discuss in terms of our objections to their counters.

15 THE COURT: Well, that is for his case, all right? Right
16 now we're just trying to get your case settled now. I don't
17 need to address them right now is what it sounds like to me.

18 MR. EARLY: I thought I heard Your Honor just say we could
19 play both videos, the discovery deposition and his de bene esse
20 when they play theirs at the same time for completeness, I
21 thought I heard you say that.

22 THE COURT: That's what I would prefer to have happen, but
23 if there is going to be some problem about the content of it
24 then that's a different kettle of fish. It's the comp.
25 deposition that I am still having some questions about.

1 MR. EARLY: There will be a lot of stuff about his injury
2 and stuff in the comp. that he was asked that we probably won't
3 go in to, the specific stuff we will be talking about is the
4 product type things I assume.

5 MR. JEKEL: After I play the de bene, which is maybe an
6 hour and 20 minutes front to back, they can get up and put in a
7 new video of a discovery dep. in the plaintiff's case in chief.
8 that may be two and a half hours long and play it? I don't
9 know how long it is. But it sounds like -- I'm just trying to
10 make sure I know what the process is going to be.

11 THE COURT: He wants the dramatic impact of having his
12 video deposition of his client be the last thing he plays.

13 MR. JEKEL: That's not going to be the last thing I play,
14 the day in the lift might be, Your Honor. I don't mind that
15 aspect, I'm just making sure I understand the process that you
16 want to follow, that's all I'm asking.

17 THE COURT: Well, having everything he has to say all at
18 one time is ideal.

19 MR. EARLY: I'm not saying it's two hours, we can cut it
20 down.

21 THE COURT: And it is just the comp. one that I'm worried
22 about.

23 MR. JEKEL: And that's fine. Again, I was just seeking a
24 little clarification to make sure after we play his de bene
25 esse what is going to happen, that's all. I don't have any

1 problem with Your Honor's ruling.

2 THE COURT: I would like to play them all at one time.

3 MR. EARLY: I understand, Your Honor. Your Honor was
4 very clear, you will only allow a couple of minutes of the day
5 in the life video, I have got a six minute video so if we could
6 get the most revised version, he's only going to play a couple
7 of minutes but I haven't seen that yet.

8 MR. JEKEL: Well, Your Honor, the original day in the life
9 was over a hour and 12 minutes, it's very difficult to cut this
10 down when you look at the subject matter, we've had it revised
11 twice. And I'm not going to subject the jury to six minutes of
12 what is on that video, I won't, I might like to fast forward
13 through it all but I'm not going to show them more than two
14 minutes of a day in the life video. I'm not sure I'm going to
15 have the time to send it out to get another two minutes cut off
16 of it.

17 THE COURT: I'm going to give you some latitude in terms
18 of what you want to do in the day of the life.

19 MR. JEKEL: But I can assure Your Honor that not more than
20 two to three minutes of that would be shown because I think
21 after that it loses it's effect.

22 THE COURT: I've already said to you you get to do what
23 you want to do so that's fine with me. If you all can work out
24 the rest of these things in that sequence so it suits you, Mr.
25 Jekel, and you can do it at the same time, I think that's the

1 better way to do it.

2 MR. EARLY: If we can't, Your Honor, I know the jury is
3 coming back at 9:00 tomorrow, we'll be here at 8:30.

4 THE COURT: That's right.

5 (Court recessed for the evening and resumed at 9:00
6 A.m. on February 1, 2018.)

7 THE COURT: All right, Counsel, any dilemmas before we get
8 started? Everything is good? I take it that we will begin
9 with the deposition; is this correct?

10 MR. JEKEL: No, we have a live witness. The last -- we
11 have the treating physician tomorrow, last expert witness is
12 Christopher DePasquale, industrial hygienist, Your Honor. I
13 want to say counsel and I have agreed or we have stipulated he
14 will be an expert in industrial hygiene so I won't have to
15 qualify him and waste any of that time.

16 THE COURT: Very good. So we would begin with our
17 expert --

18 MR. JEKEL: I've got a few pieces of evidence I'm going to
19 formally introduce and publish one document and then we are
20 going to go with the live witness.

21 THE COURT: And then after the live witness?

22 MR. GRAHAM: Will be Mr. Ward.

23 THE COURT: We will have another live witness and that is
24 the coworker. And then?

25 MR. JEKEL: And then Merk.

1 THE COURT: And that's our long deposition.

2 MR. JEKEL: Well, you know, as we've gone through it, Your
3 Honor, it's getting substantially shorter every time we look at
4 it so hopefully it won't be as long. And then we have Steven
5 Stewart's video de bene esse, still haven't seen the video from
6 the defendants, although I have read the transcript of the
7 designation. Is there a video?

8 MR. EARLY: There is a video, we designated a partial
9 video.

10 (Break in proceedings.)

11 THE COURT: Bring the jury in, please.

12 (The jury returned to the courtroom.)

13 THE COURT: Good morning, ladies and gentlemen of the
14 jury. Thank you again for your usual promptness and everything
15 to do with this trial. You may be seated. We don't know
16 everything that will be done today but I will tell you to begin
17 with you will be hearing a live witness to begin with, an
18 expert, and then you will be hearing from a coworker of Mr.
19 Stewart's, perhaps a treating physician and then there is one
20 expert deposition that will be read, and then I think we will
21 go into some for either video or live testimony so that's kind
22 of a picture of the day. We hope it will move in a smooth way
23 for you. Counsel, you may proceed.

24 MR. JEKEL: Good morning, Your Honor, good morning ladies
25 and gentlemen. Your Honor, the other day we had heard an

1 argument on some exhibits that we would like to enter at this
2 time.

3 THE COURT: And of course, Mr. Young, this is subject to
4 the objections that you have interposed and you want to be sure
5 to do that now that we have exhibit numbers and you will recite
6 those into the record, Mr. Jekel, as you offer. Each of them
7 was objected to, the objections have been ruled upon, and Mr.
8 Young's position on behalf of the defendant is preserved at
9 this time.

10 MR. YOUNG: Thank you, Your Honor.

11 MR. JEKEL: The first, Your Honor, is what was previously
12 marked as 71865 and it will become Exhibit 33.

13 THE COURT: And describe what it is.

14 MR. JEKEL: Yes, ma'am. But Your Honor -- this is from
15 the year 1963 if I could have the Elmo, please. You can see
16 1963, January through December, these are yarn purchases.

17 THE COURT: These are yarn purchases by SCAPA?

18 MR. JEKEL: For the year --

19 THE COURT: At their Waycross plant as I understand it.

20 MR. JEKEL: That's correct, Your Honor. And these are the
21 month expenditures, each month during the year of 1963 for
22 asbestos yarn purchases.

23 THE COURT: The asbestos is highlighted in yellow and
24 there are many other kind of fabrics materials that were
25 purchased that are contained in this chart.

1 MR. JEKEL: Yes. There are other items on there, we are
2 not putting the highlighted copy into evidence, Your Honor.

3 (The document was received as Exhibit 33.)

4 MR. JEKEL: The next document we have was previously
5 marked as 73429, it will be marked as Exhibit 34. It's the
6 40th anniversary celebration for SCAPA Waycross or it's SCAPA
7 England -- 34 rather, I'm sorry.

8 THE COURT: This is a booklet published by SCAPA on the
9 40th anniversary of the company, this is the parent company and
10 its subdivisions are discussed in this multipage publication,
11 and again it's admitted over the objection.

12 (The publication was received as Exhibit 34.)

13 MR. JEKEL: The special issue of the house journal of
14 SCAPA group LTD has as its main object making the 40th year of
15 existence of SCAPA Dryers, LTD a favorite and anxiousness
16 saying in the English language is great oaks from little acorns
17 grow. The development of SCAPA from the small beginnings of
18 1927 to its present day status as a major industrial textile
19 manufacturer is a fine example of this. The origins of SCAPA
20 groups are firmly planned in Blackburn and the affairs of its
21 various subsidiary companies are largely controlled from the
22 head office in the town head -- are largely controlled from the
23 head office in the town. Those directors of the group are
24 residents in Blackburn and in England are here photographed.
25 Next, Your Honor, it's a black and white photo, it's not great.

1 SCAPA Dryers, LTD sales conference Blackburn 1967 and I've
2 highlighted a young gentleman here. Number 11, Jack Chandler,
3 southern states of the US, he was the salesman. And this is a
4 section on safety in SCAPA, and I'm not going to read any of
5 that -- well, let's do this. Thus each division could debate
6 safety problems which appreciated to each particular
7 department. A fourth committee, the group safety committee,
8 was formed under the chairmanship of Mr. J. R. Hindal
9 (phonetically) now managing director of members of this
10 committee. In addition to these arrangements SCAPA is also a
11 member of both the Royal Society for the Prevention of
12 Accidents and the British Safety Council. Since we have been a
13 member of the British Safety Council we have won the safety
14 award each year thanks to the achievement. I can only give
15 here the broad outline of the organization of the industrial
16 safety work carried out at SCAPA. This is toward the end, the
17 statistical assessment of SCAPA. SCAPA felts are exported to
18 Angola, Argentina, Australia, Austria, Belgium, Canada, Chile,
19 Columbia, Czechoslovakia, Denmark, Curie, Egypt, Finland,
20 France, Germany, Greece, Holland, Indian, Israel, Italy, Japan,
21 Korea, Kuwait, Mexico, New Zealand, Nigeria, Norway, Pakistan,
22 Peru, Poland, Portugal, Romania, South Africa, Spain, Sweden,
23 Switzerland, Taiwan, Thailand, Uruguay, USA, USSR. Every major
24 paper making country of the world is included on the list.
25 SCAPA group has its own sales officers in Helsinki, Finland;

1 Melbourne, Australia, and residence sales agents. SCAPA
2 Dryers, LTD, was the felt manufacturer to -- and it goes on.
3 And then discover and adopt the important function of asbestos
4 as a material for use in dryer felts. And then finally on this
5 document, Your Honor -- and that's SCAPA group comprises --
6 SCAPA Group, LTD comprises SCAPA, LTD Blackburn. Silent
7 office. Next, SCAPA Dryers, Inc. Blackburn. Next SCAPA Inc,
8 Waycross, Georgia. Your Honor, that's Plaintiff's Exhibit 34.
9 The last exhibit, that will be Plaintiff's 35, these are the
10 photos of the facility that were discussed in the depositions.
11 We'll see these --

12 THE COURT: These are photographs of the --

13 MR. JEKEL: Bowater Paper Plant.

14 THE COURT: All right, without objection or with
15 objection?

16 MR. YOUNG: No objection, Your Honor.

17 THE COURT: All right, without objection.

18 MR. JEKEL: That's Plaintiff's 35.

19 (The photos were received as Plaintiff's 35.)

20 MR. JEKEL: Your Honor, and now the plaintiff's would call
21 Christopher DePasquale to the stand.

22 THE COURT: Members of the jury, Christopher DePasquale is
23 an expert in industrial hygiene and the parties have agreed and
24 I have examined his curriculum vitae and other information and
25 determined by reason of his training, education and experience

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 he is qualified to render expert opinions in the matters of
2 industrial hygiene.

3 MR. JEKEL: Without objection the plaintiff's are going to
4 mark as 36 a copy of Mr. DePasquale's CV.

5 (The CV was received as Exhibit 36.)

6 The witness, CHRISTOPHER DEPASQUALE, was first duly
7 sworn and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. JEKEL:

10 Q Good morning.

11 A Good morning.

12 Q Please introduce yourself to the jury.

13 A My name is Christopher DePasquale.

14 Q And what is your current profession?

15 A I am a certified industrial hygienist.

16 Q What does a certified industrial hygienist do?

17 A Well, what industrial hygienists do is we are involved in
18 the science of the recognition, evaluation and control of
19 occupational health hazards.

20 Q Recognition. Can you tell us what that entails
21 briefly?

22 A So the recognition part of being an industrial hygienist
23 is typically going out to work places and working with our
24 clients to try to identify potential hazards that their
25 employees may be exposed to.

TESTIMONY OF CHRISTOPHER DEPASQUALE

- 1 Q Can you give just -- what was the next, evaluate?
- 2 A Evaluation.
- 3 Q All right.
- 4 A So that typically will involve me or another industrial
- 5 hygienist going out to a work site. That evaluation can be
- 6 qualitative, we can look at how they're doing something and
- 7 decide if it's like appropriate or not. We can also do
- 8 quantitative assessment which may involve air sampling like for
- 9 asbestos, we can collect air samples on persons doing
- 10 activities with asbestos and evaluate their exposure.
- 11 Q So you talked about recognition and evaluation.
- 12 Evaluation is of the substances recognized or the activities
- 13 recognized?
- 14 A Yes, it's a combination of the two.
- 15 Q Okay. And then what was the last aspect of what you're
- 16 talking about, control?
- 17 A So if we identify a hazard the next part of that process
- 18 is the control aspect, we want to prevent or minimize exposures
- 19 to the workers.
- 20 Q Mr. DePasquale, do you have any experience with
- 21 asbestos?
- 22 A Yes. I've been doing it essentially since I was first
- 23 hired as an industrial hygienist.
- 24 Q Would you briefly outline for the jury your background
- 25 and training in asbestos if you would, please?

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 A Early in my career I was involved in working on asbestos
2 abatement projects where asbestos materials were being removed
3 from buildings and evaluating the exposures that those workers
4 would have during those activities. Throughout my career I've
5 been involved in doing building inspections where we will go
6 into a building, just like this one, identify suspect
7 materials, will take small samples of materials and send them
8 off to a laboratory and have them identify for their asbestos
9 contents, and then you can provide a building owner with that
10 report that details that information so that they can prevent
11 exposures for people who may come in to the building or their
12 own workers who may come into contact with those materials.

13 Q Do you hold any asbestos certifications, licenses,
14 anything like that?

15 A I am -- well, the State of Georgia doesn't have a
16 licensure, but I am an accredited building inspector, which
17 means I can do management plans for schools systems.

18 Q And is that specific for asbestos or does it cover
19 other substances?

20 A This is specific for asbestos.

21 Q And have you evaluated substances other than asbestos
22 as an industrial hygienist?

23 A Yes, absolutely.

24 Q Can you give the jury a few examples of that?

25 A It's a wider array of things. There have been evaluations

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 that have been related to chemical exposures, noise exposures.
2 We do a lot of work with indoor air quality where you may have
3 poor ventilation, high moisture content, potential mold in the
4 building, those are other issues that we address.

5 Q Can you tell the jury what you were asked to do in the
6 case of Steven Stewart?

7 A With regard to Mr. Stewart I was provided a lot of
8 materials related to the case, a lot of deposition materials.
9 I was asked to review those materials to gain an understanding
10 of the work that Mr. Stewart did, how he performed his work,
11 where he had potential during the course of his work to come
12 into contact with asbestos containing materials, and based on
13 the breath of that contact provide some information with regard
14 to whether I believed he had exposures to asbestos.

15 Q Is it fair to say that you did an exposure assessment
16 or exposure analysis of Mr. Stewart and his work site?

17 A Yes. It would be a retrospective analysis because I don't
18 have the benefit of being able to put air sampling on Mr.
19 Stewart.

20 Q Now, have you done that before, do an exposure type
21 assessment, not necessarily asbestos?

22 A In terms of air sampling on a person?

23 Q Or just a work site assessment of hazards, toxic
24 substances, anything like that.

25 A Yes. In some of our work is what we would call an audit

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 where a client, typically a company, will invite us in to help
2 them identify hazards and where they may need to meet some
3 regulatory or suggested guideline with regard to exposures.

4 Q And would it be fair for me to refer to that as an
5 industrial hygienist work site assessment?

6 A Yes.

7 Q And you've done those in the past?

8 A Yes.

9 Q Have you done them with regard to asbestos?

10 A With regard to asbestos I would consider the building
11 surveys that we do that type of an assessment.

12 Q Now, can you give an example of a work site assessment
13 you have done that did not involve asbestos?

14 A One that comes to mind is -- actually it was in South
15 Carolina, we did an industrial hygienist survey at a chemical
16 plant where we looked at chemical exposures, we evaluated noise
17 exposures and detailed all of that information and provided it
18 to our client with recommendations.

19 Q The work place assessment that industrial hygienists
20 like yourself engage in, do you need to be an expert in
21 every industry or work place you entered to do that
22 assessment?

23 A No. And I mean for me that's part of the exciting part of
24 my job is I get to go into different types of work places and
25 evaluate different chemicals, but sometimes there's overlap. I

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 mean, many facilities have asbestos in them but there are
2 different types of facilities.

3 Q And why is it not required that you be an expert in --
4 like we're here talking about a paper mill, you're not a
5 paper expert, are you?

6 A I am not an expert in making paper, no.

7 Q But do you feel that your background in industrial
8 hygiene qualifies you to do the work site assessment?

9 A I think it does, yes. Because it basically -- again,
10 looking for those interactions and experiences Mr. Stewart
11 would have had with asbestos containing materials.

12 Q Have you been to a paper mill before, Mr. DePasquale?

13 A Yes.

14 Q Was it operational, the paper mill you visited?

15 A The first one I visited was fully operational. The second
16 one, which was Mr. Stewart's, wasn't operational with the
17 exception of the paper machine number one where Mr. Stewart
18 worked, it was not operational at the time.

19 Q Did you ever get an opportunity to meet Mr. Stewart?

20 A No, I did not.

21 Q Did you review the testimony of Mr. Stewart?

22 A Yes.

23 Q So you actually had an opportunity to go out and look
24 at paper machine number one?

25 A Yes, I did.

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 Q When did you do your site visit?

2 A I don't recall the exact date but I believe it was in
3 November of 2016.

4 Q I just introduced some photographs that I wanted to
5 show. This was Plaintiff's Exhibit 35. Do you recognize
6 this area?

7 A I do.

8 Q Did it look like this when you went out there?

9 A Not exactly.

10 Q All right. Because it wasn't operational. Do you know
11 for how long it had not been operational when you were
12 there?

13 A At the moment I don't recall.

14 Q Do you see this?

15 A I do.

16 Q Do you have an idea of what that is?

17 A I can't say with absolute certainty but I anticipate it's
18 an air hose.

19 Q Okay. When you were out there doing your site visit,
20 did you see locations where high pressure air could be
21 hooked up or used?

22 A Yes.

23 Q And can you give the jury a feel for where those areas
24 were and how many of those areas there were hookups for high
25 pressure air in and around machine number one?

TESTIMONY OF CHRISTOPHER DEPASQUALE

- 1 A They were pretty much everywhere.
- 2 Q And this again is a different aspect of paper machine
3 number one. Do you recall seeing this when you went out
4 there?
- 5 A I do.
- 6 Q Now, again, it didn't look like that when you were out
7 there, did it?
- 8 A No.
- 9 Q Very well. You took some photographs when you were out
10 there?
- 11 A Yes, I did.
- 12 Q All right. I have one that I wanted to put up. And
13 this is something that the jury has not seen. Do you know
14 what we're looking at here, Mr. DePasquale?
- 15 A So those are pictures we just looked at, those were
16 actually on the level of the paper machine where they're making
17 the paper, that's where the dryers are and the doors that go to
18 access the dryers. This is the area just below that area what
19 they refer to commonly as the basement. So what you're looking
20 at is a walkway on the right, and if you're walking down that
21 walkway on the left you'll see there's a series of doors and
22 that is the section that is below the dryers directly above.
- 23 Q This door?
- 24 A That's one of them. If you keep going down you'll see
25 there's consecutive doors, yes.

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 Q All right. Go on.

2 A But essentially that's the area below the dryer felts.

3 Q And we'll talk about that area later, but when you're
4 referring to the basement, is it the area behind the door or
5 this entire area?

6 A Well, I would consider the entire area the basement. The
7 area that I understood Mr. Stewart to do his work in the
8 basement as it related to the disposal of used dryer felts
9 would be in that area to the left within those doors.

10 Q Got it. We'll talk about that in just a minute. How
11 long did the site visit take?

12 A To the best of my recollection I think we were on site
13 about two hours.

14 Q I want to go back to the work site assessment that you
15 did in this case. Did you have an understanding of what
16 Steven Stewart did at Bowater?

17 A I did, yes. He essentially worked his entire career on
18 paper machine number one and varying positions working his way
19 up to the foreman position, beginning as a utility person, and I
20 don't remember the exact title, but essentially the person who
21 was overseeing the paper making process.

22 Q Did you review information from other coworkers about
23 Bowater and the activities that they engaged in?

24 A Yes.

25 Q Was that information helpful to you?

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 A It was helpful in the sense that it confirmed much of what
2 Mr. Stewart testified to. It also in some ways elaborated on
3 some of the practices that Mr. Stewart was involved in.

4 Q What asbestos containing materials did you examine or
5 investigate as it relates to Mr. Stewart?

6 A I think you're asking me what materials he may have had an
7 opportunity to be exposed to?

8 Q Yes.

9 A Based on my review of the testimony and my understanding
10 of what asbestos contained materials present on the site and
11 his interaction with them, the ones that concerned me were the
12 asbestos containing dryer felts, potential exposures to thermal
13 system insulation basically on piping, and some potential
14 exposures to gaskets and packing related to valves.

15 Q I want to talk again briefly about the dryer section
16 that we saw there. There's been some discussion -- you went
17 in the dryer area, did you not, sir?

18 A Yes.

19 Q When I refer to cans or drums in the dryer area, do you
20 know what I'm referring to?

21 A I do.

22 Q There's been some testimony that those cans that dry
23 the paper as it's going through the dryer end were fed with
24 steam pipes. Did you see those steam pipes, the pipes that
25 carried the steam?

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 A I believe I did, yes.

2 Q In the back end of the dryers?

3 A Yes.

4 Q You can see the connection with the drums, the dryer
5 drums if you will.

6 A Yes. Essentially there is I believe they call it the
7 drive side of the paper machine, and that is where they have
8 the motors that basically run the dryers, and then they have
9 the steam pipes which feeds the cans or drums the steam to heat
10 the paper...

11 Q And what did you notice -- do you know what cladding
12 is?

13 A I do.

14 Q Can you tell the jury what cladding is?

15 A Cladding is just basically a metal wrap around the
16 insulation.

17 Q The steam pipes feeding the dryer end of the dryers,
18 were they cladded?

19 A They were, yes.

20 Q So the insulation wasn't exposed to the environment?

21 A No, it was not. I couldn't see all of it so there could
22 be ends that were exposed. But in some of the deposition
23 testimony they indicated that when the ends were exposed they
24 actually put like tar on it to basically keep it intact.

25 Q When you were at the plant, even though it hadn't been

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 operational, that cladding was still there?

2 A It was.

3 Q Of the visible thermal system insulation you saw, how
4 much of it was cladding?

5 A To be honest I would say certainly -- as I sit here now I
6 don't remember if I saw any that wasn't cladded, I suspect I
7 saw a little bit, but the vast majority of it had a metal
8 cladding on it.

9 Q And from an industrial hygienist point of view, why do
10 you believe those pipes were cladded or covered?

11 A I don't even know that it is so much of an industrial
12 hygienist point of view, my understanding was based on the
13 testimony of the workers was that the pipes were cladded
14 essentially to protect them from being damaged during the
15 course of their work. If they struck a pipe the cladding would
16 protect the insulation and prevent a release. From an
17 industrial hygienist perspective you could say that that
18 prevention of release would limit potential exposure.

19 Q If I'm standing next to a clad asbestos containing
20 thermal insulation pipe, even if I hit it with my elbow if
21 it's clad, do you have an opinion as to whether asbestos
22 fibers are going to get out to expose me?

23 A I don't think there would be an exposure there.

24 Q All right. Okay. So you identified the materials that
25 we talked about and we're going to move into that briefly.

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 What did you do next in terms of your overall work site
2 assessment as it relates to Mr. Stewart? You identified the
3 materials, what did you do next?

4 A The process then involved me writing a report, essentially
5 a report laying out my understanding of Mr. Stewart's work
6 history, where he had opportunities to interact with those
7 materials that we already mentioned, and his potential for
8 exposure when he had that interaction with those materials.

9 Q I want to focus on just dryer felts. Under what
10 condition do you believe asbestos containing dryer felts
11 would have caused an occupational exposure of asbestos to
12 Mr. Stewart?

13 A Based on the testimony I read, Mr. Stewart and the
14 coworkers, the opportunities with regard to dryer felts where
15 Mr. Stewart would have had exposures to asbestos would have
16 included the times when he was blowing down the felts during
17 paper breaks or when others were blowing down the felts during
18 paper breaks, potentially as it was described when he was on
19 the back side of the machine they were on the front side of the
20 machine so they were essentially blowing it across and towards
21 him. The second opportunity would be during the actual process
22 of changing out the felt; the removal of the old felt, the
23 threading of the new felt, the handling of the new felt through
24 the dryer cans. And then subsequent to that the actual cleanup
25 of the old dryer felt, which would involve Mr. Stewart going

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 down into that basement area and actually cutting the felt and
2 then rolling it up and putting it on a pallet to be removed
3 from the area.

4 Q What was it about the asbestos dryer felts themselves
5 that was of concern to you from guys managing it or
6 interacting with it?

7 A Well, I mean, in terms of any asbestos containing material
8 if a worker is interacting with it I want to figure out how
9 they're interacting with that material and if there's a
10 potential for release. Based on the studies I have reviewed,
11 the activities that Mr. Stewart was involved in, the blowing
12 down, the handling, the data indicates that those activities
13 will release asbestos from the dryer felts.

14 Q Thank you. Does the fact that dryer felts may contain
15 700 to 1,000 pounds of asbestos yarns a concern for you?

16 A It's a concern from the perspective that there is asbestos
17 there. There's certainly materials that have much lower
18 quantities of asbestos that we still see significant exposures,
19 but obviously ones that have somewhere between 30 and 70
20 percent asbestos create a special concern because there's more
21 opportunity for asbestos to be liberated.

22 Q And you did look at more than just dryer felts,
23 correct?

24 A In terms of potential exposures?

25 Q Yes.

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 A Yes, I did.

2 Q Okay. I'm going to focus our discussion today on dryer
3 felts. Are you relying on any studies or published reports
4 for your opinions as it relates to dryer felts?

5 A Yes. I've relied on published as well as unpublished
6 studies.

7 Q Would you talk with the jury about what you are relying
8 on as it relates to dryer felts, asbestos dryer felts,
9 please?

10 A Well, I understand the jury had an opportunity to hear Dr.
11 Millette yesterday, and certainly I've relied on Dr. Millette's
12 published and unpublished literature. His studies demonstrate
13 that these activities of handling and blowing down the dryer
14 felts release asbestos into the environment. There is a couple
15 of other studies that involve blow down of dryer felts, one is
16 a MAS study, which is another laboratory, and there is a study
17 that was done at Western Michigan University that did blow down
18 insulation of dryer felts and found some exposures during those
19 activities. And there was another study that looked at
20 exposures during the connecting of an old and new felt during
21 the paper change, or during a felt change.

22 Q Do you know a gentleman by the name of Windlick?

23 A Well, that's the last study I was referring to, yes.

24 Q And what was going on there?

25 A Essentially they were sampling I think over about a 50

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 minute period where when they changed out the felt they take
2 the new felt and they would actually rivet it to the old felt,
3 and the way they would install the new one is by basically
4 letting the old one run through the cans and let the new one
5 follow it, and they evaluated the exposure during that one part
6 of the process. And on one of the gentleman that they were
7 monitoring they found an exposure to asbestos.

8 Q Now, the manner in which they were running the felt
9 through the cans in the Windlick study, did you see any
10 testimony that they engaged in that activity at Bowater?

11 A They did, yes. That's one part of the process.

12 Q Okay. First you have to get it into place, then you've
13 got to hook it up, then -- all right.

14 A Right.

15 Q I want to talk about -- there's been some testimony
16 about taking the felts off. But you heard -- you've read
17 testimony on that aspect at Bowater how the guys would
18 remove old asbestos felts.

19 A Yes.

20 Q Do you recall hearing that they would cut these felts?

21 A I do.

22 Q There's been testimony that cutting these felts created
23 a big cloud of dust, did you recall seeing that?

24 A I did.

25 Q I want to talk about why a cloud of dust when you are

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 working with a product that contains 70 percent asbestos is
2 of concern to an industrial hygienist. Can you tell the
3 jury why?

4 A It's an indicator of potential exposure. When you're
5 dealing with asbestos containing material and you have active
6 visible emissions with a work process with the material there
7 is potential for some portion of that dust to be asbestos
8 containing.

9 Q And the studies that you were relying on, can you
10 identify specifically to the jury what information you're
11 taking from those studies that you apply to Mr. Stewart's
12 case?

13 A Well, I think in the instance of the Millette studies,
14 which I talked about, what I'm taking from those studies is his
15 demonstration of releasability with regard to the asbestos in
16 the dryer felts through the process of handling and through the
17 process of blowing them down. Similarly the MAS study does
18 blow down but they're more so trying to recreate a work process
19 similar to what persons did who worked on a paper machine, so
20 that gives me a little bit more information with regard to
21 potential exposures during that activity. Furthermore you have
22 the Western Michigan University study where they found some
23 exposures during the handling in the insulation of the felt,
24 they also found exposures during the paper weights when they
25 were blowing down the dryer felts as well.

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 Q I want to talk about the use of the compressed air.

2 There was some testimony yesterday from a gentleman that

3 they kind of cleaned up -- in addition to the blow out they

4 were using the asbestos air to kind of housekeep each other

5 after installation of the felt in the dryer. Can you tell

6 the jury why the use of compressed air is significant as it

7 relates to exposures?

8 A Well, when you have a release of asbestos some of that

9 asbestos is ventilated out of the area, some of it may come to

10 settle on the surface. So what happens is if you go to clean

11 up those surfaces that have settled asbestos dust you're

12 basically reentraining it is what we call it, and allowing that

13 asbestos to then again be released into the environment and

14 potentially inhaled by a worker in the area.

15 Q So does that create more opportunities for the asbestos

16 to be in the breathing zone?

17 A Yes, absolutely.

18 Q And when that's going on not only on the felts, is it

19 also a concern in the area in which the felts are?

20 A Yes.

21 Q I want to talk about the man coolers. Are you familiar

22 with in the testimony the man cooler, the fans that were

23 drawing air from the basement?

24 A Oh, okay, yeah. Yes, I know what you're talking about.

25 Q All right. Now I want to talk a little bit about the

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 basement area for a minute. You had indicated to me that
2 that was a particular area that you had concerns with, yes?

3 A Well, what I gained from the site visit was some
4 understanding and corroboration of what I had read in the
5 deposition testimony about how it was described. But one thing
6 that lacked from the deposition testimony is a description of
7 the work area in the basement, I didn't quite understand what
8 that looked like, so it was interesting when I got there to see
9 that it's actually essentially an enclosed area. Like you saw
10 in the earlier pictures where you have the paper machine level
11 and you're looking at the dryers and the cans and that's wide
12 open, I couldn't give you a good guess, probably I would say
13 maybe 100 feet up to the ceiling of the building, but when you
14 get down into the back it's certainly a lower ceiling. But
15 then on that picture that -- I think the first one that was
16 looking at the walkway, you have this enclosed area which goes
17 right below the dryer felts. So where Mr. Stewart and others
18 were doing this task of actually taking the old felt and
19 cutting it, it's much more enclosed than if it were up on the
20 main level of the paper machine.

21 Q All right. Were you referring to this area or this
22 area, or were you referring to this area?

23 A Yeah, that's the basement area.

24 Q And again, this is right under here?

25 A Roughly, yes.

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 Q All right. Going back to the basement, continue. How
2 big an area in relationship to this courtroom is the rooms?

3 A Essentially the rooms mirror the dryer section above. So
4 that wall comes down, it's kind of similar to where the edge --
5 where that edge is.

6 Q Okay. All right. So it's -- is it the length of --
7 these are different dryer sections, you understand that.

8 A I do.

9 Q The rooms, do they go with each section below them or
10 is it one big room for all sections?

11 A I don't recall. The best I recall is that it's one room
12 under the dryer section, but there's multiple doors that give
13 you entry into that room.

14 Q Okay. So it's as big as the dryer section. Was there
15 any ventilation in there?

16 A The only potential ventilation I could identify at that
17 time was if the machine was in operation and the ventilation
18 over the dryer cans was active, that would be the only
19 ventilation. You referred to the man coolers, which were the
20 fans that basically pulled air from the basement, those weren't
21 positioned in that area. The actual fans for the man coolers,
22 which would pull up from the basement, were basically in that
23 walkway that I showed you that was in the other picture in the
24 basement.

25 Q Were they drawing air from the enclosure?

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 A No.

2 Q Now, again, going back to the basement, I want to talk
3 about why you believe it was -- do you believe it was a
4 source of exposure to Mr. Stewart?

5 A Well, certainly the work activities that he was performing
6 in that basement area would have exposed him to asbestos. He's
7 taking the old felt, he's making cuts to the felt, he's then
8 handling the felt, folding it so that it could fit onto a
9 pallet. After he's done all of this he would then take
10 compressed air or a broom and basically blow all the debris to
11 the middle of the room, clean it up and then wet it down and
12 wash it down. So he's getting an exposure when he's handling
13 this felt and cutting it, and then after he's done any like
14 asbestos dust that's come to settle on those surfaces in that
15 basement area where he's working, he's then reentraining that
16 dust again.

17 Q And what is it about the configuration of that room
18 that was concerning to you when he's doing those things?

19 A I think again the configuration, it's a much smaller
20 space, so it's not this wide open area where you have much more
21 natural ventilation that might go through to reduce some of the
22 exposure. Another interesting part about that is I think I was
23 asked, the only ventilation that I could identify was the
24 ventilation that would be above the dryer cans. So if he's
25 working down in this basement area, he's cutting felts and he's

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 cleaning up, that type of ventilation would not be ideal for
2 attempting to control exposures from an industrial hygienist's
3 perspective. One of the early things you learn as an
4 industrial hygienist, when you have an exposure to a chemical
5 or a physical hazard, basically you don't ventilate that
6 contaminate through a workers breathing zone, okay? So if he's
7 down here working and the ventilation is about his head, all
8 we're doing then is just pulling this contaminant up into his
9 breathing zone and exposing it.

10 Q Well, let me ask you this, the ventilation, do you have
11 an opinion as to whether the ventilation above dryer hoods
12 was designed to keep the asbestos exposures in the basement
13 down?

14 A I have no indication that the ventilation was meant to
15 prevent exposure to asbestos. My understanding is the
16 ventilation's purpose was to remove basically moisture and heat
17 from the dryer section.

18 Q Thank you.

19 MR. JEKEL: May I approach, Your Honor?

20 THE COURT: Of course.

21 MR. JEKEL: I want to show the witness -- our printer in
22 the black is slow.

23 Q Is that one of your photos?

24 A It is.

25 Q Does that show some of the clad insulation or the clad

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 thermal packing in the background?

2 A Actually it does. No, that's actually a support of some
3 kind. But what this area is is when you look down that walkway
4 this is within one of those doors, so this is the area that
5 he's doing this work in.

6 Q Okay. I think it goes like that, right? All right.
7 Again, can you tell the jury -- this is inside one of those
8 doors. Is that it?

9 A Correct.

10 Q And this is where the cutting of the dryer felts would
11 be?

12 A That's my understanding.

13 Q The open area that we see that we're looking through
14 here into the room, is that from the door?

15 A Correct.

16 Q And is it your understanding that that door would be
17 closed when he was down there?

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

19 Q Have you -- I want to go back to the removal of the
20 felts, cutting on the felts. Is it your understanding that
21 when Mr. Stewart was down there cutting up these felts, were
22 there other old felts down there in that basement?

23 A At the moment I don't recall if they indicated they stored
24 them down there or if they removed them after they had taken
25 them off.

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 Q You believe that that activity was a source of exposure
2 to Mr. Stewart?

3 A The cleanup of the old felts?

4 Q Yes.

5 A I do, yes.

6 Q Mr. Stewart would have engaged in the installation of
7 the dryer felts. Do you believe that that created an
8 exposure of asbestos to Mr. Stewart?

9 A Yes.

10 Q Why?

11 A Again, based on the studies that I have reviewed. Dr.
12 Millette has demonstrated that when you handle these materials
13 there's a release of asbestos. The Western Michigan University
14 study demonstrated that there was an exposure during the
15 installation of the dryer felts. That's the basis.

16 Q And Mr. Stewart engaged in blow outs, do you understand
17 that?

18 A I do.

19 Q When there was a paper break?

20 A Yes, I think he said two times per shift.

21 Q Do you believe that those blow outs created an exposure
22 to asbestos for Mr. Stewart?

23 A Yes, I do.

24 Q Mr. DePasquale, I'm going to ask you to assume some
25 facts for me, okay? And I've got a few of them so just stay

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 with me. Mr. DePasquale, I want you to assume the
2 following: That Mr. Stewart worked at the Bowater Paper
3 Plant between 1963 and 1975 when asbestos containing dryer
4 felts were used. During that period Mr. Stewart worked on
5 paper machine number one, he worked all aspects of paper
6 machine number one and would regularly install felts, would
7 use compressed air around the machine, would engage in blow
8 outs with high pressure air and would remove such felts and
9 cut them up in the basement. That during this period of
10 time, '63 to '79, that out of a potential of 288 felts on
11 the dryer area, 23 were SCAPA asbestos containing dryer
12 felts that contained 20 to 70 percent chrysotile asbestos
13 which would release fibers and create dust, and that Mr.
14 Stewart would breath that dust. Given these facts, do you
15 have an opinion to a reasonable degree of scientific
16 certainty as to whether these SCAPA asbestos dryer felts
17 created a substantial occupational exposure to Mr. Stewart?

18 MR. YOUNG: Your Honor, I object to the form of the
19 question, it assumes facts not in evidence and omits facts that
20 will be in evidence.

21 THE COURT: I don't believe that it assumes facts not in
22 evidence. The question is whether it omits facts that will
23 come into evidence, that's what you're saying, facts that have
24 not been introduced into evidence but will come into evidence
25 later on?

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 MR. YOUNG: Both, yes, Your Honor.

2 THE COURT: All right, sir. Well, I will allow the
3 hypothetical -- overruled and will allow the hypothetical based
4 on facts that are currently in evidence before the jury.
5 Obviously we have a long way to go in this trial and the jury
6 will evaluate what the other hypotheticals which may assume
7 other pieces of evidence and what weight they will have, but
8 this one -- I'm so sorry. This hypothetical does not assume
9 any facts that are not in evidence. Mr. Lane Young's objection
10 is that it does not assume certain facts that are not in
11 evidence now but may come into evidence later, I cannot
12 evaluate that so I make no ruling about any hypotheticals that
13 may be offered in the future. This is a proper hypothetical
14 based on the case as it now stands and I will therefore
15 overrule the objection and allow the hypothetical to be
16 propounded.

17 MR. YOUNG: Your Honor, just so the record is clear, we
18 do -- one basis of our objection is that it does assume facts
19 that are not in evidence, I understand Your Honor's ruling.

20 THE COURT: I covered that very fully. You have objected
21 first that it assumes facts that are not in evidence, I
22 overruled that objection, I did not hear it to assume any facts
23 that are not in evidence. Then you have a further objection
24 about future evidence that has not yet been offered, no way for
25 me to evaluate that, that's left for another day. But this

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 hypothetical is proper based on the facts that the jury now has
2 before it. Your may proceed, Mr. Jekel, and if you want to
3 restate it you may.

4 Q I'm going to ask the witness if he needs for me to
5 restate it because it was a mouthful. I'm happy to repeat
6 it if you need me to.

7 A I think I understood the question. And based on those
8 assumptions, yes, I believe there would have been a significant
9 occupational exposure to asbestos.

10 Q Would those level of exposure in your opinion put an
11 employee or an individual like Steven Stewart at a greater
12 risk of developing mesothelioma?

13 A Yes.

14 Q I want to touch on a few other issues real briefly. We
15 talked about the Western Michigan -- the Western Michigan
16 University paper pilot study. You're familiar with the
17 study of Western --

18 A Pilot plant study, yes.

19 Q Pilot plant study, okay. You're familiar with that?

20 A I have reviewed it, yes.

21 Q The jury has heard a little bit about it. The paper
22 machine involved in the Western Michigan is not as big as
23 the number one machine at Bowater, was it?

24 A No, it's a fraction of the size.

25 Q Do you know -- you understand the Western Michigan

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 study was funded by SCAPA.

2 A That's my understanding.

3 Q You understand that the felts used in that study were
4 the same felts that Dr. Millette tested?

5 A Yes.

6 Q And have you reviewed the data points that the study
7 resulted in?

8 A I have.

9 Q I want you to talk to the jury a little bit about what
10 that study did and what they found as a result of that
11 study.

12 A Well, it's -- there's a lot going on. But they looked, or
13 attempted to look at potential exposures during installation,
14 during the paper making, during paper breaks when they did a
15 blow down, there was possibly a couple of other thing at the
16 moment that I just don't recall.

17 Q I want to talk about some of these, because they ran
18 the paper machine over a period of time, is that your
19 understanding?

20 A Yeah. I don't remember how many days but it went on for
21 several days at least.

22 Q And they're collecting data at various points over
23 these days, right?

24 A That's correct.

25 Q So we've got individual daily data and then we've got

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 study data, is that fair?

2 A So these tests -- for example I think they do eight paper
3 breaks where they then blow down the felt during the paper
4 break, they occur over the entire period of the study for
5 several days that they do this study. The difficulty is that
6 with the study continuing they kind of change some of the
7 parameters of the study. So for example early on they find
8 greater exposures when they do a blow down than they do later,
9 and partially that's because they'll end up increasing the
10 ventilation containment from I think 6,000 cubic feet per
11 minute to 15,000 cubic feet per minute. And they also change
12 the way when they actually do the blow down where they're
13 making the compressed air more parallel to the surface of the
14 felt.

15 Q I want to talk about the -- you indicated that one of
16 the changes during the period of study is when they changed
17 the angle of the manner in which they blew the felts down.

18 A I believe that's indicated in the study as well as they
19 did some changes to the amount of time that they actually blew
20 the felt down. Look, what's interesting is they still find a
21 release of asbestos even with the increased ventilation, it's
22 much lower than the initial portions of the study but they're
23 finding a release.

24 Q I want to go back to the ventilation increase. How big
25 an increase in the ventilation are we talking about?

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 A They went from I think 6,000 cubic feet per minute to
2 15,000, so that would be 2.5 times greater.

3 Q Now, that study was done in an enclosure, right?

4 A Yes. It was approximately around I think around 3,500
5 cubic feet. So if you look at the initial ventilation they're
6 moving 6,000 cubic feet a minute, which means every minute they
7 are almost changing air in the ventilation twice.

8 Q With regard to this room, how would that compare?

9 A That's a tough question to answer.

10 Q Do you think they're moving the air once a minute in
11 this courtroom?

12 A No, no.

13 Q Now, I do want to talk about enclosures in abatement
14 for a second because you've been in enclosures before, have
15 you not?

16 A Yes.

17 Q Okay. And you talked about taking samples during
18 abatement work, you've done that, right?

19 A Yes.

20 Q Now, I just want to -- because the jury has heard some
21 things about abatements. Abatements are done in enclosures,
22 and the abatements are done and designed to keep any fiber
23 release in the enclosure where it's safe, right?

24 A That is the purpose of an enclosure, yes, to try to
25 contain the work and prevent release to the environment outside

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 of that enclosure. So you use negative pressure, you create
2 negative pressure in the enclosure so that air only comes into
3 it and not out of it.

4 Q And you have taken samples off of abatement workers?

5 A I have.

6 Q And do the abatement workers when they're engaging in
7 this work, are they wearing any protective clothing?

8 A Yes....

9 Q What type of protective clothing are the abatement
10 workers working in when they're removing the asbestos?

11 A Typically they have on -- well, if it's containment there
12 is a shower entry. So basically they take off their clothing,
13 they wear coveralls that cover their head, their feet and their
14 entire body, which when they're inside they're working, and
15 when they come out they take it off, shower and immediately
16 leave the containment area.

17 Q I just want to ask you, are there different rules for
18 removal of the chrysotile asbestos versus any other asbestos
19 type?

20 A No.

21 Q Asbestos is asbestos?

22 A From the perspective of removing it? Yes. There's
23 some -- if you're doing abatement work there's some little
24 things you could get into in terms of how certain forms of
25 asbestos exposures are reduced by water, because certain ones

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 work better with water than other ones. But that's just -- it
2 doesn't change anything about the way you contain it and remove
3 it.

4 Q Chrysotile is treated just like every other asbestos
5 fiber when it comes to its removal from the building.

6 A Correct.

7 Q Now, you've come here today to testify for the jury.
8 Are you compensated for your time today?

9 A Yes.

10 Q For your time away and out of the office, right?

11 A I am.

12 Q Now, this is the first time you and I have ever met, is
13 it not?

14 A We met last night, yes.

15 Q But you've testified in court before in a trial like
16 this before, have you not?

17 A I believe on about ten occasions.

18 MR. JEKEL: Thank you, Mr. DePasquale, that's all I have,
19 I'm sure Mr. Young has some questions for you.

20 THE COURT: Cross examination?

21 MR. YOUNG: Yes, Your Honor. May I approach, Your Honor?

22 THE COURT: Yes.

23 CROSS EXAMINATION

24 BY MR. YOUNG:

25 Q I'll call you Chris because it's easier to pronounce,

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 is that okay?

2 A That's fine.

3 Q And you know I'm Lane Young, right?

4 A I do.

5 Q All the experts are from Atlanta. I'm just going to
6 hand you your deposition that I took just in case we need
7 it.

8 A Okay.

9 Q I haven't seen you in awhile, how are you doing?

10 A I'm doing well, thank you.

11 Q Good. You just indicated that you were being paid but
12 you didn't say how much.

13 A I wasn't asked.

14 Q Right, I wasn't suggesting you're hiding something. Is
15 it still \$225 an hour?

16 A No, it's \$285 per hour.

17 Q Okay. So you raised your rate since the deposition?

18 A Yes, Compass raised our rates.

19 Q And you own part of Compass, right?

20 A Yes.

21 Q That's your employer?

22 A Yes, it is.

23 Q Can you tell the ladies and gentlemen of the jury about
24 how much time you spent on this case?

25 A To be honest I don't remember, I didn't go back to look at

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 my invoices from early on. This case started roughly four
2 years ago. If I had to give an estimate I would say for
3 producing the report probably somewhere around 30 hours, and
4 then there was the site visit which involved a trip up here, so
5 that would have probably been about 12 or 16 hours.

6 Q So probably total charges are more than \$10,000, would
7 that be fair?

8 A Yeah, I think that would be.

9 Q Did you tell the ladies and gentlemen of the jury how
10 long you have been an industrial hygienist?

11 A I don't remember.

12 Q Would you do so?

13 A Sure. I first started in this profession in 1997. I
14 became a certified industrial hygienist five years after I
15 began, so that's 2002, and I still currently work.

16 Q And it was about 15 years after you started that
17 somebody asked you about a dryer felt, does that sound
18 right?

19 A Yeah.

20 Q Maybe a little more?

21 A Yeah.

22 Q You have been asked about a number of other asbestos
23 containing products during that time from when you started
24 to -- so early this decade you were asked about dryer felts?

25 A I would say it was about 2013 maybe or 2014 I was first

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 contacted.

2 Q So that would be about 17 years?

3 A Sixteen or 17 years.

4 Q No paper mill ever asked you to look at dryer felts for
5 any type of asbestos fiber release; is that correct?

6 A They've not but I wouldn't expect them to. Since I have
7 been working as an industrial hygienist it is my understanding
8 is they haven't been using them.

9 Q And as far as you know your company, Compass, they were
10 never asked by a paper mill to look at dryer felts, correct?

11 A Not that I'm aware.

12 Q And Compass has been around since before 1997, right?

13 A That's correct.

14 Q Mr. Ewing has been working for a long time.

15 A Yes.

16 Q And when did he start?

17 A I want to say about 1977 or '78.

18 Q Don't tell him I said that.

19 A I'll try not to.

20 Q But you did say that that was one of the things that
21 companies would do, they would invite Compass to come out
22 and check on industrial hazards in their facilities,
23 correct?

24 A That's correct.

25 Q And that's been pretty much true the whole time your

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 company has been in existence as far as you know?

2 A Yes.

3 Q Now, you have never done any dryer felt testing
4 yourself, correct?

5 A You mean actually doing an experiment where -- no, I have
6 not.

7 Q And Compass where you work, one of the things that they
8 have is a list of products and exposure numbers that have
9 been achieved from the testing of those products, correct?

10 A I'm sorry, I'm not sure what you're referring to.

11 Q Are you familiar with the Compass exposure measurements
12 cheat sheet?

13 A I think I know what you're talking about, and that is my
14 colleague, Mr. Ewing's summary of his exposure data. I've seen
15 it, I don't maintain one, no.

16 Q Dryer felts aren't on there, are they?

17 A No, I don't think they are.

18 Q You've never authored any publication about dryer
19 felts, is that fair?

20 A It is, yes.

21 Q And you have never made any presentation with respect
22 to dryer felts or fiber released from dryer felts, correct?

23 A That is correct.

24 Q And you weren't involved at all with Dr. Millette or
25 Dr. Longo on their test.

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 A No, I was not involved.

2 Q You weren't at the Western Michigan test, correct?

3 A No.

4 Q Do you know who Paul Carlson is?

5 A I believe I met Mr. Carlson briefly when we went on the
6 site visit.

7 Q And do you know that he was sort of in charge of the
8 Western Michigan test?

9 A I don't recall the names of everyone who was involved.

10 Q You've never had an opportunity to talk to him or
11 anyone else involved in the test with respect to what went
12 on, correct?

13 A I have not.

14 Q I understand it's your opinion that amphibole asbestos
15 is more likely to increase the risk of mesothelioma than
16 chrysotile, is that fair?

17 A That is fair.

18 Q And in this case it would be to tell the ladies and
19 gentlemen of the jury that no one has ever found any
20 amphibole asbestos in a dryer felt.

21 A I'm not aware of any.

22 Q It was found in and used in thermal insulation in the
23 60's and the 70's, correct?

24 A It could be used, yes, in some.

25 Q You are familiar with the ambient levels of asbestos in

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 the air that have been measured over the years in the United
2 States, correct?

3 A Yes.

4 Q And to your knowledge there's never been any indication
5 that ambient air levels of exposure have caused any sort of
6 increased risk of mesothelioma, correct?

7 A There's no way to really study that because you can't
8 identify an unexposed population. There's some documentation,
9 I believe, in the health safety criteria which looked at
10 assigning causation but that's outside of my expertise. But
11 what they did say is that even background exposures, ambient
12 exposures may contribute to the risk, but that risk may be very
13 small.

14 Q And you are familiar with the EPA clean air and schools
15 level of asbestos, correct?

16 A Are you referring to the AHERA requirements?

17 Q Yes.

18 A Yes.

19 Q And .01 fibers per cubic centimeter of air.

20 A So that is a PCM clearance sample to basically assess
21 whether an area has been cleaned effectively after a small
22 scale abatement activity. So if you have a release in a school
23 I think it's defined generally as the amount that would fill --
24 roughly like three linear feet or three square feet, you can do
25 this clear air sample after it's .01 fibers per CC's.

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 Q You spent a fair amount of time reading depositions and
2 things in this case; is that correct?

3 A Yes.

4 Q And there were certainly other dryer felt manufacturers
5 at Bowater while Mr. Stewart was there besides SCAPA,
6 correct?

7 A Yes, that's my understanding.

8 Q Albany, Industrial Holdings, Lockport, Mount Vernon, do
9 you recall those?

10 A I don't recall all of them but certainly I do recall some
11 of those names, yes.

12 Q Chris, you've not ever seen a blow down in person,
13 correct?

14 A That's correct.

15 Q And you've never seen a blow down at a paper mill where
16 there was an asbestos containing dryer felt in use.

17 A That is correct.

18 Q And you've never seen a paper break.

19 A I have not.

20 Q And you haven't personally talked to any paper maker
21 about what happens during a paper break, correct?

22 A I believe that's correct.

23 Q I talked to Dr. Millette a little bit about this
24 yesterday, but we can agree -- you can agree as an
25 industrial hygienist that it's actually -- there has to be

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 some interaction of force on the dryer felt for there to be
2 a potential for fiber release, correct?

3 A Yes. I would generally agree with that statement.

4 Q You don't have any information that when they're just
5 going through and making paper and nothing else is going on
6 that there's any fiber release, correct?

7 A There's a potential for fiber release but whether it
8 occurs or not I'm not sure.

9 Q And Dr. Millette told me yesterday that if there's a
10 paper break and you're trying to blow the paper fines and
11 dust out -- well, you understand that when there's a paper
12 break the dryer felt keeps going but the paper just crumples
13 up so they have to pull it out and rethread the sheet?

14 A That's my understanding, yes.

15 Q And so we're on this big giant dryer can, right? Not
16 this little old bitty thing.

17 A Okay.

18 Q And what happens is the sheet comes down and gets all
19 crumpled up, is that fair?

20 A I believe that's correct.

21 Q And sometimes they take a big stick and pull big pieces
22 out, correct?

23 A Yeah. They would shut it down so that they could do that.

24 Q And then they would blow across the machine to get the
25 paper fines and other stuff that got crumpled up here out

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 the back, right? That's one of the things you saw that
2 happened.

3 A I think we've established that I've never seen a blow down
4 so my understanding is based on the testimony of persons who
5 did it. What that understanding is is that they did what they
6 needed to do to remove the materials that have accumulated.

7 Q Would you agree with Dr. Millette that if you're
8 blowing across a machine parallel to the dryer felt there
9 would be little or no opportunity for fiber release?

10 A I don't know that I would say there would be no
11 opportunity for fiber release. I think the Western Michigan
12 study as they changed the angle of their incidents with regard
13 to the compressed air still showed some fiber release though
14 lessened from the initial studies where they were actually
15 hitting the felt more directly, so I think there is potential
16 for fiber release. But certainly I do recognize that if you're
17 using the compressed air with less direct force on the felt
18 there's less likely to be release.

19 Q And the ladies and gentlemen of the jury will hear
20 about the Western Michigan test from Mr. Carlson, but isn't
21 it your recollection that when they blew parallel to the
22 dryer felt there wasn't any fiber release?

23 A In the Western Michigan study itself?

24 Q Yes.

25 A That's not my recollection. The fiber release towards the

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 end, there may have been one or two tests that had none, but my
2 understanding is that they still had some fiber released but it
3 was significantly less than the initial studies where they were
4 again hitting the felt more directly with the compressed air.

5 Q It was all recorded so we can look at it.

6 A Sure, and I have a copy here.

7 Q You would agree with us that Mr. Stewart's employer had
8 a responsibility to provide him a safe work place?

9 MR. JEKEL: Your Honor, I'm going to object here, I think
10 that calls for a legal conclusion in terms of duty and
11 responsibility.

12 THE COURT: All right, just one moment. Your response to
13 the objection?

14 MR. YOUNG: Yes, Your Honor. He's testified that he's an
15 industrial hygienist that investigates work place hazard --

16 THE COURT: Yes, you don't need to go further, overruled.

17 A I'm sorry, could you repeat the question?

18 Q You would agree with us that Mr. Stewart's employer had
19 a responsibility to provide him a safe work place, correct?

20 A I do.

21 Q You didn't see anything in any of the depositions that
22 you looked at that indicated Bowater ever took any steps
23 with respect to asbestos or asbestos warnings insofar as Mr.
24 Stewart is concerned; is that right?

25 A I believe at some point, and I don't recall the exact date

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 and I think in the mid-80's there was some beginnings of
2 addressing potential exposures to asbestos. But I don't know
3 what Bowater knew at every point in time with regard to what
4 asbestos containing materials were in use in that plant.

5 Q Well, starting in 1971 when OSHA was adopted, they
6 certainly had a duty and an obligation to monitor the
7 asbestos levels in the mill and make sure that they were at
8 a safe level, correct?

9 A I would agree, yes.

10 Q You've never seen a dryer felt -- asbestos in any dryer
11 felt being manufactured --

12 A No.

13 Q -- is that right?

14 A It is.

15 Q And you never tested one.

16 A No.

17 Q Mr. Jekel asked you a hypothetical about SCAPA dryer
18 felts at Bowater, but when I took your deposition you didn't
19 know how many SCAPA felts were sold to Bowater or how many
20 of them had contained asbestos, correct?

21 A I believe that's correct. I mean even as I sit here now I
22 don't know that beyond his hypothetical if I know exactly how
23 many were present and installed in paper machine number one.

24 Q And I take it you wouldn't know how many asbestos
25 containing felts were supplied to Bowater by those other

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 manufacturers that were mentioned.

2 A That's correct.

3 Q You're not able to visually tell the difference between
4 asbestos containing felt and a non-asbestos containing felt,
5 correct?

6 A I personally could not do that. I would have to consult a
7 bulk sample to have it analyzed by a laboratory, that would be
8 the means by which I would establish if it contains asbestos or
9 not.

10 Q And from your review of the depositions, that wasn't
11 something that Mr. Stewart could do either, just look at it
12 and say what was in it.

13 A I mean, I think I had an understanding that they knew
14 there was asbestos potentially in those felts but I don't know
15 that they knew that by looking at the felts.

16 Q Didn't you tell me in your deposition that it was your
17 understanding from looking at the depositions in this case
18 that the Bowater employees couldn't tell the difference
19 between asbestos and non-asbestos containing felt by looking
20 at it?

21 A I don't disagree with that.

22 Q You have not done any air sampling in a paper mill,
23 correct?

24 A That's correct.

25 Q Did you look at the information from Paul Carlson to

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 prepare to come here and give your opinions to the ladies
2 and gentlemen of the jury and the Court?

3 A I believe the only information I studied from Mr. Carlson
4 were photos that he took during the on site visit.

5 Q Are you aware that his testing showed that there was
6 the same level of asbestos in the work place air with and
7 without asbestos containing felts being used at the paper
8 mill?

9 A I have not seen his testing data.

10 Q And you don't know anything about Bowater's water
11 usage, correct?

12 A In terms of how much they used on a daily basis or --

13 Q Right.

14 A No, I don't have any of that information.

15 Q Millions of gallons a day wouldn't surprise you, would
16 it?

17 A I would be guessing, I don't know.

18 Q I don't want to go through all of this because we went
19 through it in pretty good detail with Dr. Millette, but
20 there was significant ventilation over the dryer sections at
21 Bowater, correct?

22 A There was ventilation, I'm not sure what you mean by
23 significant.

24 Q Well, did you see that there was actually a sign out
25 there when you were there that indicated the amount of

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 ventilation that was coming through -- being pulled up over
2 the dryer section?

3 A So there was a fan unit over one of the dryer sections
4 that I believe indicated some possible design, it was just
5 basically written in marker on the vent fan in terms of I think
6 how many cubic feet per minute the fan operated at and what it
7 was designed to operate at.

8 Q Do you recall that was about 58,000 cubic feet of air
9 per minute?

10 A I don't remember.

11 Q And that would be a large ventilation, would it not?

12 A Absolutely, it's a large area.

13 Q And you do agree that the ventilation would affect the
14 potential for asbestos exposure to the folks in the area of
15 the ventilation.

16 A As a general industrial hygienist premise increased
17 ventilation will decrease exposure.

18 Q Did you see anything in the information that you looked
19 at from the coworkers indicating that Mount Vernon was a
20 favorite manufacturer of dryer felt at Bowater?

21 A To be honest I don't remember.

22 Q You would not be able to tell the ladies and gentlemen
23 of the jury that Mr. Stewart was present during a blow down
24 involving for certain SCAPA asbestos containing felt,
25 correct?

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 A I wasn't at the site. I wasn't there when they did these
2 blow downs. My understanding is that Mr. Stewart did blow
3 downs on felts, some of those were asbestos containing but I
4 don't know which felt was installed at each blow down he did.

5 Q So the answer to my question is you can't tell the jury
6 that Mr. Stewart was present during the blow down on a SCAPA
7 asbestos containing felt.

8 MR. JEKEL: Objection, Your Honor. Didn't he just answer
9 that question for the jury? Are we going to ask every question
10 twice?

11 THE COURT: Don't be repetitive, that's been asked and
12 answered. I'll ask you -- you can answer this question but
13 don't be repetitive.

14 A That's correct, I wasn't there, I can't say.

15 Q And you're not in a position to give the ladies and
16 gentlemen of the jury any specific number with respect to an
17 asbestos exposure from SCAPA felts Mr. Stewart might have
18 had, correct?

19 A When you talk about exposure, are you talking about a dose
20 of asbestos exposure?

21 Q Yes.

22 A I have not calculated what I would expect his dose of
23 asbestos would be from SCAPA dryer felts.

24 Q I want to ask you just a few questions about Dr.
25 Longo's test because the ladies and gentlemen of the jury

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 won't hear from him, okay?

2 A Okay.

3 Q We know that that test is done for litigation, right?

4 A I believe that's my understanding, yes.

5 Q And it was done in 2002.

6 A I don't remember.

7 Q As far as you know that's the only test that Dr. Longo
8 has ever done involving dryer felts.

9 A It's the only one I'm aware of, yes.

10 Q The results of that test were not turned in to any sort
11 of publication.

12 A I don't know.

13 Q All right. Certainly wasn't done in a paper mill,
14 correct?

15 A That's correct.

16 Q It was in a 20 by 15 foot by eight foot chamber?

17 A I believe that's correct.

18 Q And there wasn't any effort to recreate or have the
19 exact paper mill conditions at Bowater when that test was
20 done, correct?

21 A No.

22 Q No paper machine involved.

23 A That's correct.

24 Q There was no hood.

25 A No hood?

TESTIMONY OF CHRISTOPHER DEPASQUALE

- 1 Q Like they have hoods over the dryer sections.
- 2 A I believe there was some ventilation but not positioned
- 3 over where they were doing the work.
- 4 Q The felt piece that Dr. Longo tested was not moving.
- 5 A That's correct.
- 6 Q No paper being made.
- 7 A Correct.
- 8 Q As far as you know the felt was not soaked in water
- 9 before or during the test.
- 10 A That's correct.
- 11 Q There was no steam generated from any source during
- 12 that test that you recall.
- 13 A Correct.
- 14 Q We can agree from an industrial hygiene standpoint that
- 15 certainly wetting the asbestos containing product is going
- 16 to affect the potential for it to create exposure to
- 17 workers.
- 18 A Yes. As a general rule if you wet asbestos containing
- 19 material chrysotile it will help to reduce exposure.
- 20 Q That's been an industrial hygiene concept for almost
- 21 100 years now.
- 22 A I believe that's correct, yes.
- 23 Q And humidity, all other things being equal, would
- 24 decrease the potential for exposure.
- 25 A Yes.

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 Q Starting in 1971 OSHA did mandate permissible exposure
2 levels for asbestos in the work place, correct?

3 A Yes.

4 Q And those permissible exposure levels have gone down
5 over time.

6 A Yes.

7 Q In '71 and '72 the permissible exposure level was five
8 fibers cubic centimeter of air, do you recall that?

9 A Yes, over an eight hour time average. And then there was
10 a ten fibers per CC ceiling limit.

11 Q And that's the level that Bowaters at the very least
12 should have enforced for its employees, right?

13 A Which level? I mean, essentially both of those.

14 Q Right.

15 A Yes.

16 Q And will you assume for me that Bowater was built in
17 the 1950's?

18 A Okay.

19 Q Or did you know that?

20 A I might have suspected it but I don't know that I knew the
21 exact construction date.

22 Q We can agree -- well, we showed the -- we talked to the
23 ladies and gentlemen of the jury about the steam pipes at
24 Bowater, correct?

25 A I was asked some questions about those, yes.

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 Q And in a high heat type of industrial process typically
2 what you have is a boiler that generates the steam, and then
3 you have steam pipes that run the steam to where it needs to
4 be used, and in this instance that would be to the dryer
5 cans, right?

6 A Yes.

7 Q And you did see that there were significant linear feet
8 of steam pipes at Bowater when you were there, correct?

9 A It's a gigantic facility, yes, there's a lot of pipe
10 there.

11 Q For example, Chris, where Mr. Jekel's hand is, those
12 are steam pipes, correct?

13 A No, not all of them are. Actually a lot of those are
14 uninsulated piping. Some of them I think are electrical
15 conduits and some other forms of piping.

16 Q There was a lot of --

17 A If I may?

18 Q Sure.

19 A So most of that steam piping that we saw or we talked
20 about earlier is on the drive side, this is not the drive side.

21 Q Okay. There was a significant amount of steam piping
22 in the plant when Mr. Stewart was working there certainly in
23 the 60's and 70's, correct?

24 A As I understand it there was steam piping throughout the
25 plant.

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 Q And more likely than not in your opinion asbestos
2 containing thermal insulation would have been used to
3 insulate those pipes during that time period.

4 A That's correct.

5 Q And we can agree that that piping -- the insulation on
6 those pipes had to be installed, correct?

7 A That's correct.

8 Q And when they installed it they would have to cut it a
9 particular length when they came to sections and elbows and
10 that type stuff.

11 A Yes.

12 Q And then they would have to repair it.

13 A At times if it became damaged they did, yes.

14 Q You saw in the depositions, even Mr. Stewart's
15 deposition testimony, about the repairing of insulation on
16 steam pipes, correct?

17 A Yes, that's what I'm thinking.

18 Q And then when they cut it, when they put it on, when
19 they tear it off that all creates dust, correct?

20 A That's correct.

21 Q And you saw in the depositions that you looked at that
22 Mr. Stewart was around that work, correct?

23 A That's correct.

24 Q And that's certainly something that would have
25 significantly increased his risk of mesothelioma, right?

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 A When he was close enough to be exposed to it it would have
2 increased his risk of getting mesothelioma, yes.

3 Q Thermal insulation has been known to be a cause of
4 mesothelioma for 60 years, is that fair?

5 A Well, your question -- I think asbestos has been known to
6 be a cause of mesothelioma, I don't know that I would
7 generalize it specifically to thermal insulation.

8 Q Do you know who Dr. Selikoff is?

9 A I do.

10 Q And you do know and the ladies and gentlemen of the
11 jury have heard, that he started studying insulators in the
12 60's to determine what asbestos containing diseases they
13 would give, correct?

14 A That is correct.

15 Q And insulators worked with thermal insulation.

16 A They do. But the thermal system insulation isn't what
17 causes mesothelioma, it's asbestos in the thermal systems.

18 Q You recall that Dr. Selikoff found that 10 percent of
19 the insulators contracted mesothelioma?

20 A I don't recall his exact number.

21 Q But those insulators weren't working the dryer felts,
22 correct?

23 A They were not.

24 Q Do you recall Mr. Stewart testifying in his deposition
25 there was miles of thermal insulation there?

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 A At the moment I don't remember.

2 Q Do you remember Mr. Hegler testifying there were
3 hundreds of insulated condensate pipes in the basement?

4 A I don't remember.

5 Q You talked a little bit on direct about abatement, do
6 you recall that?

7 A I do.

8 Q Did you have an opportunity to look at the abatement
9 records from Bowater with respect to the thermal insulation?

10 A To be fair I was provided a lot of documents, I don't
11 remember at this point if I saw them.

12 Q It wouldn't surprise you to learn that they showed that
13 there was 80,000 square feet of asbestos insulation removed
14 from Bowater?

15 A I don't know.

16 Q You're aware of studies that have looked at the amount
17 of fiber released from the installation and removal of
18 thermal insulation, right?

19 A I am.

20 Q And in fact, Mr. Ewing, one of your coworkers, has done
21 something?

22 A He has, yes.

23 Q And the ranges of exposure from cutting or removing
24 thermal insulation he found were from .7 all of the way to
25 158 fibers per cubic.

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 MR. JEKEL: Your Honor, I have an objection, I just didn't
2 hear the foundation that he was familiar with the studies that
3 he's being cross-examined on, that's all.

4 THE COURT: Overruled. I think he said he was somewhat
5 familiar with them. He can answer as to whether he's familiar
6 with this particular question that's being asked now, but
7 overruled as a general matter. Go ahead, Mr. DePasquale.

8 A I'm not aware of which study you're talking about when
9 you're referring to 158 fibers per CC.

10 Q In what levels do you recall Mr. Ewing was found?

11 A Well, I referenced the studies of Mr. Ewing in my report
12 where he removed small sections of insulation, what would be
13 considered a maintenance type removal work where you're
14 accessing a piece of equipment, and with regard to that Mr.
15 Ewing looked at removal of the insulation. And if you'll give
16 me just one second --

17 THE COURT: It's page ten of your study, I believe.

18 A It is. He found for the person actually doing the removal
19 it was five to 15 fibers per CC, and for a bystander in the
20 room it was .2 to 10 fibers per CC.

21 Q I'm sorry, what was the second one?

22 A .2 to 10 fibers per CC.

23 Q And I think we've already established that more likely
24 than not some of that insulation during the 60's and the
25 70's at Bowater contained amphibole asbestos, correct?

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 A It's possible but I don't know if it did or not.

2 Q Certainly can't say that it didn't.

3 A I cannot.

4 Q You also looked at gaskets and packing at Bowater.

5 A Yes.

6 Q Is that correct?

7 A Yes.

8 Q And you saw that in the materials that you looked at
9 that workers would be changing out gaskets and packing in
10 the area at a time when Mr. Stewart was nearby, correct?

11 A On occasion that's correct, yes.

12 Q And you also saw that every now and then he would
13 actually be involved in the work.

14 A So there was some conflict among the testimony. Mr.
15 Stewart did not recall doing any work with gaskets or packing.
16 I think one or two of his coworkers said they thought at some
17 point they maybe saw him using packing removal and placement,
18 or helping out a person who was doing some maintenance
19 activity.

20 Q That exposure certainly would have increased his risk
21 of contracting mesothelioma, is that fair?

22 A It is fair, yes.

23 MR. YOUNG: May I have just one second, Your Honor?

24 THE COURT: Certainly.

25 (Break in proceedings.)

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 MR. YOUNG: Chris, thank you, sir, see you at home.

2 THE COURT: Redirect, Mr. Jekel?

3 MR. JEKEL: Very briefly, Your Honor.

4 THE COURT: Yes, sir.

5 REDIRECT EXAMINATION

6 BY MR. JEKEL:

7 Q I'm going to cover a lot of topics here real briefly.

8 Prior to your being a certified industrial hygienist what
9 was your level of education?

10 A I have a Bachelor's Degree in Biology and I have a Masters
11 in Public Health concentrating in Environmental Health.

12 Q And I meant to ask earlier and I apologize, what's
13 public health?

14 A So public health is -- in a masters degree public health
15 is somewhat broad-based, it can cover many different topics.
16 But usually people specialize in one area and for me that was
17 environmental health. But it could involve health policy, it
18 can involve epidemiology, biostatistics, there's a number of
19 different areas you can focus on.

20 Q Now, I want to be clear because it was a little bit --
21 You were asked if you had talked to paper makers when you
22 did your evaluation for Mr. Stewart. What I want to make
23 sure is you read Mr. Steele's deposition, didn't you?

24 A Yes.

25 Q You read Mr. Hegler's deposition, did you not?

TESTIMONY OF CHRISTOPHER DEPASQUALE

- 1 A Yes.
- 2 Q You read Mr. Stewart's deposition, did you not?
- 3 A I did.
- 4 Q You may have read others. Were they not all involved
- 5 and weren't they paper makers?
- 6 A Yes.
- 7 Q So you did get information from paper makers in your
- 8 assessment, right?
- 9 A Mr. Young's question was a little more specific. When I
- 10 had the opportunity to do the plant tour it was with persons
- 11 who were paper makers but I couldn't recall if I asked them
- 12 that specific question that Mr. Young had asked.
- 13 Q But you sought information about how this process
- 14 worked, what the activities were and all of that, right?
- 15 A Yeah. They were available to us at the time of the
- 16 walk-thru to kind of explain if they could what part of the
- 17 machine we were looking at, what did this do, it was helpful.
- 18 Q All right. And again I want to make clear, taking a
- 19 dryer -- taking a sample in a paper mill today, or even if
- 20 we go back to when you became an industrial hygienist, if
- 21 you went into a paper mill then and took air samples around
- 22 a paper making machine, if there aren't any asbestos dryer
- 23 felt on there, what is the point of taking the samples is
- 24 there?
- 25 A If there's some other potential source of asbestos

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 exposure it would be relevant, but if we were trying to
2 evaluate exposure to asbestos containing dryer felts it would
3 be useless in that time frame.

4 Q These dryer cans that we talked about, Mr. Young
5 referred to them as giant dryer cans. Are they giant dryer
6 cans?

7 A If I had to give an estimate they might be two to three
8 feet in diameter with a length of roughly the paper machine or
9 width of the paper machine, which I think was described as 210
10 to 220 inches.

11 Q Thank you. Now, you talked a little bit about Bowater
12 and what they had to do. Would you agree with me that the
13 actions of Bowater would be influenced by the information
14 they received from SCAPA as it relates to these dryer felts?

15 MR. YOUNG: Objection, Your Honor, speculation.

16 THE COURT: All right, overruled.

17 A It depends on what they do and I don't have that
18 information.

19 Q Right. But if SCAPA was selling Bowater asbestos
20 containing dryer felts and not exposing the fact that they
21 contained asbestos, how would they need to know they needed
22 to sample when people were working around them? Isn't that
23 part of the problem?

24 MR. YOUNG: Objection, Your Honor, it assumes facts not in
25 evidence.

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 THE COURT: Well, your objections are all content based.
2 My problem with this objection is that you can't cross examine
3 him or lead him, he's your witness.

4 MR. JEKEL: Oh no.

5 Q Would Bowater's actions be influenced by the
6 information they received from manufacturers of the products
7 they use in their plant?

8 MR. YOUNG: Same objection, Your Honor, speculation.

9 THE COURT: Overruled.

10 A Potentially, yes.

11 Q I didn't see Mr. Young show you any information that
12 SCAPA gave Bowater, any information about the asbestos
13 contents in their felts. Has he given any to you?

14 MR. YOUNG: Objection, Your Honor, argumentative.

15 THE COURT: Overruled.

16 A I have not seen any.

17 Q Has Mr. Young shown you any SCAPA testing that was done
18 when they were manufacturing these felts on fiber release?

19 A I've seen some of that manufacturing exposure data. I
20 didn't get it from Mr. Young if that's what you're asking me.

21 Q Yes, I am. I want to go back to the ventilation real
22 quick. You know what we're looking at here, right?

23 A I do.

24 Q All right. Now, the ventilation that Mr. Young talked
25 about, the 58,000 cubic feet per meter, that was written in

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 what on the vent?

2 A My recollection is it was like a magic marker or
3 something.

4 Q Do you know for how long the ventilation that you saw
5 in 2014 had been there?

6 A No.

7 Q Can you tell this jury whether the ventilation in 1963
8 through 1979 was at 58,000 cubic feet per minute?

9 A No, I can't.

10 Q But of the ventilation, would you agree -- what was the
11 ventilation system at in these hoods, what was it designed
12 to do?

13 A My understanding based on review of the deposition
14 testimony is that it was designed to remove moisture, humidity
15 and heat from the section of the dryer.

16 Q And that's when the dryer machine is running, is that
17 your understanding?

18 A Yes.

19 Q Now, these doors that we see here, are they up or down,
20 do you know?

21 A They're up.

22 Q They're up. The ventilation, is it designed for when
23 they're open or closed in your opinion?

24 A Well, its intent would be it would be most effective when
25 they're closed.

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 Q So what affect does opening the doors have on the
2 overall effect of the ventilation?

3 A It reduces its what we would call a capture velocity. We
4 come into this a little bit like in the laboratories, we have
5 chemical -- if you would imagine this is a chemical fume but a
6 smaller scale, you have basically a velocity at the door, okay?
7 That velocity is highest when the door is closed. So if you
8 have a contaminant inside of it, it's more likely to exhaust it
9 out through the ventilation system. If you take that door and
10 you increase the area of it being open, that captured velocity
11 drops, assuming that there's no change in the ventilation
12 speed, so it makes it less effective at pulling something into
13 the hood.

14 Q Did you -- you talked earlier about if the ventilation
15 is working and I'm doing a blow out, the ventilation is
16 pulling things through my breathing zone; is that correct?

17 A We weren't talking about that with respect to the blow
18 out, more so the cleanup and cutting of the felts down in the
19 basement area.

20 Q Does the same hold true for the blow outs?

21 A Not exactly, because they're not necessarily in the space
22 where the ventilation is. When they're doing a blow out
23 they're not going into the machine, it would be relevant for
24 those times when they're actually in the machine trying to lace
25 the new felt through. In that instance you have an activity

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 where they are manipulating the felt and the ventilation would
2 be over the heads --

3 Q Are there industrial hygiene processes that would not
4 make that happen? Are there ways around that phenomenon
5 that you discussed?

6 A Absolutely. But it kind of goes back to the fact that
7 this wasn't designed, as I understand, to control asbestos
8 exposures. But if you were trying to control exposures there
9 are different methods to do that. You could use what we call a
10 slot hood where it's positioned differently or something called
11 push/pull system, there's a variety of things you could do.

12 Q Now, Mr. Young asked you about insulators. Mr. Stewart
13 was never an insulator, was he?

14 A No.

15 Q You understand this was a union job?

16 A That's correct.

17 Q Do you have an understanding that unions are pretty
18 particular about who does what in a union shop?

19 A I grew up in New York, I'm familiar.

20 Q All right. Enough of that. You were asked -- or you
21 mentioned condensing pipe or --

22 A Condensate? I think Mr. Young mentioned it.

23 Q He mentioned it. Was that one of those clad pipes that
24 you and I talked about?

25 A When I was there they were clad, yes.

TESTIMONY OF CHRISTOPHER DEPASQUALE

1 Q : Even the condensed lines were covered in aluminum?

2 A Correct.

3 MR. JEKEL: That's all I have, thank you, Mr. DePasquale.

4 THE COURT: Very good. All right, Mr. DePasquale, thank
5 you for your testimony, sir. Ladies and gentlemen of the jury,
6 this seems like a convenient time for us to take a morning
7 break so we will do that now, we are just about at 11 so how
8 about be back here at 11:15. Very good.

9 (The jury left the courtroom.)

10 THE COURT: All right, Counsel, be in your seats for a
11 minute. Let me explain a little something to you about
12 something that's perhaps a personal hang-up for me but I don't
13 want it to hurt or gain only because I didn't want to embarrass
14 counsel that I just decide not to interrupt things, send the
15 jury out and deal with this. I do not allow any witness to be
16 addressed by their first name. I grew up under a situation
17 where there was a great deal of disparity between what happened
18 with some witnesses as opposed to other witnesses. When I
19 first started practicing law I could try a case in front of a
20 jury but I could not even sit upon a jury because women were
21 not permitted to serve on juries until after I first became a
22 member of the practice. And there was a great disparity
23 between how working people were treated and how people of
24 different backgrounds were treated so it just is a rule to me
25 that all folks are addressed by their complete names. Also to

1 say that you're going to address someone differently because
2 their name is hard to pronounce is something that you may not
3 intend anything by but it sends a message to the jury that a
4 witness is less important because the witness is addressed by
5 his first name even though that witness is there on a
6 scientific capacity as others who are addressed formerly. I
7 required that witnesses be addressed formerly and please don't
8 do anything other than that when you address a witness
9 particularly in front of a jury?

10 MR. JEKEL: And I kept myself from objecting to that but I
11 felt the same thing, Your Honor.

12 MR. YOUNG: Your Honor, I apologize, it was certainly not
13 intentional and I certainly won't do that again. I apologize
14 profusely.

15 THE COURT: Well, I appreciate it. There's a formality in
16 court proceedings and juries are of various backgrounds and
17 they pick up on things sometimes that may not occur to us but I
18 saw looks on some juror's faces and I'm saying we need to be
19 very careful to treat all of them the same way. Thank you very
20 much.

21 (A break was taken.)

22 (The jury returned to the courtroom.)

23 THE COURT: Mr. Jekel?

24 MR. JEKEL: Yes, Your Honor before we call the next live
25 witness by agreement we are introducing some Mastercards, we

1 will read some number off for you, Your Honor. This is a
2 Mastercard Bates numbered BWC 8A and B, that's being admitted
3 as Plaintiff's 37. There is BWC 9A and 9B Mastercard being
4 admitted as Exhibit 38. There is BWC A and B, Your Honor,
5 that's Exhibit 39. There is a BWC A and B, again, Mastercard,
6 that is Exhibit 40. There is BWC 19 A and B, that is again a
7 Mastercard as Exhibit 41. And there's BWC 17A and B,
8 Plaintiff's Exhibit 42. And we would ask that these be
9 admitted into evidence.

10 (The Mastercard documents were received as Exhibits
11 37-42.)

12 THE COURT: Mr. Young, without objection?

13 MR. YOUNG: No objection.

14 MR. JEKEL: This was Plaintiff's Exhibit 37 and 38. This
15 is the first machine one second top Scaflo 50 SRA. And on and
16 off January 16, '72, off December 18, 1972, that's 37 and 38.
17 Again machine one, second tomorrow and bottom Scaflo 50. And
18 the on date for this one is 12/18/72, off date 7/15/73. Your
19 Honor, at this time the plaintiff's -- Mr. Graham, he's going
20 to be handling this.

21 THE COURT: All right. Mr. Graham?

22 MR. GRAHAM: Your Honor, if it please the Court we would
23 like to call Harold Ward.

24 The witness, HAROLD WARD, JR. was first duly sworn and
25 testified as follows: