

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Jean H. Toal, Circuit Court Judge

RECEIVED

JUN 10 2019

SC Court of Appeals

Appellate Case No. 2018-001965

Jerry Howard Crawford, individually and as Personal Representative of the Estate of Evelyn Kay Crawford, Respondent,

v.

Celanese Corporation; Aurora Pump Company; Carrier Corporation; CNA Holdings, LLC, f/k/a Celanese Corporation f/k/a Hoechst Celanese Corporation; Covil Corporation; Crane Co.; Daniel International Corporation f/k/a Daniel Construction Company, Inc.; Flowserve Corporation, individually and as successor-in-interest to Anchor/Darling Valve Company and individually as successor-in-interest to Durco Pumps; Flowserve US Inc.; Fluor Constructors International, f/k/a Fluor Corporation; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; Ford Motor Company; Genuine Parts Company, d/b/a Rayloc (a/k/a NAPA); The Goodyear Tire & Rubber Company; Goulds Pumps, Inc.; Grinnell, LLC f/k/a Grinnell Corp., f/k/a ITT Grinnell Corp.; Honeywell International, Inc., f/k/a Allied-Products Liability Signal, Inc., sued as successor-in-interest to Bendix Corporation; Ingersoll-Rand Company; John Crane, Inc.; Metropolitan Life Insurance Company, a wholly owned subsidiary of Metlife Inc.; National Automotive Parts Association (NAPA); Parker-Hannifin Corporation; Pneumo Abex, LLC, successor-in-interest to Abex Corporation; Spirax Sarco, Inc.; SPX Cooling Technologies, Inc., individually and as successor-in-interest to Marley Cooling Towers Co.; Standard Motor Products, Inc., sued as successor-in-interest to EIS Automotive; United States Fidelity & Guaranty Company; The William Powell Company, Defendants,

Of Which Covil Corporation is the Appellant.

RECORD ON APPEAL - VOLUME 3 OF 8

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RECORD ON APPEAL INDEX

Orders

Order/Judgment/Verdict Form issued July 19, 2018.....	1
Order/Judgment granting new trial entered October 22, 2018.....	3

Pleadings

Summons and Complaint filed December 4, 2017.....	16
Defendant Covil Corporation's Answer to the Complaint filed January 5, 2018.....	65
Plaintiffs' Motion for Sanctions against Defendant Covil Corp. filed July 10, 2018.....	84
Covil Corp.'s Reply to Plaintiff's Motion for Sanctions filed July 10, 2018.....	519
Plaintiffs' Motion for JNOV filed July 30, 2018.....	522
Covil Corp.'s Memorandum in Opposition to Motion for JNOV filed August 3, 2018...	530
Plaintiffs' Memorandum in Support of JNOV with Exhibits A-J filed September 25, 2018.....	535
Covil Corp.'s Supplemental Memorandum Opposing Plaintiff's Motion for JNOV filed October 5, 2018.....	1034
Plaintiffs' Supplemental Memorandum in Support of JNOV and Exhibits filed October 9, 2018.....	1041
Covil Corp.'s Notice of Appeal filed October 31, 2018.....	1046

Transcripts

Transcript of Trial, July 16, 2018 through July 19, 2018.....	1063
Transcript of JNOV Hearing on October 10, 2018.....	1703

Deposition of Palmer Covil taken July 14, 1977.....	1758
Deposition of Jerry Crawford taken February 6, 2018.....	1963
Deposition of Dwayne Waters taken October 16, 2017.....	2350
Deposition of Machen Lee Carpenter taken May 27, 2004.....	2513
Deposition of Don Buck taken June 19, 2018.....	2642
Deposition of Harley Neelands taken December 8, 2016.....	2696
Deposition of Bruce Bowyer taken June 27, 2018.....	3027
 <u>Exhibits</u>	
Plaintiff's Exhibit 822.1.....	3242
Plaintiff's Exhibit 822.2.....	3243
Plaintiff's Exhibit 822.3.....	3244
Plaintiff's Exhibit 822.4.....	3245
Plaintiff's Exhibit 822.5.....	3247
Plaintiff's Exhibit 822.6.....	3272
Plaintiff's Exhibit 822.7.....	3294
Plaintiff's Exhibit 822.8.....	3315
Plaintiff's Exhibit 822.9.....	3337
Plaintiff's Exhibit 822.10.....	3353

Plaintiff's Exhibit 822.11.....	3359
Plaintiff's Exhibit 822.12.....	3365
Plaintiff's Exhibit 822.13.....	3383
Plaintiff's Exhibit 822.14.....	3433
Plaintiff's Exhibit 822.15.....	3446
Plaintiff's Exhibit 822.16.....	3467
Plaintiff's Exhibit 825.1.....	3754
Court Exhibit 2.....	3755
Court Exhibit 3.....	3778
Court Exhibit 4.....	3792
Court Exhibit 5.....	3799
Court Exhibit 6.....	3808
Court Exhibit 7.....	3835
Court Exhibit 8.....	3845
Court Exhibit 9.....	3850
Court Exhibit 10.....	3867
Court Exhibit 11.....	3903

only the amounts received by Plaintiffs in settlement for the personal injury and loss of consortium claims should be considered when determining the setoff amount.

In determining the allocation of Plaintiffs' settlements, the Court accepts Plaintiffs' representation that at the time the settlements were received by Plaintiffs, they were internally allocated as one-third to Mr. Jolly's personal injury claims, one-third to Mrs. Jolly's loss of consortium claims, and one-third to the release of future wrongful death claims. Additionally, the Court reviewed the releases of the settling defendants and confirmed that all future claims related to Mr. Jolly's mesothelioma, including wrongful death, were released by the Plaintiffs. Because the total pre-trial settlements were in the amount of \$2,270,000, one-third of the settlements is valued at \$756,666.67.

The Court finds that the internal allocation of the settlement funds received by Plaintiffs is reasonable as required by South Carolina precedent. The Supreme Court has noted that "[s]ettling parties are naturally going to allocate settlement proceeds in a manner that serves their best interests. That fact alone is insufficient to justify . . . reapportionment for the sole purpose of benefitting [non-settling defendants]." *Riley v. Ford Motor Co.*, 414 S.C. 185, 196-97, 777 S.E.2d 824, 830-31 (2015).

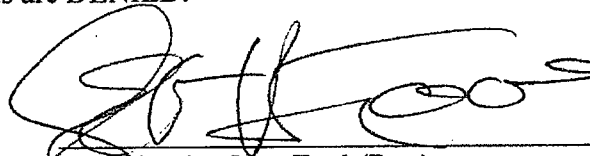
As set forth above, the total amount of the added verdict for Mr. Jolly's personal injury claims is \$1,580,000. Defendants are entitled to a setoff in the amount of Plaintiffs' pre-trial settlements allocated to the personal injury claim, which is \$756,666.67. Defendants owe the balance of \$823,333.33 for Mr. Jolly's personal injury claim.

As set forth above, the total amount of the added verdict for Mrs. Jolly's loss of consortium claim is \$290,000. This does not exceed the \$756,666.67 in settlement proceeds allocated to her loss of consortium claim.

VII. Conclusion

The Court GRANTS Plaintiffs' motion for new trial *nisi additur*, and raises the verdict to \$1,580,00 for Mr. Jolly's personal injury damages and \$290,000 for Mrs. Jolly's loss of consortium damages. The Court GRANTS in part Defendants' motion for set-off, and reduces Mr. Jolly's damages by one-third of Plaintiffs' pre-trial settlements, in the amount of \$756,666.67. Mrs. Jolly's damages are likewise reduced in the amount of \$756,666.67, which exceeds her added damages award. Judgment will therefore be entered against Defendants in the amount of \$823,333.33. Defendants may, of course, reject the additur, and a new trial will be scheduled. Defendants' remaining post-trial motions are DENIED.

IT IS SO ORDERED.



Chief Justice Jean Toal (Ret.)
Supreme Court of South Carolina

#37

December 15, 2017

EXHIBIT J

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CASE NO. 99-CP-23-0588

Terry Douglas Jaynes,
et al.,

Plaintiffs,

vs.

ACandS, Inc., et al.,

Defendants.

DEPOSITION OF MACHEN LEE CARPENTER

DATE TAKEN: May 27, 2004

TIME BEGAN: 10:16 a.m.

TIME ENDED: 11:53 a.m.

LOCATION: Haynsworth Sinkler Boyd, P.A.
75 Beattie Place
Greenville, South Carolina

REPORTED BY: Sheila B. Smith, CVR-CM
Certified Verbatim Reporter
Certificate of Merit
Notary Public for South Carolina

COPY

GALLAGHER COURT REPORTING

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Greenville, South Carolina 29615
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Certified Court Reporters

1004

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.....On behalf of Covil Corporation; Guard Line,
Inc.

STIPULATIONS: The within deposition was taken pursuant to
the South Carolina Rules of Civil Procedure.

WAIVER: Examination and reading of the deposition are
waived by the witness and by the parties.

INDEX

	PAGE
Examination by Ms. Flynn.....	4
Examination by Mr. Mauriello.....	75
Reexamination by Ms. Flynn.....	114
Certificate.....	129
Exhibits: (Attached to deposition)	
Exhibit No. 1 [Work Log Entry].....	76
Exhibit No. 2 [Covilite Document].....	81
Exhibit No. 3 [Owens-Corning Invoice].....	85
Exhibit No. 4 [Yellow Pages Listing].....	86
Exhibit No. 5 [Covil Invoice].....	90
Exhibit No. 6 [Covil Invoice].....	90
Exhibit No. 7 [Covil Invoice].....	91
Exhibit No. 8 [Covil Invoice].....	95
Exhibit No. 9 [Group of Guy M. Beaty Invoices]..	100
Exhibit No. 10 [Duke Power Specification].....	101
Exhibit No. 11 [Duke Power Specification].....	104
Exhibit No. 12 [12/13/77 Letter].....	111

1 **MACHEN LEE CARPENTER**, being duly sworn, testified as
2 follows:

3 **EXAMINATION BY MS. FLYNN:**

4 Q. Mr. Carpenter, my name is Stephanie Flynn. And I
5 am an attorney representing some Defendants that
6 are being sued in some asbestos-related lawsuits.
7 Have you ever given a deposition before?

8 A. Yes, ma'am.

9 Q. Tell me about that. When was that?

10 A. In person it's been quite a while ago; several
11 years back. I've given depositions by telephone
12 quite often. I guess the word got out of who I
13 was and what my knowledge was, and I would even
14 get calls from the attorneys across the country.

15 Q. How many depositions have you given?

16 A. Oh, probably eight to ten.

17 Q. Were they all by telephone or were they --

18 A. Most were by telephone, yes.

19 Q. I know you've got a good idea of how this is going
20 work today then. If you ever don't understand
21 something that I've asked --

22 A. Okay.

23 Q. -- just let me know and I'll be happy to repeat
24 the question until you do understand.

25 A. Okay.

1 Q. If you do answer a question I'm going assume that
2 you understood that. Is that fair?

3 A. That's fair enough.

4 Q. And I don't know how long your deposition is going
5 take, but if at any time you need a break, please
6 just let me know and I'll be happy to stop.

7 A. Fair enough.

8 Q. And I'll try to let you finish your answer before
9 I start into my next question. And if you could
10 just try to let me finish my question, even if you
11 know where I'm going with it before you start your
12 answer, and we'll have a nice smooth record.

13 A. Okay.

14 Q. If you could go ahead and just state for me again
15 your full name for the record.

16 A. My full name is Machen Lee Carpenter.

17 Q. And we had talked a little bit about your prior
18 depositions. When was the last time you gave a
19 deposition?

20 A. Oh, man, I believe it was by phone and I want to
21 say it was about -- let's see, I've been gone from
22 Covil since '91; somewhere around '92, '93.

23 Q. So it's been quite some time ago?

24 A. Yes.

25 Q. Were all these depositions related to asbestos

1 cases?

2 A. No, ma'am. Some was related to poisoning of the
3 grounds, the party that was interested in buying
4 the facility. Some of it was related to railroad
5 right-of-ways in the interest of buying the
6 facilities. So no, it wasn't all asbestos-
7 related.

8 Q. How many asbestos-related cases have you testified
9 in by deposition?

10 A. Six to seven probably.

11 Q. Have you ever given testimony in court?

12 A. No, ma'am.

13 Q. Were these depositions in Workers' Compensation
14 cases or were they other type of cases?

15 A. They were mostly in personal related lawsuits of
16 fellow workers.

17 Q. Fellow workers?

18 A. Uh-huh (affirmative).

19 Q. Other Covil employees?

20 A. That's correct.

21 Q. Did you go by any nicknames on the job site?

22 A. No, ma'am.

23 Q. What is your present address?

24 A. 14 South Fairfield Road, Greenville, South
25 Carolina, 29605.

- 1 Q. What is your date of birth?
- 2 A. 7/15/44.
- 3 Q. How old would that make you today?
- 4 A. Fifty-nine.
- 5 Q. What is your Social Security Number?
- 6 A. 251-72-2965.
- 7 Q. Where were you born?
- 8 A. Greenville, South Carolina.
- 9 Q. Have you lived here your entire life?
- 10 A. Yes, ma'am.
- 11 Q. Are you married?
- 12 A. Yes, ma'am.
- 13 Q. What is your wife's name?
- 14 A. Paulette, P-A-U-L-E-T-T-E.
- 15 Q. What was her maiden name?
- 16 A. Rodgers, R-O-D-G-E-R-S.
- 17 Q. Where is she from?
- 18 A. She's from Greenville.
- 19 Q. How long have you been married to Paulette?
- 20 A. Six years.
- 21 Q. Were you married before?
- 22 A. Yes, ma'am.
- 23 Q. How many times?
- 24 A. Once.
- 25 Q. What was your first wife's name?

- 1 A. Not to my knowledge, no.
- 2 Q. Have you ever been arrested for any reason?
- 3 A. No, ma'am.
- 4 Q. Have you ever personally filed an asbestos-related
- 5 lawsuit?
- 6 A. No, ma'am.
- 7 Q. Have you ever filed a Workers' Compensation suit?
- 8 A. No, ma'am.
- 9 Q. Do you currently attend church?
- 10 A. No.
- 11 Q. Are you a member of any social clubs or
- 12 organizations in Greenville County?
- 13 A. No, ma'am.
- 14 Q. I understand that you are here today, and you've
- 15 not been identified to testify as to any
- 16 particular person that I'm aware of; is that
- 17 correct, any particular plaintiff's case?
- 18 A. No, ma'am. I'm strictly Covil.
- 19 Q. Well, then let's go through your work history a
- 20 little bit. I guess I'll start with your
- 21 educational background. Where did you go to high
- 22 school?
- 23 A. Carolina High School.
- 24 Q. Is that here in Greenville?
- 25 A. Uh-huh (affirmative). It's now called Carolina

1 Academy.

2 Q. What year did you graduate?

3 A. '62.

4 Q. Did you receive any education following high
5 school?

6 A. Yes, I did. I went in the Marine Corps for four
7 years and attained quite a bit of electronic
8 information in various parts of the Marine Corps.

9 Q. You had some electronic training?

10 A. Yes, ma'am. I was in combat helicopters and I
11 basically did all the -- I did the electronic
12 maintenance and upkeep of combat choppers.

13 Q. When did you get out of the Marine Corps?

14 A. I went in on Valentine's Day and got out on
15 Valentine's Day.

16 Q. Valentine's Day of 1963?

17 A. Yes, ma'am.

18 Q. Then you stayed in for four years?

19 A. Yes, ma'am.

20 Q. Did you have an honorable discharge?

21 A. Yes, ma'am.

22 Q. What did you do after getting out of the Marine
23 Corps?

24 A. I went to work at Covil Insulation, a/k/a Covil,
25 within about a week.

1 Q. So that would have still been February of 1967?

2 A. Seven, yes, ma'am.

3 Q. And when you were hired by Covil, what did you
4 hire on as, what position?

5 A. Well, I had a friend there that I grew up with.
6 He was the warehouse foreman and he was wanting me
7 to come to work there and more or less train me to
8 take his place because he wanted to move on up
9 into the estimating department of Covil. So
10 that's basically why I wound up there. And as it
11 turned out, that's exactly what happened. I
12 basically took his place and he moved on.

13 Q. What was your friend's name?

14 A. Tony Junkin.

15 Q. How long did you work for Covil?

16 A. From '67 to '91.

17 Q. Did you retire?

18 A. No, ma'am. The company went bankrupt.

19 Q. Where did you go after you left Covil?

20 A. I spent ten months looking for a job. It was --
21 they were very, very, very bad times for jobs;
22 took me ten months to find a job.

23 Q. And where did you go?

24 A. I went to work for a company called American
25 Woodworks here in Greenville who are now owned by

1 Leggett and Platt.

2 Q. How long did you work for them?

3 A. Still employed by them. I think I've been there a
4 little over eleven years.

5 Q. And what do you do for them?

6 A. I've done a lot of things, but right now I'm
7 inventory control manager.

8 Q. Going back to Covil -- we'll start there. You
9 said when you hired on you had a friend who was
10 the warehouse foreman and he wanted to move you
11 into that position?

12 A. He wanted to train me to -- he wanted to see if I
13 could be trained to eventually go into that
14 position. I was really hired on -- the day I was
15 hired on was as a warehouse helper. And then I
16 moved from a warehouse helper to assistant
17 warehouse foreman. And then, of course, from
18 assistant warehouse foreman to warehouse foreman
19 and that's when he moved.

20 Q. How long did you work as a warehouse helper?

21 A. As a warehouse helper?

22 Q. Yes.

23 A. I'd say all of this took place in way less than a
24 year.

25 Q. So you moved up from warehouse helper to assistant

1 foreman to foreman in about a year's time?

2 A. Yes, ma'am, or even less, to be honest with you.

3 Q. Tell me what you did during this year period.

4 A. I'll give you an example. The first job -- the
5 first day I reported to work at Covil, the first
6 job I was put on, along with others, is -- there
7 was a railroad car sitting at one of the railroad
8 doors that had a thousand 100-pound bags of raw
9 asbestos cement out of Canada. And we unloaded
10 those thousand hundred-pound bags and put them in
11 our warehouse. Of course, in the process we
12 busted 30, 40, which we would have to clean up,
13 re-bag. Outside of that, I did receiving and
14 shipping, loaded trucks, filled orders. When I
15 was initially hired, it was predominantly on the
16 receiving end. I worked more in receiving than I
17 did in shipping, but I eventually moved into
18 shipping as well because I was gaining the
19 experience necessary to be a warehouse foreman.

20 Q. Did you remain in the position of warehouse
21 foreman the entire time you were there or did you
22 change positions?

23 A. No. I went from there to warehouse and shop
24 foreman. We had a rather large fabrication shop.
25 You want me to go on?

1 Q. Yes, please.

2 A. I went from there to purchasing manager where I
3 was over customer service. I was responsible for
4 doing all the purchasing and I also still had the
5 warehouse and fabrication shop, as well as
6 buildings and grounds, tools and equipment
7 underneath me. We later got into centralized
8 purchasing where I would do the buying for all of
9 our branches as well. From there, new owners took
10 over Covil, and I eventually made my way back to
11 warehouse manager. At some point in time after
12 that, the company had to borrow a significant
13 amount of money and I became a bonded security
14 agent for two different companies. Technically I
15 was no longer an employee of Covil Corporation at
16 that time, technically, legally. But it was my
17 warehouse, and my warehouse alone. I had the key.
18 They couldn't get in. They couldn't get nothing
19 out unless I signed for it. I did that for about
20 two and a half years. Then the family, the kids
21 of Palmer Covil, the founder, and an in-law, they
22 got control of the company back and I moved into
23 the position of vice president of operations,
24 which involved all of our branches. The last year
25 and a half or so that I spent at Covil, I was a

1 board of director member. I never owned any stock
2 whatsoever. And that's it.

3 Q. That's it; all right. I'm going to walk back
4 through these just a little bit so I can get the
5 years clear in my head. I know that you became a
6 warehouse foreman less than a year after you got
7 there in 1967. At some point you moved to
8 warehouse and shop foreman. When did that take
9 place?

10 A. You know, Wallace and Graham has got all of this
11 documentation. The years -- I don't remember
12 exactly what those years were, but it is
13 documented. I don't know. You could get access
14 to them through them I'm sure. It's got the
15 exact years that I was in what positions. I'd
16 just be afraid that I'd -- I'd lead you astray
17 from memory. I mean that's a lot to -- that's a
18 lot of different positions to look at and remember
19 dates.

20 Q. Are you represented by Wallace and Graham?

21 A. Indirectly.

22 Q. Are they representing you in connection with any
23 lawsuits?

24 A. Lawsuits, no, ma'am. Wallace and Graham and I go
25 back about ten years. They contacted me first and

1 they called me quite frequently and asked me did
2 work for this person or did I ever work with that
3 person, do I know this person, do I know that
4 person, do I know this company, do I know this
5 brand, or whatever. I filled out questionnaires
6 for them as far as asbestos companies. They keep
7 a real, real close check on me physically because
8 I've had a lot of physical problems, in the last
9 year especially. They're not representing me in
10 any way, shape, or form in a present lawsuit
11 primarily because no one -- they'll dance around
12 the subject, but no one has -- no one is willing
13 to say I have asbestosis. The only way they will
14 say that is if I have a full-blown -- what do you
15 call it -- biopsy which is about a six-day stay in
16 ICU. And I've refused to do that because of my
17 other medical reasons. I've had a bronchoscopy,
18 which is another procedure, of course, where a
19 small sample was taken.

20 Q. What were the results of that bronchoscopy?

21 A. I have non-transmittable TB predominantly was the
22 result. That was the predominant result.

23 Q. So you've not been diagnosed with any asbestos-
24 related diseases that you're aware of?

25 A. Not that anybody is willing to say. I have been

1 told that I have asbestos particles on the
2 exterior of my lungs, but not able to make a
3 determination without a biopsy of the interior of
4 my lungs. My lungs are quite scarred from the
5 TB. I also have advanced -- what's the smoking
6 disease?

7 Q. Emphysema?

8 A. Emphysema. My right lung is about a third as long
9 as my left lung. I've been told by my surgeon
10 that that is asbestos-related.

11 Q. That your emphysema is asbestos-related or your
12 lung size?

13 A. No, my lung size.

14 Q. Who was the doctor that told you that?

15 A. Dr. Cochran. I finally had to give up on the lung
16 business. I had gone through -- let's see, one,
17 two, three -- I had gone through three CT scans.
18 I was scheduled for my fourth CT scan in January.
19 And unfortunately, I was already in the hospital
20 and a CT scan for my lungs were the least of my
21 problems. In September I developed severe --
22 what's the word -- vascular problems. And I spent
23 from September through the first part of January
24 in various trips to the hospital fighting that
25 problem. And so I basically give up on my lungs

1 since then. There were conflicts, major conflicts
2 in the medications. I had to stop the medications
3 for my lungs which I was to take for two and a
4 half years. I couldn't handle it and all the
5 other medications for my vascular system.

6 Q. What doctors have you seen for lung-related
7 problems?

8 A. My family doctor and Dr. Cochran.

9 Q. Who is your family doctor?

10 A. Dr. McCarroll, Jr. He referred me to Dr. Cochran.

11 Q. Have you seen any doctors that you were sent to by
12 Wallace and Graham?

13 A. No, ma'am. I've had offers. And they wanted me
14 to go here and wanted me to go there, but I never
15 did.

16 Q. Have you ever worked on a job site for Covil for
17 Covil or has your work been primarily at the Covil
18 place of business, the Covil warehouse?

19 A. That is a very, very tough question. I can
20 explain it best, I think, in the fact that as a
21 "Worker," quote-unquote, no. I haven't been a
22 worker at a Covil job site. Have I been on Covil
23 job sites? Many, many, many.

24 Q. So you have not been an actual insulator on a job
25 site for Covil?

1 A. No, ma'am.

2 Q. What would be the reason that you would go to job
3 sites where Covil was working?

4 A. Various reasons. We would be running behind
5 schedule, facing thousands and thousands of
6 dollars of fines. We were -- we would go to
7 trouble-shoot the problem, see what we needed to
8 do, how much manpower we needed to add, what --
9 you know, exactly what we needed to do to get out
10 of the jam. We would go when there was conflict
11 that we didn't structurally -- we didn't buy off
12 on. We would go simply as a visitor to check the
13 status of our insulators, quality of work and so
14 forth and so on.

15 Q. How frequently would you go to various job sites?

16 A. Quite frequently in the later years, very seldom
17 in the early years. In the early years, I might
18 would go with a truck driver in a truck to a job
19 site to help unload, and that job site could be
20 anywhere. I've done -- you know, I've done my
21 share of that, but as far as visiting job sites,
22 on the basis of which I just explained, for
23 legitimate logistical reasons it was the latter
24 years.

25 Q. I am going to step back just for a second. We

1 Q. What was the purpose of touring the plant?

2 A. An invite.

3 Q. Same for the others that you named, the Southern
4 Asbestos --

5 A. Yes.

6 Q. -- and the Childers Products?

7 A. Yes.

8 Q. Do you know when the tour of the Owens-Corning
9 plant took place?

10 A. In the latter years. I'd say two to three years
11 before '91. It wasn't during the asbestos days.
12 Southern Asbestos, I would say, was five years
13 before '91, big time asbestos.

14 Q. What about Childers Products?

15 A. Childers Products, Houston, Texas. I've been
16 there many, many times. Probably the last time
17 was a year and a half to a year before '91.

18 Q. As to Southern Asbestos, when you said it was big
19 time asbestos, five years before 1991, were they
20 still manufacturing asbestos products?

21 A. Absolutely.

22 Q. When did you first become aware that asbestos
23 could be harmful?

24 A. I figured you was going to ask that question. I
25 really truthfully can't answer that question. I

1 don't remember when. I remember how serious it
2 was. I remember a moratorium being put out on
3 it. I remember special ways that we had to handle
4 it. I remember the changes in the industry,
5 especially in the calcium silicate products that
6 all the manufacturers made to be able to identify
7 asbestos-free products of theirs and it was always
8 a red stripe or a green stripe or a blue stripe --
9 dye -- it was a dye stripe on the outside of the
10 insulation product. So if it was on pipe and
11 somebody -- an inspector wanted to inspect it, if
12 he saw a blue stripe, he knew -- he knows
13 automatically it's a non-asbestos product. I
14 remember all that, but exactly when I don't
15 recall.

16 Q. Can you remember what decades this was in, whether
17 it was the 1970's or the 1980's?

18 A. Oh, it would have had to have been in the early
19 seventies. Now as I was speaking to him earlier,
20 a major event happened in the early seventies.
21 And I can't recall the years, but Covil
22 Corporation, per se, burnt to the ground. I want
23 to say that that took all the remaining asbestos
24 products obviously from -- at some point in time
25 from our grounds, you might call it. Up until

1 impressive operation using negative air enclosed
2 -- completely 360 degrees enclosed. It was quite
3 expensive, too, by the way.

4 Q. So this was a team of Covil employees that were
5 going in and taking all the precautions and
6 removing asbestos?

7 A. Absolutely. For example, in a school, the only
8 way you could -- you had to be asbestos removal-
9 certified before you could remove asbestos in any
10 South Carolina school. We had insulated quite a
11 few South Carolina schools. It was kind of ironic
12 in a way in hindsight, not just schools but mega
13 plants. What we put on one day, we started taking
14 off another day because this stuff had to be taken
15 off and asbestos-free products put in unless --
16 and there was only one unless -- unless it could
17 have been -- it could be unequivocally
18 encapsulated. If it could be unequivocally
19 encapsulated, it did not have to be removed.

20 Q. Do you remember about when that fire occurred? I
21 know you said early seventies. I just --

22 A. I want to say '74 or '75. I had a lot of fun at
23 Covil over all those years.

24 Q. Where was the warehouse that burned? Where was
25 that located?

1 A. In Berea, Sulphur Springs Road.

2 Q. Was this the warehouse that supplied all products
3 used by Covil or were there other warehouses?

4 A. Oh, we had ten to 12 other branches throughout the
5 southeastern United States. I could try to name
6 them if I could -- if you need it.

7 Q. Please.

8 A. We had one in Charlotte, North Carolina for a
9 short period of time. We had a big one in
10 Greensboro, North Carolina. We had a rather large
11 one in Black Creek, North Carolina, which is right
12 outside of Wilson. We had a -- for a short period
13 of time, we had one in Knoxville, Tennessee. Of
14 course, we had one in Greenville, South -- really,
15 we had two in Greenville, South Carolina. We had
16 corporate headquarters in Greenville and the
17 Greenville branch located in Greenville, South
18 Carolina. We had one in Columbia, South Carolina.
19 We had one in Albany, Georgia. We had one in
20 Montgomery, Alabama. We had one in Jacksonville,
21 Florida. We had one in Columbia, South Carolina.
22 I believe that's it.

23 Q. As a warehouse foreman and in your other
24 positions, did you only have responsibility over
25 one warehouse or multiple warehouses?

1 A. When I was operations manager, I was responsible
2 for all those warehouses to the degree I would
3 tour each one of them at least once a month. I
4 was also responsible for all clerical functions,
5 all warehousing, all trucking, all shipping, all
6 receiving, buildings and grounds, equipment,
7 scheduling, purchasing. And like I say, I would
8 generally visit each one of them at least once a
9 month.

10 Q. What years were you operations manager?

11 A. Operations manager the last -- operations manager
12 I'd say the last two and a half years prior to
13 '91. I later became vice president of operations.

14 Q. Was that about the last two years or so?

15 A. Yes. I was operations manager for a short period
16 of time and then became vice president of
17 operations really for a short period of time, and
18 then became a board of director as vice president
19 of operations.

20 Q. As a member of the board of directors, you
21 continued to maintain your position as vice
22 president of operations for the company?

23 A. Absolutely, yes.

24 Q. You just served on the board as well?

25 A. That's correct, a board of five. There was two of

1 us on the board who had no stock whatsoever in the
2 company. The other three were family.

3 Q. Who was the other person on the board who didn't
4 have any stock?

5 A. Her name now is Yvonne Ward. At that time it was
6 Yvonne Wells. She lives here in Greenville.

7 Q. Prior to the time that you became operations
8 manager and were in charge and responsible for all
9 of these warehouses, in other positions did you
10 have responsibility for just one warehouse or how
11 did that work?

12 A. As purchasing manager, I had the responsibility of
13 supplying all branches because we had centralized
14 purchasing.

15 Q. And I know I asked you this before. You don't
16 remember what years you were purchasing manager?

17 A. I'd say '85, '86. Matter of fact, I was
18 purchasing manager twice.

19 Q. Were you purchasing manager first in 1985 or 1986?

20 A. When Palmer Covil died, two people took over the
21 company. Shortly thereafter, I was moved from
22 purchasing back into warehouse management. I
23 remained there for probably four years of hell,
24 and that's the only way to put it. So this would
25 have had to have been close to the mid-eighties

1 because the family got it back after about four
2 years.

3 Q. Who owned it or was running it during the four
4 years when the family was not in control?

5 A. Travis Cash, Russell Johnson, and probably Jim
6 Gilreath, who is an attorney -- was an attorney.
7 He's dead now.

8 Q. And after the four years when the family got back
9 in control, you went back to purchasing manager
10 for a period?

11 A. Yes. And then very shortly thereafter I went into
12 operations manager and then vice president of
13 operations, then a board of director member.

14 Q. When you were the purchasing manager and were
15 responsible to supply all branches, at that time
16 were you purchasing any products that contained
17 asbestos?

18 A. I would say no, because this was after the
19 asbestos era that I was in this position. That's
20 not to say -- now let me clarify that. There's a
21 lot of misnomer out there of what still contains
22 asbestos. And I'm sure there were some products
23 that I was buying that contained some asbestos,
24 for example, Southern Asbestos. If it come from
25 Southern Asbestos, you can take it to the bank it

1 had asbestos in it. Some of the coatings, like in
2 Childers Products in Houston, Texas -- some of the
3 coatings would have asbestos fibers in them. So I
4 could not unequivocally say that I was not
5 purchasing any products that contained zero
6 asbestos because I'm sure there's probably some
7 products still out there that I don't know about
8 now. They may have cleaned up their act. I don't
9 know.

10 Q. These companies weren't supposed to have asbestos
11 in their products, were they?

12 A. I would say not.

13 Q. Why do you think that the products that Southern
14 Asbestos was manufacturing still contained
15 asbestos during this time?

16 A. It was the nature of the product. It was like
17 brake shoes. You don't re-invent the wheel over
18 night. It was a very, very demanding, super
19 important product. It was a gasket type material
20 for super high temperature pipe or boilers. I
21 mean you just couldn't quit.

22 Q. You've named specifically a gasket material for
23 super high temperature pipe and boilers.

24 A. Yes, ma'am.

25 Q. And you believed that that still contained

1 asbestos at the time that you were purchasing
2 manager?

3 A. I would think it did, yes.

4 Q. Are there any other products during that time that
5 you think still contained asbestos?

6 A. Yes, ma'am.

7 Q. What were those products?

8 A. The coatings. That would be -- that's the
9 predominant thing that I can think of is the pipe
10 coating itself.

11 Q. Are we talking about a hard material or a powder
12 material?

13 A. No. We're talking about a product with the
14 consistency I'd say of mixed cement. And you
15 generally put it on with your bare hands or
16 troweled it. And when it was cured, it was
17 basically like plaster of Paris.

18 Q. Did it come in --

19 A. Five gallon pails, 55-gallon pails.

20 Q. So it was already a pre-mixed type of product?

21 A. Oh, yes. And there again, it came to a argument
22 of encapsulation. You'd had a hard time getting
23 asbestos fibers out of the mixture of this
24 product, believe me. And then, of course, once it
25 hardened, it was definitely encapsulated.

1 supposedly it was one of the insulation wonders of
2 the world.

3 Q. Do you know if Covil supplied any products or
4 personnel to the Jocassee site?

5 A. Yes, ma'am.

6 Q. Do you know what time period that would have been?

7 A. Mid-eighties.

8 Q. This was after the asbestos era?

9 A. Oh, yes.

10 Q. So it should have been asbestos-free at that time?

11 A. Oh, yes.

12 Q. What about Keowee?

13 A. Keowee? Keowee was done about the same time, to
14 be honest with you.

15 Q. Therefore, it should not have had products that
16 contained asbestos?

17 A. Absolutely not.

18 Q. Do you know whether Covil ever supplied or
19 installed products to Lee Steam Station?

20 A. Yes, ma'am, fossil fuel plant.

21 Q. Do you know what period of time that would have
22 been?

23 A. It would have been an ongoing proposition. It
24 goes back to what I said. Once we were there, we
25 were basically always there, either in insulators,

1 installing, or in selling and placing the
2 insulation product there. What happened -- I was
3 telling him earlier, a lot of people's got -- in
4 talking to others, questionnaires, I don't think
5 anybody until today in my conversation with him,
6 has really understood the insulation industry in
7 the southeastern United States during a certain
8 period of time, during Covil's era, during
9 Daniel's era. And even Fluor Daniel has changed
10 drastically as we sit here today. Covil was the
11 largest insulation contractor in the southeastern
12 United States. Covil and Daniel was like that
13 (indicating). That's why I say, if Daniels did a
14 job, Covil insulated it. However, when the jobs
15 were getting close to being finished, Daniels
16 realized that they were going to have to maintain
17 those plants forever. So they started training
18 their own insulation crews which eventually hurt
19 us bad because they basically took our place.
20 We'd finish the original job and didn't have much
21 opportunity for retrofit, add-on, new work. And
22 that was pretty true throughout the insulation
23 industry, not just with Daniel.

24 Q. Do you know when Daniel started training their own
25 insulation crews?

CERTIFICATE

I, the undersigned, Sheila B. Smith, Notary Public in and for the State of South Carolina, do hereby certify that the foregoing deposition was taken on the aforementioned date;

That the within deponent was sworn to tell the truth and that the foregoing is an accurate transcription of the testimony taken under oath;

That all exhibits entered herein are attached hereto (if requested by counsel) and made a part of this deposition.

I further certify that I am neither counsel nor solicitor to any of the parties in said suit, nor interested in the event of the cause.

In witness whereof, I have hereunto set my hand and seal this 14th day of June, 2004.

COPY

Sheila B. Smith, CVR-CM
Notary Public for South Carolina
My Commission Expires: 3/9/2014

(Seal)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	:	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	C.A. NO.: 2017-CP-42-04429
JERRY HOWARD CRAWFORD and	)	
EVELYN KAY CRAWFORD,	)	
	)	
Plaintiffs	)	SUPPLEMENTAL
	)	MEMORANDUM OPPOSING
-versus-	)	PLAINTIFF'S MOTION FOR JNOV
	)	
CELANESE CORPORATION, et al	)	
	)	
Defendants.	)	
	)	

Defendant, Covil Corporation ("Covil"), submits this supplemental memorandum opposing Plaintiff's request for a Judgment Notwithstanding the Verdict and new trial absolute ("JNOV") filed September 25, 2018 (hereinafter "the Supplemental Motion").¹ In the Supplemental Motion, the Plaintiff has expanded the relief sought to include Section IV, asking the Court to award damages with JNOV. No such request was made in the original JNOV motion and cannot be made after the passage of the ten days allowed for the JNOV motion and the deadline cannot be extended by the trial court. Boone v. Goodwin, 444 S.E.2d 524 (S.C. 1994); C&S National Bank v. Easton, 427 S.E.2d 640 (S.C. 1993). Additionally, Plaintiff's efforts to recast, reshape, reargue, and otherwise raise new arguments is improper. Id.²

¹ As anticipated, Plaintiff improperly filed a memorandum supporting his Motion for Judgment Notwithstanding the Verdict (JNOV). See, Covil's Memorandum Opposing JNOV filed August 3, 2018, at page 1.

² Plaintiff's footnote 1 in the original motion discusses the absence of receipt of the trial transcript. Plaintiff is now presumably attempting to use that reservation as a springboard to the expansion of his motion for JNOV 57 days after the filing of his original motion. It is noted that Plaintiff was obtaining real time transcripts each evening during the trial.

I. Plaintiff Is Not Entitled to a JNOV.

First, “only the grounds raised in the directed verdict motion may properly be reasserted in a JNOV motion. A motion for a JNOV is merely a renewal of the directed verdict motion.” RFT Management Co. LLC v. Tinsley & Adams LLP, 732 S.E.2d 166, 170-71 (S.C. 2012). “Moreover, “[a] motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict.” Id. at 171. “In deciding such motions, neither the trial court nor the appellate court has the authority to decide credibility issues or to resolve conflicts in the testimony or the evidence.” Id.

“If the evidence as a whole is susceptible to more than one reasonable inference, a jury issue is created and the motion should be denied.” Howard v. Roberson, 654 S.E.2d 877, 880 (S.C. Ct. App. 2007). “When considering directed verdict motions, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence.” Id. The court should apply the same standard when considering a JNOV motion by “viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party.” RFT, 732 S.E.2d at 171 (citing Elam v. SC Dep’t of Transp., 602 S.E.2d 772 (S.C. 2004). Moreover, “[a] motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict.” Id. at 171.

In the case at bar, there were multiple factors which tended to show that Covil was not liable to Plaintiffs. The records of Covil Corporation, which were generated after the May 1973 fire and were included in any work form the date of the fire through 1974 did not establish any work by Covil at the Celanese Plant at issue during the relevant time period. Moreover, the corporate representative of Celanese (Spartanburg) clearly established that he had reviewed the records of

Celanese, that Celanese would have had to approve any contract with any subcontractor, supplier or vendor. Daniel nor Celanese could find no documents that supported that Covil provided any services to the Celanese Plant. Finally, the corporate representative of Daniel, Mr. Buck, testified that he went through the forty (40) boxes of documents that made up the Celanese project for Daniel and found no reference to any work done or provided by Covil other than three employees of Covil providing fire retardant materials for the structural steel. Additionally, the records of Daniel establish that Daniel's own employees provided the insulation for the project. Finally, the documents of Daniel establish that Covil was neither a subcontractor nor a vendor to Daniel on the Celanese (Spartanburg) Project. The jury accepted these facts and found that Plaintiff did not meet *his* burden of proof. It is not Covil's burden to disprove the Plaintiff's case, but rather the Plaintiff's burden to prove *his* case. He did not and a reasonable jury found as such. Despite Plaintiff's request, the court cannot and should not "decide credibility issues or to resolve conflicts in the testimony or evidence." Howard, 654 S.E.2d at 880. The court should apply the same standard when considering a JNOV motion by "viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party." RFT, 732 S.E.2d at 171

II. Plaintiffs Did Not Move for a Mistrial and Waived Right to do so.

First, Plaintiff's Supplemental Motion addresses Covil's opening statement. Plaintiff did not timely move for JNOV with regard to opening and has now waived their right to do so.

Second, in so far as the closing is concerned, Plaintiffs did not move for a mistrial. A motion for a mistrial after the verdict where no motion is made prior to that verdict is improper and not preserved. State v. Penland, 273 S.E.2d 765 (S.C. 1981). By moving for a JNOV on the basis of closing arguments of counsel, Plaintiffs are essentially asking for a mistrial. "A trial court is vested

with wide discretion in determining the scope of argument.” Id. The court determined three important things during the trial: A) that the statements made by counsel for Covil did not rise to the level of warranting a mistrial; B) the curative instructions were appropriately given to the jury; and C) that in addition to the charge, the jury was told by counsel virtually immediately after the statements were made that the comments were withdrawn. A “new trial” based upon alleged improper comments during a closing is addressed by a motion for mistrial, not a JNOV. Plaintiffs failure to move for a mistrial constitutes waiver of this issue.

Alternatively, the comments alone were not so egregious so as to have deprived Plaintiff of a “fair trial.” Gill v. State, 552 S.E.2d 26 (S.C. 2001) (recognizing defendants burden to show lack of fair trial based on closing comments). Here, a curative instruction was given, counsel admonished, and neither topic was mentioned again. This was an appropriate remedy and no reversible error occurred. Mishoe v. OHG, 621 S.E.2d 363 (S.C. Ct. App. 2005). Plaintiffs have not met their burden of proof regarding the loss of a “fair trial.” In fact, a review of the trial transcript, upon information and belief, demonstrates that Plaintiffs received favorable rulings on procedural matters and evidentiary matters throughout the trial. From the Plaintiffs point of view, they were given every opportunity and inference to convince the jury that Covil was liable to Plaintiffs. Simply put, they did not convince the jury.

Finally, in looking at the comments themselves, neither warrant a new trial. With regard to the loss of a corporate charter, nothing was said by the undersigned regarding finances, ability to pay, or insurance. Further, the fact that the business has been closed since the early 1990s was a fact presented. It is the Plaintiffs that argue this loss of charter – which is a legal issue in and of itself – equates to financial insolvency. It is not an argument that Covil made or attempted to make.

Rather, it was a matter of fact related to the winding up of the business. Regardless, it is an inconsequential statement. Austin v. Stokes-Craven Holding Corp., 691 S.E.2d 135 (S.C. 2010)(finding comments in closing arguments about net worth and ability to pay “inconsequential”).

With regard to the comment on Mr. Waters and the existence of his lawsuit, the court similarly addressed the issue via curative instructions, admonished counsel, and no further mention of the subject occurred. The trial court complied with its obligation. Moreover, the jury should never have considered the testimony of Mr. Waters in their deliberation as Mr. Waters did not work with Mr. Crawford at any job location. The sole purpose of Mr. Waters testimony was for purposes of establishing punitive damages, and, as a result, would not have been considered by the jury for purposes of liability vs. non-liability. This was an issue that the jury never reached. A JNOV is not warranted.

III. “Thirteenth Juror” Doctrine is Inapplicable.

Plaintiff’s argument seeks to have the court weigh the evidence. As has been previously briefed, “[i]f the evidence as a whole is susceptible to more than one reasonable inference, a jury issue is created and the motion should be denied.” Howard, 654 S.E.2d at 880. “When considering directed verdict motions, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence.” Id. The court should apply the same standard when considering a JNOV motion by “viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party.” RFT, 732 S.E.2d at 171 (citing Elam, 602 S.E.2d 772). Moreover, “[a] motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict.” Id. at 171.

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to Plaintiffs. The records of Covil Corporation, which were generated after the May 1973 fire and were included in any work form the date of the fire through 1974 did not establish any work by Covil at the Celanese Plant at issue during the relevant time period. Moreover, the corporate representative of Celanese (Spartanburg) clearly established that he had reviewed the records of Celanese, that Celanese would have had to approve any contract with any subcontractor, supplier or vendor. Daniel nor Celanese could find no documents that supported that Covil provided any services to the Celanese Plant. Finally, the corporate representative of Daniel, Mr. Buck, testified that he went through the forty (40) boxes of documents that made up the Celanese project for Daniel and found no reference to any work done or provided by Covil other than three employees of Covil providing fire retardant materials for the structural steel. Additionally, the records of Daniel establish that Daniel's own employees provided the insulation for the project. Finally, the documents of Daniel establish that Covil was neither a subcontractor nor a vendor to Daniel on the Celanese (Spartanburg) Project. The jury accepted those facts and found in Covil's favor. Where a reasonable jury could accept those facts, a JNOV is improper.

IV. Conclusion.

Wherefore, Covil asks this court to deny the Plaintiffs request for a JNOV and a new trial absolute.

[SIGNATURE INTENTIONALLY ON FOLLOWING PAGE]

Dated this 5th day of October, 2018.

Respectfully submitted,

WALL TEMPLETON & HALDRUP, P.A.

s/Morgan S. Templeton

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ATTORNEYS FOR COVIL CORPORATION

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) FOR THE SEVENTH JUDICIAL CIRCUIT

JERRY HOWARD CRAWFORD,)
Individually and as Personal) **C/A NO. 2017-CP-42-04429**
Representative of the Estate of **EVELYN**)
KAY CRAWFORD)

Plaintiff,) In re:
v.) Asbestos Personal Injury Litigation
) Coordinated Docket

CELANESE CORPORATION,)
et al.,)
Defendants.)

**PLAINTIFF'S SUPPLEMENT IN SUPPORT OF MOTION FOR JUDGMENT
NOTWITHSTANDING THE VERDICT AND FOR NEW TRIAL ABSOLUTE**

Plaintiff file this Supplement in support of his motion for Judgment Notwithstanding the Verdict (JNOV) and New Trial Absolute.

In seeking JNOV, Plaintiff has asked the Court to enter judgment against Covil and to award damages for his medical expenses and pain and suffering. As a result of his mesothelioma, Mr. Crawford has suffered tremendous physical and emotional pain, and is expected to lose over ten years of life from this disease. Plaintiff asked the jury to award \$8 million in compensatory damages, and accordingly asked this Court to award the same in granting JNOV.

In support of his damages request, Plaintiff submits the plaintiff's verdict obtained last Friday, October 5, 2018, in *Finch v. Covil Corp.*, a case tried in the Middle District of North Carolina. **Ex. 1.** Considering substantially the same evidence against Covil that Mr. Crawford submitted in this case, the jury in *Finch* returned a verdict for the plaintiff and awarded \$32.7 million

in compensatory damages. Mr. Finch died of mesothelioma at the age of 78 after being exposed to Covil-supplied insulation at the Firestone plant in Wilson, North Carolina.

The amount of the jury verdict in *Finch* supports the amount of damages Plaintiff has requested in this case. Mr. Crawford was diagnosed with mesothelioma at the age of 72 and is currently 73 years old. He will lose even more of his life than Mr. Finch did.

Plaintiff therefore asks the Court to grant JNOV and consider the *Finch* verdict in determining an appropriate amount of damages to be awarded against Covil in this case.

Respectfully submitted,

s/Theile B. McVey

Theile B. McVey (SC Bar No. 16682)

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument was served on counsel for all parties via Certified U.S. Mail Return Receipt, U.S. Mail Standard First Class, and/or electronic mail this 9th day of October 2018.

s/Theile B. McVey

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

ANN FINCH, as the Executrix of the
Estate of Franklin Delenor Finch

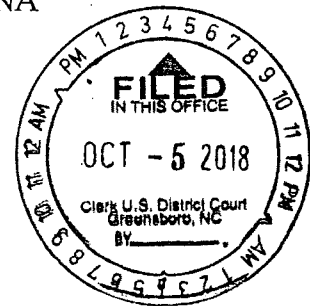
Plaintiff,

v.

COVIL CORPORATION,

Defendant.

1:16-CV-1077
VERDICT SHEET



Issue 1: Was Covil negligent, and was that negligence a proximate cause of injury to Mr. Finch?

Yes ☒ No ☐

Go to Issue 2.

Issue 2: Did Covil unreasonably fail to provide an adequate warning or instruction, and was that negligence a proximate cause of injury to Mr. Finch?

Yes ☒ No ☐

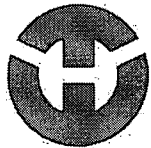
If you answered "Yes" to Issue 1 or Issue 2 or both, answer Issue 3. If you answered "No" to both Issue 1 and Issue 2, do not answer Issue 3.

Issue 3: What amount is the plaintiff entitled to recover for Mr. Finch's wrongful death?

\$ 32.7 million

This 5 day of October, 2018.

Sasha Harrison
FOREPERSON



Wall Templeton
ATTORNEYS

Morgan S. Templeton
Morgan.Templeton@WallTempleton.com
Telephone: 843.329.9500 Ext. 209
Facsimile: 843.329.9501

October 31, 2018

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Jerry Howard *Crawford vs. Aurora Pump Company, et al.*
Case No: 2017-CP-42-4429

Dear Ms. Kitchings:

Please find enclosed an original and one copy of a Notice of Appeal and Proof of Service in the above referenced matter. I am also enclosing the requisite \$250.00 filing fee. Please file the original and return a filed-stamped copy to me in the envelope provided for your convenience.

By copy of this letter to the Spartanburg County Clerk of Court and all counsel of record, I am filing the same on the E-filing system and serving them with the enclosed Notice of Appeal.

Thank you for your time and attention to this matter.

Sincerely,

WALL TEMPLETON & HALDRUP, P.A.

Morgan S. Templeton

MST:are
enclosures

cc: Theile B. McVey, Esq.
Jonathan M. Holder, Esq.
The Honorable Hope Blackley Clerk of Court, Spartanburg County (w/ encl)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Jean H. Toal, Circuit Court Judge

Case No. 2017-CP-42-04429

Jerry Howard Crawford, individually,.....Plaintiffs
And as Personal Representative of the
Estate of Evelyn Kay Crawford,

v.

Celanese Corporation, Aurora Pump Company,.....Defendants,
Carrier Corporation, CNA Holdings, LLC, f/k/a
Hoechst Celanese Corporation, Covil Corporation,
Crane Co., Daniel International Corporation f/k/a
Daniel Construction Company, Inc., Flowserve
Corporation, individually and as successor-in-interest
to Anchor/Darling Valve Company, and individually
as successor-in-interest to Durco Pumps, Flowserve,
US Inc., Fluor Constructors International, f/k/a Fluor
Corporation, Fluor Constructors, International, Inc.
Fluor Daniel Services Corporation, Fluor Enterprises,
Inc., Ford Mortor Company, Genuine Parts Company,
d/b/a Rayloc (a/k/a NAPA), The Goodyear Tire &
Rubber Company, Goulds Pumps, Inc., Grinnell, LLC
f/k/a Grinnell Corp., f/k/a ITT Grinnell Corp.,
Honeywell International, Inc., f/k/a Allied-Products
Liability Signal, Inc., sued as successor-in-interest
to Bendix Corporation, Ingersoll-Rand Company,
John Crane, Inc., Metropolitan Life Insurance
Company, a wholly owned subsidiary of Metlife Inc.
National Automotive Parts Association, (NAPA),
Parker-Hannifin Corporation, Pneumo Abex, LLC
successor-in-interest to Abex Corporation, Spirax
Sarco, Inc., SPX Cooling Technologies, Inc.,
individually and as successor-in-interest to
Marley Cooling Towers, Co., Standard Motor
Products, Inc., sued as successor-in-interest to EIS
Automotive, United States Fidelity & Guaranty

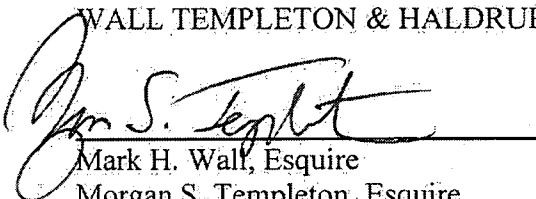
Company, and The William Powell Company,
Of Which, Covil Corporation is the Appellant.

NOTICE OF APPEAL

Covil Corporation ("Appellant") appeals the Order granting a new trial to Plaintiffs/Respondent which was entered on October 22, 2018. The Order is attached hereto as Exhibit A. This Order was entered following judgment in favor of Appellant being issued July 19, 2019, which is attached as Exhibit B. Appellant received Exhibit A on October 22, 2018.

October 31, 2018

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Jean H. Toal, Circuit Court Judge

Case No. 2017-CP-42-04429

Jerry Howard Crawford, individually,.....Plaintiffs
And as Personal Representative of the
Estate of Evelyn Kay Crawford,

v.

Celanese Corporation, Aurora Pump Company,.....Defendants,
Carrier Corporation, CNA Holdings, LLC, f/k/a
Hoechst Celanese Corporation, Covil Corporation,
Crane Co., Daniel International Corporation f/k/a
Daniel Construction Company, Inc., Flowserve
Corporation, individually and as successor-in-interest
to Anchor/Darling Valve Company, and individually
as successor-in-interest to Durco Pumps, Flowserve,
US Inc., Fluor Constructors International, f/k/a Fluor
Corporation, Fluor Constructors, International, Inc.
Fluor Daniel Services Corporation, Fluor Enterprises,
Inc., Ford Mortor Company, Genuine Parts Company,
d/b/a Rayloc (a/k/a NAPA), The Goodyear Tire &
Rubber Company, Goulds Pumps, Inc., Grinnell, LLC
f/k/a Grinnell Corp., f/k/a ITT Grinnell Corp.,
Honeywell International, Inc., f/k/a Allied-Products
Liability Signal, Inc., sued as successor-in-interest
to Bendix Corporation, Ingersoll-Rand Company,
John Crane, Inc., Metropolitan Life Insurance
Company, a wholly owned subsidiary of Metlife Inc.
National Automotive Parts Association, (NAPA),
Parker-Hannifin Corporation, Pneumo Abex, LLC
successor-in-interest to Abex Corporation, Spirax
Sarco, Inc., SPX Cooling Technologies, Inc.,
individually and as successor-in-interest to
Marley Cooling Towers, Co., Standard Motor
Products, Inc., sued as successor-in-interest to EIS
Automotive, United States Fidelity & Guaranty

Company, and The William Powell Company,
Of Which, Covil Corporation is the Appellant.

PROOF OF SERVICE

I, Amy R. Eversole, of Wall Templeton & Haldrup, do hereby certify that I have served the Notice of Appeal on counsel, by depositing the same in the United States Mail, properly posted on October 31st, 2018 addressed as follows to counsel of record:

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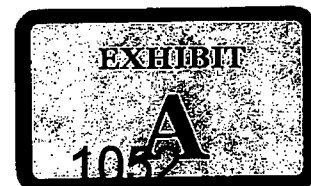

Amy R. Eversole, Paralegal
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	FOR THE SEVENTH JUDICIAL CIRCUIT
	)	
JERRY HOWARD CRAWFORD,	)	
Individually and as Personal	)	C/A NO. 2017-CP-42-04429
Representative of the Estate of	)	
EVELYN KAY CRAWFORD	)	
	)	
Plaintiff,	)	ORDER DENYING IN PART AND
v.	)	GRANTING IN PART PLAINTIFF'S
	)	MOTION FOR JUDGMENT
CELANESE CORPORATION,	)	NOTWITHSTANDING THE
et al.,	)	VERDICT AND FOR NEW TRIAL
	)	ABSOLUTE
Defendants.	)	
	)	

In this asbestos case, Plaintiff Jerry Howard Crawford moves for relief from the jury's July 19, 2018 verdict in favor of Covil Corporation ("Covil"). For the reasons set forth below, Plaintiff's motion for judgment notwithstanding the verdict is DENIED, but Plaintiff's motion for new trial absolute is GRANTED.

I. The Evidence at Trial

Plaintiff Jerry Crawford worked around asbestos at the Hoechst Fiber (Celanese) plant in Spartanburg, South Carolina, from 1970 to 1974. He worked at three locations within the plant: the poly building, the continuous line building and the warehouse. Daniel Construction constructed an addition to the continuous line building during the period Mr. Crawford worked there. Daniel installed insulation on the new lines in this area. Mr. Crawford testified that he saw them cut insulation for steam pipes, which created "a good bit of dust." Daniel Construction also repaired the insulation in the poly building. Don Buck, representative for Daniel Construction, testified that Daniel Construction was at the facility every year between 1970 and 1974.



Harley Neelands worked as an insulator for Daniel Construction and insulated pipe at the Celanese plant. Daniel used Kaylo half-moon insulation, "mud" insulation, and Kaylo block insulation. This work generated so much dust that their clothes were covered with white chalky dust at the end of each day.

Mr. Neelands testified that Covil supplied the insulation used at the Celanese plant. This is confirmed by a Daniel vendor list from the Celanese project that lists Covil as a supplier on that project. Plaintiff's Ex. 822.4.

Covil, through its representative Robert Glenn, has admitted that it sold Kaylo brand asbestos-containing insulation. Covil sold insulation to industrial contractors. Covil agreed that Daniel Construction was one of its largest customers. Covil agreed this relationship with Daniel Construction began in the early 1960s. Daniel Construction, through its representative, acknowledged that it did business with Covil as an insulation supplier and insulation subcontractor. Dwaine Waters, a former Covil employee, testified that if Daniel had the maintenance contract, Covil did the insulation work.

When Mr. Glenn was asked about his search for documents reflecting Covil's sales to the Spartanburg Celanese plant, he testified that he performed a word search of Covil's documents and found nothing regarding that plant. He also stated that a fire occurred in 1973, thereby causing Covil to lose all sales information from 1973 and beforehand. This was contradicted by a Covil employee, Machen Carpenter, who testified that Covil's office complex was protected by a fire wall and the office complex was not destroyed by the 1973 fire. Covil's documentation was kept in a vault which would not have been destroyed by the 1973 fire either. Mr. Carpenter testified that the documents were likely destroyed by means other than the fire.

Covil pointed to the lack of record evidence of its involvement at Celanese. Covil maintained that its records generated after the May 1973 fire did not establish any work by Covil at Celanese. Covil also relied on testimony that Celanese did not have a record of Covil providing any services to the plant. Despite Daniel's vendor list that included Covil, Covil also contended that Daniel's records did not show Covil as an insulation supplier on the Celanese project.

The evidence established that the insulation supplied by Covil to Celanese contained asbestos. Bruce Bowyer testified on behalf of CNA Holdings, the entity now responsible for Celanese. He said the plant specifications called for amosite asbestos-containing insulation. Mr. Bowyer also referred to a plant survey conducted in 1995 which shows the quantity of asbestos-containing insulation removed from various areas of the plant. the area where Mr. Crawford worked, over 77,749 lineal feet of insulation was removed and 90% of that insulation contained asbestos. Further, Covil, through its corporate representative Robert Glenn, admitted that Kaylo insulation contained asbestos during the relevant time period.

Covil admitted that it knew as of 1965 that asbestos was hazardous and that exposure to asbestos could be fatal. Covil first saw warning labels on asbestos-containing products in 1968. Nevertheless, Covil continued to sell asbestos-containing insulation until at least 1973 and an invoice admitted into evidence showed that it sold asbestos-containing Thermobestos until at least 1974.

Covil did nothing to protect end users and bystanders like Mr. Crawford. Covil never had a research department, a medical director, or an industrial hygienist. Covil never placed a warning on its boxes of asbestos-containing products. Even though Covil told its own employees to wear respirators since the 1950s, it never put that information on any of the boxes that it sold. Mr. Glenn testified that Covil made a "business decision" to not warn about the asbestos-containing products

that it sold.

Plaintiff introduced causation testimony from two expert witnesses—Dr. Arnold Brody and Dr. John Maddox. Dr. Arnold Brody, an expert qualified in the areas of cell biology and experimental pathology, testified about how asbestos gets into the body and how it causes disease. Dr. Brody explained that asbestos causes cancer in that it either displaces genes necessary for the normal distribution of chromosomes or it damages DNA. He was not cross-examined by Covil.

Dr. John Maddox is a pathologist who was qualified to testify as an expert in the diagnosis and causation of asbestos-related diseases. Dr. Maddox testified that Mr. Crawford has a malignant mesothelioma of the biphasic type of his right pleura. Mr. Crawford's mesothelioma was asbestos-related. Assuming all of the relevant exposure facts about Mr. Crawford's work around asbestos-containing insulation supplied by Covil between 1970 and 1974, Dr. Maddox opined that this exposure was a substantial contributing cause in development of Mr. Crawford's mesothelioma. In his expert opinion, Mr. Crawford's mesothelioma will cause his death.

There was testimony about the medical treatments Mr. Crawford has endured, including chemotherapy and surgery to remove the lining of his lung. Mesothelioma is a very painful disease because of the accumulation of fluid in the lungs and the inability to breath. Weight loss and loss of appetite is common, and mesothelioma patients experience "air hunger" when struggling to breathe. Mr. Crawford's physical health has already declined significantly and he knows it is very unlikely he will survive this cancer. He was physically unable to attend trial and his testimony was presented via videotaped deposition taken in early February 2018. Dr. Maddox testified that, absent his cancer, Mr. Crawford's life expectancy, at age 72, would have been an additional 13 years.

II. Ruling on Motion for Judgment Notwithstanding the Verdict

On a motion for a directed verdict or a judgment notwithstanding the verdict (JNOV), this Court views the evidence and all reasonable inferences in the light most favorable to the nonmoving party. *See RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 331-32, 732 S.E.2d 166, 171 (2012). A motion for a JNOV “requires a court to determine the sufficiency of the evidence.” *Rogers v. Norfolk Southern Corp.*, 356 S.C. 85, 81, 588 S.E.2d 87, 89 (2003). The Court must deny a motion for a directed verdict or JNOV if the evidence yields more than one reasonable inference or its inference is in doubt. *See Strange v. S. C. Dep’t of Highways & Pub. Transp.*, 314 S.C. 427, 429, 445 S.E.2d 439, 440 (1994). “In deciding such motions, neither the trial court nor the appellate court has the authority to decide credibility issues or to resolve conflicts in the testimony or the evidence.” *RFT Management Co. LLC v. Tinsley & Adams LLP*, 732 S.E.2d 166, 171 (S.C. 2012). JNOV can be granted only “if no reasonable jury could have reached the challenged verdict.” *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998).

For the reasons set forth at the hearing, the Court denies JNOV.

III. Ruling on Motion for New Trial Pursuant to the Thirteenth Juror Doctrine

South Carolina’s thirteenth juror doctrine is a well-established standard for granting a new trial. *See Folkens v. Hunt*, 300 S.C. 251, 387 S.E.2d 265 (1990); *Sorin Equipment Co., Inc. v. The Firm, Inc.*, 323 S.C. 359, 474 S.E.2d 819 (Ct. App. 1996). “Under the ‘thirteenth juror doctrine,’ a trial judge may grant a new trial absolute when he finds the evidence does not justify the verdict.” *Haselden v. Davis*, 341 S.C. 486, 534 S.E.2d 295 (Ct. App. 2000), *aff’d*, 353 S.C. 481, 506, 579 S.E.2d 293, 306 (2003), quoting, *Vinson v. Hartley*, 324 S.C. 389, 402, 477 S.E.2d 715, 722 (Ct. App. 1996). Stated differently, a trial judge may grant a new trial under the thirteenth juror doctrine if the judge determines the verdict “is contrary to the fair preponderance of the evidence.” *Dent v. Redd*, 270 S.C. 585, 586, 243 S.E.2d 460, 460 (1978); *Vinson v. Hartley*, 324 S.C. 389, 404, 477

S.E.2d 715 (Ct. App. 1996) (“Traditionally, in South Carolina, circuit court judges have the authority to grant a new trial upon the judge’s finding that justice has not prevailed.”). Unlike a motion for directed verdict, the trial judge weighs the evidence under the thirteenth juror doctrine and need not view the evidence in the light most favorable to the opposing party. *McEntire v. Mooregard Exterminating Servs., Inc.*, 353 S.C. 629, 578 S.E.2d 746 (Ct. App. 2003); see also *Parker v. Evening Post Publ’g Co.*, 317 S.C. 236, 247, 452 S.E.2d 640, 646 (Ct. App. 1994) (stating the trial court may take its own view of the evidence). Moreover, the question of whether to grant a new trial upon the facts is one addressed to the discretion of the trial judge. *South Carolina State Highway Dep’t v. Clarkson*, 267 S.C. 121, 126, 226 S.E.2d 696, 697 (1976).

“South Carolina’s thirteenth juror doctrine is so named because it entitles the trial judge to sit, in essence, as the thirteenth juror when he finds ‘the evidence does not justify the verdict,’ and then to grant a new trial based solely ‘upon the facts.’” *Norton v. Norfolk Southern Ry. Co.*, 350 S.C. 473, 567 S.E.2d 851 (2002) (quoting, *Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990)). In fact, as the “thirteenth juror,” the trial judge can hang the jury by refusing to agree to the jury’s otherwise unanimous verdict. *Id.* As the South Carolina Supreme Court explained in *Folkens*:

The effect is the same as if the jury failed to reach a verdict When a jury fails to reach a verdict, a new trial is ordered. Neither judge nor the jury is required to give reasons for this outcome. Similarly, because the result of the ‘thirteenth juror’ vote by the judge is a new trial rather than an adjustment to the verdict, no purpose would be served by requiring the trial judge to make factual findings.

Id.

With this standard in mind, the Court finds that the jury’s verdict in favor of Covil is unsupported by the evidence presented during trial. Plaintiff presented overwhelming evidence to support each of his claims against Covil. Plaintiff’s evidence conclusively established that Jerry

Crawford worked at the Spartanburg Celanese facility from 1970 to 1974. While working at Celanese, Mr. Crawford was exposed to asbestos-containing insulation, which Plaintiff proved was supplied by Covil. Testimony from Plaintiff's medical expert, Dr. Maddox, confirmed that Mr. Crawford had mesothelioma and that his exposure to asbestos from Covil-supplied insulation was a substantial factor in causing his disease. Covil failed to present any evidence to the contrary. Despite receiving medical treatment, Mr. Crawford is expected to die from mesothelioma.

Dr. Maddox also testified that it was known, at least by 1967, that some pipe insulation contained asbestos and that asbestos was hazardous. Covil failed to present any testimony challenging this evidence. In fact, Covil admitted that it received information regarding the hazards of asbestos from numerous sources beginning in the 1960s and by 1965 was aware that exposure to asbestos could be fatal. Despite this knowledge, Covil failed to take any measures to warn its customers or users of the hazards associated with the asbestos-containing products that it supplied. Covil continued to sell asbestos-containing insulation until at least 1974.

Covil's defense was that it did not supply the thermal insulation installed at Celanese, pointing only to the absence of sales invoices or records of sales to that facility. It was undisputed that Covil's sales records had been destroyed, however, and Mr. Carpenter's testimony supports the conclusion that the destruction was deliberate instead of the result of a fire, as Covil claims. The Court rejects Covil's contention that Daniel's records did not show Covil as the insulation supplier on the Celanese project: Plaintiffs admitted a Daniel vendor list with Covil's name on it, which confirmed Mr. Neelands's testimony that Covil supplied the insulation installed by Daniel at Celanese. Covil failed to present any evidence to contradict Plaintiff's evidence that Covil was the supplier of the asbestos-containing thermal insulation installed at Celanese. Moreover, Covil failed to present any evidence to contradict any of the testimony that Covil was one of Daniel

Corporation's primary insulation suppliers, including from 1970 to 1974 when Daniel installed insulation at Celanese.

Given the overwhelming evidence against Covil on the issues of Mr. Crawford's exposure to Covil-supplied insulation, Covil's knowledge of the danger and failure to warn, and Mr. Crawford's injury and damages, the Court finds that the jury's verdict for Covil was contrary to the fair preponderance of the evidence. The Court exercises its discretion to act as the thirteenth juror, and, finding that the evidence does not justify the jury's verdict, the Court is persuaded that Plaintiff is entitled to a new trial.

Conclusion

The Court DENIES Plaintiff's Motion for Judgment Notwithstanding the Verdict but GRANTS Plaintiff's Motion for New Trial pursuant to the Thirteenth Juror Doctrine.

IT IS SO ORDERED.

Jean Hoefer Toal, Chief Justice of the South
Carolina Supreme Court, Retired, Acting as
Circuit Court Judge

October ____, 2018

Spartanburg, South Carolina.



Spartanburg Common Pleas

Case Caption: Jerry Howard Crawford , plaintiff, et al VS Celanese Corporation ,
defendant, et al
Case Number: 2017CP4204429
Type: Order/Other

IT IS SO ORDERED.

s/ Jean H. Toal #2758

Electronically signed on 2018-10-19 14:17:20 page 9 of 9

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Jerry Howard Crawford and the Estate
of Evelyn Kay Crawford,

Civil Action No. 2017-CP-42-04429

Plaintiffs,

v.

Covil Corporation,

Defendants.

VERDICT FORM

NEGLIGENCE

1. We the Jury find that Covil Corporation was negligent, and its negligence was a proximate cause of Jerry Crawford's injury and damages:

☐ YES

☒ NO

STRICT LIABILITY

2. We the Jury find Covil Corporation is strictly liable for selling products that were a proximate cause of Jerry Crawford's injury and damages:

☐ YES

☒ NO

IMPLIED WARRANTY

3. We the Jury find Covil Corporation breached the Implied Warranty in selling its products and its breach was a proximate cause of Jerry Crawford's injury and damages:

☐ YES

☒ NO



4. If you answered YES to any of Questions 1, 2, or 3, please state the amount of actual damages that have been proven by the greater weight of the evidence.

\$ _____ Jerry Crawford's actual damages

\$ _____ actual damages for Mrs. Crawford's Loss of Consortium

5. If you answered YES to Questions 1, 2, or 3, please answer Question 5. We, the Jury, by unanimous vote, find by clear and convincing evidence that the conduct of Covil Corporation was willful, wanton, or reckless:

_____ Yes _____ No

Sandra Burdick
Juror Foreperson

7/19/18
Date

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF COMMON PLEAS

3
4 JERRY HOWARD CRAWFORD)
AND THE ESTATE OF)
5 EVELYN KAY CRAWFORD,) TRANSCRIPT OF RECORD
6 PLAINTIFFS,) 2017-CP-42-04429
7 -vs-) JULY 16, 2018
8 COVIL CORPORATION,) SPARTANBURG, SOUTH CAROLINA

(VOLUME I)

9 DEFENDANT.

10
11 B E F O R E:

12 THE HONORABLE JEAN HOEFER TOAL, JUDGE. ; and a jury.
13

14
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CIRCUIT COURT REPORTER

INDEX

(JULY 16, 2018)

WITNESSES

PAGE

JURY VOIR DIRE -- PAGE 85

JURY SWORN -- PAGE 117

OPENING STATEMENT BY MR. CHAPMAN -- PAGE 118

OPENING STATEMENT BY MR. WALL -- PAGE 139

DR. ARNOLD BRODY (PW)

DIRECT EXAMINATION BY MS. MCVEY

145

(NO CROSS EXAMINATION)

INDEX

(JULY 17, 2018)

WITNESSES	PAGE
DR. JOHN MADDOX (PW)	
DIRECT EXAMINATION BY MR. CHAPMAN	216
CROSS EXAMINATION BY MR. WALL	294
VIDEOTAPED DEPOSITION OF JERRY CRAWFORD (PW)	302
VIDEOTAPED DEPOSITION OF HARLEY NEELANDS (PW)	319
VIDEOTAPED DEPOSITION OF DWAIN WATERS (PW)	319
ROBERT GLENN (PW)	
DIRECT EXAMINATION BY MR. BUHA	326
CROSS EXAMINATION BY MR. WALL	373
REDIRECT EXAMINATION BY MR. BUHA	376
DEPOSITION OF MACHEN CARPENTER READ (PW)	377

INDEX

(JULY 18, 2018)

1		
2		
3		
4	WITNESSES	PAGE
5	VIDEOTAPED DEPOSITION OF BRUCE BOYER (PW)	404
6	VIDEOTAPED DEPOSITION OF DON BUCK (PW)	406
7	DEPOSITION OF DON BUCK READ (PW)	407
8	PATTY GILES (PW)	
9	DIRECT EXAMINATION BY MS. MCVEY	410
10	(NO CROSS EXAMINATION)	
11	TESSA QUINN (PW)	
12	DIRECT EXAMINATION BY MS. MCVEY	432
13	(NO CROSS EXAMINATION)	
14	PLAINTIFFS RESTS -- PAGE 436	
15		
16	DEPOSITION OF PALMER COVIL READ (DW)	456
17	VIDEOTAPED DEPOSITION OF BRUCE BOYER (DW)	456
18	VIDEOTAPED DEPOSITION OF DON BUCK (DW)	456
19	DEFENDANT RESTS -- PAGE 457	
20		
21	VIDEOTAPED DEPOSITION OF HARLEY NEELANDS (PW)	457
22		
23		
24		
25		

INDEX

(JULY 19, 2018)

WITNESSES

PAGE

CLOSING ARGUMENT BY MR. CHAPMAN -- PAGE 533

CLOSING ARGUMENT BY MR. WALL -- PAGE 556

FINAL ARGUMENT BY MR. CHAPMAN -- PAGE 568

COURT'S JURY INSTRUCTIONS -- PAGE 588

JURY VERDICT -- PAGE 629

REPORTER'S CERTIFICATE -- PAGE 634

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	P-803.1	MEDICAL RECORDS		254
4	P-804	BILLING RECORDS & SUMMARY		215
5	P-805.1	PHOTOGRAPH		435
6	P-805.2	PHOTOGRAPH		436
7	P-805.3	PHOTOGRAPH		436
8	P-805.4	PHOTOGRAPH		436
9	P-805.5	PHOTOGRAPH		436
10	P-805.6	PHOTOGRAPH		436
11	P-805.7	PHOTOGRAPH		436
12	P-805.8	PHOTOGRAPH		436
13	P-806.1	DR. MADDOX CURRICULUM VITAE		218
14	P-806.2	DR. MADDOX CURRICULUM VITAE		218
15	P-807.1	DR. MADDOX REPORT		257
16	P-807.2	DR. MADDOX REPORT		257
17	P-807.3	DR. MADDOX REPORT		257
18	P-807.4	DR. MADDOX REPORT		257
19	P-807.5	DR. MADDOX REPORT		258
20	P-807.6	DR. MADDOX REPORT		258
21	P-807.7	DR. MADDOX REPORT		258
22	P-809	DR. BRODY CURRICULUM VITAE		155
23	P-822.1	MAP		405
24	P-822.2	MAP		405
25	P-822.3	INFORMATION ON ASBESTOS		406

EXHIBITS

	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	P-822.4	SUBCONTRACTOR LIST		409
4	P-822.5	CONTRACT		408
5	P-822.6	CONTRACT		408
6	P-822.7	CONTRACT		408
7	P-822.8	CONTRACT		408
8	P-822.9	ENGINEERING CONTRACT		408
9	P-822.10	CONTRACT		408
10	P-822.11	PURCHASE ORDER	12	
11	P-822.12	MAINTENANCE SERVICE CONTRACT		408
12	P-822.13	CONTRACT		408
13	P-822.14	CONTRACT		408
14	P-822.15	CONSTRUCTION REPORT		406
15	P-822.16	PROGRESS REPORT		406
16	P-825.1	BILLING		369

17

18

19

20

21

22

23

24

25

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	CT-1	POWER POINT	84	
4	CT-2	JERRY CRAWFORD VIDEOTAPED DEPOSITION	527	
5	CT-3	HARLEY NEELANDS VIDEOTAPED DEPOSITION	527	
6	CT-4	DWAINE WATERS VIDEOTAPED DEPOSITION	527	
7	CT-5	DWAINE WATERS DEPOSITION	527	
8	CT-6	MACHEN CARPENTER DEPOSITION	527	
9	CT-7	BRUCE BOYER VIDEOTAPED DEPOSITION	527	
10	CT-8	DON BUCK VIDEOTAPED DEPOSITION	527	
11	CT-9	DON BUCK DEPOSITION	527	
12	CT-10	PALMER COVIL DEPOSITION	527	
13	CT-11	PALMER COVIL DEPOSITION	527	
14	CT-12	CD OF BRUCE BOYER, BRUCE BOYER,		
15		DON BUCK, HARLEY NEELANDS VIDEOTAPED		
16		DEPOSITIONS	527	
17	CT-13	HARLEY NEELANDS DEPOSITION	527	
18				
19				
20				
21				
22				
23				
24				
25				

1 (PROCEEDINGS, JULY 16, 2018).

2 (Medical Records marked as Plaintiffs' Exhibit No.
3 803.1 for identification).

4 (Billing Records and Summary marked as Plaintiff's
5 Exhibit No. 804 for identification).

6 (Photograph marked as Plaintiffs' Exhibit No.
7 805.1 for identification).

8 (Photograph marked as Plaintiffs' Exhibit No.
9 805.2 for identification).

10 (Photograph marked as Plaintiffs' Exhibit No.
11 805.3 for identification).

12 (Photograph marked as Plaintiffs' Exhibit No.
13 805.4 for identification).

14 (Photograph marked as Plaintiffs' Exhibit No.
15 805.5 for identification).

16 (Photograph marked as Plaintiffs' Exhibit No.
17 805.6 for identification).

18 (Photograph marked as Plaintiffs' Exhibit No.
19 805.7 for identification).

20 (Photograph marked as Plaintiffs' Exhibit No.
21 805.8 for identification).

22 (Dr. John C. Maddox Curriculum Vitae marked as
23 Plaintiffs' Exhibit No. 806.1 for identification).

24 (Dr. John C. Maddox Curriculum Vitae marked as
25 Plaintiffs' Exhibit No. 806.2 for identification).

1 (Dr. John C. Maddox Report marked as Plaintiffs'
2 Exhibit No. 807.1 for identification).

3 (Dr. John C. Maddox Report marked as Plaintiffs'
4 Exhibit No. 807.2 for identification).

5 (Dr. John C. Maddox Report marked as Plaintiffs'
6 Exhibit No. 807.3 for identification).

7 (Dr. John C. Maddox Report marked as Plaintiffs'
8 Exhibit No. 807.4 for identification).

9 (Dr. John C. Maddox Report marked as Plaintiffs'
10 Exhibit No. 807.5 for identification).

11 (Dr. John C. Maddox Report marked as Plaintiffs'
12 Exhibit No. 807.6 for identification).

13 (Dr. John C. Maddox Report marked as Plaintiffs'
14 Exhibit No. 807.7 for identification).

15 (Dr. Arnold Brody Curriculum Vitae marked as
16 Plaintiffs' Exhibit No. 809 for identification).

17 (Map marked as Plaintiffs' Exhibit No. 822.1 for
18 identification).

19 (Map marked as Plaintiffs' Exhibit No. 822.2 for
20 identification).

21 (Information on Asbestos marked as Plaintiffs'
22 Exhibit No. 822.3 for identification).

23 (Subcontractor List marked as Plaintiffs' Exhibit
24 No. 822.4 for identification).

25 (Contract marked as Plaintiffs' Exhibit No. 822.5

1 for identification).

2 (Contract marked as Plaintiffs' Exhibit No. 822.6
3 for identification).

4 (Contract marked as Plaintiffs' Exhibit No. 822.7
5 for identification).

6 (Contract marked as Plaintiffs' Exhibit No. 822.8
7 for identification).

8 (Engineering Contract marked as Plaintiffs'
9 Exhibit No. 822.9 for identification).

10 (Contract marked as Plaintiffs' Exhibit No. 822.10
11 for identification).

12 (Purchase Order marked as Plaintiffs' Exhibit No.
13 822.11 for identification).

14 (Maintenance Service Contract marked as
15 Plaintiffs' Exhibit No. 822.12 for identification).

16 (Contract marked as Plaintiffs' Exhibit No. 822.13
17 for identification).

18 (Contract marked as Plaintiffs' Exhibit No. 822.14
19 for identification).

20 (Construction Report marked as Plaintiffs' Exhibit
21 No. 822.15 for identification)

22 (Progress Reports marked as Plaintiffs' Exhibit
23 No. 822.16 for identification).

24 (Billing marked as Plaintiffs' Exhibit No. 825.1
25 for identification)

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THE COURT: This is the case of Jerry Crawford and the Estate of Evelyn Kay Crawford against Covil Corporation. It's C.A. 2017-CP-42-04429.

Ms. McVey?

MS. MCVEY: Good morning, Your Honor.

As you know, we have filed a series of motions in this case dealing with repeat abuses, in our view, of Covil in both the discovery process, mediation, and then trial preparation.

One of the first issues, Your Honor, you heard a little bit about this, is we scheduled a global mediation with Covil on June 29th in Charleston with Tom Wells and that mediation went forward.

Mr. Boger, as you heard last week, was there for Armstrong. We were not told he was appearing for Covil, and it was our understanding that Covil was not there to actively participate in that June 29th mediation. And the reason for that, that we understood to be a semi-valid reason, is because Covil had called and said "we want to do a global mediation with you guys, a private global mediation, and talk about lots of your cases, not just the Crawford case." And so we said "that would be great."

And they said "let's come to Dallas. We will do it on July 9th." July 9th was also the deposition date for

1 their 30(b)(6), but we said "we will make both work. Come
2 on."

3 And so at the mediation we didn't make too big a
4 stink about it, but then what happened is on July 6th they
5 unilaterally cancelled that private mediation.

6 Now, I heard two different reasons for that. At
7 the time, July 6th, they told us they had a conflict and
8 they couldn't get there. In the pleadings that I received
9 over the weekend they say it was because our demand was
10 outlandish, so I don't know what the right answer is, but,
11 regardless, people say all the time that "your demand is too
12 high, Theile McVey." I mean, that's what people say. It
13 doesn't excuse them from participating in the mediation.

14 And so, Your Honor, for that reason we believe
15 that they did not participate in good faith in any sort of
16 mediation, either on the 29th, or on the later scheduled
17 July 9th motion.

18 THE COURT: And what are you asking for as
19 sanctions, as sanctions for the failure to participate in
20 mediation?

21 MS. MCVEY: So, Your Honor, initially we were
22 going to ask for you to compel them to attend the mediation
23 with somebody with full authority. I think that ship has
24 sailed at this point.

25 THE COURT: It has.

1 MS. MCVEY: So, you know, what we are asking for
2 are attorneys fees and costs in preparing for the mediation.

3 THE COURT: All right.

4 Mr. Wall?

5 MR. WALL: Yes, Your Honor.

6 Your Honor, there was -- there was no -- what
7 happened was mediation was set. The carrier said "we are
8 not going anywhere going this way. Why don't we have a
9 private mediation and we will come to Houston" -- excuse me,
10 Dallas, and they agreed to go to Dallas. It was all set up.
11 And then there was banter back and forth about who is going
12 to come, how much seats we need, etcetera, etcetera. At the
13 same time they confirmed the 30(b)(6) deposition of our
14 hired witness. And so we said "fine, we will go forward on
15 all of them."

16 Then Ms. Dean -- there was no conflicts. Ms. Dean
17 sent an e-mail that said "it's going to take eight figures
18 to settle this case, these cases." Your Honor, we barely
19 have seven figures worth of insurance. And she was very
20 adamant in her e-mail that it was going to take eight
21 figures.

22 So what the carriers did, they said, well,
23 we're -- "the 30(b)(6) is more important, so we want you to
24 take the 30(b)(6)", and they then cancelled the mediation
25 and they made an offer of \$75,000 that same time. So,

1. therefore -- that was done before the 9th. So, Your Honor,
2. even though the mediation didn't go forward, Covil had made
3. a bona fide fair offer to settle the case for \$75,000.

4. In addition to that, they offered to come to
5. Columbia on Wednesday for the pretrial. And, in fact, three
6. of them were there on Wednesday, the 11th, for the pretrial
7. and they spoke to plaintiffs' counsel and tried to get the
8. ball rolling to try and settle the Crawford case. And even
9. since that time Mr. Branham and the carriers have been
10. discussing attempts to settle the case. We've now disclosed
11. to him all the insurance coverage we believe exists in this
12. case.

13. As you know, Covil has no assets. It has no
14. employees. It has no business. All it has is the remaining
15. insurance coverage.

16. For the Crawford case, as I understand from what I
17. have read, there is less than half a million dollars worth
18. of insurance coverage on this case, and we were trying to
19. negotiate and settle the case. In fact, we have asked
20. several times for a reply to our \$75,000 and we have never
21. gotten a reply for \$75,000. Thank you.

22. THE COURT: Well, just a minute, Mr. Wall.

23. MR. WALL: Yes.

24. THE COURT: I have got a few questions.

25. MR. WALL: Yes, ma'am.

1 THE COURT: I understand the frustration of having
2 a client that has limited resources and trying to negotiate
3 within them, but I don't understand how that would allow,
4 given the orders, the standing orders in this case, as well
5 as the rules, I don't understand how that would preclude
6 them from the responsibility for participating in mandated
7 mediation.

8 MS. WALL: Yes, Your Honor, and we --

9 THE COURT: And, frankly, I'm not a fan of global
10 mediations that involve all kinds of different cases and so
11 forth, because I think it has the troubling ethical issue of
12 whether all are being treated fairly on their own merits by
13 their own attorneys, as well as attorneys on the other side.
14 So that kind of mediation is something that's uncomfortable
15 for me, but what I know is that particularly in these big
16 types of torts, the mandated mediation is a part of our
17 standing order and a part of what the rules require.

18 I'm not blaming you. You can only do what your
19 client allows you to do, but I don't understand why they,
20 Covil, feels that they can unilaterally cancel a mediation
21 that's been ordered by the court.

22 MR. WALL: Yes, Your Honor. I understand your
23 point.

24 Their point is it was futile. They were -- they
25 were demanding more money than there was insurance and --

1 THE COURT: Well, that -- that -- that presumes
2 that the mediator will have no role to play in going between
3 the parties during the course of a mediation. And I don't
4 care what they say about how absolutely settled they are,
5 you are very experienced as a lawyer, and I think I am as
6 well, with almost fifty years in practice, that has never
7 been a foundation for excusing the failure to participate in
8 a mandated arbitration if the other side is being
9 unreasonable. You don't have to settle in the arbitration.
10 Quite often it's the defendants who won't make any
11 settlement offer kind of thing, but whichever way it is, the
12 plaintiff would not have the right to say "well, they won't
13 make an offer. Therefore, I'm not going to participate in
14 mediation," nor would Covil.

15 MR. WALL: Your Honor, I understand.

16 The parties agreed to excuse Covil from the rules
17 mediation because we are going to Dallas to meet directly
18 with honest lawyers with no mediator present. It was just
19 going to be the carriers and me and the plaintiffs' lawyers
20 and we were going to try and see if we could work things
21 out. When the demand came in for eight figures, they
22 figured there was no way and no reason to go down there, so
23 they in good faith offered \$75,000, the first offer that had
24 been made by Covil in this case, and that was done before
25 the cancellation of the mediation.

1 THE COURT: All right.

2 Ms. McVey?

3 MS. MCVEY: Your Honor, it if suits you, I can let
4 Mr. Branham respond to the e-mail about that mediation.
5 That was actually not from Ms. Dean. It was from Mr.
6 Branham and the negotiations that have happened since then.

7 THE COURT: All right.

8 Mr. Branham?

9 MR. BRANHAM: Your Honor, thank you.

10 I'm sorry to tag team this, but just because I was
11 involved, I think it's important to understand what actually
12 occurred.

13 They asked us for a demand for this private
14 mediation and we complied. We gave them a demand and then
15 they unilaterally cancelled it. I sent the e-mail making
16 the demand. And, of course, a demand is just that. It's
17 some sort of a wish list, if you will, based on our
18 evaluation of the case. And as a plaintiffs' lawyer I'm
19 going to bid higher than what I expected them to pay, but
20 there are a couple of other larger issues that Mr. Wall
21 raised that I think the court needs to understand.

22 The very first time they ever made an offer in
23 this case was July 10th, which was after the court-ordered
24 mediation and it was after the day of the scheduled
25 mediation, which candidly the week before trial I cleared my

1 desk, worked over the weekend to get ready to be available
2 for a Monday meeting. So that's the first issue.

3 The second issue is I can tell you that although I
4 do not believe it to be accurate, Mr. Wall has represented
5 that they have a half a million dollars in coverage. I have
6 e-mails from insurance counsel telling me they have at least
7 \$880,000 in coverage in this case. I have now reviewed
8 their insurance policies and I'm fairly convinced that they
9 are wrong. They have several policies that have million
10 dollar per occurrence cases, and there is even a policy
11 addendum to the insurance that I looked at last night which
12 has a three million dollar per occurrence incident for
13 events occurring between December 16th of 1971 and
14 January 26th of 1972, which is right in the wheelhouse of
15 here. So there is a lot of confusion about what the
16 policy -- how much insurance there is. And so even his own
17 carriers are disputing with what he's saying is available
18 here.

19 And the demand here, and there is a reason for it,
20 is, as you will recall in the Howe case, we asked for this
21 insurance information. They refused to provide it and the
22 court struck their answer. That's presently on appeal. And
23 so we have continued to try and get to the bottom of this
24 insurance issue, because as a lawyer before I can be
25 educated and make a proper demand, based on what I think the

1 damages are and the coverage is, particularly in a situation
2 where you have Covil who doesn't have any assets, all I'm
3 looking at is the policy, I got to know what those limits
4 are. And I keep getting a different story, even here today,
5 about what those policy limits are. And so what I have told
6 them is that this is a policy limits case and you can define
7 those for me, which they still to this day haven't done, and
8 then we can talk about whether I'm too high. But as I read
9 the coverage, there is a lot more than 880, and this is a
10 case that is very limited in its number of paying defendants
11 in it. You had -- Daniel was probably the largest defendant
12 in the case, aside from Covil. And then you had Celanese as
13 his employer, which obviously creates all sorts of issues,
14 and then a few minor players in this case. So you're not
15 looking at a very large set-off, and you are looking at a
16 situation in which you have an insulation contractor with
17 unknown insurance and a person who has a fatal disease that
18 is going to die. And so until I understand what the
19 policies cover and don't cover, it really makes it hard for
20 me to understand. When he says that there is -- that they
21 have less than seven figures of insurance total, that is not
22 what their policies seem to indicate.

23 And so, again, part of the problem here is getting
24 a clean and clear answer on insurance. And, candidly, the
25 corporate rep, who we will talk about in a minute, which is

1 this is one of the topics, couldn't really answer that
2 question either. So that's really what's going on here and
3 what the problem is.

4 And that's really the point of the mediation,
5 which is, you know, the carrier said they wanted to come out
6 and let's sit down and have a talk. He talks about the
7 carriers stayed around on Wednesday afternoon and met with
8 me. Well, one did, Travelers Insurance. Mr. Jerry Begley
9 met with me after the day-long hearing in Columbia on
10 Wednesday out in the hall. And I think Your Honor can
11 probably understand why it is that, you know, a first
12 meeting out in the hall after a day-long hearing is probably
13 not the best forum to try and get to a resolution. So, you
14 know, that's the reason that it makes a lot of sense to have
15 mediation, so we can try and hash some of these issues out.
16 That's the problem.

17 THE COURT: All right.

18 MR. WALL: If I misspoke about the \$500,000, I
19 misspoke.

20 He was dealing directly with two carriers
21 involved. They were sending him their interpretation of the
22 amount of coverage in the policy. Whatever they said was
23 available is available.

24 Your Honor --

25 THE COURT: Well, how much does that make

1 available?

2 MR. WALL: Whatever they told him. I don't -- I
3 wasn't involved in all of that. I'm not a coverage counsel,
4 but as I understand it, whatever he said, \$800,000 is what
5 whatever the amount is, that's what Covil's carriers say is
6 there.

7 THE COURT: What about the one million dollar
8 policy --

9 MR. WALL: They said it doesn't apply.

10 THE COURT: -- and three million dollar per
11 occurrence policy? Those are -- per occurrence, no claims
12 made. Back in those old days, I remember those policies
13 from our earlier years of practice. They have to stay on
14 them forever.

15 MR. WALL: According to what I saw in the exchange
16 of e-mails those are site specific. They went out and
17 bought a million dollar excess policy for a job, I think. I
18 mean, again, I'm not dealing with those. They are dealing
19 directly.

20 And, Your Honor, about the issue of insurance, as
21 you know, these cases are intermingled. We are now
22 representing Covil in North Carolina. There was a --

23 THE COURT: Well, you know, Mr. Wall, I can't deal
24 with those cases this way and I don't think it's ethical for
25 me to deal with these cases on the basis that Covil has got

1 other things, just as I don't think Covil can come into this
2 courtroom and say "well, we are not here. Our corporate rep
3 is not here and our insurance company is not here, so you
4 don't get to know anything."

5 MR. WALL: No, Your Honor. I was going to explain
6 to you that in a case called Finch the same law firm and our
7 law firm agreed and the judge ordered in North Carolina that
8 subpoenas prepared by them be sent to all the carriers and
9 the carriers are now responding to their subpoenas. So we
10 are attempting to get them all the information on all the
11 policies that are out there. I just wanted to say that,
12 because we are not trying to hide any policies. They have
13 all been subpoenaed by the Federal Court in North Carolina.

14 THE COURT: All right.

15 I'm going to go forward with and hear the next
16 motion and we will do something global about this at the
17 end, but let's just keep on going forward.

18 The next motion we will hear is plaintiffs' motion
19 for sanctions against Covil for spoliation of evidence and
20 discovery abuse.

21 Ms. McVey.

22 MS. MCVEY: Yes, ma'am, Your Honor.

23 You are very familiar with the history of the
24 Covil depositions, but just by way of background, Palmer
25 Covil was sort of the main guy and he has testified for

1 years that Covil had a fire in the early seventies and it
2 destroyed -- he didn't say all the documents, but he says
3 the vast majority of documents.

4 In 2018, Jim Covil, who is his son who also worked
5 for Covil, says all the documents were destroyed in the
6 fire, that they were all burned up.

7 Well, what we found is a deposition by a guy named
8 Machen Lee Carpenter, and Mr. Carpenter testified as a
9 co-worker in a lawsuit in 2004.

10 And Mr. Carpenter is an interesting man because he
11 went to work for Covil in 1967, and he worked for Covil from
12 '67 until 1991. And during that long time period he had a
13 lot of different jobs. He was a warehouse foreman. He was
14 the foreman of the fabrication shop. He was the vice
15 president of operations. He was kind of all in the know of
16 Covil. And he, in fact, verified that there was a fire in
17 the 1970's, but what he said is that not all the fire -- not
18 all the documents were destroyed in the fire.

19 And we put this in our brief, Your Honor, but on
20 page 103 of his deposition he was asked:

21 "Because of the fire or some other fire? I'm
22 trying to find out if there was any repository of
23 information, meaning documents."

24 "A. No, that's not right. It wasn't. The front
25 office complex did not burn down. It was protected by a

1 firewall. We kept all of our documentation in a vault.

2 "Now, where is it today," he goes on? "What is
3 the limitation on time frame in which you would have to keep
4 it?

5 "And I would say it would be seven years, or less,
6 so I would say it's history."

7 So what Mr. Carpenter says is nope, not all the
8 documents were burned up in the fire. In fact, we had --
9 the front office had a fire wall and it had a vault.

10 And in that vault, even Mr. Glenn, their
11 corporate -- their current corporate representative said it
12 would have been accounts payable, accounts receivable, all
13 sorts of important documentation, which would show where
14 they sold their asbestos insulation and to whom and when.
15 That's where it would be.

16 And what's important about this is Covil was first
17 sued and had a claim made against it in 1972. By 1977, when
18 he said maybe the document retention policy would kick in,
19 by 1977 they were a defendant in numerous, dozens of
20 lawsuits. That is the definition of spoliation. They know
21 they are on notice. They have a claim -- that claims are
22 being made, that they need to keep these documents and they
23 willfully destroyed them. They weren't all destroyed in the
24 fire, as we have been led to believe, and that is why we
25 made a motion for spoliation.

1 THE COURT: All right. Now, that's spoliation.
2 Is there anything additional by way of discovery
3 abuse?

4 MS. MCVEY: Yes, ma'am.

5 So in addition to the spoliation motion, this is
6 again another motion for discovery misconduct by Covil and
7 failing to have a 30(b)(6) prepared for their deposition.

8 Your Honor, you will recall in Howe that Jim Covil
9 testified, after being ordered to do so. He was ordered to
10 look for and produce certain documents, and it turns out
11 that he didn't do that. And for that reason Howe, Smith and
12 Sizemore cases that Covil pleadings were struck. That was
13 in March of 2018.

14 In April of 2018, of this year, we sent out a
15 30(b)(6) notice to Covil with our same kind of topics out
16 there and we asked them to get prepared.

17 And they said, "you know what? We need more time
18 to get prepared."

19 We said "you certainly do, so we are going to give
20 you the time."

21 And so they kept asking for more and more time and
22 finally we agreed -- so they could have a fully prepared
23 witness, we agreed to do that deposition, the 30(b)(6), on
24 July 9th, which was just two days before our pretrial
25 hearing. And in that deposition they produced a new

1 30(b)(6) witness and his name is Mr. Glenn.

2 THE COURT: What's his first name?

3 MS. MCVEY: Robert Glenn.

4 And so the deposition took place July 9th.

5 He testified in his deposition he was not even
6 contacted about being the Covil witness until two weeks
7 prior to the deposition. He testified he didn't even know
8 the Covil name before two weeks before the deposition.

9 And, Your Honor, we have listed in our brief all
10 the different ways he was unprepared. I think over 103
11 times he said "I don't know. I don't understand." He was
12 not -- he had only reviewed about a 100 documents out of the
13 24,000 available.

14 And, by the way, those 24,000 documents are
15 post-'73.

16 He was unprepared about Covil's safety procedures.
17 He was unprepared about whether or not Covil had ever
18 warned. He was unprepared about the last year Covil sold
19 asbestos-containing products.

20 Now, what Covil argues is "what do you want us to
21 do? He only had two weeks to get ready." And our point is
22 that's exactly the problem. That's exactly the problem.
23 Mr. Covil said he couldn't be prepared in two weeks. He
24 reviewed only a 100 documents, and those are not even
25 documents he found. Those were documents that were given to

1 him.

2 Covil further argues "you know what? You can't
3 sanction us for this conduct because we are not violating
4 any court order under Rule 37."

5 And I would disagree, Your Honor.

6 Number one, they know that there are court orders
7 out there saying that Covil has to have a prepared 30(b)(6)
8 witness.

9 But, more importantly, the standing order in this
10 asbestos litigation said they have to have a 30(b)(6)
11 witness who is prepared.

12 What they are really saying to you is "ha-ha, you
13 can't catch us, because we let you -- you didn't take our
14 deposition July 9th at our request and you didn't file a
15 motion to compel to get an order and then have us violate it
16 again." That's really what they are arguing to you, Your
17 Honor.

18 It is trial by ambush to have information that is
19 not out there.

20 And, Your Honor, it's more than just this, and we
21 can go into this a little bit later, too, but it's also this
22 idea of they have not given us an exhibit list. They
23 haven't named any experts. They are not participating in
24 this process.

25 So, Your Honor, we think we are entitled to

1 sanctions, and I'm happy to tell you what we are seeking.

2 THE COURT: Yes, please.

3 MS. MCVEY: All right.

4 For the spoliation motion we would ask that the
5 plaintiffs be allowed to introduce evidence of Covil's
6 destruction of the documents and misrepresentations about
7 the circumstances of the destruction.

8 We would ask that you instruct the jury that it
9 can draw a negative adverse inference from the defendant's
10 acts; that Jerry Crawford was exposed to asbestos insulation
11 supplied and installed by Covil at Celanese between 1970 and
12 1974.

13 I don't think this is going to be an issue,
14 because they haven't listed any experts, but we would also
15 ask that Covil not be allowed to introduce any expert
16 testimony at trial in this case.

17 For the sanctions motions, we would ask that you
18 exclude any witnesses testifying on behalf of Covil at trial
19 in this matter.

20 We would ask for a presumption that Mr. Crawford
21 was exposed to asbestos from insulation supplied by Covil.

22 We also ask, although I think the ship has sailed
23 as well, Covil to produce a knowledgeable witness for
24 plaintiffs to depose in Spartanburg prior to trial. Since
25 we are on the first day of trial, I think that ship has

1 sailed.

2 And then we would ask for any attorneys fees in
3 the preparation for the deposition, the deposition costs.

4 THE COURT: All right.

5 Mr. Wall?

6 MR. WALL: Mr. Boger --

7 MR. BOGER: Your Honor, if I could, if the court
8 will indulge us, we are going to -- I was going to talk
9 about the spoliation part of this and Mr. Wall is going to
10 discuss the witness portion of it.

11 THE COURT: All right.

12 MR. BOGER: As to the spoliation, the standard
13 that we are looking at here, or what they are asserting, is
14 some sort of intentional and deliberate destruction of
15 evidence, and we see that hard to find where a fire 45 years
16 ago burned a significant portion of the plant.

17 And in 1977, or '78, the then president Mr. Palmer
18 Covil, which was the closest testimony we have to the fire,
19 says "we don't have -- "all these records were destroyed,
20 including invoices," and we have cited that in our brief.

21 I have also attached to our brief photos that were
22 in the Greenville News the day after the fire. "\$700,000
23 fire ravages Covil Firm inferno." And I think that photo
24 itself shows this wasn't some, you know, back warehouse fire
25 that only destroyed products and not paper.

1 The fact that a witness 14, 15 years ago testified
2 that maybe some of the documents weren't destroyed but he
3 doesn't know where they are, does not infer that we have
4 deliberately destroyed documents or are withholding
5 documents.

6 The record also shows that we have produced 25,000
7 pages worth of documents.

8 So intentional, deliberate, that doesn't apply
9 here, and we don't think they are entitled to a negative
10 inference that we withheld any sort of information. We have
11 given up everything that we have and that we know of.

12 And to supplement that, too, Covil has been out of
13 business since 1991. So 27 years we have been without
14 employees, without a corporate body, without anybody that
15 would hold these documents.

16 And we have, as counsel for Covil, were
17 substituted in in May of this year and it was our
18 understanding that these records were kept by prior counsel
19 and we've done what we can to provide them those 25,000
20 pages, as I know.

21 And I'll let Mr. Wall discuss the testimony of the
22 30(b)(6) witness.

23 MR. WALL: Thank you, Your Honor.

24 As the court knows a lot about Covil and the
25 30(b)(6) witness, I won't go over that, except point out

1 that Covil is out of business, has been since 1991. The
2 charter was revoked in 1993; have no employees, have no
3 business, and a fire, and the court struck all of Covil's
4 answers in three cases, and unfortunately that's how we got
5 involved in the case and that was rather recently.

6 We know that there was no way you were going to
7 listen to Jim Covil again, so then I had to go out and try
8 and find someone who is willing -- if you read the statute,
9 has to be noncorporate employee, has to be willing to
10 testify for Covil. So I found one. It took me awhile to
11 find one. And when I finally found one, the name is Robert
12 Glenn. We delivered to him all the documents we had,
13 25,000, all the depositions we had, of which there were
14 four, and we told him to start work.

15 We went one step further. We had delivered to the
16 plaintiffs all of the same 25,000 documents.

17 We went in and found somebody who could make those
18 documents searchable. So we can now go in, and we did do
19 this, we searched in all those 25,000 documents for all of
20 the documents dealing with Daniel and with Celanese and we
21 produced those to plaintiffs' counsel at the deposition of
22 Mr. Glenn.

23 Mr. Glenn only had two weeks and he did the best
24 he could.

25 I find it more than interesting that they now have

1 subpoenaed him to come here again today, or tomorrow, to
2 testify again about the same thing he has.

3 He has continued to work on Covil documents, but
4 the sole set of facts that we have are the depositions that
5 were taken in the case and the documents that we have
6 produced to plaintiffs' counsel and that seemed to testify
7 about what he's found in those documents and what he's read
8 in those depositions, and he did that, Your Honor. Thank
9 you.

10 THE COURT: Mr. Wall?

11 MR. WALL: Yes, ma'am.

12 THE COURT: 30(b)(6), as I understand it, does not
13 allow you to condition a corporate representative's
14 knowledge on what you choose to supply him with.

15 I find it preposterous that I would be told
16 "because you took actions against Covil for their
17 untruthfulness in prior matters, we're not going to offer
18 the corporate rep that we should be offering, Mr. Covil, who
19 has got some direct connection with the company. We are
20 going to hire somebody who has no knowledge of Covil at all
21 and just have them read what we give them and then you can't
22 fuss with us if they don't know something, because they can
23 only do what we gave them to do in terms of their breadth
24 and knowledge." That turns 30(b)(6) on its head big time
25 and it rewards Covil and -- not you personally, but this is

1 Covil. Covil can't get away from saying "we have been
2 sanctioned before because we wouldn't be truthful, so now we
3 are going to hire somebody who knows nothing, give them some
4 documents we choose to give them, and then you can't fuss
5 with us if they don't know anything."

6 MR. WALL: Your Honor --

7 THE COURT: What in the world kind of argument is
8 that?

9 MR. WALL: I am told that you struck the answers
10 because Mr. Covil had no knowledge. I discussed with prior
11 counsel. They met with Jim Covil for numerous hours and so
12 deposed as to it. He could not comprehend the documents out
13 there. He could never, according to prior counsel, ever get
14 up to speed to supply the information that they wanted. He
15 worked --

16 THE COURT: Then what Covil should have done would
17 have been to get someone else connected with the company who
18 could respond. But to get someone off the street, who has
19 no connection with the company, to look at the documents and
20 testify about them doesn't make any good sense to me.

21 MR. WALL: We have nobody and know of nobody who
22 would be willing to do that. We have tried to contact a
23 former employee who lives in Myrtle Beach. We have called
24 him, I think, three times. He's never returned the phone
25 calls.

1 THE COURT: Well, here is what --

2 MR. WALL: Danny White called him and he
3 wouldn't --

4 THE COURT: Here is the what the record shows at
5 this time, Mr. Wall, that's before me right now. It shows
6 that there is one, and only one, piece of information from a
7 witness that has been supplied to me right now by someone
8 who has direct knowledge about that fire, and that is Mr.
9 Glenn. And what -- I mean, Mr. --

10 MS. MCVEY: Carpenter.

11 THE COURT: Mr. Carpenter.

12 And what Mr. Carpenter said is that there was a
13 vault within the office of Covil in which many of their
14 documents were held and that it was not destroyed by fire.

15 He further says that there was a firewall between
16 the office and the rest of the complex.

17 Now, if that's not so, you could have at least put
18 up Mr. Covil, unless he is mentally unable to do it, or
19 someone else to talk about the extent of that fire.

20 And, frankly, a photograph out of the Greenville
21 News is just not enough in the face of a witness with direct
22 knowledge who says what I just recited.

23 MR. WALL: Mr. Covil, Sr. Testified that it was
24 all destroyed.

25 Mr. Jimmy Covil testified twice that it was

1 destroyed. His testimony is already under oath. All three
2 of their testimonies are under oath before this court that
3 the fire consumed all of the documents, except for ones, and
4 there are some pre-'73 documents which are in that file and
5 we have produced them also. There is nobody else who can
6 say anything about the fire. No one --

7 Jimmy Covil, as I said, apparently is unable to
8 provide the information. He doesn't know the information.
9 He really doesn't want to be involved. And we cannot --
10 he's not an employee. We cannot force him to be involved.
11 So we had to do -- and we knew this was coming down the
12 pike. So under the rules we can go out and get anybody who
13 is willing to testify to testify as a 30(b)(6) witness and
14 we gave him all the information we had. Thank you.

15 THE COURT: Well, obviously this is --

16 Mr. Wall, when I look at page six for the
17 submission by plaintiff on this issue. And on page six and
18 seven it details -- six, seven, and eight, it details the
19 things that Mr. Glenn was not prepared to testify about, and
20 it includes such things as what percentage of their products
21 were asbestos-containing versus nonasbestos-containing;
22 safety procedures used; why Mr. Glenn was chosen as a
23 corporate representative; what documents would have been
24 saved in the fire in 1973. I mean, it goes down a list of
25 things that it seems to me are fundamental.

1 MR. WALL: And I think he answered those
2 questions.

3 THE COURT: Sir?

4 MR. WALL: The way I read the deposition, I
5 thought he answered those questions. He couldn't answer
6 them to -- he could not tell you what was in Palmer Covil's
7 mind. He could not say "well, Palmer Covil did this because
8 he thought X." There are no documents that support that
9 kind of analysis of what happened there.

10 THE COURT: Well, I mean, here are questions "who
11 was in charge of safety at Covil throughout the history?"

12 MR. WALL: He told them.

13 THE COURT: Who did he tell?

14 MR. WALL: Russell Johnson was the person he knew
15 was in charge of --

16 Well, first there was no safety director, but
17 training and safety was under Russell Johnson's direction.

18 THE COURT: How about "what followup was done on
19 insurance policies and insurance coverage for the years in
20 question?"

21 MR. WALL: We sent subpoenas to all of the
22 carriers.

23 THE COURT: In this case?

24 MR. WALL: In the Finch case, which is the same
25 case as this, the same lawyers.

1 THE COURT: Where are those? I haven't seen them.

2 MR. WALL: We didn't move them in this court.

3 They went out of the Federal Court in North Carolina.

4 THE COURT: Well, then they weren't in this case.

5 They were in the Federal Court?

6 MR. WALL: That's correct, they were not in this
7 case, but they were done.

8 THE COURT: I mean, what I'm trying to understand
9 is what does your client expect this court to do for the
10 next two weeks when your client is not providing any
11 information, is not going to put up any expert witnesses,
12 but says they can't be sanctioned because of some things
13 they are doing in the North Carolina case? I mean, what
14 position does that put this court in, in your view, Mr.
15 Wall?

16 MR. WALL: We have -- we have not put any experts
17 because we have none on the issues.

18 First -- the real issue in this case is there was
19 no Covil insulation products at the job site and there are
20 three people going to testify to that, already have
21 testified to that, and so -- we made insulation. There
22 is -- and we acknowledge --

23 THE COURT: And the three people that are going to
24 testify to that, where is the witness list that showed
25 me who they are?

1 MR. WALL: They are -- they are -- they have
2 already been deposed. They are the witnesses to them. They
3 are plaintiffs' witnesses.

4 THE COURT: That doesn't absolve you from putting
5 together a witness list for me, Mr. Wall.

6 There are fundamental --

7 MR. WALL: Your Honor, we put together a witness
8 list for you and we filed it with them and we lists --

9 THE COURT: I don't see the witness list. I have
10 looked over the filings this morning and I don't see that.

11 MR. WALL: We listed the two Covils.

12 We listed an expert who was on state of the art.
13 We are not going to call him.

14 And we listed then the right to call any other
15 witness who has been deposed, offered, or discussed in this
16 litigation, and there are two of those; the representative
17 of Daniel and the representative of Celanese, and they have
18 been deposed and we are going to try and play their video.

19 THE COURT: You haven't properly noticed them
20 to --

21 MR. WALL: We think we have.

22 THE COURT: Well, if you haven't properly noticed
23 them, then --

24 MR. WALL: I understand.

25 THE COURT: -- then, you know -- I mean, I don't

1 think your client is really serious about respecting this
2 court and this process. That's what's got me worried, Mr.
3 Wall.

4 MR. WALL: I disagree, Your Honor.

5 First of all, I have no client. They're out of
6 business.

7 THE COURT: Well, then -- what do you mean you
8 have no client? Are you here in -- the defendant in this
9 case is Covil Corporation.

10 MR. WALL: That's correct.

11 THE COURT: Are you here representing them and are
12 they your client?

13 MR. WALL: They are out of business, but I am
14 their -- I represent them.

15 THE COURT: Well, then, please don't start this by
16 telling me you don't have a client.

17 MR. WALL: Well, no, I'm here at the request of
18 the insurance company, who has the duty to defend Covil, and
19 I have been retained to defend Covil, and that's what we are
20 doing.

21 THE COURT: That's correct. So you have a client.
22 That's Covil.

23 MR. WALL: Yes.

24 THE COURT: You don't -- the insurance company is
25 not the client --

1 MR. WALL: That's correct.

2 THE COURT: -- here in front of me.

3 MR. WALL: That's correct.

4 THE COURT: Your client is Covil Corporation.

5 MR. WALL: That's correct.

6 THE COURT: All right.

7 Ms. McVey?

8 MS. MCVEY: Can I briefly -- I know you need to --

9 THE BAILIFF: Excuse me, Your Honor.

10 (Off the record).

11 (Back on the record)

12 THE COURT: All right.

13 We will -- to be continued.

14 MS. MCVEY: Okay.

15 THE COURT: Y'all are needed in the courtroom over
16 there, so y'all go over there and deal with jury
17 qualifications, and then we will come back and deal with
18 this after we get the jury picked.

19 MS. MCVEY: Thank you, Your Honor.

20 (Whereupon, proceedings were recessed).

21 (Whereupon, proceedings were reconvened).

22 THE COURT: Ladies and gentlemen, I have got a
23 statement of the case and voir dire from plaintiff and
24 defendant and let me ask couple of questions at this point.
25 This thing says this case arises from Mr. Jerry Crawford's

1 alleged occupational exposure to the asbestos. So far so
2 good.

3 The plaintiffs are Jerry Crawford and the Estate
4 of his, and I would say wife, Evelyn Crawford, and his three
5 children, Patty Giles, Tessa Quinn, and Danny Crawford.

6 Plaintiffs allege that Mr. Crawford died from
7 mesothelioma.

8 MS. MCVEY: Oh, my gosh.

9 THE COURT: I don't think so.

10 MS. MCVEY: No. Thank you. He has not.

11 THE COURT: Contracted mesothelioma.

12 MS. MCVEY: Yes.

13 THE COURT: Mesothelioma cancer as a result of
14 exposures to asbestos while working at Celanese Corporation.

15 Now, let's just stop there for a minute. How we
16 going to handle mentioning Celanese and why are we
17 mentioning Celanese?

18 MS. MCVEY: The exposure to Covil occurred while
19 he was working at Celanese.

20 THE COURT: I get that.

21 MS. MCVEY: So I think that's going to -- it's
22 going to be all over the case.

23 THE COURT: Okay. All right. I'm just checking.

24 MS. MCVEY: I know it.

25 THE COURT: Defendant in this case is Covil

1 Corporation.

2 All right. I'm just looking down the questions.

3 It says "is there any member of the jury panel who
4 knows or has any connection to the defendant in this matter,
5 Covil Corporation, who sold and installed insulation?"

6 It doesn't say in this case, but we haven't dealt
7 with our sanctions yet. We are going to deal with those in
8 a minute.

9 All right. "Is there any member of the jury panel
10 or any member of your immediate family, and by that I mean
11 your children, ever been a plaintiff or a defendant in a
12 lawsuit?"

13 I have gone that far.

14 "Anyone ever worked around asbestos?"

15 I don't know that I have gone that far. What --
16 how do we feel about that?

17 MR. BRANHAM: Judge, I think it's important for
18 both parties to know whether or not anybody believes that
19 they have worked around asbestos, but certainly if the court
20 declines to do it, we would fine with that.

21 THE COURT: Well, I got a little question there.

22 Now, there are a number of people who will testify
23 in the trial of this case. Do you know if there are any
24 problems with any, please stand. The witnesses are as
25 follows:

1 Harley Neelands. Who is that?

2 MS. MCVEY: He was --

3 THE COURT: Co-worker?

4 MS. MCVEY: Yes.

5 THE COURT: All right.

6 Arnold Brody I know.

7 John Maddox I know.

8 Jerry Crawford, plaintiff.

9 Patty Giles, child.

10 Tessa Quinn, child.

11 Palmer Covil and Jim Covil. I thought they
12 weren't going to testify.

13 MS. MCVEY: They -- if they testify, it will be by
14 deposition that they have already given.

15 THE COURT: All right.

16 Don Buck.

17 MS. MCVEY: He's a Daniel corporate
18 representative, by deposition.

19 THE COURT: I'm not planning on turning this into
20 a three week trial now.

21 MS. MCVEY: Your Honor, you are going to be so
22 proud of us. We are going to be finished this week.

23 THE COURT: Good. That's what I want.

24 MS. MCVEY: I knew you would be happy.

25 THE COURT: I like a one week trial.

1 MS. MCVEY: I know it.

2 MR. WALL: We have very few designations, ma'am.

3 THE COURT: All right.

4 Dwaine Waters. There is some controversy there.
5 We will get to that about whether that's going to be
6 allowed.

7 Machen Carpenter.

8 Dr. James Crapo.

9 Tony Watson, certified industrial hygienist.

10 That's y'all.

11 And Mr. Robert Glenn, corporate representative.

12 He's an industrial hygienist?

13 MR. WALL: He is by training.

14 THE COURT: Uh-huh. Okay.

15 MR. BRANHAM: Your Honor, Tony Watson was an
16 expert retained by other defendants in this case who blames
17 Covil in the case. It's literally about a five-minute
18 read-in.

19 THE COURT: All right.

20 MR. WALL: Your Honor, I have one -- I'm sorry,
21 are you ready for me?

22 THE COURT: Not yet.

23 MR. WALL: Okay.

24 THE COURT: Just let me get through theirs and
25 I'll go right to yours.

1 "Any members of the jury panel related by blood or
2 marriage to any of these witnesses?" That's okay.

3 "Do you know any of lawyers?" Tommy Boger was not
4 in here, but I would say Theile McVey, Aaron Chapman, Mark
5 Buha, Trey Brown, Mark Wall, Tommy Boger.

6 "Is there any member of the jury panel who has a
7 family member who has mesothelioma or any asbestos-related
8 disease?"

9 I can go that far.

10 "Is there anyone in the jury panel who has
11 expressed or formed any opinion?"

12 "Any member of the jury panel not prepared to give
13 them a fair trial?"

14 "Have you or anyone in your family ever worked as
15 an insulator, boilermaker, rigger, millwright, machinist,
16 pipe fitter, valve technician, engineer, or worked with
17 boilers, pumps, valves, gaskets for packing?"

18 "Ever served on a jury?"

19 All right. Here are the defendants.

20 "Anyone or had a family member worked at a fiber
21 plant, including Hoechst Celanese."

22 What is a fiber plant?

23 MS. MCVEY: That's your question?

24 MR. WALL: It's a company plant that make fibers
25 which have been woven, like Celanese.

1 THE COURT: How about if I just say "has any
2 member of your family worked for Hoechst Celanese?"

3 MR. WALL: That's fine.

4 THE COURT: All right.

5 "Is any member of your family ever worked or been
6 around asbestos-containing thermal insulation?"

7 This is the one that I get kind of ancy about.
8 "Do you believe that you have been exposed to asbestos, or
9 do you believe a family member has been exposed to
10 asbestos?"

11 I don't like getting into what you believe and so
12 forth and so on, so I'm not inclined to ask that.

13 "Do you or anyone you know, including family or
14 close friend, presently have cancer?"

15 I don't generally go that far. Cancer is all over
16 the place.

17 "Does anyone who would be unable to give all
18 parties a fair trial?"

19 That's the same thing as the plaintiff.

20 "Who is so sympathetic that you would not be able
21 to follow the rules of the court, set sympathy aside when
22 evaluating the case where the plaintiff was injured or died
23 from mesothelioma?"

24 I would do something like that. It might be a
25 way --

1 "And who has got a strong or negative opinion of a
2 corporation?"

3 I don't ask that.

4 Okay. Anything else?

5 MS. MCVEY: Not as to voir dire.

6 THE COURT: As to voir dire.

7 Any exceptions?

8 MR. BOGER: Well, Your Honor, the only thing I
9 would point out, we had some witness issues that we haven't
10 gotten to, as far as the pretrial, that may be added or
11 subtracted from that list.

12 It was our understanding that the Celanese
13 30(b)(6), Bruce Boyer was going to be called. Then upon
14 receiving the voir dire last night his name was off their --
15 off their list, so we would want his testimony to be
16 included.

17 THE COURT: If I let you put up any witnesses.
18 What's his name?

19 MR. BOGER: Bruce Boyer.

20 MS. MCVEY: And that's the argument. That goes to
21 our -- Your Honor, our -- whether or not they designated
22 timely.

23 THE COURT: I have not at this present moment ever
24 seen an exhibit list from the defendants still, after I
25 asked about it. I don't -- I -- I have no witness list.

1 MR. WALL: He did it. He will get it.

2 THE COURT: It hadn't been filed with the court
3 and it hadn't been filed with me, so we are going to talk
4 about that, but I'm going to ask about this guy, because I
5 want to go ahead and qualify them and let them go to lunch
6 so we can finish up our pretrial and not delay them. So
7 that's how I'm going to handle it, unless y'all --

8 MR. BOGER: Can I pass up our witness
9 designations?

10 THE COURT: You will when we get back to pretrial
11 motions, but at the present time I'm going to throw his name
12 in and I'm going to ask about it.

13 MR. BOGER: Thank you, Your Honor.

14 THE COURT: My high quality bet is they won't know
15 any of these people, except perhaps the Crawfords and their
16 family.

17 MR. WALL: I have one question, Your Honor.

18 THE COURT: Yes.

19 MR. WALL: You talk about the estate.

20 THE COURT: Yeah, the estate of Evelyn Crawford.

21 MR. WALL: She's now deceased. Her consortium
22 claim is now lost. It's over.

23 MS. MCVEY: No, it's not.

24 MR. WALL: I think it is, Your Honor.

25 MS. MCVEY: It survives her death.

1 MR. WALL: I don't think so.

2 THE COURT: It survives her death.

3 MR. WALL: Consortium claim?

4 THE COURT: Yes.

5 She had it while she was still living and --

6 MR. WALL: I understand.

7 THE COURT: That's -- yeah. That's -- it has been
8 in the other cases I tried. You may say differently.

9 Okay. I propose to bring the jury --

10 Well, I can either -- how many of them are there?

11 MS. MCVEY: I think they were picking the first
12 trial, Your Honor, the first -- there is another wreck case
13 going maybe, or another personal injury case going.

14 THE BAILIFF: I'll check.

15 THE COURT: Tell you what. Find out how close
16 they are to the end of picking their jury.

17 THE BAILIFF: Yes, ma'am.

18 THE COURT: And if they still are going to have a
19 little time left, we could take a little time and knock out
20 the rest of these motions, or try to.

21 THE BAILIFF: Yes, ma'am.

22 MS. MCVEY: Yes.

23 THE COURT: Okay. Let him just find out about
24 that and then we will see.

25 (Off the record)

1 (Back on the record)

2 THE COURT: I'm going to look up the consortium
3 thing to make sure, Mr. Wall.

4 MR. WALL: Thank you.

5 THE BAILIFF: Your Honor, they are just now going
6 into that courtroom. They are taking a fifteen minute
7 break.

8 THE COURT: Okay. While they're taking a fifteen
9 minute break, do we want to try to --

10 MS. MCVEY: That would be great.

11 THE COURT: -- keep on plugging here for a minute?

12 Where we are, all these motions, except for
13 defendant's motion with respect to Mr. Waters, has been
14 argued. Am I right?

15 MS. MCVEY: The only thing that hasn't been argued
16 is the motion to strike their late deposition designations.

17 THE COURT: Right. Okay.

18 Let me get something straight then.

19 I want to see the exhibit list, the -- talking
20 about for defendants. I know the plaintiffs' exhibit list
21 and their exhibits and their witnesses have been sent to the
22 other side within the compliance period of the rule. I
23 certainly want copies of those things.

24 MS. MCVEY: Okay.

25 THE COURT: With respect to defendants, I want to

1 see your exhibit list, your witness list, and information
2 about when you designated your objections.

3 MR. BOGER: Okay. I'll -- can I pass the --

4 THE COURT: Sure. Come right on up.

5 MR. BOGER: -- witness list up?

6 THE COURT: Yes.

7 MR. BOGER: This is our witness list, Your Honor.

8 THE COURT: What I'm looking at is this. I'm
9 looking at Judge Hill's standing order regarding asbestos
10 trials. It was signed in 2015, that I have lived with and
11 not changed, and it says "at 125 days after filing of the
12 complaint counsel for the defendant shall designate all fact
13 witnesses expected to be called at trial. Designations
14 shall include brief summary of expected testimony, whether
15 the witness is a co-worker, family member, treating
16 physician, or other fact witness. This list may be
17 supplemented up to five days before the deadline to depose
18 defendant's fact witnesses. Counsel for the defendant shall
19 designate all expert witnesses and any plaintiffs' treating
20 physician called for trial. This designation shall include
21 a brief summary of anticipated. It may be supplemented up
22 to five days before the deadline to depose all defendant's
23 witnesses." Filing deadlines -- once the trial date has
24 been assigned, and I assigned the trial date a long time
25 ago.

1 "Depositions 70 days before trial.

2 "Depositions of defendant's fact witnesses
3 concluded, with the exception of 30(b)(6)."

4 So whether you call it 120 days after filing of
5 the complaint, or 70 days before trial, this July 2nd, 2018
6 designation of amended disclosure of witnesses is way past
7 any deadline.

8 MS. MCVEY: The only thing I tell you is at the
9 end -- I can see them getting up. The last page of that
10 scheduling order?

11 THE COURT: Yes.

12 MS. MCVEY: It said 14 days before trial the
13 parties to exchange final list of all witnesses to be called
14 at trial.

15 THE COURT: Right. This is an attempt to meet
16 that.

17 MS. MCVEY: I thank so.

18 THE COURT: But it's got to be witnesses that were
19 disclosed before in accordance with the rest of this order
20 so that they can be deposed, as I understand it.

21 MS. MCVEY: I think they did disclose those in --

22 Did they answer discovery?

23 If they answered discovery, my assumption is they
24 put those in there.

25 I don't see like there is a problem with their

1 witness list right there. I do have a major problem with
2 the other deadlines that they have missed.

3 THE COURT: Okay. So the three that they have
4 indicated are Palmer Covil, James Covil, and Brian D.
5 Harding, a PhD.

6 MR. WALL: We are not calling him. He was my
7 expert.

8 THE COURT: But you are not calling him?

9 MR. WALL: He's the state of the art expert.

10 THE COURT: So all you have listed by way of
11 witnesses are the two Covils.

12 MR. WALL: And, Your Honor, the other witnesses
13 listed by any party or the defendant.

14 The only thing we have done is when all this was
15 going on, they took the deposition of Daniel and took the
16 deposition of Celanese and those people are by reference
17 mentioned in that list, and they have -- they have now
18 designated or had initially designated the testimony, one.

19 Two, they were parties until just recently.
20 Daniel did not get out of this case until Wednesday, last
21 Wednesday, so they were parties in the case.

22 MS. MCVEY: Your Honor, briefly. This is the most
23 important issue I want to talk to you about.

24 Everybody has an obligation to list the
25 designations seven days before trial. That would have been

1 last Monday.

2 THE COURT: Right.

3 MS. MCVEY: All designations that you plan to use,
4 that has to be done, okay?

5 THE COURT: Right.

6 MS. MCVEY: They didn't do that.

7 And, in fact, not only did they not do that, when
8 they realized they were the only ones left, they were
9 supposed to counter our designations on Friday.

10 This is really important because it's not just a
11 matter of here is our designations. We have got to cut
12 video. It's a long process. They have not met any of those
13 deadlines. They didn't designate anything to begin with, so
14 they don't get to use anything. And they didn't counter
15 ours until past the deadline.

16 MS. WALL: That's correct.

17 MS. MCVEY: And the fact -- I mean, that's the
18 rule. If there are no consequences to that, then we can't
19 function.

20 I mean, this trial is going to move super fast.
21 Dr. Brody is going to go on today. We have got videos cut
22 for either this afternoon today and then starting tomorrow
23 morning. We are going to be finished pretty quickly in this
24 trial, so we have got to be ready to go with these
25 depositions and they didn't designate anything.

1 THE COURT: Mr. Wall?

2 MR. WALL: We have now designated. We were
3 getting ready for the Whitmire case.

4 THE COURT: So you are the only defendant that did
5 not get ready for both?

6 MR. WALL: Well, we --

7 THE COURT: Every other defendant got ready for
8 both and I have got mountains of material from all of them
9 designating witnesses, designating parts of transcript,
10 objections to parts, and all that kind of stuff.

11 MR. WALL: We anticipated that Daniel and Celanese
12 would still be defendants in this case, and that as soon as
13 they went out we did the designations. Until they went out
14 there was no point in doing the designations.

15 MS. MCVEY: That's actually not true, Your Honor.
16 They settled on Wednesday --

17 MR. WALL: Yeah.

18 MS. MCVEY: -- and we didn't get those things
19 until Saturday -- Sunday.

20 MR. WALL: Well, it takes -- it takes a while to
21 generate.

22 THE COURT: I'm just -- I can't accept that, with
23 great respect, Mr. Wall. I don't think any preparation was
24 done of any meaningful nature by Covil until this weekend,
25 and that's what -- and I don't think any preparation even

1 started until after the mediation took place and I fussed
2 with your client in the other case, Armstrong, and that's
3 what's got my heartburn.

4 I am very much understanding of what it takes to
5 get these videos so that I don't keep the jury waiting or
6 anything like that and cut them and agree to them and have
7 my law clerk run interference, if necessary, to be sure that
8 it's all teed up for the jury, and that's what these
9 deadlines in the standing order anticipates be done.

10 Now, what I want to know is the witnesses they
11 want to use, these Daniel experts --

12 MR. WALL: The fact witnesses. Both fact
13 witnesses, Your Honor.

14 THE COURT: Are you using those -- you are putting
15 those up?

16 MS. MCVEY: So we have our designations of Don
17 Buck and Mr. Boyer, who are the two kind of corporate
18 representatives of Celanese and Daniel. We have got those
19 ready to go, our designations.

20 THE COURT: And when did you receive their
21 designations on those witnesses?

22 MS. MCVEY: One was received Sunday. The other
23 was Saturday, past the deadline.

24 THE COURT: Past the seven deadline for submitting
25 those?

1 MS. MCVEY: That's right.

2 And -- right.

3 MR. BOGER: And, Your Honor, if I could, they also
4 submitted supplementals. They designated the entire
5 transcript two weeks ago and then submitted a supplemental
6 designation to reduce all that, and these witnesses were
7 deposited in late June.

8 You know, it's not unreasonable that we were all
9 working to try to get those -- the specific designations
10 done. We have had our paralegals in touch with the video
11 person they provided, and we are trying to get the --
12 attempt to re-cut the video so we can add that in. It's not
13 a large amount of testimony that we're trying to --

14 MS. MCVEY: Your Honor, it is so much bigger than
15 that. It takes so much time, because then they are going to
16 designation stuff and we have to object to it. You have to
17 rule on it and we have got to get this going. We need to
18 play it tomorrow, if not today. We can't do it, and they
19 shouldn't be rewarded for sandbagging. Everybody knows what
20 the rules are.

21 THE COURT: Well, I am going to deny Covil the
22 ability to designate more than what has been designated on
23 Saturday and Sunday. That is past the deadline and so I am
24 not going to allow Covil to use that testimony.

25 MR. WALL: We designated them Saturday and Sunday,

1 Your Honor.

2 THE COURT: Yes, sir, that's past -- well past the
3 deadline.

4 MR. WALL: Okay. So you are not going to -- even
5 though they designated and they designated the entire
6 deposition.

7 THE COURT: I'm not going to allow them to --

8 MR. WALL: And then they came back and cut it out.

9 THE COURT: I am going to allow them to --
10 When did you designate the specifics?

11 MR. WALL: Last week.

12 MS. MCVEY: Thursday, Friday.

13 MR. WALL: Last week, and --

14 MS. MCVEY: No, we designated it --

15 MR. WALL: And we did Saturday and Sunday.

16 THE COURT: Wait a minute. Wait a minute.
17 They designated the whole deposition when?

18 MS. MCVEY: During the appropriate deadline, so
19 that would have been Monday.

20 THE COURT: And then after the deadline y'all cut
21 it down?

22 MS. MCVEY: We just cut some out based on what has
23 happened.

24 THE COURT: Well, that disadvantages them because
25 if they count on everything being designated and don't

1 designate anything specific, then that's what's happened
2 here, Ms. McVey.

3 MS. MCVEY: But they -- I understand that, and for
4 any other defendant who actually designated anything, but
5 they designated nothing. That's the difference in my view.
6 And we cut it out simply to cut the court time out. I mean,
7 it --

8 THE COURT: I understand that. You know, I'm just
9 trying to be even handed.

10 I'm very unhappy with Covil and I think they are
11 costing the state a lot of money to try cases which they
12 have made no real attempt to get ready, and I will say that,
13 but what I want to know now is what the -- I don't want to
14 get into a big who shot John. What have they designated?

15 MR. BRANHAM: May I, judge?

16 THE COURT: Yes.

17 MR. BRANHAM: Judge, I glanced briefly at the
18 designations. They are fairly substantial. Given the
19 lateness of them, I haven't had a chance to go through and
20 deal --

21 THE COURT: Fairly substantial, meaning how much
22 more material?

23 MR. BRANHAM: My guess is that it's probably about
24 45 minutes worth of what the testimony, but, again, I
25 haven't been able to go through it, but we may have

1 objections. The problem here is that we may have objections
2 to their testimony and we'll keep those to a minimum, if we
3 can, but those are going to have to be looked at and ruled
4 on.

5 If Your Honor is inclined to allow them to play
6 certain excerpts from the Daniel depositions, my suggestion,
7 in order to deal with court time appropriately, would be
8 that they play those in their case in chief after we rest so
9 that we're not in a situation of having to get our people to
10 cut in excerpts into whatever else that's already been cut.

11 THE COURT: That's what I'm going to do. That's
12 what I'm going to do.

13 MR. WALL: We are already in the process of doing
14 that, from what I'm told.

15 THE COURT: What I'm going to do, Mr. Wall, and I
16 think I'm bending over backwards to do it given what's
17 occurred here, I'm going to allow you to play what you have
18 already designated, not by re-cutting their deposition, but
19 in your case.

20 MR. WALL: Yes, ma'am.

21 THE COURT: And that's what I'm going to do.

22 MR. WALL: Yes, Your Honor.

23 THE COURT: All right. Does that resolve that
24 particular thing?

25 MS. MCVEY: Yes, ma'am.

1 THE COURT: All right.

2 Now, let's go back then for a minute. We have got
3 the --

4 MR. BOGER: Well, Your Honor, while we are on the
5 subject of witnesses, we also filed a motion to strike a
6 particular witness.

7 THE COURT: I'm getting there.

8 MR. BOGER: Okay.

9 THE COURT: I'm getting there.

10 All right. There is Dwaine Waters.

11 As I understand, Mr. Waters' deposition testimony
12 was designated in advance of the deadlines, correct?

13 MS. MCVEY: Yes, ma'am.

14 THE COURT: And the objection is that it's -- his
15 deposition was taken in a different case --

16 MS. MCVEY: It was.

17 THE COURT: -- and that's it.

18 MS. MCVEY: It was, which Covil was a defendant in
19 the case and present at the deposition.

20 THE COURT: And had the right to examination.

21 MS. MCVEY: That's right.

22 THE COURT: I'm going to deny the motion in limine
23 with respect to the testimony of Dwaine Waters.

24 All right. Now, we have then got sanctions for
25 spoliation, discovery abuse, and failing to participate in

1 mediation.

2 With respect to the failure to participate in
3 mediation, I find that Covil -- and, again, this is a
4 decision that their corporate insurance representatives made
5 and that the lawyers apparently let them make, which I think
6 is tough. I understand that's who hired them, but our
7 mediation rules require participation in mediation. And
8 when they got the plaintiffs to agree to a separate
9 mediation and then unilaterally cancelled that separate
10 mediation because the insurance lawyers were unhappy about
11 the demand made by the plaintiff, the rules don't
12 accommodate that. That was a deliberate failure to
13 participate in mediation, which is required by our rules and
14 by the standing order of the court with respect to asbestos
15 trials.

16 And so I find that they have violated those rules
17 in their failure to participate in an agreed-upon mediation,
18 and that as a sanction for the failure to participate in
19 mediation, I will award attorneys fees and costs, amounts to
20 be submitted by plaintiff for that violation of the
21 requirement of mediation and as a sanction for that
22 violation.

23 The record is very complete that this was a
24 deliberate decision by counsel for the insurance companies
25 that insure Covil. Covil is a corporation no longer in

1 existence and its appearance here is completely controlled
2 by several insurance companies which insure Covil for the
3 times in question in this lawsuit, and those insurance
4 counsel, or insurance representatives, made the deliberate
5 decision to renege on their agreement to mediate in a
6 private mediation session.

7 I find that the sparse attempt that was made to
8 then discuss settlement with plaintiff at the close of our
9 very lengthy all-day hearing on various motions related to
10 Whitmire and to Crawford on July 11th, just past, is not
11 sufficient to make up for the clear intentional refusal to
12 mediate, as required by the rules. So that's the ruling
13 with respect to sanctions on the mediation violation.

14 With respect to the spoliation and discovery
15 abuse, I find that the assertion that all records of Covil
16 were destroyed by fire is not supported by even the
17 information that Covil submitted in this case, which
18 included a letter from Palmer Covil, president of Covil
19 Insulation Company, addressed to our friends, customers, and
20 employees, and this document was submitted as Exhibit D to
21 Covil reply to plaintiffs' motion for discovery sanctions,
22 dated July 14th, 2018, and supplied to me today.

23 In that letter from Mr. Covil, which was written
24 shortly after the fire of May the 14th, 1973, Mr. Covil said
25 to his customers "on Monday afternoon, May the 14th, we had

1 a very disastrous fire which completely destroyed our
2 fabrication shop and warehouse and part of our offices in
3 the Berea Industrial Park.

4 "By Monday, May the 28th, we expect to be back in
5 fairly normal operation, except for our fabrication shop.
6 We have warehouse facilities located on Rutherford Road.
7 Our general offices, including accounting, payroll, customer
8 service, contract, power and processes will be located in
9 the basement floor of Cone Mill offices on Buncombe Road.

10 "We expect to be able to service our many
11 customers and friends from these locations on a temporary
12 basis and trust that you will bear with us until we are able
13 to build back our old location."

14 Later in Mr. Palmer Covil's deposition, attached
15 as Exhibit A to Defendant's supplemental reply to a motion
16 for discovery sanctions -- Exhibit B -- correction, Exhibit
17 C, Mr. Palmer Covil says "we had -- and this is at page
18 nine, "well, let me explain one thing. We had a fire in May
19 of 1973 and it burned up a lot of our records, but here is a
20 copy of the complaint and the plaintiff's name, all of them,
21 whether they worked for us or not, just basic stuff that's
22 come in in reference to this case and some stuff we had and
23 some copies of invoices and other things we pulled out."

24 The question is "well, maybe we ought to start out
25 by you telling us what records were destroyed, what types of

1 things were destroyed in regard to these plaintiffs that you
2 have got a list of.

3 "Well, some of our personnel files and employment
4 records were destroyed. We just have a few of them. A good
5 many of them were destroyed and most all invoices and things
6 back prior to '73. The only thing we say got out of the
7 fire was vital records that we had in a vault, you know,
8 like accounts payable and accounts receivable and stuff like
9 that. We had them in a vault and we saved those, but our
10 invoices and employment records and things like that were
11 all destroyed.

12 "How about your insurance records?

13 "Well, I think we went back and found enough
14 records we know who had insurance at different times and
15 things like that, what companies were involved with
16 insurance.

17 "What types of records are now available in your
18 office?

19 "Well, everything from 1972 forward."

20 And then a co-worker -- or a Covil employee from
21 2004, Mr. Machen Lee Carpenter, testified in an asbestos
22 suit that the fire did not destroy all Covil documents. He
23 said "the front office complex did not burn down. It was
24 protected by a firewall. We kept all of our documentation
25 in a vault. Now where it is today, what is the limitation

1 on the time frame in which you had to keep it, I would say
2 it would be seven years, or less, so I would say it's
3 history."

4 I conclude from the material that has been
5 submitted to me, much of it by the defendant, that all the
6 records of Covil were not destroyed in the fire and that
7 Covil had those records at a certain point in time, as they
8 were described by Mr. Carpenter and Mr. Palmer Covil, and
9 that now they contend that the records were destroyed and no
10 longer available. This is at a time after lawsuits had been
11 filed, some of which were discussed by Mr. Palmer Covil in
12 the deposition excerpt that was presented to me by
13 defendants today.

14 I conclude, therefore, that spoliation has taken
15 place by Covil of some of its corporate records that are
16 pertinent to these proceedings.

17 And I also conclude that there are insurance
18 records available that have not been available to the
19 defendants in this case, but which Covil is now making
20 efforts in another lawsuit in Federal Court in North
21 Carolina to locate.

22 Either -- it is not clear what happened to the
23 records, insurance records, that Mr. Palmer Covil definitely
24 said were in existence at one time, but the company now says
25 it doesn't have them, and I find that spoliation has taken

1 place with regard to its retained copies of those records.

2 And as a -- in addition to that, I find that grave
3 abuse of discovery rules was made in the designation of a
4 corporate representative.

5 The defendant contends that the two Covils were
6 not designated as corporate representatives because one of
7 them is not able to recall things at this time, and that is
8 understandable, but that the other corporate representative
9 simply is not going to -- he's not going to testify. He
10 won't do it voluntarily. They have not made any effort to
11 subpoena him to testify or tender him without his consent as
12 a representative, but instead they hired an industrial
13 hygienist that had no connection with Covil, and two weeks
14 before the 30(b)(6) deposition, having been delayed many,
15 many times, was finally scheduled for -- within the last
16 short period of time in this case. Mr. Glenn was given two
17 weeks to review 25,000 documents, Mr. Robert Glenn, the
18 designated corporate representative.

19 Mr. Glenn testified in his deposition that he
20 might have reviewed about a 100 pages of all the 25,000
21 pages of documents that were allegedly supplied to him, and
22 he flipped through some of the depositions, two Covils and a
23 Mr. Johnson, who was a safety representative for -- or
24 safety manager for Covil, and that's how he prepared. He
25 was unable to answer very basic questions about the

1 operations of Covil at the times pertinent to this lawsuit.
2 He was unable to answer anything in any specificity about
3 the safety practices of Covil or the knowledge of Covil
4 about asbestos-containing products, so he was completely
5 unprepared as a 30(b)(6) witness in any reasonable way.

6 I want to make sure that I make it clear that this
7 was a decision that Covil and its current representative
8 insurance people made about the way they would supply
9 30(b)(6) information. This is not the fault of Mr. Wall or
10 Mr. Boger, who are the lawyers who are representing Covil at
11 this time. This is the responsibility of the insurance
12 representatives for Covil and the Covils themselves, that no
13 one was properly prepared to be a 30(b)(6) representative in
14 this case, but that is a fundamental aspect of disclosure in
15 discovery by a corporation in toxic tort cases, such as
16 this, and the failure to provide any meaningful
17 representative of Covil to testify to many factual pieces of
18 information that are important in the case is a complete
19 breakdown of compliance with Rule 30(b)(6) by Covil.

20 And, therefore, as a sanction for that -- and,
21 therefore, as a sanction for the complete breakdown of the
22 integrity of this process, in terms of compliance by Covil
23 and spoliation of evidence, I will grant the plaintiffs'
24 request that it be allowed to introduce Covil's -- introduce
25 evidence of Covil's destruction of documents and

1 misrepresentation about the circumstances of the
2 destruction, which I understand would primarily be by Mr.
3 Carpenter's designation as a witness;

4 That, second, I will instruct the jury that it can
5 draw a negative adverse inference, also known as a
6 spoliation presumption, from the defendant's acts and that
7 the negative adverse inference which may be drawn is that
8 plaintiff, Jerry Crawford, was exposed to
9 asbestos-containing insulation supplied and installed by
10 Covil at Hoechst Celanese between 1970 and 1974.

11 Third, that --

12 Those are the two sanctions I will impose, that
13 evidence of destruction of the documents; evidence of the
14 negative adverse inference, that is, that Mr. Crawford was
15 exposed to asbestos insulation. That will be what I will
16 allow.

17 A request has been made that Covil also be
18 prohibited from introducing expert testimony as a sanction.
19 I don't need to do that, since no expert witness has been
20 designated by Covil and could not be at this point in time,
21 because it is so far beyond the requirements of the standing
22 order with respect to the conduct of asbestos trials.

23 Now, that is my ruling on these particular
24 matters.

25 And I think I have covered everything in pretrial.

1 Mr. Boger?

2 MR. BOGER: Your Honor?

3 THE COURT: Mr. Boger?

4 MR. BOGER: Can I put something on the record,
5 Your Honor, regarding your ruling?

6 THE COURT: Oh, certainly. Let me just be sure I
7 have got all the motions outstanding.

8 MS. MCVEY: Those are all the motions we have,
9 Your Honor.

10 THE COURT: And I have got your motion?

11 MR. BOGER: Yes, Your Honor.

12 THE COURT: And, Mr. Boger, I know you want to put
13 exceptions on the record. Please go right ahead and do so.
14 You need to preserve your position for the record.

15 MR. BOGER: Thank you, Your Honor.

16 With respect to the ruling, we would submit that
17 the position taken by Covil in this matter was not that all
18 records were destroyed in the fire in 1973. There certainly
19 has been back and forth as to what was destroyed and was not
20 by a few of the fact witnesses, including Palmer Covil,
21 Jimmy Covil, and Mr. Carpenter.

22 As I mentioned in my argument earlier, we have
23 produced 25,000 pages worth of documents, approximately, in
24 this case. It has been 27 years since this business ceased
25 in 1991, and, frankly, we understand that the records have

1 been kept in prior counsel's office and we understand that
2 everything has been produced that we have.

3 In addition to that, there is no additional
4 testimony or evidence that portions of records were
5 destroyed by Covil at any point, besides the fire, which we
6 contend was not a deliberate or intentional act on behalf of
7 Covil.

8 In addition, we believe the facts and testimony of
9 this case will show that representatives of Daniel and
10 Celanese cannot place Crawford as applying and installing
11 insulation -- I'm sorry, Covil as applying and installing
12 the insulation at the Celanese plant during the period of
13 time that Mr. Crawford worked at the plant, from 1970 to
14 1974.

15 THE COURT: All right.

16 Mr. Wall?

17 MR. WALL: I will do my part of it.

18 Your Honor, Mr. Palmer Covil is dead, so he could
19 not testify. He's not refused to testify.

20 And Jim Covil has refused to testify -- well, we
21 have contacted his prior lawyers and said he can't handle
22 it. Too, they have subpoenaed him personally. So if he
23 comes, they can use him for whatever purpose they can.

24 Two, we have given them 900 pages of -- by a CD of
25 insurance records, the same insurance records that Palmer

1 Covil said they gathered altogether with the former counsel
2 and shipped them all to plaintiffs' counsel sometime ago.

3 THE COURT: Thank you, sir.

4 All right. All that is noted for the record, and
5 my ruling stands.

6 So, now, where are we, Ms. McVey?

7 MS. MCVEY: I think we are ready for jury
8 selection.

9 MR. WALL: I got -- when you are finished. When
10 you are finished I got another issue to bring up.

11 THE COURT: All right.

12 MS. MCVEY: One question, that the inference that
13 you are going to give, will you give that at the beginning
14 before opening, or when will that happen? Will that be in
15 the charge at closing charges?

16 THE COURT: It ought to be done at the beginning
17 of trial, and my idea is going to be this. I will voir dire
18 the jury with these few questions I have for them. We will
19 make -- we will have jury selection. I will send them to
20 lunch and you all will present me with something before
21 opening takes place --

22 MS. MCVEY: Okay.

23 THE COURT: -- that you share with the other side,
24 of course.

25 MS. MCVEY: Okay. We will do that.

1 The only other issue, and we can take it up after
2 lunch, is we have given Mr. Wall our power point slides for
3 opening --

4 THE COURT: Yes.

5 MS. MCVEY: -- and I think he's got objections to
6 those, but we can take them up after lunch, or after we
7 select the jury, I guess.

8 THE COURT: After we select the jury. I don't
9 want to delay the jury.

10 Mr. Wall, you got -- are you wanting to talk about
11 the power point?

12 MR. WALL: Well, yes, but one other thing. Your
13 Honor, I didn't fully understand. Are you giving a negative
14 inference that he actually worked with the property --
15 products of Covil, or a negative inference that we destroyed
16 product?

17 THE COURT: I'm going to repeat this once again --

18 MR. WALL: Thank you.

19 THE COURT: -- so you understand what I have done.

20 MR. WALL: Thank you.

21 THE COURT: I have done two things as a sanction
22 for spoliation and for discovery abuse.

23 One, I am allowing them to introduce in their case
24 in chief evidence of Covil's destruction of documents and
25 misrepresentations about the destruction -- the

1 circumstances of destruction, and that, as I understand it,
2 will primarily be through the sworn statements of Mr. Machen
3 Carpenter. So that's what I have done, number one. That
4 will be done during the course of their case. I'm not
5 giving any instructions about that. That is simply going to
6 be testimony that is going to be offered on destruction of
7 documents and misrepresentations.

8 And I am going to instruct the jury that it may
9 draw a negative adverse inference from defendant's acts
10 that --

11 What I'm going to do is instruct them simply this.

12 I'm going to instruct them that plaintiff Jerry
13 Crawford was exposed to asbestos-containing insulation
14 supplied by and installed by Covil Corporation at Hoechst
15 Celanese between 1970 and 1974. That's what I'm going to
16 instruct the jury. I'm not going to go into it was
17 spoliation, negative inference. I'm simply going to tell
18 them at the appropriate time, which would be right before
19 opening statements, I will say that to them.

20 MR. WALL: Your Honor, first of all, as I said
21 before last on the 11th, I need a written order so I can --

22 THE COURT: No, sir, I have examined -- I have
23 examined that quite closely. I can on the record recite my
24 order. I'm not required to give you a separate written
25 order.

1 MR. WALL: Then, Your Honor, then --

2 THE COURT: This is not a directly appealable
3 matter.

4 MR. WALL: I understand.

5 THE COURT: You can't stop the trial.

6 MR. WALL: I'm not asking to. I just want to be
7 well within my rights to timely file my Rule 59(e) motion.

8 THE COURT: Right, and you can do that as a result
9 of my on-the-record recitation of my order.

10 MR. WALL: All right. You are agreeing that that
11 is in writing as -- because Rule 59 says it has to -- when
12 you get a written order, you apply it --

13 THE COURT: Yes, sir.

14 MR. WALL: Rule 59.

15 THE COURT: Yes, sir. It's going to be a
16 transcript of the trial and it's going to be in writing in
17 two different ways. Number one, the official court reporter
18 is taking down everything that I say and he will transcribe
19 that.

20 In addition to that, the plaintiffs, and perhaps
21 you all have collaborated on this, have a private court
22 reporter, Deborah Dusseljee, who is also taking down
23 everything that I'm saying and a written transcript can be
24 obtained from her.

25 So there are two different ways in which a written

1 transcription of my order on the record can be gotten.

2 MR. WALL: Two, I suggests, Your Honor, that the
3 sanctions that you have issued as to the witness and as
4 to -- saying that he was, in fact, exposed to products from
5 Covil, it's equivalent to striking my answer, because we
6 have a factual basis and a factual basis says he was not
7 exposed to our product and we have two witnesses who are
8 going to say that. So I suggest --

9 THE COURT: Your witnesses are going to say
10 something very different from that. Your witnesses are
11 going to say that they don't know of any exposure. That is
12 very, very different from whether or not he was exposed, and
13 so -- I have not struck your answer. I have not struck your
14 defenses, but I have -- because of Covil's behavior and
15 disregarding so extremely the requirements of the standing
16 order and the rules of discovery, I have sanctioned Covil by
17 allowing the jury to be instructed that Mr. Crawford was
18 exposed to asbestos-containing insulation installed by and
19 supplied by Covil between 1970 and 1974.

20 MR. WALL: I understand, and I'm not arguing with
21 the court.

22 THE COURT: Sure.

23 MR. WALL: And, finally, Your Honor, I find that
24 your sanctions -- I find -- I believe --

25 THE COURT: Yes, sir.

1 MR. WALL: -- that your sanctions are a directed
2 verdict against the defendant. So I suggest that the case
3 is now over, that you are already going to instruct the jury
4 that they are to find that our only defense is that we did
5 not give the materials there, that he was not exposed to our
6 products is not the facts of the case. So, Your Honor, you
7 have now directed a verdict against us.

8 THE COURT: All right.

9 Well, I do not find that I have done that, but I
10 will look again at how I word this instruction to the jury
11 to whether I simply instruct them, as I said just a moment
12 ago, that he was exposed, or whether I say to them you may
13 infer or you shall infer.

14 MS. MCVEY: And, Your Honor, just briefly in
15 response, you clearly haven't directed a verdict because we
16 still have to prove causation.

17 THE COURT: Exactly.

18 MS. MCVEY: We could prove that that exposure
19 caused mesothelioma.

20 THE COURT: Yes, sir.

21 MS. MCVEY: If Mr. Wall wants to stipulate to
22 that, then we could have a damages hearing, I suppose, but I
23 imagine he's not going to stipulate --

24 MR. WALL: We are -- we are not contesting that he
25 died of mesothelioma.

1 THE COURT: Right. You are not contesting that,
2 but you are contesting whether the asbestos to which he was
3 exposed by Covil caused his mesothelioma.

4 MR. WALL: If he was exposed to asbestos supplied
5 by Covil, it -- okay. Okay.

6 THE COURT: I mean, if you want to embrace any and
7 all exposure and all the other --

8 MR. WALL: No, I'm not --

9 THE COURT: I advise you that you may not want to
10 go that far.

11 MR. WALL: Right.

12 MS. MCVEY: If he wants to agree that the exposure
13 to Covil Insulation causes mesothelioma, then we can just --
14 we would agree and we could have a damages hearing.

15 THE COURT: Yeah, and if you want to do that,
16 that's fine. I don't think you want to do that, but I'm not
17 going to --

18 MR. WALL: Right.

19 THE COURT: -- advise you in that regard.

20 MR. WALL: Right.

21 THE COURT: Okay. All right.

22 And understand now, on these power points -- let
23 me see them and see what you are fussing about.

24 MR. WALL: It says -- may I approach?

25 THE COURT: Sure. Absolutely.

1 (Whereupon, the lawyers approached the bench for
2 an on-the-record discussion)

3 MR. WALL: We discussed this this morning.

4 THE COURT: Yes, sir, which generally happens with
5 these power points.

6 These are the ones that you are going to use in
7 your opening argument?

8 MR. WALL: Yes.

9 MR. CHAPMAN: I am, Your Honor.

10 THE COURT: All right.

11 Now, what are you objecting to about these?

12 MR. WALL: "They knew it. They did it. They hid
13 it."

14 THE COURT: Yes, sir. And you object to that?

15 MR. WALL: Yes.

16 THE COURT: Why?

17 MR. WALL: Because they haven't put any evidence
18 in yet.

19 THE COURT: Opening arguments are a statement of
20 what plaintiff intends to prove.

21 All right. The first thing on the power point,
22 all right, "they knew it. They did it. They hid it" is
23 appropriate opening argument.

24 If they don't prove it, I'm sure that you will
25 discuss that with the jury, but that's overruled. That's

1 okay.

2 What else?

3 MR. WALL: The same thing all way through there.

4 THE COURT: All right.

5 MR. WALL: Undisputed facts.

6 THE COURT: And disputed facts.

7 If it turns out that the undisputed facts ends up
8 being somehow not the real facts, I'm sure we can deal with
9 that, but so far "Jerry Crawford worked at Celanese
10 Spartanburg from 1970 to 1974, around asbestos-containing
11 pipe insulation." I'm going to allow them to infer that as
12 we talk.

13 "Jerry Crawford has cancer." I don't think there
14 is any doubt about that.

15 "Covil sold asbestos-containing products,
16 specifically pipe insulation." There is not going to be any
17 doubt about that.

18 MR. WALL: Well, Your Honor, we --

19 THE COURT: I understand you do, but they got
20 evidence to the contrary and they are going to put it in, so
21 it's going to be, you know, at most a disputed fact, but if
22 they --

23 MR. WALL: Okay.

24 THE COURT: If you end up putting the evidence up
25 like you are talking about, we will bring that to the

1 attention of the jury when you argue to them.

2 "Jerry Crawford did nothing wrong." Nobody says
3 he did anything wrong.

4 MR. WALL: Your Honor, the first one was the major
5 one.

6 THE COURT: Well, okay, overruled.

7 MR. WALL: Right.

8 Everything else is sort of generic, so I have no
9 problem with that.

10 THE COURT: Lifestyle, exposure.

11 MR. WALL: "They did it. They knew it, and they
12 hid it."

13 THE COURT: I know. Well, I think that's
14 appropriate argument.

15 Ms. McVey, I don't think that we need to put this
16 in. It will be in evidence, Mr. Court Reporter, when she
17 shows the power point and if you want to mark it
18 demonstrative. It doesn't go back to the jury, but if you
19 want to mark it as demonstrative, I think that would be well
20 so that Mr. Wall will have that in the record for his
21 objection.

22 MS. MCVEY: Okay.

23 THE COURT: So the objection is overruled and an
24 exhibit -- a power point will be given to the court
25 reporter. And Mr. Reporter, you are to mark that as Court's

1 Exhibit No. 1. It doesn't mess up your designation. And
2 then Mr. Wall has got in the record what he wants for his
3 objection.

4 (Plaintiffs' Power Point marked as Court's Exhibit
5 No. 1 for identification)

6 MR. WALL: Do I understand that the way that judge
7 has ruled that I do not need to renew my objection during
8 opening statement?

9 THE COURT: That's correct. That's exactly why I
10 did it here and I made a complete record and I have put it
11 on the record, so you are protected.

12 MR. WALL: Thank you.

13 MS. MCVEY: Thank you, Your Honor.

14 THE COURT: All right.

15 All right. What else?

16 MS. MCVEY: I think we are good.

17 THE COURT: Very good.

18 Is the jury just sitting there wondering what in
19 the world is happening?

20 THE BAILIFF: Yes, ma'am.

21 THE COURT: Good bring them out.

22 I suggests, friends, it's 12:30. Let's go on and
23 get jury selection out of the way and then we will figure
24 out what we want to do for lunch.

25 MS. MCVEY: Perfect.

1 THE COURT: All right.

2 MS. MCVEY: Your Honor, we have -- after opening
3 we have Dr. Brody here today to go on.

4 THE COURT: What's that?

5 MS. MCVEY: We have Dr. Brody ready to go today --

6 THE COURT: Good.

7 MS. MCVEY: -- after opening.

8 THE COURT: All right. If you will bring the
9 jury, we will just stay here and let the whole venire be
10 brought in, Ben.

11 THE BAILIFF: Yes, ma'am.

12 THE COURT: Very good.

13 (Off the record).

14 (Back on the record).

15 (Whereupon, the jury venire panel was brought into
16 the courtroom)

17 THE COURT: Ladies and gentlemen, thanks very much
18 for your patience as we now come to jury selection in this
19 matter.

20 My name is Jean Toal. I'm from Columbia. I was
21 the Chief Justice of South Carolina for 15 years and on the
22 court for 27. I retired in 2015.

23 Since that time I have been serving as a Circuit
24 Court judge and I have been managing several kinds of cases,
25 including cases involving asbestos. This is the second time

1 that I have come to Spartanburg this year to try a case and
2 I very much appreciate the kindness and hospitality and
3 decency of the people of Spartanburg. You are special and
4 I'm honored to be among you.

5 What I will do right now is a couple of things.

6 First of all, I have a few more questions that
7 relate themselves to the specific facts of this case and I
8 will instruct you how to respond to those questions here
9 momentarily.

10 When we are finished, the clerk will develop a
11 list for the attorneys and they will pick the jury. And
12 after the jury is picked and you are seated in the jury box,
13 I will dismiss you for lunch and we will begin the opening
14 statements in this trial this afternoon.

15 Many times these asbestos cases run on for two
16 weeks, but I am very optimistic that this case will try this
17 week. Both sides have assured me that we can get through it
18 this week. I try to run a court in which your time is not
19 wasted, so if I have issues that I need to take up with the
20 attorneys, I do those when you're on a break, so that when
21 you come back we are prepared as I can get us to move
22 forward in an effective and efficient way for you to decide
23 the matters in this case.

24 Thank you again for your patience and let me now
25 turn to the questions that I have for you.

1 This case arises from Mr. Jerry Crawford's alleged
2 occupational exposure to asbestos.

3 The plaintiffs are Jerry Crawford, the Estate of
4 his wife Evelyn Crawford, and his three children Patty
5 Giles, Tessa Quinn, and Danny Crawford.

6 The plaintiffs allege that Mr. Crawford contracted
7 mesothelioma cancer as a result of exposures to asbestos
8 while working at Celanese in Spartanburg.

9 The defendant in this case is Covil Corporation.

10 I have some questions for you and at the end of
11 each question I will ask those who respond in the
12 affirmative to please stand.

13 The first question is does anyone on this jury
14 know Jerry Crawford? If so, please stand.

15 (No response).

16 THE COURT: Does anyone know his wife, Evelyn
17 Crawford? If so, please stand.

18 (No response).

19 THE COURT: Does anyone in the jury venire know
20 Mr. Crawford's children - Patty Giles, Tessa Quinn, and
21 Danny Crawford? If so, please stand.

22 (No response).

23 THE COURT: Is there any member of the jury who
24 knows or has any connection to the defendant, Covil
25 Corporation, C-O-V-I-L, who sold and installed insulation?

1 If so, please stand.

2 (No response).

3 THE COURT: Is there any member of the jury who
4 has any connection with Hoechst Celanese? If so, please
5 stand.

6 Yes, ma'am.

7 When you answer my question --

8 JUROR NUMBER 285: Okay.

9 THE COURT: -- what you do is give me your juror
10 number and then answer the question.

11 JUROR NUMBER 285: Okay. 285.

12 THE COURT: Yes, ma'am.

13 And what's -- what is your connection to Celanese
14 or knowledge about it?

15 JUROR NUMBER 285: My father worked there for over
16 50 years and retired from Celanese recently.

17 THE COURT: When did your dad retire?

18 JUROR NUMBER 285: Two years ago.

19 THE COURT: Thank you, ma'am.

20 Would the fact that your father worked for Hoechst
21 Celanese Corporation for 50 years interfere with your
22 ability to give a fair and impartial verdict in this case?

23 JUROR NUMBER 285: No.

24 THE COURT: Very good. You may be seated.

25 Is there any member -- is there any member of the

1 jury or any member of your immediate family, and by that I
2 mean your children, so you or your children, ever been a
3 plaintiff or a defendant in a lawsuit? If so, please stand.

4 Yes, ma'am, your juror number?

5 JUROR NUMBER 142: Number 142.

6 THE COURT: Yes, ma'am.

7 JUROR NUMBER 142: A lawsuit regarding an
8 automobile accident.

9 THE COURT: Involving who?

10 JUROR NUMBER 142: I was the plaintiff.

11 THE COURT: All right.

12 And would the fact that you were a plaintiff in a
13 lawsuit involving an automobile accident interfere with your
14 ability to give a fair and impartial verdict in this case?

15 JUROR NUMBER 142: Yes, due to my physical
16 limitations.

17 THE COURT: All right.

18 I will dismiss you from service on this jury, but
19 I will ask you to come here to the clerk. She will transfer
20 you to another court session.

21 JUROR NUMBER 142: Now?

22 THE COURT: So you come forward right now.

23 Yes, sir.

24 JUROR NUMBER 192: 192.

25 THE COURT: 192?

1 JUROR NUMBER 192: Correct.

2 THE COURT: All right, sir.

3 JUROR NUMBER 192: Yeah, I was a plaintiff in a
4 lawsuit following an automobile accident.

5 THE COURT: On a -- what kind of accident?

6 JUROR NUMBER 192: Automobile.

7 THE COURT: Automobile accident.

8 And would your participation as a plaintiff in a
9 lawsuit involving an automobile accident in any way
10 interfere with your ability to give a fair and impartial
11 verdict in this matter?

12 JUROR NUMBER 192: No, ma'am.

13 THE COURT: Very good. You may be seated.

14 Yes, ma'am.

15 JUROR NUMBER 108: 108.

16 THE COURT: 108.

17 Yes, ma'am.

18 JUROR NUMBER 108: I was a plaintiff in an
19 automobile accident.

20 THE COURT: All right.

21 And would the fact that you were a plaintiff in an
22 automobile accident interfere with your ability to give a
23 fair and impartial verdict in this matter?

24 JUROR NUMBER 108: No, ma'am.

25 THE COURT: Very good. You may be seated.

1 THE COURT: Yes, sir.

2 JUROR NUMBER 210: Juror 210.

3 THE COURT: Juror 210.

4 Yes, sir.

5 JUROR NUMBER 210: I have been a plaintiff in an
6 automobile accident years ago.

7 THE COURT: Yes, sir.

8 Would the fact that you were a plaintiff in an
9 automobile accident years ago interfere with your ability to
10 give a fair and impartial verdict in this case?

11 JUROR NUMBER 210: No, ma'am.

12 THE COURT: Very good. You may be seated.

13 JUROR NUMBER 210: Also I have a workmen's comp.
14 I don't know if you would call it a --

15 THE COURT: You were a claimant in a worker's
16 compensation matter?

17 JUROR NUMBER 210: Yes, ma'am.

18 THE COURT: And would the fact that you were a
19 claimant --

20 JUROR NUMBER 210: I guess it's ongoing.

21 THE COURT: Yes, sir.

22 And would the fact that you have an ongoing claim
23 in worker's comp interfere with your ability to give a fair
24 and impartial verdict in this matter?

25 JUROR NUMBER 210: No, ma'am.

1 THE COURT: Very good. You, may be seated.

2 Anyone else?

3 (No response).

4 THE COURT: All right.

5 Has anyone -- has any member of the jury venire
6 ever worked around asbestos?

7 Yes, sir, your number?

8 JUROR NUMBER 57: Juror 57.

9 THE COURT: Yes, sir.

10 JUROR NUMBER 57: Between the ages of 18 to 28 I
11 worked in the insulation contracting and --

12 THE COURT: All right.

13 JUROR NUMBER 57: -- removal of asbestos.

14 THE COURT: All right. And would the fact that
15 you worked at the ages specified in insulation and removal
16 of insulation interfere with your ability to give a fair and
17 impartial verdict in this matter?

18 JUROR NUMBER 57: No, Your Honor.

19 THE COURT: All right.

20 Yes, sir, juror number?

21 JUROR NUMBER 192: 192.

22 THE COURT: 192.

23 JUROR NUMBER 192: Yeah, I worked installing
24 Internet and had to crawl through the attics with the
25 insulation.

1 THE COURT: All right.

2 And would the fact that you had the experience of
3 working around insulation, as you have described it,
4 interfere with your ability to give a fair and impartial
5 verdict in this matter?

6 JUROR NUMBER 192: No, ma'am.

7 THE COURT: Very good. You may be seated.

8 Yes, sir.

9 JUROR NUMBER 75: Juror 75.

10 THE COURT: Yes, sir.

11 JUROR NUMBER 75: Our test lab at our facility
12 where I work is lined with asbestos tile.

13 THE COURT: Yes, sir.

14 And would the fact that the facility in which you
15 work has asbestos tiles interfere with your ability to give
16 a fair and impartial verdict in this matter?

17 JUROR NUMBER 75: No, Your Honor.

18 THE COURT: Very good. You may be seated.

19 All right. There are a number of people who are
20 going to testify in this case and if you know any of them or
21 have any concern or difficulty, please stand. I'm going to
22 read these witnesses, and any of you who may have any
23 association with any of them, please stand.

24 Harley Neelands.

25 Dr. Arnold Brody.

1 John Maddox.

2 Jerry Crawford.

3 Patsy Giles.

4 Tessa Quinn.

5 Palmer Covil.

6 Jim Covil.

7 Don Buck.

8 Dwaine Waters.

9 Machen Carpenter.

10 Dr. John Crapo, MD.

11 Tony Watson, certified industrial hygienist.

12 And Robert Glenn, certified industrial hygienist.

13 Yes, sir?

14 MR. BOGER: One additional name.

15 May I approach?

16 THE COURT: Yes, sir. All right. This is not the
17 time to be doing this, though, Mr. Boger.

18 (Off the record).

19 (Back on the record).

20 (Whereupon, the lawyers approached the bench for
21 an off-the-record discussion).

22 THE COURT: Bruce Boyer. All right.

23 None stood.

24 And so I take it that -- I know the answer to
25 this, but I need to ask it anyway. Is any member of the

1 jury panel related by blood or marriage to any of these
2 witnesses?

3 (No response).

4 THE COURT: All right.

5 Do any of you know the lawyers involved in this
6 matter; Ms. Theile McVey?

7 Mr. Aaron Chapman.

8 Mr. Mark Buha.

9 Mr. Trey Branham.

10 Mr. Mark Wall.

11 And Mr. Tommy Boger.

12 If so, please stand.

13 (No response).

14 THE COURT: Very good.

15 Is there any member of the jury panel who has a
16 family member who has mesothelioma or any
17 asbestos-associated disease? If so, please stand.

18 (No response).

19 THE COURT: Any member of the jury panel who has
20 expressed or formed any opinion with regard to this case or
21 any aspects of this case? If so, please stand.

22 (No response).

23 THE COURT: Is there any member of the jury panel
24 who is not prepared to give all parties in this case a fair
25 trial based on the law and the evidence as presented in this

1 courtroom? If so, please stand.

2 (No response)

3 THE COURT: Have you or anyone in your immediate
4 family ever worked as an insulator, and I do -- the
5 gentleman who answered that question don't need to stand up
6 again. Boilermaker, rigger, millwright, machinist, pipe
7 fitter, valve technician, engineer, or work with boilers,
8 pumps, valves, gaskets, or packing. If so, please stand.
9 You or any member of your family.

10 All right. Y'all just stay right there and I'll
11 go and --

12 First, yes, sir.

13 JUROR NUMBER 40: Juror number 40. I'm an
14 electrical engineer.

15 THE COURT: Very good.

16 Would the fact that you're an electrical engineer
17 in any way interfere with your ability to give a fair and
18 impartial trial in this matter?

19 JUROR NUMBER 40: No, it will not.

20 THE COURT: Yes, sir.

21 JUROR NUMBER 217: 217.

22 THE COURT: 217.

23 JUROR NUMBER 217: I'm a maintenance supervisor at
24 Wofford College. I have been in that kind of field for the
25 last 20 years.

1 THE COURT: All right, sir.

2 And would the fact that you are a maintenance
3 supervisor at Wofford in any way interfere with your ability
4 to give a fair trial in this matter?

5 JUROR NUMBER 217: No, ma'am.

6 THE COURT: Very good.

7 Yes, sir.

8 JUROR NUMBER 192: 192.

9 THE COURT: 192.

10 JUROR NUMBER 192: Yes. I work for in a machine
11 shop for about 15 years.

12 THE COURT: All right, sir.

13 And would the fact that you work in a machine shop
14 for 15 or 16 years interfere with your ability to give a
15 fair and impartial trial in this matter?

16 JUROR NUMBER 192: No, ma'am.

17 THE COURT: All right. Thank you.

18 Yes, ma'am, in the back.

19 JUROR NUMBER 204: Juror 204.

20 THE COURT: Yes, ma'am.

21 JUROR NUMBER 204: I'm currently a tool maker, but
22 I have been a machinist before for several years.

23 THE COURT: All right, ma'am.

24 And would the fact that you are tool maker and
25 have been a machinist in the past in any way interfere with

1 your ability to give a fair and impartial trial in this
2 matter?

3 JUROR NUMBER 204: No, ma'am.

4 THE COURT: Yes, sir.

5 JUROR NUMBER 144: Juror 144.

6 THE COURT: Yes, sir.

7 JUROR NUMBER 144: I work for the city utilities
8 doing preventative maintenance. We deal with a lot of
9 valves and pumps.

10 THE COURT: Uh-huh.

11 And would the fact that as a city maintenance
12 worker, you are around valves and pumps, in any way
13 interfere with your ability to give a fair trial and
14 impartial trial in this matter?

15 JUROR NUMBER 144: No, ma'am.

16 THE COURT: All right, sir.

17 Yes, sir.

18 JUROR NUMBER 90: Juror number 90.

19 THE COURT: Yes, sir.

20 JUROR NUMBER 90: Work in the maintenance
21 department with valves, boilers, and all the above.

22 THE COURT: All right.

23 And would the fact that you work in the
24 maintenance department with valves and other related
25 equipment interfere with your ability to give a fair and

1 impartial trial in this matter?

2 JUROR NUMBER 90: No.

3 THE COURT: Very good.

4 All right. And, finally, this may be a little
5 repetitive, some questions Judge Hayes would have asked you
6 about jury service, but have any of you served on a jury?
7 If so, please stand.

8 Yes, sir. All right. Yes, sir.

9 JUROR NUMBER 18: 18.

10 THE COURT: When?

11 JUROR NUMBER 18: Probably 15 years ago.

12 THE COURT: All right. Civil or criminal?

13 JUROR NUMBER 18: Civil.

14 THE COURT: You, sir?

15 JUROR NUMBER 72: 72. About -- back in '91.

16 THE COURT: All right, sir.

17 Civil or criminal?

18 JUROR NUMBER 72: Civil.

19 THE COURT: You?

20 JUROR NUMBER 210: Probably -- I'm not sure

21 what --

22 THE COURT: Your number?

23 THE WITNESS: 10 years. 210.

24 THE COURT: And?

25 JUROR NUMBER 210: Civil.

1 THE COURT: Several years ago?

2 JUROR NUMBER 210: Probably 10, 15 years ago.

3 THE COURT: Civil or criminal, if you remember?

4 JUROR NUMBER 210: Civil.

5 THE COURT: Okay. You in the back, yes, sir.

6 JUROR NUMBER 75: 75.

7 THE COURT: Yes, sir.

8 JUROR NUMBER 75: Civil jury.

9 THE COURT: How long ago?

10 JUROR NUMBER 75: 2015.

11 THE COURT: All right. 2015.

12 Yes, ma'am.

13 JUROR NUMBER 283: 283. Civil, 10 years ago.

14 THE COURT: All right.

15 In back?

16 JUROR NUMBER 81: 81. It was a federal case, four
17 months ago.

18 THE COURT: Now called for this duty. God bless.

19 Yes, ma'am.

20 JUROR NUMBER 120: Juror 120. Civil, in the
21 1980's.

22 THE COURT: All right.

23 In the back there. Yes, ma'am.

24 JUROR NUMBER 204: 204, civil, last week.

25 THE COURT: Oh, my. In magistrate's court?

1 JUROR NUMBER 204: Yes, ma'am.

2 THE COURT: Uh-huh.

3 Yes, ma'am.

4 JUROR NUMBER 86: Juror number 86. It was in
5 2008. It was criminal.

6 THE COURT: All right.

7 And in back there?

8 JUROR NUMBER 285: Juror number 285. It was civil
9 and it was about 20 years ago.

10 THE COURT: Okay.

11 Up front here.

12 JUROR NUMBER 265: Juror 265, early eighties,
13 civil.

14 THE COURT: All right.

15 You, sir?

16 JUROR NUMBER 57: 57. Juror about 20 years ago.

17 THE COURT: All right, sir.

18 JUROR NUMBER 57: Civil.

19 THE COURT: Civil.

20 Yes, ma'am.

21 JUROR NUMBER 168: Juror 168. It was criminal and
22 it was over 20 years ago.

23 THE COURT: All right.

24 Now, I'm just going to ask all of you at one time,
25 all right, who answered affirmatively that you had

1 participated in jury service, either very recently, like our
2 two friends on this side of the aisle, or at more of a
3 distance, would your participation in a jury trial in any
4 way interfere with your ability to give a fair and impartial
5 trial in this matter? If so, please stand.

6 (No response).

7 THE COURT: Very good.

8 I have asked you about Celanese.

9 Has any member of your family ever worked around
10 asbestos-containing thermal insulation? If so, please
11 stand.

12 (No response)

13 THE COURT: Is there anyone who would not be able
14 to follow the rules of court and set sympathy aside when you
15 are evaluating a case and where the plaintiff was injured by
16 mesothelioma, contracted mesothelioma? If so, please stand.

17 (No response).

18 THE COURT: That completes my questions, ladies
19 and gentlemen.

20 Now, the clerk will generate a list for the
21 parties to use and they will select a jury.

22 MS. MCVEY: Your Honor, can we approach quickly?

23 THE COURT: You may.

24 (Whereupon, the lawyers approached the bench for
25 an off-the-record discussion)

1 THE COURT: Ladies and gentlemen, the parties may
2 need a few moments to examine the list and then decide so
3 that our picks of the jury will move very quickly, so what
4 I'm going to do is take a break now. It's ten minutes of
5 one and ask the venire to come back after that time and what
6 I would like you to do is come back at 2:15. We will then
7 select the jury. Those of you who are not selected may
8 mercifully go about your business and the others will listen
9 to opening statements. So I will see you back here at 2:15.

10 (Whereupon, the jury venire panel left the
11 courtroom)

12 (Off the record).

13 (Back on the record).

14 THE COURT: Let's talk about the length of opening
15 statements and who is going to give them.

16 Who is going to be speaking for the plaintiff?

17 MR. CHAPMAN: I am, Your Honor.

18 MS. MCVEY: Mr. Chapman.

19 THE COURT: All right, Mr. Chapman.

20 And who will be opening for --

21 MR. WALL: Me.

22 THE COURT: Mr. Wall.

23 What y'all want? I'll see what I will give.

24 MR. CHAPMAN: Your Honor, I think I can be done
25 and sitting down in less than 45 minutes.

1 THE COURT: Good. I will allow an hour for each,
2 just so you won't be stressed out. And if you want to
3 reserve anything, plaintiffs, you can do that, but it sounds
4 to me like we will move along rather rapidly.

5 MR. WALL: I'm probably 15 or 20 minutes.

6 THE COURT: That's fine.

7 Then y'all will be within my range of what I think
8 is not going to wear the jury out, so I'll just trust you to
9 do usual capable jobs.

10 MR. BRANHAM: Your Honor, after opening statements
11 we are going to have Dr. Brody here.

12 THE COURT: Yes.

13 MR. BRANHAM: The court is very familiar with Dr.
14 Brody.

15 THE COURT: I am.

16 MR. BRANHAM: Dr. Brody has a flight at eight
17 o'clock tonight.

18 THE COURT: Yes.

19 MR. BRANHAM: I expect that we can get him done in
20 two hours, which it sounds like we will have, but to the
21 extent that we need an extra thirty minutes, or so, to work
22 to get him on and off today, I would ask --

23 THE COURT: We are going to get -- no problems
24 there.

25 MR. CHAPMAN: Your Honor, may I clarify something?

1 THE COURT: Yes, sir.

2 MR. CHAPMAN: If I have some time remaining
3 underneath my hour, which I think I will, can I reserve that
4 time to rebut anything that Mr. Wall --

5 MR. WALL: No, Your Honor.

6 MR. CHAPMAN: -- says?

7 MR. WALL: I object.

8 MR. CHAPMAN: I'm just trying to understand what
9 you are saying.

10 THE COURT: I generally allow plaintiff to reserve
11 a little time, since they got the burden of proof, but if
12 you object to it, let's just stick with each side giving
13 their opening and go on forward with it.

14 MR. CHAPMAN: Thank you, Your Honor.

15 THE COURT: All right. Anything else that I need
16 to do for you?

17 MR. WALL: No, Your Honor.

18 MS. MCVEY: We just need strike sheets and that's
19 it.

20 THE COURT: Okay. She's got -- have I got the
21 strike sheets, Maribell?

22 THE CLERK: I'm doing that right now.

23 MS. MCVEY: And, Your Honor, can we leave the
24 courtroom open so that our tech guys can set up for opening
25 during lunch?

1 THE COURT: Certainly.

2 MS. MCVEY: Okay.

3 THE COURT: Y'all leave the courtroom open and let
4 their technical people set up.

5 And y'all are going to get strike sheets from
6 Maribell right now.

7 MS. MCVEY: And then we will be ready to strike as
8 soon as we get back.

9 THE COURT: Okay. Good. I'm going to depart from
10 you.

11 MS. MCVEY: Thank you.

12 (Whereupon, proceedings were recessed)

13 (Whereupon, proceedings were reconvened)

14 THE COURT: Bring us the jury.

15 Before the jury comes in, Mr. Wall, have you seen
16 the stipulation?

17 MR. WALL: Yes, Your Honor.

18 THE COURT: All right. I know that you don't like
19 it, but --

20 MR. WALL: I object to it, Your Honor. I think
21 it's too severe. That doesn't match the crime what the law
22 says. You should have done what you said you were thinking
23 about doing was saying that the jury could decide an
24 inference that he was exposed to insulation --

25 THE COURT: Well, what it was going to be was a

1 presumption based on the fault of the defendant, but do you
2 remember, I decided early on that I wasn't going to tell
3 them about badness on y'all's part, that other ruling is a
4 motion in limine I ruled on at the pretrial, so what I'm
5 going to do is charge it this way and you object to it and
6 you say it's tantamount to a directed verdict, etcetera,
7 etcetera, and your position is preserved.

8 MR. WALL: Thank you, Your Honor.

9 THE COURT: Yes, sir.

10 MR. WALL: I won't say another word based upon
11 your representation.

12 THE COURT: Absolutely. Absolutely.

13 And what this will be done, it won't be done now.
14 It will be done right before the lawyers open.

15 MS. MCVEY: Okay. That's what I wanted to just
16 clarify.

17 THE COURT: Yeah.

18 MS. MCVEY: Thank you, Your Honor.

19 (Off the record).

20 (Back on the record).

21 THE COURT: Now, one other thing I will just tell
22 y'all. I allow note taking and I have instructed the
23 clerk's office to make tablets available for the purpose of
24 note taking and I give them an instruction about that.
25 Those of you who have tried some other cases with me know

1 that I do it. I think it keeps them a little more focused
2 than they otherwise would be.

3 MS. MCVEY: Will we just make sure that it's a
4 clean note pad?

5 THE COURT: Yes.

6 Ms. McVey knows. We had one where I had to DQ a
7 juror right off the bat because they gave them -- in York I
8 tried one case there already and gave them the same
9 notebooks for the next jury and still had the old jury's
10 notes. This one fellow had spread red through all of it.

11 (Off the record).

12 (Back on the record).

13 (Whereupon, the jury venire panel was brought into
14 the courtroom).

15 THE COURT: You may be seated, counsel.

16 The jury is present and the lawyers will now
17 select from a strike sheet.

18 Let me explain to you, members of the jury, what
19 is going on with that.

20 A computerized spin of the wheel, so forth, not
21 like the old days when the blind person would reach into the
22 old jury box and pull out the names one by one, but the
23 modern equivalent of that is a computerized random selecting
24 of 29 names from which will be drawn 12 jurors and three
25 alternates with alternating strikes by the two sides. Those

1 names have been renumbered, so that when the number is
2 called out, it won't bear any relation to the number that
3 you have on your jury tag, so you won't know what's being
4 done, but when the number is -- the jury number is called
5 out, they will perform their strikes and then the clerk will
6 read out those who are to be seated as jurors and they will
7 be seated in the jury box.

8 The jury box is over here and you will be seated
9 there and one of the first things I would do is allow you
10 who have been selected to retire to your jury room. Those
11 who have not, hallelujah, you would be able to gather your
12 possessions and go, and then I'll have a few instructions
13 for you and then opening statements will begin. So that's
14 what we are doing right now.

15 All right. Madam Clerk.

16 THE CLERK: At this time I will ask the attorneys
17 to give me their strikes, with the plaintiff going first,
18 and then alternating with the defense, using the numbers to
19 the left of the name.

20 MS. MCVEY: Plaintiff strikes number 13.

21 MR. WALL: Defense strikes number 10.

22 MS. MCVEY: Plaintiff strikes number 15.

23 MR. WALL: Defense strikes number 3.

24 MS. MCVEY: Plaintiff strikes number 9.

25 MR. WALL: Defense strikes number 4.

1 MS. MCVEY: Plaintiff would strike number 8.

2 MR. WALL: Defendant strikes number 17.

3 THE CLERK: Now for the alternate.

4 MS. MCVEY: Just so I'm clear, we are going to
5 strike three at a time, the first three?

6 MR. WALL: Yes.

7 MS. MCVEY: Each side will strike, correct?

8 THE COURT: Each side has a strike, and you begin
9 with number 21, do you not, Madam Clerk?

10 THE CLERK: Yes.

11 THE COURT: Very good.

12 MS. MCVEY: Yes, ma'am.

13 Thank you, Your Honor.

14 Plaintiff will strike number 21.

15 MR. WALL: Defendant will strike number 22.

16 MS. MCVEY: Plaintiffs strike number 25.

17 MR. WALL: Defendant will strike number 24.

18 MS. MCVEY: Plaintiffs strike number 27.

19 MR. WALL: Defendants will strike number 29.

20 THE CLERK: Now I'll read them back out to you.

21 For the plaintiff I have number 8, number 9,
22 number 13, and number 15. And then the alternate is number
23 21, 25, and 27. Is that correct?

24 MS. MCVEY: Yes, ma'am.

25 THE COURT: Okay. For the defendant I have got

1 number 3, number 4, number 10, number 17. And then I have
2 got number 22, 24, and 29, is that correct?

3 MR. WALL: That's correct from the defense.

4 THE COURT: Okay. If you would just give me one
5 moment.

6 (Off the record).

7 (Back on the record)

8 THE CLERK: Ladies and gentlemen of the jury, at
9 this time I will be calling the name and juror numbers of
10 the jurors that have been selected for service in this
11 trial. When your name and number is called, please bring
12 all your belongings with you and have a seat in the jury
13 box.

14 Juror number 34, Sarah M. Burdick.

15 Juror number 92, Stacy A. Gillen.

16 Juror number 168, Kathleen M. Lynch.

17 Juror number 118, Michael S. Hayes.

18 Juror 100, Tammy R. Graham.

19 Your number 132, Zachary R. Hunter.

20 Juror number 202, Hannah N. Napoli.

21 Juror number 32, Christina S. Buckner.

22 Juror number 55, Anthony T. Cox.

23 Juror number 117, Johanna Harvey.

24 Juror number 232, Geneva D. Robinson.

25 Juror number 108, Sandra K. Grizzle.

1 This is for our alternates.

2 Juror number 62, Casey L. McKinney.

3 Juror number 244, Sarah L. Scott.

4 And juror number 279, Alicia D. Townsend.

5 Your Honor, your jury has been selected.

6 THE COURT: Thank you, ladies and gentlemen of the
7 jury, and I have looked very much forward to working with
8 you on this case. It's so important to both sides.

9 What we will do now is ask you to go to your jury
10 room. At that time please select one of the jurors as the
11 foreperson of the jury. I let y'all do that rather than
12 have me just arbitrarily pick someone, so you tell me who
13 you would like to have serve as the foreperson of the jury,
14 and that person will be seated right here where the
15 gentleman in the blue shirt is seated.

16 I am I right, or up one?

17 THE BAILIFF: No, that's fine.

18 THE COURT: Is he -- he's a regular juror, not an
19 alternate, right?

20 THE BAILIFF: Regular juror.

21 THE COURT: Right.

22 The end seat is where the foreperson of the jury
23 sits. It's easier for that foreperson to pass me a message
24 if it needs to be passed and so forth. Of course, if it can
25 come from any one of you.

1 You will find that when you go to your jury room
2 that you have some tablets. I allow jurors to take notes.

3 And let me just give you a little instruction
4 about taking notes. I let you do it because if you are like
5 I am, you hear all this technical testimony and, frankly,
6 you will be deers in the headlights to begin with hearing
7 all these unusual terminology, and I feel the same way and I
8 have heard these cases before, but I find I focus a little
9 bit better if I can just scribble some little notes to
10 myself.

11 What you need to know about notes is that they are
12 just for your personal use. They don't overcome another's
13 independent recollection and they shouldn't be used in place
14 of your own memory about things, but they are just a little
15 aid to help you kind of keep up with what's going on.

16 You don't have to take notes. It's nothing
17 mandatory about it. It's simply there if that's what you
18 want to use.

19 Alternates, you are an extremely important part of
20 this process and I don't just say that as something
21 deliberate. It's said to every jury. I select so many
22 jurors because these types of tort cases like this one are
23 complicated and sometimes things can come up, even if the
24 case doesn't last but a week, and certainly it could last
25 longer than that, and I have had jurors that, for one reason

1 or another, had to be released because of something that
2 came up in their situation or because of something that they
3 figure it out they knew about the case, and it would be a
4 shame to have all the time and effort put into this case and
5 then not have 12 jurors we need and must have to decide the
6 case. So you are just as important, alternates, as are the
7 regular jurors and you will be right in there with the
8 regular jurors, and only when the case actually goes to the
9 jury verdict will you not be in there with them, but I
10 generally keep my alternates until the case -- until a
11 verdict is reached. And I do that because, even when you
12 are deliberating, something may occur and, therefore, an
13 alternate might be needed and you would have to kind of redo
14 some of the discussions that you have had. But, in any
15 event, that's how we operate.

16 I try to start court at nine, if I can, and I try
17 to get you out of here no later than 5:30 every day.
18 Sometimes it can be shorter than that, depending on how the
19 testimony goes. A lot of times it will be a little before
20 five.

21 I take two breaks, one in the morning and one
22 mid-afternoon, and I take a lunch break. So there is plenty
23 of opportunity. And, needless to say, if you need a break,
24 all you have got to do is raise your hand, send a note to
25 your foreperson and I will take a break. Your comfort is

1 paramount and your ability to concentrate is extremely
2 important and I want to work with you to be sure that you
3 have what you need to render a fair and impartial verdict in
4 this matter.

5 So if you would go to your jury room, select your
6 foreperson, and we will be ready to start probably in about
7 five minutes, or so. It generally takes you a while to get
8 in there, get set and get your materials and get out, so it
9 will be five or ten minutes, but I will call for you when
10 your bailiffs say that you are ready to proceed. So
11 everybody be refreshed, that's important, and then we will
12 call you out and the lawyers will present their opening
13 statements to you, jurors.

14 Thank you. You may go to your jury room.

15 (The following takes place outside the presence of
16 the jury panel)

17 THE COURT: All right. Be at ease and we will
18 have the bailiff advise us when the jury is ready to
19 proceed, but I would like to proceed no later than ten of
20 the hour.

21 MR. WALL: You let the panel go?

22 THE COURT: What's that?

23 MR. WALL: You let the rest of the panel go?

24 THE COURT: Yes. Y'all sit down so I can talk to
25 this group of lucky people.

1 Jury service is so important for this wonderful
2 democracy of ours and there really isn't a country in the
3 world that does it as the United States does it. It's a
4 precious gift that's been given to us by the founders and
5 the Constitution and all the old traditions from Magna Carta
6 days forward, but it can only work because of you. And you
7 come, not because you got to some specialized training,
8 because you are real decent people of the community who give
9 up service so that we can all have a system of justice that
10 works for everybody, no matter their station in life, no
11 matter their position in life. So I thank you so much and I
12 know that you are glad, that having been called for a jury,
13 that hopefully you won't have to come back any time soon.
14 Thank you very much and you are dismissed.

15 (Whereupon, the jury venire panel left the
16 courtroom)

17 (Whereupon, proceedings were recessed)

18 (Whereupon, proceedings were reconvened)

19 THE COURT: Bring the jury in.

20 (The following takes place in the presence of the
21 jury panel)

22 THE COURT: I see that you have selected a
23 foreperson and your name is?

24 JURY FOREPERSON: Sarah.

25 THE COURT: Sarah Scott?

1 JURY FOREPERSON: Burdick.

2 THE COURT: Burdick.

3 Yes, I got you, Sarah.

4 All right. Ms. Burdick is your foreperson.

5 Lawyers, you may be seated, and let me give you
6 your first what would be many instructions, if I can find
7 it.

8 Ladies and gentlemen of the jury, as a result of
9 rulings that I have made, I am instructing you now that
10 Jerry Crawford, the plaintiff in this matter, was exposed to
11 asbestos insulation supplied by and installed by Covil
12 Corporation at Celanese between 1970 and 1974.

13 And with that, plaintiff, you may open.

14 MR. CHAPMAN: Thank you, Your Honor.

15 I'll get set up here.

16 THE COURT: I'm sorry, ladies and gentlemen of the
17 jury, before it gets dark, we have to put the light back up
18 again, friend.

19 Madam Clerk, you may give the jurors their oath.

20 THE CLERK: Ladies and gentlemen --

21 THE COURT: Will you please stand, members of the
22 jury?

23 THE CLERK: If you will, raise your right hand.

24 Do you swear or affirm in the case about to be
25 tried to truly try the issues joined in the case and a true

1 verdict render, according to the law and evidence, so help
2 you God?

3 THE JURY PANEL: (Collectively said I do).

4 THE CLERK: Thank you.

5 THE COURT: Thank you. You may be seated.

6 MR. CHAPMAN: May I proceed?

7 THE COURT: Mr. Chapman.

8 Mr. Chapman, I think they can see that without
9 getting completely dark in here.

10 MR. CHAPMAN: I think so. I think so.

11 Can everybody see that okay?

12 Good afternoon. I am very excited to get to
13 finally talk to y'all. I hope that you are excited to be
14 here. I know it's Monday and you are giving up your time to
15 do it. I know that can be especially tough this time of the
16 year when kids are out of stool and when people are trying
17 to take vacations and things like that, so before I really
18 get into anything I want to say thank you. Thank you for
19 your time. The judge said a second ago that one of the best
20 things about the United States is our jury system and that
21 doesn't work without you, so thank you for being here.
22 Thank you for your time and for your attention.

23 There is going to be a lot of evidence in this
24 case, a lot of testimony. And as we really dig into the
25 meat of it, I want you to remember three things; that they

1 knew it, that they did it, and that they hid it.

2 Now, we kind of got introduced before. My name is
3 Aaron Chapman and I, along with Theile McVey and Mr. Mark
4 Buha, we are proud to represent a man named Jerry Crawford.

5 This is Jerry.

6 Unfortunately Mr. Crawford is not going to be able
7 to be in the courtroom with us for this trial. Mr. Crawford
8 has cancer. The cancer that he has is called mesothelioma
9 and because of that he's just too sick to be here, but we
10 have got his family here.

11 And could y'all please stand up? We have got
12 Patty and we have got Tessa. These are his daughters.

13 His daughters, along with us, we are here to stand
14 for him when he can't. We are here to fight against the
15 injustice which he has endured, to fight for his pain, and
16 to fight for his suffering. Okay.

17 And you are going to hear that the defendant in
18 this case, Covil. Covil Insulation sold products, like
19 insulation and gaskets, from the 1940's for decades. Okay.
20 You are going to hear that they did this throughout
21 Spartanburg County, throughout the State of South Carolina,
22 and throughout the entire southeastern United States.

23 You are going to hear that what they supplied was
24 asbestos-containing insulation. They did this at a time
25 when they knew it killed people and they failed to provide

1 any sort of warnings.

2 So what I'm really trying to say, ladies and
3 gentlemen, is that they knew it, they did it, and they hid
4 it.

5 Now, you have already received one instruction
6 from the judge, and I wrote it down so I wouldn't mess it
7 up. The judge told you already that Jerry Crawford was
8 exposed, was exposed to asbestos insulation supplied by and
9 installed by Covil at Celanese between 1970 and 1974.
10 That's already been instructed. On top of that, ladies and
11 gentlemen, you are going to see that the evidence, that the
12 testimony and that the documents show this to be true.

13 Okay.

14 So I want to get into what some of the undisputed
15 facts are in this case.

16 It is undisputed that Mr. Crawford worked at
17 Celanese Spartanburg, just down the road, from 1970 to 1974.
18 When he did this work, he was working around
19 asbestos-containing insulation.

20 Jerry Crawford has cancer. No one is going to
21 come here and tell you he don't.

22 Covil sold asbestos-containing products,
23 specifically pipe insulation, and I'm going to get into what
24 that means in just a second, but that's undisputed. That's
25 what they sold. That was their business.

1 And not a single soul is going to stand up here
2 and tell you Mr. Crawford did anything wrong.

3 Now, when I say pipe insulation, this is what I'm
4 talking about. This is the product at issue in this case.

5 This was the first asbestos-containing products,
6 ladies and gentlemen, that was ever studied and understood
7 to be dangerous, and it was understood to be deadly. It is
8 effectively banned in the United States today.

9 In fact, ladies and gentlemen, you will hear that
10 if you see asbestos-containing insulation, or even
11 insulation that you believe to be asbestos, may be asbestos,
12 you have to take all sorts of precautions. You have to hire
13 professional companies. They have got to come in and use
14 special filters, wear special suits wear, use special
15 sheeting. It's a known hazard.

16 And you are going to see, ladies and gentlemen,
17 that from the 1940's, until -- for decades Covil chose to
18 sell this. They made the choice.

19 We all got to take responsibility for the choices
20 that we make; me, Mr. Crawford, and Covil. It was about
21 making Covil take responsibility for their choice.

22 All right. So let's get into the disputed facts,
23 and what it all boils down there are really two of them. We
24 disagree, we fundamentally disagree, over the value of a
25 human life and that's going to be the toughest question --

1 MR. WALL: Objection, Your Honor. It's not the
2 issue of value of human life and I object.

3 THE COURT: Overruled.

4 MR. CHAPMAN: So, again, it boils down to the
5 first one is we fundamentally disagree over the value of a
6 human life, and that is going to be the toughest question
7 that you guys are going to be asked to answer. Okay.

8 And the second question is what amount is Covil at
9 fault here.

10 Now, there is this concept of total loss and I'm
11 not going to spend a whole lot of time on it, but at the end
12 of this case I'm going to ask you to find in our favor, all
13 right, based on all the evidence that you are going to see.
14 And if you find in our favor, I'm going to ask you for a
15 number, okay?

16 If you decide to find in our favor and if you
17 decide to give us a number, I want you to know right now
18 that the number that you give us will be based on the total
19 loss suffered by Mr. And Mrs. Crawford, the total value of
20 that.

21 And after you give that number and you serve, the
22 judge is going to decide what position of that Covil may
23 have to pay, and you are not going to know what that number
24 is and that would drive me crazy, and I'm sorry, but that's
25 the way it works here. So I want you to understand that if

1 you give us a number, that represents the total loss
2 suffered by Mr. And Mrs. Crawford.

3 So I have got a lot to get through. I don't have
4 a whole lot of time to do it, but this is basically where
5 I'm going.

6 I want to talk to you about mesothelioma, what it
7 actually is.

8 I want to talk to you about asbestos. You may
9 have heard about it, but what is asbestos actually.

10 And, finally, talk to you about Covil, what they
11 did and what they didn't do.

12 Mesothelioma.

13 Now, we have all heard those commercials on TV,
14 I'm sure most of us have, about mesothelioma. It almost has
15 become kind of a joke, right? But, ladies and gentlemen,
16 for people like Jerry that actually have mesothelioma, I can
17 assure it's anything but a joke.

18 You are going to hear mesothelioma is cancer. And
19 you are going to hear throughout the testimony in this case
20 that around all of our major organs is this lining, okay?
21 It's like a saran wrap type lining. In fact, if you look up
22 here at the picture at the healthy human lung, it's kind of
23 shiny. That's because there is this lining around it. And
24 you are going to see that within that lining are these
25 cells. They are called mesothelial cells. Mesothelioma is

1 the cancer of the lining around the lung. Not the lung
2 itself, but the lining around it. And, in fact, we are
3 going to bring an expert molecular biologist to come and
4 testify. His name is Dr. Arnold Brody, and Dr. Brody
5 probably knows more about this stuff than anybody else on
6 the planet and he's going to explain it all to you and how
7 it works, but I want you to understand basically what
8 mesothelioma is.

9 Like I said, mesothelioma is a cancer.

10 I want to be clear about this, ladies and
11 gentlemen. There is no cure for mesothelioma. We are going
12 to hear mesothelioma is fatal. Things like chemotherapy and
13 radiation can sometimes slow it down, but that's all it
14 does.

15 There is two things up here I want to spend just a
16 few minutes with you about.

17 The first is this concept called latency, okay,
18 and it is well established, and you are going to hear that
19 it's well established in the medical and scientific
20 literature going back decades that there is a gap. There is
21 a period of time between when a person is exposed to
22 asbestos and when that person gets sick, when that person
23 gets mesothelioma. It's a well known time period, and that
24 time period is anywhere from 10 to 40, or more, years.

25 So you are going to hear about Mr. Crawford's work

1 in the 1970s, and his work around asbestos-containing
2 insulation, and that's going to make a lot of sense, because
3 that's right in that known time period of latency.

4 The second is individual susceptibility. That
5 means basically what it sounds. Different people react
6 differently to asbestos.

7 Now, these are extreme examples, but it's possible
8 someone walks by airborne asbestos, gets sick years later.
9 It's also possible someone works with this stuff their
10 entire life and doesn't get sick. Everybody reacts
11 differently to it.

12 What's clear is that mesothelioma is only caused
13 by exposure to asbestos.

14 And this link between mesothelioma and asbestos is
15 so clear that it's called a signal tumor. What that means
16 is when that a doctor diagnosis a patient with mesothelioma,
17 or suspects that a patient might have mesothelioma, the
18 first question they ask is "where were you exposed to
19 asbestos?"

20 Okay. So the first question that they ask is
21 "where were you exposed to asbestos," and that's because of
22 this casual link, this known link in the scientific and
23 medical literature between asbestos exposure and
24 mesothelioma. Okay. That's mesothelioma.

25 Let me tell you about asbestos. You may have

1 actually heard about asbestos. You may know that it's
2 dangerous, but what is it actually? If you are like me
3 before I started doing this kind of work, I had no idea, so
4 asbestos is a known hazard. It has been studied for more
5 than a 100 years. You are going to hear that the first
6 articles talking about asbestos, the hazards of asbestos and
7 asbestos diseases go all the way back to 1898.

8 You are going to hear that Covil Corporation
9 started using asbestos-containing products, 1948.

10 Asbestos is a mineral. Okay. It is mined from
11 the ground, and has been for a long period of time. It is
12 dangerous and there is no known safe level. I'm going to
13 say that again. There is no known safe level of exposure to
14 asbestos.

15 I don't know what the defendants are going to say,
16 right, but I think they may come up here and tell you that
17 if Mr. Crawford was exposed, which we know he was, then he
18 was exposed at some low level that it couldn't have caused
19 his disease.

20 Now, that's wrong for a lot of reasons, but
21 primarily because there is no known safe level and because
22 the evidence is going to show you that he was exposed to
23 huge levels of asbestos in this case. Okay.

24 So as far as asbestos is concerned, we have three
25 main types. All right? The first is called chrysotile, or

1 sometimes it's called white asbestos. There is something
2 called amosite. That's brown asbestos. And then there is
3 also something called crocidolite, and that's blue asbestos.

4 I want to be clear what we are talking about in
5 this case is primarily amosite, brown asbestos. All three
6 are dangerous. All three cause mesothelioma. All three are
7 a known hazard.

8 This is so hazardous, in fact, ladies and
9 gentlemen --

10 Well, before I get -- before I get there, asbestos
11 is made up of very strong fibers. That's what it is, and
12 these fibers work together. It's used primarily in heat and
13 steam applications because they were so good at insulation.
14 It's virtually fireproof and it's really, really hard to
15 destroy. They were using products, thousands of products,
16 for years and they did a lot of good for the products that
17 they were in. They worked, but it also happens to be one of
18 the most deadly substances known to man.

19 In fact, ladies and gentlemen, you are going to
20 hear that asbestos is responsible for one out of every three
21 occupational cancer deaths. One out of every three.

22 There is one more concept I want to kind of get to
23 and that's dose response. Mesothelioma is known as a dose
24 response disease. What that means is that the more asbestos
25 that you're exposed to, the more likely you are to get

1 mesothelioma. That's what that means.

2 What this doesn't mean is that someone with a low
3 dose of exposure to asbestos won't get sick. And what this
4 doesn't mean that someone with a high dose will definitely
5 get sick, but there is a correlation, and this is known in
6 studies between the amount of exposure and likelihood of
7 getting sick.

8 So I keep talking about exposure. How does
9 exposure to asbestos actually happen? And you are going to
10 hear, ladies and gentlemen, that you are exposed to asbestos
11 in a hazardous way when you breath it in. I think Dr. Brody
12 is going to tell you about that. You breath in the fibers
13 and they get to the lungs and they get to your mesothelial
14 cells.

15 When these fibers get airborne, you are going
16 to -- it's -- let's talk about pipe insulation specifically,
17 because that's what Mr. Crawford worked around. With pipe
18 insulation, when you rip off, when you cut, when you install
19 pipe insulation that contains these asbestos fibers, these
20 fibers become airborne. They get kicked into the air. And
21 you are going to hear that once they get put into the air,
22 they stay in what's known as your breathing zone. Literally
23 the zone around you in which you breath air. They stay
24 there for hours, and these tiny fibers float there. And
25 when they eventually fall to the floor, you are going to

1 hear that walking over it, or sweeping up, and you are going
2 to hear Mr. Crawford did a lot of sweeping up after
3 insulation. When do you that, it kicks them back up into
4 the air and they stay there for hours. And so your exposure
5 period, ladies and gentlemen, you are going to hear is long
6 after when the work actually occurred.

7 And here is what makes asbestos fibers so
8 dangerous. They are microscopic. You can't smell them.
9 You can't feel them. You can't touch them. You can't taste
10 them. With other potential hazards, if you touch a
11 poisonous plant, you get a rash. There is reaction. If you
12 cut an onion, you cry. There is a reaction. If you work
13 with something like ammonia, there is a smell. There is a
14 reaction. If you are working around asbestos, it doesn't
15 make you sneeze. It doesn't make you cough. You could be
16 working around and breathing literally millions of fibers
17 and never know it, never see it.

18 There are three primary diseases in which asbestos
19 causes. I want to touch on them briefly.

20 The first is asbestosis; literally a disease named
21 after asbestos. There is lung cancer as we think of it, and
22 then there is mesothelioma, which we have already talked
23 about.

24 So first asbestosis. It was known by at least
25 1930 that asbestos can cause the disease asbestosis.

1 Asbestosis is where you breath in the fibers. The fibers
2 reach your lungs and literally cause scar tissue on your
3 lungs. That scar tissue doesn't allow you to breath in. It
4 doesn't move with your lungs. So a person with asbestosis
5 can literally suffocate to death because they can't breath
6 because of that scar tissue. This was known by the 1930's.

7 There was a known link in science and industry
8 that asbestos can cause cancer in the 1950's; and
9 importantly 1960's, mesothelioma is known and understood.
10 It was understood by science, understood by medicine,
11 understood by industry, and you are going to hear, ladies
12 and gentlemen, it was understood by Covil that asbestos can
13 cause disease; that asbestos can kill. Literally hundreds
14 of articles about this by this time.

15 Let's talk about Covil, their time line, okay?
16 Covil was founded --

17 Before we get there, like I said, asbestos is a
18 known disease -- a known hazard that cause disease. People
19 knew it could kill you by 1930. All right.

20 1948, 18 years after that literature, 18 years
21 after science and industry knew asbestos could kill you, a
22 man named Palmer Covil found an insulation company selling
23 asbestos-containing products.

24 1967, and this is an important year for a lot of
25 reasons. 1967, Palmer Covil flies up to New York City from

1 Greenville, South Carolina, attends a conference given by a
2 man name Irving Selikoff. Irving Selikoff is important,
3 because you are going to hear he is a pioneer in
4 understanding asbestos and asbestos-related diseases. He
5 wrote some of the most important papers about this topic.
6 And you are going to hear, ladies and gentlemen, that the
7 papers that he wrote and the products that he first studied
8 were pipe insulation, exposure to people working on pipe
9 insulation, the very product at issue in this case.

10 So Mr. Covil goes up there and he goes to a talk.
11 He sees a memo by Irving Selikoff, 1967 learns this, learns
12 asbestos can kill.

13 In that same time frame, 1966, 1967, Mr. Covil
14 goes back down to South Carolina where the Celanese
15 Spartanburg facility is being built and it's being supplied
16 by Covil asbestos-containing insulation. What does Mr.
17 Covil do when he learns about these hazards from Mr.
18 Selikoff in 1967? Does he go back and say "whoa, whoa,
19 whoa, we got to stop putting this in. We got to stop
20 selling this." Nope, he keeps selling it. He keeps selling
21 it.

22 You are going to hear, ladies and gentlemen, 1970,
23 1974, that's when Jerry Crawford was there. That's when he
24 was exposed.

25 1984. Palmer Covil, founder of Covil, passes away

1 from mesothelioma, the very cancer that Jerry Crawford has,
2 the very cancer that is caused by exposure to asbestos.
3 They did it.

4 You are going to hear that Covil supplied
5 asbestos-containing insulation for the original construction
6 of Spartanburg; that they supplied asbestos-containing
7 insulation for continued construction while Mr. Crawford was
8 there; that they failed to warn a soul about the hazards of
9 asbestos in their product; that they failed to warn that
10 asbestos can kill; they failed to tell anybody that asbestos
11 was even in their product. And you understand here is the
12 man. You are going to hear it from their own employees.

13 Now, I have talked to you a little bit about pipe
14 insulation. Let's talk about it in the context of this
15 case. Covil supplied this asbestos-containing pipe
16 insulation to Celanese. Literally, literally miles of it.
17 Miles of asbestos-containing pipe insulation, the very
18 facility where Jerry Crawford was working.

19 You are going to hear that this is dusty to cut,
20 dusty to put on, dusty to take off. You are going to hear,
21 ladies and gentlemen, that if you are seeing dust from
22 asbestos-containing pipe insulation, that if you can
23 physically see them, your exposure level to those asbestos
24 fibers are through the roof.

25 You are going to hear that Jerry Crawford was

1 physically there when they were being worked on.

2 Now, I know he can't be here, but we took his
3 deposition and we are going to be able to show that to you
4 and he is going to tell you that he saw the dust. He swept
5 up the dust after that and that's where his exposure is
6 going to come from.

7 And, importantly, ladies and gentlemen, you are
8 going to hear that the type of asbestos being used was
9 primarily amosite insulation. That's the brown type of
10 asbestos.

11 So they had this. They did it. They knew about
12 it. What did they do? Nothing. The evidence is going to
13 be overwhelming, ladies and gentlemen. No verbal warnings,
14 no written warnings, nothing on the insulations. They
15 didn't tell anything to the Celanese employees. No
16 communication. Nothing that says asbestos can cause cancer.
17 Nothing that says that it's hazardous. Nothing that says
18 it's deadly. Never told anybody that was actually working
19 on or near their product.

20 I want to talk about responsibility for a second.
21 I'm going to be the first one to tell you we don't believe
22 Covil is the only one responsible, all right? There was the
23 plant. I think they bear some responsibility. There was
24 the general contractor. I think they bear some
25 responsibility, but I'm going to take a second.

1 Chase, if we could switch to the elmo, please.

2 I'm going to show you, ladies and gentlemen, why I
3 think Covil bears the most responsibility here.

4 Are we up? Good.

5 Okay. So in this particular case we have a
6 supplier. See that? Good. That's Covil.

7 We have an employer. That's Celanese, if I can
8 spell.

9 And then we have the employee. That's Mr.
10 Crawford.

11 If we are dealing, ladies and gentlemen, with a
12 known hazard, like asbestos, then you are going to hear it's
13 up to the supplier to warn the employer. Then once the
14 employer has been warned, it's up to them to control the
15 employee. And once the employee has been controlled through
16 policies, or whatever it is, you better follow it, right?
17 If you know about this and you don't do anything about it,
18 that's on you. But if Covil doesn't warn, then the employer
19 cannot effectively control. And if the employer cannot
20 effectively control, Mr. Crawford can't follow it. This is
21 particularly important when the hazard is not obvious. For
22 all the reasons we just talked about, asbestos is not an
23 obvious hazard, and this is particularly important when the
24 consequences are the most severe. This is particularly
25 important when the consequences are the most severe; when

1 death is on the line.

2 Switch it back. Thank you.

3 Not an obvious hazard.

4 Any sort of industrial site you are going to have
5 hazards. You are going to have obvious hazards; sharp
6 edges, tripping hazard, something you can see. Common sense
7 can tell you to watch out for that. Common sense can't tell
8 you to watch out for asbestos, unless you are warned.

9 Information -- I'm repeating this because it's so
10 important. Information is the most important when the
11 consequences are the most severe.

12 Why didn't they warn? I had a chance -- just like
13 we deposed Mr. Crawford, I had a chance to go depose Covil
14 in this case. I asked them that question, why didn't you
15 warn? Their answer was because they didn't think they
16 legally had to. That's their answer in this case.

17 And so I followed up on that and I said, okay,
18 even if you didn't think had you a legal obligation --

19 MR. WALL: Your Honor, that's arguing now.
20 Objection.

21 THE COURT: Overruled.

22 MR. CHAPMAN: Thank you, Your Honor.

23 I told them even though you don't think you have a
24 legal obligation, you are going to hear this, I asked them
25 what about ethically, morally, don't you have an obligation

1 to warn?

2 Covil's response was that it was a business
3 decision. That's what they said. That's what you are going
4 to hear.

5 Now, this next part, ladies and gentlemen, you are
6 going to be hearing as a jury for the first time what it
7 took us almost a half a year to figure out, and there is
8 three primary subjects to this.

9 First is Covil's documents. Okay. One of the
10 things we did is we asked them send me your invoices, right.
11 Give me your sales records. Let me see if you supplied to
12 Celanese.

13 And what they told me was that we had a fire in
14 our warehouse in 1973, and almost everything before that was
15 destroyed. Sorry, we got no documents.

16 So I did some digging and what we found was an old
17 Covil employee. His deposition about ten years ago, maybe
18 more, where he said "yeah, there was a fire. Documents
19 didn't get destroyed. Documents weren't involved. They did
20 not burn up." And he says they are gone, but because Covil
21 destroyed them. At the end of this case the judge is going
22 to tell you legally what that means to you, but factually
23 that's what the evidence is going to show.

24 Now, at this same time when Covil said that a fire
25 destroyed their documents, they claim they went asbestos

1 free. So all the documents that they have show
2 asbestos-free insulation. It turns out this claim wasn't
3 true either and you are going to hear that. You are going
4 to hear that there are documents that show
5 asbestos-containing insulation being supplied to facilities
6 by Covil after 1973; literally miles of it, after 1973.

7 Last thing on that list, the boxes. You are going
8 to see the deposition by video of a man named Dwaine Waters.
9 Mr. Waters worked at Covil for a bit of time and he's going
10 to tell you, you are going to hear this from his mouth, that
11 Covil took asbestos-containing insulation and put it into
12 boxes labeled asbestos free and then they shipped that out.
13 You are going to have to decide what to do about a company
14 like that, but that's what the evidence is going to show,
15 ladies and gentlemen.

16 At the heart of this, this is a negligence case,
17 okay, not so different from when a texting driver hits
18 another driver, except instead of the texting driver we are
19 dealing with a corporation's actions.

20 The evidence is going to show that asbestos --
21 knew asbestos -- excuse me, Covil knew asbestos can kill,
22 they used it anyway, and they failed to warn.

23 The evidence is going to show they supplied,
24 knowingly supplied, a defective product, and they hid that
25 fact from people like Jerry Crawford.

1 They knew it, they did it, and they hid it.

2 What's the result?

3 You are going to see, ladies and gentlemen, the
4 result is Mr. Crawford's cancer, Mr. Crawford's pain, Mr.
5 Crawford's suffering, the suffering of his family. And as
6 sorry as I am to say, eventually Mr. Crawford's death. This
7 didn't have to happen. Tragedies happen to us every day.
8 Family members gets sick and die. Those are tragic. How is
9 Mr. Crawford any different? This is different because this
10 didn't have to happen. It should not have happened.

11 Covil's actions, what they did, were willful,
12 wanton and, frankly, reckless. And throughout this case,
13 ladies and gentlemen, the evidence is going to
14 overwhelmingly show and overwhelmingly support --

15 MR. WALL: Again, Your Honor, he's arguing.
16 Objection.

17 THE COURT: Overruled.

18 MR. CHAPMAN: Thank you, Your Honor.

19 The evidence, ladies and gentlemen, is
20 overwhelmingly going to support and show that Covil knew it.
21 They knew that it was hazardous. They did it and they
22 supplied it anyway and then they hid that fact from people
23 like Jerry.

24 Thank you so much for your time and for your
25 attention.

1 THE COURT: Thank you, Mr. Chapman.

2 MR. CHAPMAN: Yes, Your Honor. Thank you.

3 THE COURT: Ladies and gentlemen, you will now
4 hear from Mr. Mark Wall on behalf of the defendant.

5 Mr. Wall.

6 MR. WALL: May it please the court.

7 Ladies and gentlemen, I'm Mark Wall. I'm with the
8 law firm of Wall Templeton, and here with me today is Tommy
9 Boger, a lawyer in our office and we represent Covil.

10 Covil is a defunct out-of-business corporation
11 with no employees, no business, and no owner, and it's been
12 out of business since 1991.

13 Covil started in 1948, in Greenville, South
14 Carolina, by a man named Palmer Covil, who is deceased.

15 Covil was, when in business, an industrial
16 insulating contractor and also distributed industrial
17 materials, but it was not a manufacturer. It did not
18 manufacture the pipe covering that we are hearing about and
19 talking about. It bought it from manufacturers.

20 You will find out that Daniel Construction Company
21 bought its asbestos, not from Covil, but from manufacturers.

22 Covil, like all the industrial insulators, did, in
23 fact, sell asbestos materials, and in the late seventies it
24 went, like everyone else did, to asbestos-free asbestos, or
25 materials.

1 In May of 1973 Covil had a fire at the plant and
2 it destroyed most, not all, most, not all, of the sales
3 records. We have some sales records. We have some
4 corporate files. We have some documents that show doing
5 business with different companies at different times, but we
6 have almost no sales records. We have records from some of
7 the sixties, but basically everything was from '74, up.

8 These documents that were not destroyed and that
9 were accumulated after that, there were about 25,000 pages
10 of these documents. That does not include some old
11 employees files which were not burned.

12 Also which was not burned was some sales
13 records -- excuse me, some business records of cash deposits
14 and other things that were actually in the safe. The sales
15 records were not in the safe. They were in the warehouse
16 that burned down. You may get a chance to see a picture of
17 the fire. I got it from the Greenville News. The whole
18 place burned down bad.

19 In order to find out what Covil did, we had to
20 hire someone to read all their documents, read all their
21 depositions, and try and consider so that he could testify
22 about what Covil did in the seventies and before, because
23 there are no documents to establish what they did.

24 As I said, Mr. Covil is deceased. His son Jimmy
25 Covil never was in the industrial side and was not -- is not

1 interested in dealing with the company, because it's been
2 out of business since 1991.

3 The person that we hired is a person you will hear
4 by the name of Bob Glenn and he will tell you what he was
5 able to glean from looking at the documents, from reading
6 Mr. Covil's deposition, and reading his son's deposition,
7 and a couple of other depositions at Covil.

8 As you all know, this case is about the Celanese
9 plant here in Spartanburg from '70 to '74.

10 Mr. Glenn will tell you that he reviewed the
11 records of Covil that were not destroyed and he could not
12 find any sales of any materials to Celanese. He could not
13 find any workers who worked at Celanese installing
14 materials. He found no records from the '70 to '74 period.

15 Now, to be sure, there are records that we did
16 work with Celanese at later dates, but not the period of '70
17 to '74.

18 You will also hear from a representative of
19 Celanese who will tell you that he has reviewed all their
20 records and he has found no records of any sales of asbestos
21 products by Covil to Celanese.

22 And you will hear later that the law of the
23 country of South Carolina is the plant owner is responsible
24 for the safety of all their workers in the plant.

25 You will also hear from a representative of Daniel

1 Construction Company, which is now Fluor Daniel. It's a
2 very big national contractor, originally started in
3 Greenville, and they will tell you that they, Daniel, built
4 the Celanese plant in the 1960's.

5 They will also tell you that Daniel did all the
6 maintenance at the plant from the sixties and the seventies.

7 They will also tell you that Daniel did all the
8 improvements and changes at the plant in 1970 to 1974.

9 And he will tell you as he reviewed all the
10 construction files held by Daniel, he viewed them all, and
11 he found no reference to any products sold to Daniel by
12 Covil.

13 He will tell you that Daniel bought their products
14 from the manufacturer, directly from the manufacturer, not
15 from Covil.

16 He will tell you that in this time period, by 1973
17 Daniel had a program that they would not use
18 asbestos-containing insulation in pipe covering, starting in
19 1973, and he says there was none there.

20 A Mr. Buck, who is the Daniel representative,
21 looked through all these 40 boxes and the only reference he
22 could find to Covil was that at one point Covil had three
23 employees on the job site putting fireproofing material on
24 structural steel. That's all. That's all Covil did.

25 He will also tell you that Daniel bought all the

1 materials from the manufacturers and were asbestos free in
2 1973.

3 Lastly, you will hear some testimony about the
4 fact that Mr. Crawford also changed asbestos brakes for
5 years and years on his own car and with a friend and was
6 exposed to asbestos brakes while he was working on those.

7 After you hear all this evidence, and if you
8 believe it at the end of the case, I will ask you to return
9 a verdict for Covil, a verdict for the defendant.

10 Thank you very much.

11 THE COURT: Thank you, Mr. Wall.

12 Ms. McVey, call your first witness.

13 MS. MCVEY: Yes, Your Honor.

14 We call Dr. Arnold Brody.

15 THE COURT: Come around, Dr. Brody, for the oath.

16 DR. ARNOLD BRODY, having been first duly sworn,
17 testified as follows:

18 THE COURT: Have a seat, Dr. Brody.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: All right. If you will just give me a
21 second.

22 Dr. Brody, good to see you.

23 THE WITNESS: Thank you, Your Honor.

24 MS. MCVEY: Judge, did you want me to get started
25 qualifying him, or --

1 THE COURT: Just a second, if you would.

2 MS. MCVEY: All right.

3 (Off the record).

4 (Back on the record)

5 THE COURT: Okay, I got it now.

6 Ladies and gentlemen of the jury, Dr. Arnold Brody
7 is going to be offered as an expert witness, and let me just
8 tell you a little something about expert witnesses.

9 Experts are a different kind of witnesses from the
10 normal fact witnesses. Normally you can't testify to your
11 opinions about anything. You testify about the facts, but
12 if a person, by reason of their training, education, and
13 experience, becomes an expert in a field that is kind of
14 beyond our common knowledge where we might need some
15 assistance from someone who has an expertise, if they have
16 the proper training, education, and experience, they would
17 be qualified as an expert witness and they will then be able
18 to give you opinions about their field of expertise, but
19 remember this. You are the judges of the facts, the sole
20 judges of the facts. I am not the judge of the facts. I'm
21 the judge of the law, and you, and only you, who determine
22 the facts.

23 And with regard to expert witnesses, they may give
24 you opinions, but you are the sole judge of their
25 credibility and you may accept what is said, you may accept

1 some of it, reject other parts of it. You may give an
2 opinion whatever weight you as a jury think that opinion
3 entitles you.

4 So that's kind of an explanation about why a
5 witness can give you an expert opinion by reason of their
6 education, training and experience, but you, yourself, are
7 the judges of whether you accept that opinion.

8 All right. You may proceed, Ms. McVey.

9 MS. MCVEY: Thank you, Your Honor.

10 DIRECT EXAMINATION BY MS. MCVEY:

11 Q. Dr. Brody, would you introduce yourself, please?

12 A. Yeah, sure.

13 My name is Arnold R. Brody, B-R-O-D-Y.

14 I'm Professor Emeritus in the pathology department at
15 the Tulane University Medical School in New Orleans.

16 I was the vice chairman of the pathology department
17 there for years. I'm trying to be retired.

18 I'm emeritus professor and my field is lung injury and
19 asbestos disease.

20 Q. Are you a medical doctor?

21 A. No, I'm a Ph.D.. I'm a scientist and I have been
22 teaching doctors about this field for a long time.

23 Q. And what is it to be a cell -- what is a cell
24 biologist?

25 A. Cell biology is the study of life. As a cell biologist

1 I use various kinds of cells.

2 Everything is made of cells. Every living thing is
3 made of cells. We need to understand how the cells
4 function.

5 My focus has been on lung cells. Some scientists study
6 liver cells and kidney cells, so my focus has been on lung
7 cells.

8 Q. And up here we talked about experimental pathologist.
9 What does that mean?

10 A. So pathology is the study of disease.

11 Scientists like myself do experiments to understand
12 disease, so that's the field of experimental pathology.

13 Q. And Dr. Brody, have you studied asbestos over the
14 course of your career?

15 A. I have.

16 Q. Have you spent essentially your career studying
17 asbestos and its effects on the lungs?

18 A. That's correct.

19 Q. Among other things.

20 I have handed you your CV we have marked as Exhibit
21 809.

22 A. Uh-huh.

23 Q. Is that a current and up-to-date CV?

24 A. I will tell you in one second.

25 Yes.

1 Q. I think we are glad we're in here today with the storm
2 going.

3 Can you give the jury the benefit of your educational
4 background?

5 A. Sure.

6 After high school in New Hampshire, I went out to
7 Colorado to do a Bachelor of Science Degree in Zoology.
8 That's the study of animals.

9 Then I went to the University of Illinois, where I
10 received a Master of Science Degree in what's called
11 Anatomy; that was human anatomy, animal anatomy. That's
12 where we learn how all of our parts fit together and
13 function; muscles, bones, nerves, joints, that sort of
14 thing.

15 Then I went back to Colorado to do a Ph.D.. That's a
16 doctorate. We were just talking about in cell biology.

17 And then I did three years of post-doctoral study at
18 Ohio State University.

19 And then I started my academic career after that.

20 Q. And Dr. Brody, how did you get interested in the study
21 of asbestos disease?

22 A. Uh-huh.

23 So this takes us into my first academic position, which
24 was as an assistant professor, that's a beginning professor,
25 in the pathology department in the medical school at the

1 University of Vermont. And while there we had a visitor to
2 the department. His name was Dr. Wagner. It looks like
3 Wagner, W-A-G-N-E-R.

4 Dr. Wagner had established in 1960 that asbestos causes
5 this cancer. I know you just heard about called
6 mesothelioma. So here was Dr. Wagner in this department
7 sitting down with a young professor, me, and seeing the work
8 that I was doing with human lungs and he asked me to come
9 and work with him in Wales in the United Kingdom. So this
10 was a great opportunity for a young scientist to go and work
11 with this very famous person in this field of
12 asbestos-induced injury and that's where I got started.

13 There was so many questions to be answered about how
14 asbestos causes disease. So when I worked with Dr. Wagner,
15 it was clear asbestos causes disease - asbestosis, lung
16 cancer, mesothelioma - but a lot of open questions on how
17 asbestos does that.

18 Q. And is that what you wanted to go study, how it
19 happens?

20 A. Exactly.

21 Q. Okay. I want to talk a little bit about research that
22 you have done over the course of your career, if we could.

23 A. Uh-huh.

24 Q. Do you get funding for your research?

25 A. Oh, sure. I mean -- yes, of course. I mean, the

1 universities where I have been a professor all these
2 decades, they give you an office and a place to do your
3 work, but they don't pay you for the science, so we have
4 to -- we have to get funded from outside sources.

5 Q. And who have been some of the outside sources that have
6 funded your research?

7 A. Well, my work has been funded by the National
8 Institutes of Health. So you have probably heard the name
9 the National Cancer Institute, the National Heart, Lung &
10 Blood Institute, the National Institute of Allergy &
11 Infectious Disease. These are different institutes in
12 Washington, D.C., and they are set up to understand human
13 health so that effective treatments can be developed where
14 there are none.

15 What we have to do, what scientists have to do, is
16 write proposals, applications. I have been competing with
17 the grade schools in South Carolina and Texas and California
18 and New York all my life writing applications for a limited
19 amount of dollars and the top 10 to 15 percent of the
20 applications get funded. So it's a very competitive
21 environment.

22 To answer your question, my work has been funded
23 without interruption by the National Institutes of Health
24 for my career.

25 Q. And the National Institute of Health doesn't just fund

1 the 90 percent? They fund the cutting edge, is that fair?

2 A. Well, yes. I mean, it's the research that's most
3 likely to teach us something about what's necessary to be
4 able to develop an effective treatment. There are no
5 effective treatments for any of the asbestos-related
6 diseases, so we are trying to move the field ahead to be
7 able to develop those kinds of treatments.

8 Q. Dr. Brody, have you served on any government panels or
9 agencies relating to asbestos?

10 A. Sure, I have been on panels from the Environmental
11 Protection Agency.

12 I have been on congressional subcommittees where we are
13 meeting to understand where some of this funding should go,
14 what the priorities should be.

15 I have served on boards from the National Institutes of
16 Health, the National Science Foundation, etcetera.

17 Q. Can I ask you a little bit about peer review
18 publications?

19 Will you describe the process for getting a publication
20 peer reviewed or having a peer reviewed paper published?

21 A. Sure.

22 So if I do a series of experiments in my laboratory and
23 I want that information to be out in the open medical
24 literature so that if anybody is interested in seeing that
25 work, it can be found in the journal called a peer review

1 journal. It's called that because when I write this
2 information up about the experiments that I did, I write an
3 introduction. I write a methods and materials that I use.
4 I write a discussion of the work that was done and I send it
5 to a journal. It could be one of twenty, or so, different
6 journals.

7 The editor takes that paper and sends it to two or
8 three or four of my peers, other scientists like myself, who
9 anonymously review my work. And they write a report back to
10 the editor and they may say well", this needs some
11 clarification. You need additional experiments to be done
12 to complete this work." It might be fine. It might be
13 ready to go.

14 And so when the editors are satisfied and I'm
15 satisfied, and I may have to do a series of experiments,
16 rewrite the paper and send it in again. It might be
17 reviewed again.

18 When the editor says I'm satisfied, the reviewers are
19 satisfied, the work then appears in the open medical
20 literature as a peer reviewed paper.

21 Q. And how many of your publications have been peer
22 reviewed or published?

23 A. So this is my CV that you have handed me that has -- it
24 shows 154 peer reviewed papers.

25 I also have a series of separate section called Invited

1 Reviews, where they might be -- review articles about my
2 work and other people's work, and also a book.

3 Q. Of those publications you just described, how many deal
4 with asbestos?

5 A. So of the 154 peer reviewed papers, about a 120, or so,
6 of them are directly related to asbestos. Others may relate
7 to some lung cell work that I have done. I have published
8 several papers on viral diseases. Some papers on asthma.

9 Of the reviews, the 55 book reviews and chapters, all
10 of those deal directly with asbestos.

11 I'm currently working on a review right now.

12 Q. And, Dr. Brody, have you published any books?

13 A. I have published a book.

14 Q. And what's the name of that book?

15 A. It's called "The Science Class You Wish You Had." It
16 is -- it's subtitled the seven greatest scientific
17 discoveries in history and the people who made them. It's
18 in its fourth edition. It's in six different languages and
19 find it on Amazon.Com.

20 Q. You spent your career studying asbestos.

21 And how did you get involved in litigation, doing what
22 you are doing here today?

23 A. Yeah. Well, that's kind of an interesting question.
24 There is a law firm in South Carolina down in Charleston
25 with a gentleman down there who has been in asbestos

1 litigation for many years and he had been -- he had a
2 meeting with Dr. Irving Selikoff and Irving Selikoff's name
3 appeared on the screen up there as one of the references
4 that the gentleman who was opening, gave the opening
5 statement. He referred to Dr. Irving Selikoff, because Dr.
6 Selikoff had studied these insulators, these people who
7 actually develop very high rate of mesothelioma from their
8 exposures. And this attorney had visited Dr. Selikoff and
9 said -- asked Dr. Selikoff to come into court and give the
10 kind of testimony that you have asked me to give here today
11 and Dr. Selikoff wasn't interested. He had had -- Dr.
12 Selikoff had had polio as a youngster and he wasn't very
13 mobile, but Dr. Selikoff said, "you know, there is this
14 young guy down in North Carolina and he has been studying
15 how asbestos causes disease. I saw his papers. I invited
16 him to give a talk. Why don't you go see Dr. Brody." So
17 this attorney comes walking into my office and he said "Dr.
18 Selikoff told me that you can explain how asbestos causes
19 disease."

20 I said "well, that's what I do."

21 And so then the attorney said "could you do it for a
22 jury, like you do it for your medical school classes that
23 you teach?"

24 I said "I don't know."

25 He said "would you like to find out?"

1 So I gave a seminar to that group and I have been doing
2 this now for about 20 years, or so. And so it's -- that's
3 how it started.

4 Q. So since that time you have testified as an expert
5 witness in many different states, is that fair?

6 A. Many different states across the country. Many
7 different settings. I have given talks in various places
8 around the world for a number of different reasons.

9 Q. And do you typically testify more for plaintiffs or
10 defendants?

11 A. Yeah, it's usually for -- in cases like this for
12 plaintiffs, where somebody has been injured by asbestos, but
13 I have testified for a number of different companies as
14 well. If the company would like the jury or the court to
15 know how asbestos causes disease, then I testify exactly the
16 same way for them.

17 Q. That's what I was going to ask you. Have you recently
18 testified on behalf of a corporation?

19 A. Well, I was -- yes, last year, if that's recent. Now
20 it's not -- last year is not so recent any more, but, yes, I
21 testified last year for a defendant, and I have just been
22 retained by an asbestos manufacturer to testify.

23 Q. And whether you are testifying for me on behalf of the
24 Crawford family, or for a corporate defendant, is your
25 testimony any different?

1 A. Not at all.

2 Q. Okay. How much do you charge for your time to be here
3 today?

4 A. \$575 per hour.

5 Q. And how long, Dr. Brody -- I think you said 20 years
6 you have been testifying?

7 A. At least.

8 MS. MCVEY: Your Honor, at this time I would like
9 to move to admit Dr. Brody's CV into evidence.

10 THE COURT: Any objection?

11 MR. WALL: Your Honor, it's always my belief that
12 that's hearsay. He's testified about it. It should not
13 come into evidence.

14 THE COURT: Very good.

15 Overruled. It will be accepted into evidence.

16 (Whereupon, Plaintiffs' Exhibit No. 809 was
17 entered into the record as evidence).

18 MS. MCVEY: And, Your Honor, we would also like to
19 tender Dr. Brody as an expert in cell biology and
20 experimental pathology as it relates to asbestos and the
21 diseases it causes.

22 THE COURT: All right.

23 Voir dire?

24 MR. WALL: No, Your Honor, no voir dire.

25 THE COURT: Very good.

1 All right, ladies and gentlemen, by reason of Dr.
2 Brody's education, training and experience, I find that he
3 is qualified as an expert in the field of cell biology and
4 experimental pathology and is qualified to give opinions
5 about the disease of mesothelioma, its causes and its
6 progress in the system.

7 MS. MCVEY: Thank you, Your Honor.

8 BY MS. MCVEY:

9 Q. Would it be -- Dr. Brody, have you prepared a slide --
10 there are slides that you can show the jury to help explain
11 your testimony?

12 A. Yeah, sure. I have a series of slides that I use when
13 I talk to medical students.

14 I gave a talk at the Case Western Reserve Medical
15 School a few months ago.

16 I have given talks at the Institut Pasteur in Paris.

17 I was a medical educator in Beijing for several weeks.

18 And all of these places I use a series of slides from
19 my work and from textbooks that help me to explain it. And,
20 of course, I do the same thing for jurors.

21 Q. So the same slides you are going to show our jury are
22 the slides that you show medical students?

23 A. Yeah, I use a different vocabulary for the jurors than
24 I do for the medical students and I don't show them all the
25 slides that I show the medical students, but, yeah, they are

1 a subset, shall we say.

2 MS. MCVEY: Would it be okay if he came down to --

3 THE COURT: Yes, you may come down, Dr. Brody, if
4 you would like to present at the slide. Be sure that you
5 are aware that the jury can see you. Are you just going to
6 stand right here?

7 THE WITNESS: If I could. I think this would
8 work, Your Honor.

9 THE COURT: I think so. Let's see if your pointer
10 will work.

11 Yes, it will.

12 THE WITNESS: Perfect.

13 THE COURT: Very good.

14 You may proceed, Dr. Brody.

15 THE WITNESS: Thank you, Your Honor.

16 BY MS. MCVEY:

17 Q. Dr. Brody, just the first thing, what is asbestos?

18 A. Okay. So I had the opportunity to sit here and listen
19 to the opening statements, just like you, so now I know what
20 asbestos is. No.

21 So asbestos -- asbestos is a -- as you saw a picture of
22 that huge mine. So it is a mineral that is mined from the
23 soil. It's mined in a lot of different places. It's mined
24 in Russia and Canada. It was mined in the U.S.. A lot of
25 it in Australia. A lot of it came from South America,

1 Brazil, some from Italy. So a lot of places around the
2 world.

3 There are three different kinds that were up there;
4 chrysotile, crocidolite, and amosite.

5 Chrysotile is about 90 percent of the world's use. The
6 other types make up about five percentage of the world's
7 use, but it really depends on the product. In other words,
8 if it was insulating -- if it was an insulating product, it
9 would be mostly amosite.

10 So the overriding point here is that all the asbestos
11 varieties cause all of the asbestos diseases. And with that
12 we can --

13 Q. And just one question on that. Is the potency, though,
14 the same for the different types of asbestos?

15 A. Well, yes. But, I mean, if a person is exposed --

16 Yeah, so -- for causing mesothelioma, the amphiboles,
17 amosite and crocidolite are more potent in causing
18 mesothelioma, but if you are exposed to any of them, you
19 have obviously a dramatically increased risk.

20 Q. Okay. Could you talk about and explain to us what
21 diseases are caused by exposure to asbestos?

22 A. Sure. So the disease --

23 Well, let me -- let me just go to the first slide.

24 So this is a -- obviously a diagram that I have that I
25 took from a textbook, and I know that you know where your

1 lungs are, but let me just make the point that when you take
2 a breath, the air comes down this tube that we call the
3 trachea or windpipe, and you can feel the top of that in
4 your adam's apple right here. That's your trachea on top of
5 your windpipe.

6 You take a breath and the air comes down into this
7 series of tubes called conducting airways, because they
8 conduct air down into the lungs.

9 So the diseases you are asking me about, the first one
10 that you would come to as you move down the airways is lung
11 cancer. Lung cancer develops in the walls of the airways.

12 Every one of these diseases has a target cell from
13 which that disease develops, and I'll show you these cells
14 as we get deeper into the lung. So cancer -- a lung cancer
15 develops in the walls of these tubes.

16 And then as the tubes descend into the lung, we get
17 into what's called the gas exchange air of the lung, where
18 we exchange oxygen and carbon dioxide. The room has
19 about -- room air has about 20 percent oxygen in it. We
20 need to extract the oxygen from the room air and exchange it
21 with the -- make carbon dioxide in our body and expel it and
22 that's going on all the time, and that's done down here in
23 the gas exchange area and that's where the disease
24 asbestosis develops.

25 Asbestosis is scar tissue in the lung from inhaling

1 asbestos. And as you were told correctly, that's the --
2 that was the first disease discovered to be caused by
3 asbestos.

4 The next one was lung cancer in the fifties. And then
5 in 1960, Dr. Wagner established this cause of asbestos
6 causing mesothelioma.

7 Q. Dr. Brody, I neglected to ask you this, but will you
8 promise that any opinions that you give will be to a
9 reasonable degree of scientific certainty?

10 A. Sure.

11 Q. Okay. Can you tell the jury how asbestos causes
12 disease?

13 A. And we are on our way.

14 Q. Okay.

15 A. All right. And so you see this black line that runs
16 around the outside of the lung. That black line represents
17 the pleura, P-L-E-U-R-A. The pleura is a very thin, I mean
18 saran rap thin membrane. It wraps around the outside of the
19 lung, makes your lungs air tight, like balloons. So you
20 take a breath and then the pleura expands and it comes back
21 down like a balloon.

22 Now, there is a single layer of cells that runs around
23 the outside of the pleura and those cells are called
24 mesothelial cells. And so if you have a cancer of the
25 mesothelial cells, it's called mesothelioma.

1 So the concept today is explained how asbestos that's
2 floating around in the air from whatever source, how that
3 asbestos causes that cancer mesothelioma. That's what you
4 have asked me to do. That's my goal today.

5 Q. Thank you, Dr. Brody.

6 A. All right.

7 So one of the ways that we do that is by using
8 different kinds of microscopes, because you cannot see
9 individual asbestos fibers. You cannot see the individual
10 cells without a very powerful microscope, so this is called
11 an electron microscope.

12 Q. Who is that guy?

13 A. And -- well, I had this microscope for a very long
14 time. In fact, this microscope was a victim of Hurricane
15 Katrina when I was at Tulane University in New Orleans.

16 And I can take a piece of tissue as small as a period
17 at the end of a sentence, or as big as this device I have in
18 my hand, and I put that tissue into this door right here in
19 front of me and this column has a vacuum inside, so it's
20 evacuated. And at the top of the column there is an
21 electron gun that produces trillions of electrons that come
22 down that column and strike that sample that I put into the
23 microscope. And then the electrons that pass over that
24 tissue that I -- that lung tissue that I put in there, or
25 asbestos, the electrons set up a secondary charge on the

1 surface of the sample and I collect those electrons and
2 produce an image that's a re-creation of exactly what is in
3 the tissue actually looks like. And that tissue image then
4 appears right in front of me, and just off of the screen
5 there is a camera so I can take a permanent image of
6 whatever it is I'm looking at.

7 So, for example, if I cut a piece of tissue out of the
8 lung here and you will see the pleura going over the surface
9 and you will see these conducting airways going up, and I
10 cut this tissue out and you can see now this lung. You can
11 see the airways going up here and you can see the pleura
12 running around the surface here, and you see how thin the
13 cut edge of that is, because I told you that it's saran wrap
14 thin. The mesothelial cells are out here on the surface of
15 the pleura. A sheet of hundreds of millions of mesothelial
16 cells covering the surface.

17 There is a conducting airway, so you take a breath
18 and -- let's say that there are asbestos fibers floating
19 around in the air and you take a breath, some proportion of
20 those fibers get caught in your nose. Moisture in the nose
21 catches them. Nose hairs catch them. Some fibers get
22 caught in the back of the throat. Those don't go any
23 farther. You cough them out or you blow them out, you
24 sneeze, or whatever.

25 Some of the fibers go right past that and get down into

1 the airways, these conducting airways. We will take a look
2 at that in a second.

3 And then some of them go right past these airways and
4 get out into the gas exchange area, which we will take a
5 look at in a second.

6 And then once they get here, there are pathways I'm
7 going to show you to the surface of the pleura where the
8 target cell, where the mesothelial cells are. So that's
9 what we are going to take a look at.

10 Q. So what happens next, diving down?

11 A. Yeah. So we are going to take a look at the cells that
12 line the airways.

13 And I saw the lights go down earlier. Is it possible
14 to do that?

15 THE COURT: Yes.

16 A. Because the picture is going to show a lot better.

17 That's great, actually. That's perfect, just like
18 that.

19 Okay. So I'm going to focus the microscope right down
20 here on the surface of the airway. It could be anywhere
21 along the airway. It could be you, me, a rat, cat, a dog, a
22 giraffe, elephant. We all have these exact same kinds of
23 cells and structures.

24 So I'm going to focus the microscope and I'm going to
25 fill the screen with what's in that red spot from anywhere

1 along here. So let's focus right there, take a picture and
2 now you can see this says human bronchial. Bronchial is a
3 small airway. Our airways are lined by these little
4 hair-like structures. They are not hairs at all. They're
5 extensions of the cell surface called cilia, C-I-L-I-A, and
6 they are constantly beating in a synchronous wave-like
7 fashion, so that any particles that get past your nose and
8 your throat that land down on the airway gets swept up to
9 your mouth by these cilia and you swallow them or spit it
10 out, and that's going on all the time.

11 Then you can see that there is some cells here that
12 don't have cilia, and those cells make mucus. And you don't
13 think much about mucus, unless you're a cigarette smoker, or
14 you have a cold and you can feel that mucus. It gets swept
15 up and you swallow it or you spit it out. So that's all
16 normal, clear, and that's what's supposed to be happening
17 all the time.

18 We are going to talk about what happens when you get
19 too much asbestos in your lungs, but that's what is supposed
20 to be going on all the time.

21 Okay. So -- I'm sorry.

22 BY MS. MCVEY:

23 Q. That's all right.

24 What is that the line at the bottom, the marker?

25 A. Yeah, sure.

1 So this is called a size marker, because we always want
2 to know how big and small these things are. When you see
3 asbestos fibers, you want to know if they are small enough
4 to get down into these areas of the lung. So this one here
5 you see says ten mu or microns. So this line represents ten
6 microns.

7 Obviously you can see it, but let me explain how big a
8 micron is. If you take your thumb and your forefinger and
9 you make a little space, you can just barely see it with the
10 naked eye, you have made just about a millimeter, okay?
11 Now, that means -- naked eye means no microscope, no
12 magnifying glass. This is what you can normally see with
13 your naked eye. It's about a millimeter.

14 Now, take that millimeter and divide it a thousand
15 times. So what you have done then is you have made a
16 thousand microns. So a thousand microns is the same as a
17 millimeter. And so the human eye can see about a thousand
18 microns. You obviously can't see ten. You can barely see a
19 thousand, right, but with the microscope it's easy to see
20 ten microns.

21 And then if you take this bar and you line it up
22 against these cilia, you can see that these cilia are just
23 about eight to ten microns long, and that's the cilia that
24 line our airways.

25 Okay. So we are going to back up for a second, because

1 we are going to go past the cilia now and out to the gas
2 exchange area, because we want to progress toward the target
3 area, the pleura where the mesothelial cells are.

4 So let's take a look at this area right here moving
5 past the airway and here we are now at the end of the airway
6 and we are out where the small air spaces of our lungs. You
7 see, we have hundreds of billions of these microscopic air
8 spaces in our lungs. And if you think of each one of these
9 as a room, maybe kind of like this courtroom. You take the
10 ceiling off and if you look down on the floor, there is a
11 carpet. And I don't know if there are carpet squares or
12 not, but everyone knows what carpet squares are. And if you
13 think of -- if you think of each carpet square as a cell,
14 you have an idea of what lines all of our air spaces.

15 We have a thin layer of cells that line the floor, go
16 up over the wall into the next air space and line all of our
17 air spaces with a cell that's thin enough so that you take a
18 breath and the room air comes running in and fills all these
19 air spaces. And the oxygen in the room air diffuses right
20 through the carpet, because underneath the carpet there is
21 blood running. And the blood goes to your brain and your
22 muscles and you send the oxygen there and you use it up and
23 you make carbon dioxide and you send it back to your lungs
24 and you go like that. Okay. So that's what's going on in
25 our lungs all the time.

1 So I'm going to take us into a single human air space.
2 It could be any one of these. So it's like perching the
3 microscope over the room and looking down right on the
4 carpet. So let's do that in a single human air space.

5 There is a single human air space. I'm outlining one
6 of the cells for you. I call it a carpet square, but nature
7 doesn't make squares very well. Nature makes smooth
8 surfaces. Just look at all of us. We have smooth contours
9 on all of us. No squares, right?

10 And so it's the same thing with the cells that line our
11 air spaces. They come in oval shapes and odd shapes and
12 round shapes. And these smaller round cells, the little
13 bumps all over them actually are a kind of a stem cell.

14 If our big flat carpet cells get injured, damaged by
15 asbestos or by infection, these smaller cells start to
16 divide and take their place. So we all have this repair
17 mechanism in all of our air spaces.

18 So I'm going to -- we have one more line of defense.

19 Q. What's the next line of defense?

20 A. Okay. So I'm going to take us right down on the carpet
21 down here. And remember the cell with the bumps all over it
22 here, so let's focus right there. I'm going to go down so
23 far that you are going to actually be able to count the
24 bumps on the cell, okay? So we are right down on the carpet
25 now and here is the cell, the stem cell, and here is the

1 carpet cell.

2 Then there are a couple of other actors. There is this
3 one, kind of ruffled, not going anywhere. Then there is
4 this cell with the tail end and a couple of what are called
5 false feet out in front of it, and I caught it in the act as
6 it was going this way going after this pollen grain right
7 here.

8 So what's going on here is that this lung once belonged
9 to somebody who was killed in a motorcycle accident. I was
10 on the medical examiner's autopsy call and I went in and
11 prepared this person's lung within just an our or so after
12 death and we had this chemical fixative that stops
13 biological activity and freezes it, essentially, in a
14 life-like situation, condition, and I was using my electron
15 microscope to go from air space to air space looking for
16 interesting things to show the medical students and I came
17 across these two cells; this one kind of ruffled, not going
18 anywhere, but this one going after this pollen grain.

19 Now, these cells are called macrophages. Macro means
20 big and phage means eater. These cells patrol our air space
21 surface. And as this person was riding along on his
22 motorcycle he was probably inhaling a lot of different
23 things. One thing we know he inhaled was this pollen grain
24 which went zipping right past his cilia and the mucus and
25 landed on the carpet.

1 We don't want any kind of foreign particles sitting on
2 our gas exchange surface, so we have these cells, these
3 macrophages, that detect the presence of foreign particles
4 and they can move to those particles, pick them up, bring
5 them into the substance of the cell, sort of eat them in a
6 cellular way, not with -- not with a mouth and teeth, but
7 take it into the substance of the cell and digest it, not
8 for nutritional purposes, but to get rid of it, and then
9 they move onto the cilia. Actually the big word for the
10 mucus and the cilia is called the mucociliary escalator,
11 because it escalates things up from our mouth. And so they
12 get on the escalator. Every time you swallow, you are
13 swallowing a few of your friends, these macrophages that are
14 constantly cleaning your air spaces of things, dust
15 particles and things that don't belong there.

16 So this is going on all the time and these macrophages
17 we found go after asbestos fibers, because they are trying
18 to remove the asbestos from the lung, just like they are
19 removing this pollen, and we actually discovered that its
20 signal in my laboratory. We discovered the chemical signal
21 that attracts the asbestos -- attracts the macrophages to
22 the asbestos.

23 The problem is that asbestos is toxic. So here the
24 macrophages are coming in to clean the asbestos off of the
25 carpet, but the asbestos kills the macrophages and they

1 become part of the disease process.

2 So I'm just telling you about some of the things that
3 we have studied and discovered over the years. So let me
4 then go on, if I may, and talk about asbestos.

5 Q. Please. Tell us about asbestos.

6 A. Okay. So this is one of the kinds of asbestos. It's
7 chrysotile.

8 I have a picture of crocidolite I'm going to show you
9 in a couple of minutes, which is basically the same picture
10 as amosite.

11 And you notice that I'm talking about asbestos in
12 general, because all of the asbestos fibers do all the same
13 things. There is no reason to separate out one kind versus
14 another.

15 Notice that the fibers -- in this particular group the
16 fibers are in a bundle. That means they are a group of
17 fibers stuck together. Some of them are fracturing off.
18 You can see this a one micron bar right here. So that means
19 you can hold this bar up and find that this fiber is
20 hundreds of microns long as it goes off the screen. This
21 fiber starts at about a micron thick and fractures down and
22 they can become extremely thin, down to tenths of microns.

23 If this whole bundle were floating by and the light
24 were just right, it would look like a speck of dust. You
25 know how you walk in a room sometimes and it looks really

1 dusty, but you can't really notice it unless the light is at
2 a certain angle? Well, if you can see a speck of asbestos
3 dust, that means that you are looking at thousands of
4 fibers, because look at how small they are. Look at in this
5 bundle, which you can just barely see, once they have
6 fractured out, you would have thousands of fibers. They are
7 constantly breaking down and becoming thinner and smaller.
8 And, in fact, that whole bundle, if you can see the whole
9 bundle, you can't inhale the bundle. It's too thick, if you
10 can see it with your naked eye. It's the fibers that are
11 constantly fracturing off of the bundle.

12 So that's my point. If it's dusty in an environment
13 and you can see individual dust particles, if it's asbestos,
14 there are thousands of fibers coming off of each speck of
15 dust, and those are the ones that get into the lungs. The
16 ones you cannot see is the ones that get into the lungs.

17 Q. So the real danger is the stuff that you can't see?

18 A. Exactly.

19 Q. Okay.

20 A. But seeing it as a dusty setting means that those
21 microscopic fibers that you cannot see are there as well.

22 Q. Got it.

23 A. Okay. So I want to show you a couple of slides from
24 some experiments that we did to understand where the
25 asbestos goes and how it does what it does. So in order to

1 do that, you have to use what are called animal models.

2 Q. And why are animal models useful?

3 A. Right. Because if you think about how people are
4 typically exposed, they are exposed at a work site, a
5 workplace, and then decades later they get sick. You don't
6 get to watch what's going on in that person during those
7 decades. So scientists -- and there are a lot of diseases
8 like that. And so scientists have used animal models,
9 typically rats and mice.

10 If you prove -- and that's -- this is what Dr Wagner
11 did when I worked with him. He showed that if he exposed
12 rats to asbestos, they get asbestosis, lung cancer and
13 mesothelioma. And so I showed, and other scientists showed,
14 they get those diseases from the same cells as people; same
15 anatomic sites, same cells. So now we can use it as a model
16 to understand the human disease, which is what this is all
17 about. This isn't to help cure rats. I mean, this is to
18 understand what is happening in the lungs of people.

19 And you can say that about any of the diseases that
20 people get that we have animal models. We use it to
21 understand tuberculosis, HIV disease, diabetes, kidney
22 diseases. A whole list of infectious diseases, we have
23 animal models to understand the human disease.

24 So this slide is from a rat, lung of a rat that was
25 exposed to asbestos for a single hour. Well, why would I do

1 that? That's not going to bring the rat to the clinic. You
2 have to expose them for through almost their life span to
3 produce cancers in these animals, and we know you can do
4 that, but if you want to ask the question well, where does
5 the fibers actually land in the lung, you have to expose
6 them for a short time and then take them out of the
7 chambers. We have these chambers about six feet high and
8 four feet wide. There is an asbestos generator at the top
9 of the chamber. It makes it dusty in the chamber, just like
10 in some work sites, dusty. Animals inhale the dust. And
11 then immediately after exposure they take them out, give the
12 animals an overdose of anesthetic and then I can study any
13 asbestos I see in the lung must have landed there during
14 that first hour. That's the only way the asbestos is going
15 to get there.

16 And then if I want to know where the asbestos goes, I
17 let another group of animals go back to their food and water
18 for a couple of hours and I give those animals an overdose.
19 And I may have let some go for days, others weeks, others
20 months, others years, okay, and some you have exposed for an
21 hour, some you expose for days, weeks, or months.

22 So these are experiments that take years to sort out
23 and literally hundreds of different publications to explain
24 all the findings, and I'm going to show you just a couple of
25 snippets of these.

1 This is one from a rat that was exposed to asbestos for
2 a single hour and you recognize now these different -- these
3 air spaces, these rooms that I was telling you about. There
4 is an airway. Here are the individual air spaces. So
5 let's --

6 I'm going to focus on this spot right here immediately
7 after exposure. This black hole right here. You see, the
8 air can come in here. It can go down this hole, or it can
9 go up here, or here, or it can go this way, and can split
10 again. So there are a number of different splits it can
11 take. So the air is coming here. This black hole here is
12 this one right here. So that means we are going to study
13 this area right here. So let's look at it. Here is that
14 black hole.

15 Now, you see this is a ten-micron bar. Ten microns; in
16 other words, you can barely see a thousand. This one is ten
17 microns long. That means this asbestos fiber is about ten
18 microns long, a little longer. It's kind of a long fiber
19 here. Then there is some short fibers you see. Now the
20 asbestos is distributed across the carpet.

21 Now for the first time there is a publication in the
22 literature that shows that asbestos lands on the carpet.
23 And not only does it just land on the carpet, but it turns
24 out we discovered that these carpet cells actually come up
25 over the fibers, a proportion of the fibers. About 20

1 percent of the fibers get shoved under the carpet. And you
2 can actually see that happening right here. You see the
3 fibers here, but you can't see them here. You can see them
4 here, but you can't see them here. So it turns out -- I'm
5 just showing you one picture of thousands that I have taken
6 of this and cut sections through them and proved to my
7 colleagues what I'm telling you is true. I'm just showing
8 you a snippet of this. So here are these -- what happens is
9 these fibers land on the carpet. The carpet cells respond
10 to these toxic fibers by covering them and shoving them
11 under the carpet. We don't want any kind of toxic particles
12 sitting on our gas exchange surface.

13 Now, I know you haven't heard about background asbestos
14 yet, because I was in the courtroom and I heard the opening.
15 We all have asbestos in our lungs, small amounts of asbestos
16 that we get from the background as we walk around. There
17 are products that have been released from car brakes and
18 building materials. Everywhere you go there is a small
19 amount of asbestos in the air called background and it's not
20 enough to cause disease, but it's enough that you can
21 measure it in the lungs of the average person, and I have
22 published papers showing that, and I asked rhetorically
23 where are those fibers? They are under the carpet in our
24 lungs. That's a storage space and they are not enough --
25 it's not enough to cause disease. It's when you get above

1 this background level, like in occupational setting, that's
2 when -- that's when asbestos causes disease.

3 So here these fibers are sitting under the carpet and
4 I'm going to show you that there is a pathway to the pleura
5 from underneath the carpet. Okay, so --

6 Q. What is the pathway?

7 A. Yes.

8 So the next experiment, again one picture shows that.
9 So here is an air space up here, another one here, and here
10 is the carpet here, and you see these characters here look
11 like donuts.

12 This is what our red blood cells look like. And you
13 can see that these are individual cells, red blood cells,
14 and they have a shape that it -- it looks like a donut, but
15 there is no hole there actually. It's just a depression,
16 not a hole, and they line up in single file as they flow
17 through these vessels called capillaries.

18 Now, you see there is an asbestos fiber bundle right
19 here and there is a single asbestos fiber right here on its
20 way into the flow of the blood. Then there is a group of
21 fibers here, and there is actually one here that's
22 completely covered by the carpet.

23 So this is a dynamic situation. This group of fibers
24 just landed there and it hasn't been taken up yet. This one
25 landed probably an hour earlier and it's already covered.

1 Some of them are already entering the flow.

2 Now, that's the way fibers get to the pleura, to the
3 target cell. There is a fluid flow of the lung. And the
4 fluid flow of the lung has two compartments; one is blood,
5 which is easy to see, but there is another one that's more
6 important than blood and it's called lymph, L-Y-M-P-H.
7 Lymph is a clear fluid that flows in our bodies head to toe
8 and the lymph flow in the lung starts under the carpet. If
9 I were to pull the carpet back, I would show you that it's
10 moist under there, because we have this clear fluid called
11 lymph and the lymph flows towards the pleura. So any fibers
12 that get into that flow collect in small vessels that go to
13 the pleura.

14 Now, I just want to mention, I said this is what our
15 red blood cells look like, but this is the lung of a rat.
16 This is exactly what our red blood cells look like; same
17 size, same shape.

18 Okay. So we are talking about fluid flow and you can
19 see here. Now, this is a diagram. It's called a Netter
20 Diagram, because this is from Dr. Netter, who has given us
21 atlases of the human body in health and disease, and Dr.
22 Netter here is showing us the pattern of lymph flow in the
23 lung. And the pattern of lymph flow in the lung goes to the
24 pleura. You see these small vessels? Well, these, that
25 many of which end at the pleura. And if you look at the

1 surface of the pleura, you will see a network of small
2 vessels out there, and this flow started under the carpet
3 and collected in these small vessels that go to the pleura.

4 So what is the proof? Again I ask rhetorically, what
5 is the proof that the fibers that are in the lymph system
6 get -- that flow in the lymph, what's the evidence that they
7 actually flow in the lymph?

8 Well, we all have these structures called lymph nodes.
9 You have probably heard of lymph nodes. Lymph nodes are
10 small bundles of tissue that are found wherever lymph flows.
11 And that means from head to toe. You know about some lymph
12 nodes around in your arm pits, or on your neck. Sometimes
13 they swell when you are getting a cold, because -- or you
14 are getting the flu, or something, because the lymph system
15 carries cells of the immune system. And so you are feeling
16 the inflammation and the effect of a developing cold or
17 something like that, but we have lymph nodes in our ankles
18 and in our wrists and all around our body.

19 We also have lymph nodes around the lung, and that's
20 what the artist, Dr. Netter, has given us here. You see
21 these green blobs? These are lymph nodes around the lungs.
22 They are called thoracic nodes, because they are in the
23 thorax, in the chest.

24 There is another set of very important nodes in the
25 peritoneal cavity.

1 So the lung, this surface, these surfaces out here,
2 these mesothelial surfaces are the most likely place to get
3 a mesothelioma, those mesothelial cells.

4 The second most likely place is the peritoneal cavity.
5 Which holds your stomach and your intestines. There is a
6 lot of lymph down there, a lot of lymph nodes down there.

7 So some scientists -- this is not my work now, but some
8 scientists study the contents of the lymph nodes around the
9 lung and in the peritoneal cavity and they find asbestos and
10 particularly concentrated in people occupationally exposed.

11 There is only one way for an asbestos fiber to get into
12 a lymph node. That's to be inhaled, travel into the lymph
13 system through the surfaces of the air spaces and get
14 trapped in these lymph nodes, because lymph is a
15 circulation. It circulates all around the body. And if
16 there are lymph nodes around the lung and in the peritoneal
17 cavities, that means these asbestos fibers at one time in a
18 person's life were inhaled.

19 Okay. So we now have the fibers at the target site.
20 That's where the mesothelial cells are. So we can talk -- I
21 can spend the rest of the time talking about how asbestos
22 causes these mesothelial cells to become cancer cells.

23 Q. How does that occur?

24 A. Okay. So let's talk about that.

25 So here is a normal pleura. You see how thin and shiny

1 it is, and it's shiny because it's moist from the lymph, and
2 compare that to a pleura with a person with mesothelioma.
3 Dramatically thickened with tumor cells.

4 So let's talk about how asbestos causes cancer.

5 So this is the proceedings of a meeting I was at a few
6 years ago. I gave a talk at this conference and the
7 concept, the focus of the conference, was how fibers cause
8 cancer. So there is a big word, carcinocancer genesis
9 formation. How do fibers cause cancer? That was the focus.

10 I have talked to you today about cells. I showed you
11 some cells and I showed you that some cells pick up
12 asbestos. I talked about some of the cells, but you cannot
13 talk about carcinogenesis, cancer formation, unless you talk
14 about the molecular aspects.

15 Q. Can you talk just a little bit about the molecular
16 aspects of that?

17 A. Right. So molecular aspects means your genes.

18 Molecular biology is the study of genes and genetics.

19 Cancer is a genetic disease.

20 I'm going to give you the simplest definition of cancer
21 and then I'm going to explain what that means.

22 So cancer is the loss of control of cell growth. Let
23 me say that again and I'll explain it. Cancer is the loss
24 of control of cell growth.

25 Every one of our cells has a rate at which it is

1 supposed to divide and multiply. Your skin, for example, we
2 are always losing skin off the surface. We have to keep
3 replacing our skin cells, and we do that at a rate of about
4 ten percent. So if I cut a piece of your skin and I put it
5 under a microscope, I can show you that about ten percent of
6 your skin cells are dividing and making new cells.

7 Your lung and your liver, about one percent. Shouldn't
8 have to be making a lot of new lung and liver cells.

9 And the mesothelioma cells, a half of one percent.
10 Very low background rate of division. You shouldn't have to
11 be making new mesothelial cells.

12 Now, humans have about 20,000, or so, genes that makes
13 us what we are. If you look around and you see different
14 hair color, eye color, skin color, different size people,
15 different metabolic rates, these are all things that you can
16 see that are 20,000, or so, genes control most of the things
17 that our genes do you don't get to see. Of about 100 of
18 those -- like, for example, the genes that make the enzymes
19 that digest our food, you don't see those genes working, but
20 you know that we know they are there.

21 Now, of those 20,000, or so, genes, about a 100, or so,
22 might be up to 200 now, but somewhere between 100 and 200 of
23 these are called growth-controlled genes, and they keep a
24 set pattern of growth in our different cells. Cancer is the
25 loss of control of that growth. That means that there are

1 errors or mistakes, mutation, in genes that control cell
2 growth. That is as simple as it can possibly make a
3 description of cancer, because cancer is a very complex
4 process, because in all those sets of genes that we have, we
5 don't yet know just which genes are required to be damaged
6 to cause the cancer, but let me show you what we do know
7 about how asbestos acts as a carcinogen; that is a cancer
8 causing agent.

9 So one of the ways we do that is by taking cells out of
10 the body, out of humans, out of animals, put those cells in
11 a dish and give those cells the right nutrients and they
12 will grow. They will divide, and you can study the genes
13 and you can study the DNA, DNA meaning just genetic
14 material, and you can add to those cells things that you are
15 interested in studying, like asbestos. We produce cancers,
16 cancer cells, right in these dishes and that's a way to
17 study how these different carcinogens function, how they
18 work. And so we -- we and other laboratories have been
19 doing those kinds of experiments for a long time.

20 And here is an example of that. On the cover of this
21 proceedings there is two cells. Here is one I'm outlining
22 for you, and then there is another one over here, and some
23 fibers were added to these cells. The cells are sitting in
24 a special medium of fluids that gives them the right
25 nutrients so they can live and grow. Some cells live like

1 that overnight and some will live for months. It depends on
2 the kind of cell it is. So you can see some fibers have
3 been added. You see it's kind of a long fiber and then
4 there is some short fibers. See how those fibers have
5 collected around the center circle in the cell? But they
6 are excluded from that center circle. The center circle in
7 our cells is called the nucleus and the nucleus contains all
8 of our DNA. All of our genetic material is crammed into the
9 nucleus of our cell. Take any -- take mesothelial cell,
10 skin cell, the lung cell, the same story that I'm telling
11 you now. Okay. The DNA is cramped into the nucleus.

12 And we have this membrane that protects the DNA. You
13 see how the fibers have been excluded from the DNA? That's
14 a good thing. That's what's supposed to happen, but one
15 thing that scientists have known for a long time is that
16 when a cell divides, when we make new cells, we lose that
17 protective membrane around the DNA, and that makes the cell
18 more vulnerable.

19 And we know that a dividing cell is more than likely to
20 become a cancer cell, and that's why this process of cell
21 division in us and in rats and mice and worms and insects is
22 very fast. It goes very quickly, because we don't want to
23 leave the DNA vulnerable. Okay? But when it's vulnerable,
24 the cells are more likely to become a cancer cell. So we
25 asked it in my laboratory with a collaborating laboratory

1 what would happen if we added asbestos and other agents when
2 the cell is dividing and it's more vulnerable? So let me
3 just show you that a little bit.

4 Q. Do you have a picture of that?

5 A. I do, because that's how you learn how asbestos acts as
6 a carcinogen, a cancer causing agent, by doing those kinds
7 of experiments.

8 Okay. So here is what's supposed to happen in normal
9 cell division. Here are three cells; one, two, three cells.
10 The two cells on the outside are not dividing.

11 Now, there is no asbestos here. This is just normal.
12 This is what's going on in all of us all the time right now.
13 Okay. The nucleus is intact. The DNA is stained blue so
14 you can see where it is. The cell in the center is
15 dividing. I know that because all the DNA is condensed into
16 these white threads called chromosomes.

17 Chromosomes are bands of condensed DNA. This is what
18 happens in -- this is normal. This is what happens in all
19 of our cells as the cells divide. The DNA condenses and
20 forms these chromosomes. Now the idea is to make another
21 cell. The chromosomes duplicate. They replicate. They
22 make another cell. And then you get two new cells, just
23 like the original. Okay. That's what's supposed to happen
24 every time.

25 Let me show you what our chromosomes look like. So if

1 you take -- if you take this kind of cell and spread out the
2 chromosome, you can see that humans have 23 pairs of
3 chromosomes. You probably heard ads from this company 23 &
4 Me? Well, that comes from this 23 pairs of chromosomes that
5 humans have. Okay. And on these chromosomes you can see
6 these light and dark bands. And the light and dark bands
7 that where you find all of the 20,000, or so, genes
8 distributed across the chromosome.

9 Now, the important point here is that every one of our
10 genes must be on the right chromosome and in the correct
11 place on that chromosome. There is no mixing and matching
12 allowed when it comes to where our genes are located. It's
13 the same for you and me and rats and mice and grasshoppers
14 and all that. Okay? We all have this same concept of
15 chromosomes of genes in the right place in the right
16 chromosome.

17 So when we say faithful replication, so let's see what
18 happens here when it goes correctly. Here is a normal cell.
19 The chromosomes are stained purple this time so you can see
20 them and now they are going through what's called faithful
21 replication with each gene in the right place in the right
22 chromosome and you get two what are called daughter cells.
23 So two new daughter cells just like the original.

24 Now, I told you that we have of these 1,000 of these
25 ten -- of these 20,000, or so, genes that we have, about a

1 100 of them are called growth controlled genes. I'm going
2 to tell you about one of them just as an example. One of
3 them is called P -- how we doing?

4 Q. Okay.

5 A. We are going. I'm almost finished.

6 Q. Okay.

7 A. So we have -- we have this -- a gene called P-53. P-53
8 has been called the guardian of the genome. It is a tumor
9 suppressor gene. Now, that gives you a concept of how
10 important it is. And this tumor suppressor gene is damaged
11 in about 50 percent of all human cancer. It's central to
12 the development of many human cancers. What happens is if
13 you have a carcinogen, like asbestos, or cigarette smoke,
14 affect your cells, the P-53 gene gets activated, turns and
15 shuts the cell down. It stops the cell from dividing. That
16 means it can't make the new daughter cells and send these
17 mistakes off into the new cell. It supresses the tumor, a
18 potential tumor. It's a very important gene.

19 Not only that, it controls what's called a death
20 pathway. We have a whole series of genes that protect us.
21 We have what are called molecular defenses. Most of us are
22 not going to get cancer. Most people, no matter how much
23 asbestos they are exposed to, don't get cancer. Even as
24 dangerous as smoking cigarettes is, most cigarette smokers
25 don't get cancer, because we have these very effective

1 genetic defenses, like P-53. I'm not going to tell you
2 about the hundreds of others that we have, but they are all
3 distributed, and we know where many of them are. Like P-53,
4 for example, is at the tip of human chromosome 17. Now, if
5 it's not at the tip of human chromosome 17, it's not going
6 to function and it can't protect us.

7 So let's go on and you will see why I'm telling you
8 this, because here is now an experiment that was done with
9 asbestos, where we -- here is a normal cell. This is one of
10 millions of cells in this experiment. There is no asbestos
11 over here. Half of the chromosomes go to one side, half to
12 the other, and that's going to produce two normal daughter
13 cells.

14 Over here is asbestos. This happens to be crocidolite
15 asbestos, which is basically the same as amosite asbestos,
16 and you can see the five long fiber here and a little
17 shorter one, a little shorter one. Most of the DNA is where
18 it supposed to be, but look at some of the DNA is bound to
19 the surface of the asbestos fibers. And that results in
20 this condition called aneuploidy, and I'm going to tell you
21 about aneuploidy in just a second. Let just show you one
22 more example where we have another kind of asbestos causing
23 aneuploidy, and these are mesothelial cells.

24 So here is a mesothelial cell, no asbestos. Half the
25 chromosomes go here, half of them go here, and now you have

1 normal cell division.

2 Over here the daughter cells have essentially formed,
3 but there is some DNA bound to the surface of the fiber
4 producing this condition aneuploidy.

5 Aneuploidy means abnormal chromosome separation. These
6 are not cancer cells, but the door has been opened. And if
7 you have been listening to anything that I have said, you
8 will know the reason is because in this DNA that's not where
9 it's supposed to be could be a gene like P-53, or any of the
10 other molecular defenses. We have genes that produce
11 enzymes that can repair DNA. They are called DNA repair
12 enzymes and they can actually bind together DNA that's been
13 damaged.

14 Now, I tell you about one more thing related to this
15 event, to these events. Aneuploidy -- let me finish this.
16 Aneuploidy means abnormal chromosome distribution. They are
17 not cancer cells, but the door has been opened because there
18 is DNA that's been displaced, and in this DNA could be a set
19 of genes that protects us and now the gene is not where it's
20 supposed to be, so it's not going to work. Okay? That's
21 one way asbestos causes cancer.

22 The second way is because asbestos generates what are
23 called reactive oxygen species. High-energy short-lived
24 chemical compounds that we have been known for many
25 generations of scientists that damage DNA. That's the way

1 cigarette smoke causes genetic defects in the airway
2 linings. That's the way radiation causes cancer, by
3 generating oxygen rapidly. Asbestos, all the asbestos
4 varieties, the individual fibers generate oxygen rapidly.
5 So here now are these asbestos fibers in this same
6 compartment as the DNA generating oxygen rapidly. So
7 asbestos can produce a double whammy as a carcinogen. It
8 binds DNA and it generates oxygen rapidly.

9 I have one more slide. This is the last slide.

10 Q. What is that slide showing us?

11 A. Okay. So this is a summary of what I just told you
12 that will take just a second. I want you to understand what
13 was going on during those decades of latency. All right.

14 So what happened between the time the individual was
15 exposed to asbestos, whether it was one year or four years,
16 it's typically decades after exposure that the person comes
17 to the clinic with the cancer. What was going on. That's
18 what I want you to know and then I'll be finished.

19 So here the artist has given us a layer of mesothelial
20 cells, single cell layer, right? Hundreds of millions of
21 cells lining the surfaces of the lung. And he's got a
22 couple of lightening bolts coming in here and he says DNA
23 damage. That's what that says. Now, as far as I know,
24 lightening doesn't cause DNA damage. What the point is,
25 this is a mesothelioma. So something from the environment,

1 namely asbestos, has breached the target cell. The target
2 cell is the cell from which the disease develops. The
3 mesothelial cells lining the surface of the lung have been
4 breached. The DNA has reached that site, and I showed you
5 how that happened.

6 So now the cell has -- the carcinogen, the asbestos,
7 has reached the cell and the cell is dividing and the artist
8 has one of the daughter cells going off into the upper
9 left-hand corner here. The DNA is clumped up. The cell is
10 dying and this daughter cell is going to die, because the
11 artist knows very well that's what happens to most cells
12 with DNA damage. They die.

13 You go out and you get a sunburn, you have DNA damage
14 in certain cells and you get aneuploidy and you get DNA
15 damage, but you typically don't get skin cancer, because
16 those cells die.

17 The aneuploid cells that you find in the lungs of
18 cigarette smokers, they typically die, because of these
19 genetic defenses that drive the cells down the death
20 pathway. And that's what this cell represents is that death
21 pathway.

22 But we have a cancer. We have a tumor and the artist
23 has given us a tumor right here. And I'll tell you about
24 that funny color that the tumor has in just in second, but
25 that means that one of the daughter cells with that genetic

1 error, that DNA damage, must survive and there that cell is.

2 Now, between that surviving daughter cell and the
3 development of this tumor you got to give me about 50 years.
4 Okay. The artist didn't help much with that space right
5 there, but you going to give me about 50 years between that
6 first daughter cell and the tumor.

7 So what's going on? So think about the hundreds of
8 millions of mesothelial cells and now you have one with an
9 error in a gene that controls cell growth, the gene that
10 protects us, and that cell sits there now looking and acting
11 like a normal mesothelial cell. You would never know it was
12 there. No one is going to be going in there and start
13 collecting mesothelial cells from somebody. And that cell
14 then can sit there, as I say, like that for months, but
15 eventually it has to divide. I told you half of one
16 percent, very low background rate, but eventually it has to
17 divide; two cells, four cells, eight cells, 16, 32, 64,
18 making what's called a field of similar cells, all with that
19 one error.

20 Now, one or more of those might die, but in order to
21 get a cancer, several -- more than one has to persist. And
22 then the person gets hit again. Another one of those cells
23 gets hit again and another error. One error in a gene is
24 not enough. Two is not enough. Three is not enough. Four
25 is not enough. Five is probably not enough.

1 When you look at the cells from mesothelial tumors,
2 people with mesothelioma, there is a whole array of
3 different genetic errors. And I think I told you this
4 earlier. We can't tell you just which ones yet were
5 necessary and required for that cancer, but we do know that
6 you have to have a series of them.

7 So now we are up to two. Okay. So now there is a cell
8 with two genetic errors and it sits there looking and acting
9 like a normal mesothelial cell and it sits there like that
10 for months. Then it starts to divide. Two, four, eight,
11 16, 32, 64, making another field, a separate field of cells
12 with those errors. Okay. Now, think about that process for
13 decades, going on with the addition of errors over the
14 decades.

15 Finally, near the end of that latency, the single cell
16 with sufficient errors and in the right combination for that
17 person; remember, very rare cancer, a single cell grows out,
18 and that's why the artist made this all the same color, this
19 tumor is all the same color, because it all came from a
20 single cell. The clone that grew out into this cancer,
21 which is now going to keep growing by definition. It's not
22 now just a -- just a field. It's not now just a field of
23 similar cells. It is a cancer that is going to keep growing
24 until it takes that person's life.

25 Q. Thank you, Dr. Brody.

1 A. You are welcome.

2 Q. I got just a few more questions.

3 Dr. Brody, does smoking cause mesothelioma?

4 A. No, smoking has nothing to do with mesothelioma. We
5 know this because some scientists -- these are now called
6 epidemiologists. Epidemiologist is a scientist who studies
7 populations and they ask what causes disease in a population
8 and they found that people who smoke cigarettes don't have
9 an increased risk of mesothelioma.

10 Then they looked at people who are exposed to asbestos,
11 where there is a clear risk of mesothelioma, and if they
12 smoked, it didn't increase their risk.

13 So the answer is no, smoking has nothing to do with
14 mesothelioma.

15 Q. And how well established in the scientific community is
16 the causal relationship between exposure to asbestos and the
17 development of mesothelioma?

18 A. Well, there really -- I mean, it's like if you ask me
19 that same question about smoking and lung cancer. I mean,
20 it's called -- and I know that you saw this. It's called a
21 signal tumor. Somebody walks in with a mesothelioma, it's
22 signaled the doctor that there was very likely and probably
23 an asbestos exposure.

24 Q. And you talked a little bit about this, but in terms of
25 dose response, I'm going to talk to you about that for a

1 moment.

2 Is it the case that in some circumstances a person who
3 is actually doing the hands-on work with asbestos would not
4 develop this disease, but a person who is a bystander to
5 that person doing the work would develop the disease?

6 A. Oh, of course. It's all related to susceptibility.

7 Q. And --

8 A. There are -- there are -- it's called a bystander, and
9 there are a number of cases where workers, asbestos workers,
10 come home and the person who is taking care of the clothes,
11 is washing the clothes and shaking things out, that's the
12 person that gets the mesothelioma, not the worker. There
13 are a lot of cases like that.

14 Q. That would not be unusual?

15 A. That's correct, not at all.

16 Q. And can you talk to the jury a little bit about
17 cumulative dose? When you have different kinds of
18 exposures, can you pull one out?

19 A. Oh, okay, sure.

20 So whatever a person is exposed to, whenever a person
21 is exposed, a certain proportion of that asbestos
22 accumulates in the person's lung.

23 The lung does not discriminate among the various
24 sources of exposure. It just accumulates the material from
25 wherever it came. So if a person is exposed then as an

1 insulator and works on car brakes and then works in another
2 place where there is asbestos, all of those contribute to
3 the dose that that person gets and it's that person's dose
4 that caused their disease.

5 Q. Is there a level of exposure to asbestos that's known
6 to be safe that won't cause mesothelioma?

7 A. Well, not above background. In other words, I told you
8 about this level that we all have in our lungs. We
9 published papers finding that -- showing that we all have it
10 and it's there, but typically not enough to cause a disease.

11 So if you say background typically does not cause
12 disease, fine, but there is no level that we know that is
13 published above that, above that background that we all have
14 that's known to be safe.

15 Q. And, Dr. Brody, have government agencies looked at that
16 concept and come to the same conclusion?

17 A. Well, sure. I mean, that's where I get my information.
18 You know, this is not -- this is not something that I
19 deduced myself. This is what the epidemiologists have told
20 us.

21 Q. And what are some of the government agencies that have
22 agreed with that?

23 A. Well, The National Institute to Health, The American
24 Cancer Society, The World Health Organization, The
25 Environmental Protection Agency. National Institute of

1 Occupational Safety & Health. Every agency that's ever
2 actually asked that question comes to that conclusion.

3 Q. Dr. Brody, I would like to give you a hypothetical, if
4 I could.

5 Would you assume for me exposure to a person on a
6 regulars basis as a bystander to workers installing and
7 cutting asbestos insulation in the same building where he
8 was close enough to see dust over a period from 1970 to
9 1974?

10 And would you further assume for me exposure from
11 sweeping up after the insulation and cutting of asbestos
12 insulation near the same -- over that same four-year period,
13 from 1970 to 1974?

14 Would those exposures be a significant contributing
15 cause of the development of mesothelioma?

16 MR. WALL: Objection to the form of the question,
17 Your Honor. It calls for speculation.

18 THE COURT: Overruled. It's a proper hypothetical
19 question.

20 A. No question. Absolutely. That is the kind of exposure
21 that has caused many cases of mesothelioma.

22 BY MS. MCVEY:

23 Q. Thank you, Dr. Brody.

24 A. You are welcome.

25 MS. MCVEY: I pass the witness.

1 THE COURT: Your witness, Mr. Wall.

2 MR. WALL: No questions.

3 THE COURT: Very good.

4 Dr. Brody, thank you so much. You may come down.

5 THE WITNESS: My pleasure, Your Honor. Thank you.

6 MS. MCVEY: Your Honor, may Dr. Brody be excused?

7 THE COURT: He may be excused. Thank you, Dr.

8 Brody.

9 THE WITNESS: Thank you, Your Honor.

10 THE COURT: Good to see you, sir.

11 THE WITNESS: Pleasure. Thank you.

12 THE COURT: Ms. McVey?

13 MS. MCVEY: Your Honor, we have a video that we
14 can play, or we can start again tomorrow.

15 THE COURT: All right. This jury has been at it a
16 long time and I did not honor my promise to give them their
17 mid-afternoon break in order to get Dr. Brody through, so
18 what I am going to do, ladies and gentlemen of the jury, is
19 let you go for the day.

20 We will start at nine o'clock tomorrow morning.
21 And, again, I thank you for the attention that you have
22 given us. This is not easy jury duty. This is tough jury
23 duty, but I want to remind you please don't read anything
24 about this case. Don't go to the Internet and start doing
25 research on mesothelioma and try to figure out what you want

1 to know. Your evidence comes from this witness stand, and
2 one of the things that I always have to caution jurors
3 about, we are so lucky in this day and age with social media
4 and the Internet, we have access to all kinds the
5 information. I want you to please refrain from trying to do
6 independent research about the case.

7 It is so important to how a case is presented that
8 we have a record of what information you receive about the
9 case from the witnesses that testify to that information
10 here or show you documents that are exhibited and allowed to
11 go back to the jury room for you. So if you would please
12 help me out by trying this case fairly and not doing
13 research.

14 Another thing I would ask you not to do is post on
15 the Internet. It's awfully easy sometimes to throw
16 something on social media or post something about what kind
17 of a day you have had, particularly when you are doing
18 something that you don't normally do, and this is certainly
19 outside your normal every day work experience or living
20 experience hearing a complicated case like this. But if you
21 post something, it might interfere with your ability to be
22 perceived as fair and objective jurors. So if you will
23 please cooperate with me by don't posting anything on social
24 media, don't do any personal research, don't read anything
25 about the case.

1 Then have a wonderful evening and I'll see you
2 tomorrow morning. We will try to start at nine. So if
3 would be here just a little bit before nine, we will try to
4 hit the ground running at nine o'clock.

5 Thank you so much. You may retire to the jury
6 room.

7 Madam Forelady, did you have a question or have I
8 answered it?

9 JURY FOREPERSON: Do you go to this jury room, or
10 do you go to the jury assembly room?

11 THE COURT: You go to this jury room now. This is
12 your room now, so that is where you will assemble.

13 JURY FOREPERSON: Thank you.

14 THE COURT: Thank you so much, ladies and
15 gentlemen.

16 (The following takes place outside the presence of
17 the jury panel)

18 THE COURT: All right. Do we have any issues that
19 I need to deal with?

20 MS. MCVEY: I don't think so, Your Honor.

21 MR. WALL: Not yet.

22 THE COURT: What I will do, as per usual for those
23 of you who have tried cases with me, I will try to be here
24 about 8:30, or so.

25 MS. MCVEY: Great.

1 THE COURT: And so if you have some dilemmas that
2 develop that you think I need to assist you with or hear, I
3 will be here for you and you just let me know.

4 And I promise I will bring my cell phone and my
5 laptop tomorrow -- I mean my I-pad tomorrow so I will be
6 more accessible, but if things come up during the evening
7 that either side feels that you need any activity on my
8 part, all you have to do is e-mail me or text me. My cell
9 phone number is 803-530-0457. And my e-mail address, which
10 I think y'all know well, but I will just have it so you will
11 have it as noted jtoal@sccourts.org.

12 Have a good evening.

13 MS. MCVEY: Your Honor, just before we go, just to
14 confirm, tomorrow we are going to have Dr. Maddox in the
15 morning and then I understand that Covil is going to bring
16 their corporate representative, since we subpoenaed him.

17 MR. WALL: In the afternoon, not in the morning.

18 MS. MCVEY: Right.

19 THE COURT: Veer good. All right.

20 Thank you very much. See you tomorrow morning.

21 (Whereupon, proceedings were adjourned to July 17,

22 2018)

23

24

25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF COMMON PLEAS

3
4 JERRY HOWARD CRAWFORD)
AND THE ESTATE OF)
5 EVELYN KAY CRAWFORD,) TRANSCRIPT OF RECORD
6 PLAINTIFFS,) 2017-CP-42-04429
7 -vs-) JULY 17, 2018
8 COVIL CORPORATION,) SPARTANBURG, SOUTH CAROLINA

(VOLUME II)

9 DEFENDANT.

10
11 B E F O R E:

12 THE HONORABLE JEAN HOEFER TOAL, JUDGE. ; and a jury.

13
14 A P P E A R A N C E S:

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INDEX

(JULY 16, 2018)

1		
2		
3	WITNESSES	PAGE
4	JURY VOIR DIRE -- PAGE 85	
5	JURY SWORN -- PAGE 117	
6	OPENING STATEMENT BY MR. CHAPMAN -- PAGE 118	
7	OPENING STATEMENT BY MR. WALL -- PAGE 139	
8		
9	DR. ARNOLD BRODY (PW)	
10	DIRECT EXAMINATION BY MS. MCVEY	145
11	(NO CROSS EXAMINATION)	
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

INDEX

(JULY 17, 2018)

WITNESSES	PAGE
DR. JOHN MADDOX (PW)	
DIRECT EXAMINATION BY MR. CHAPMAN	216
CROSS EXAMINATION BY MR. WALL	294
VIDEOTAPED DEPOSITION OF JERRY CRAWFORD (PW)	302
VIDEOTAPED DEPOSITION OF HARLEY NEELANDS (PW)	319
VIDEOTAPED DEPOSITION OF DWAIN WATERS (PW)	319
ROBERT GLENN (PW)	
DIRECT EXAMINATION BY MR. BUHA	326
CROSS EXAMINATION BY MR. WALL	373
REDIRECT EXAMINATION BY MR. BUHA	376
DEPOSITION OF MACHEN CARPENTER READ (PW)	377

INDEX

(JULY 18, 2018)

WITNESSES	PAGE
VIDEOTAPED DEPOSITION OF BRUCE BOYER (PW)	404
VIDEOTAPED DEPOSITION OF DON BUCK (PW)	406
DEPOSITION OF DON BUCK READ (PW)	407
PATTY GILES (PW)	
DIRECT EXAMINATION BY MS. MCVEY	410
(NO CROSS EXAMINATION)	
TESSA QUINN (PW)	
DIRECT EXAMINATION BY MS. MCVEY	432
(NO CROSS EXAMINATION)	
PLAINTIFFS RESTS -- PAGE 436	
DEPOSITION OF PALMER COVIL READ (DW)	456
VIDEOTAPED DEPOSITION OF BRUCE BOYER (DW)	456
VIDEOTAPED DEPOSITION OF DON BUCK (DW)	456
DEFENDANT RESTS -- PAGE 457	
VIDEOTAPED DEPOSITION OF HARLEY NEELANDS (PW)	457

INDEX

(JULY 19, 2018)

WITNESSES

PAGE

CLOSING ARGUMENT BY MR. CHAPMAN -- PAGE 533

CLOSING ARGUMENT BY MR. WALL -- PAGE 556

FINAL ARGUMENT BY MR. CHAPMAN -- PAGE 568

COURT'S JURY INSTRUCTIONS -- PAGE 588

JURY VERDICT -- PAGE 629

REPORTER'S CERTIFICATE -- PAGE 634

	EXHIBITS			
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	P-803.1	MEDICAL RECORDS		254
4	P-804	BILLING RECORDS & SUMMARY		215
5	P-805.1	PHOTOGRAPH		435
6	P-805.2	PHOTOGRAPH		436
7	P-805.3	PHOTOGRAPH		436
8	P-805.4	PHOTOGRAPH		436
9	P-805.5	PHOTOGRAPH		436
10	P-805.6	PHOTOGRAPH		436
11	P-805.7	PHOTOGRAPH		436
12	P-805.8	PHOTOGRAPH		436
13	P-806.1	DR. MADDOX CURRICULUM VITAE		218
14	P-806.2	DR. MADDOX CURRICULUM VITAE		218
15	P-807.1	DR. MADDOX REPORT		257
16	P-807.2	DR. MADDOX REPORT		257
17	P-807.3	DR. MADDOX REPORT		257
18	P-807.4	DR. MADDOX REPORT		257
19	P-807.5	DR. MADDOX REPORT		258
20	P-807.6	DR. MADDOX REPORT		258
21	P-807.7	DR. MADDOX REPORT		258
22	P-809	DR. BRODY CURRICULUM VITAE		155
23	P-822.1	MAP		405
24	P-822.2	MAP		405
25	P-822.3	INFORMATION ON ASBESTOS		406

EXHIBITS

	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	P-822.4	SUBCONTRACTOR LIST		409
4	P-822.5	CONTRACT		408
5	P-822.6	CONTRACT		408
6	P-822.7	CONTRACT		408
7	P-822.8	CONTRACT		408
8	P-822.9	ENGINEERING CONTRACT		408
9	P-822.10	CONTRACT		408
10	P-822.11	PURCHASE ORDER	12	
11	P-822.12	MAINTENANCE SERVICE CONTRACT		408
12	P-822.13	CONTRACT		408
13	P-822.14	CONTRACT		408
14	P-822.15	CONSTRUCTION REPORT		406
15	P-822.16	PROGRESS REPORT		406
16	P-825.1	BILLING		369

17

18

19

20

21

22

23

24

25

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	CT-1	POWER POINT	84	
4	CT-2	JERRY CRAWFORD VIDEOTAPED DEPOSITION	527	
5	CT-3	HARLEY NEELANDS VIDEOTAPED DEPOSITION	527	
6	CT-4	DWAINE WATERS VIDEOTAPED DEPOSITION	527	
7	CT-5	DWAINE WATERS DEPOSITION	527	
8	CT-6	MACHEN CARPENTER DEPOSITION	527	
9	CT-7	BRUCE BOYER VIDEOTAPED DEPOSITION	527	
10	CT-8	DON BUCK VIDEOTAPED DEPOSITION	527	
11	CT-9	DON BUCK DEPOSITION	527	
12	CT-10	PALMER COVIL DEPOSITION	527	
13	CT-11	PALMER COVIL DEPOSITION	527	
14	CT-12	CD OF BRUCE BOYER, BRUCE BOYER,		
15		DON BUCK, HARLEY NEELANDS VIDEOTAPED		
16		DEPOSITIONS	527	
17	CT-13	HARLEY NEELANDS DEPOSITION	527	
18				
19				
20				
21				
22				
23				
24				
25				

1 (PROCEEDINGS, JULY 17, 2018)

2 THE COURT: Please be seated.

3 All right. Ladies and gentlemen, let me take up
4 something with the lawyers before, and this is on the
5 record, before we bring in the jury.

6 One of our jurors, juror number 168, has had a
7 domestic situation develop. She was very recently divorced
8 and her husband, who is an ex-deputy sheriff, and,
9 therefore, well knows how these proceedings work, has taken
10 advantage of the fact that she is here and on the jury and
11 does not have access to her cell phone to threaten their
12 sixteen year old son. And the result of that is that 9-1-1
13 was called. She was still here and gets out and has all
14 these calls on her cell phone and so forth. A very ugly
15 situation. And she has come to me this morning and placed
16 it before me and I have made the decision to allow Ms. Lynch
17 to be excused from jury service for her own safety, and I
18 have instructed the sheriff's department to accompany her
19 and be sure that her safety and the safety of her son is
20 assured.

21 I certainly will invite your comments, if you have
22 any, or if you have any dilemmas about that, but I just felt
23 that her safety required it.

24 MR. WALL: No objection, Your Honor.

25 MS. MCVEY: No objection.

1 THE COURT: Very good.

2 That will mean that the first alternate will now
3 be on the jury. I don't have my jury list right here.

4 THE BAILIFF: Juror 62, Your Honor.

5 MS. MCVEY: Number 62, sir?

6 THE BAILIFF: Yes, ma'am.

7 MS. MCVEY: Thank you.

8 MS. MCVEY: What's her name?

9 THE COURT: Casey L. McKinney, juror number 62,
10 will move up to be a member of the jury.

11 And, as you can see, this illustrates the
12 advisability in these kind of cases of having a sufficient
13 number of alternates to meet the challenges that we face,
14 but I appreciate your understanding.

15 All right. Now, is there anything I need to help
16 you with before we bring our jury in?

17 MS. MCVEY: Your Honor, just one thing.

18 First let me just give you the schedule of the day
19 and tell me one issue we are going to need to argue I think
20 this afternoon.

21 THE COURT: Right.

22 MS. MCVEY: We have a medical stipulation that we
23 have agreed to that I would like to publish to the jury this
24 morning.

25 THE COURT: Right.

1 MS. MCVEY: And Dr. John Maddox is here and he'll
2 go up.

3 THE COURT: Very good.

4 Hey, Dr. Maddox. Good to see you again, sir.

5 MS. MCVEY: We have some video to play of Mr.
6 Crawford and others.

7 THE COURT: Yes.

8 MS. MCVEY: And then Mr. Glenn, the corporate
9 representative for Covil, is coming this afternoon.

10 THE COURT: All right.

11 MS. MCVEY: And then depending upon how the day
12 goes, we will either put a family member up or not.

13 THE COURT: Right.

14 MS. MCVEY: Depending upon how much time we have.

15 THE COURT: So that's kind of a broad outline as
16 to what we can expect today?

17 MS. MCVEY: Yes.

18 Before Mr. Glenn testifies, we filed a brief on
19 corporate representative hearsay. We filed it and served it
20 earlier this week. We don't need to argue it now, but just
21 before Mr. Glenn testifies, which will probably be after
22 lunch.

23 THE COURT: All right. Very good. I will take
24 that and keep that here.

25 Mr. Wall, I will certainly hear anything that you

1 and Mr. Boger would like to argue about it.

2 MR. WALL: Yes, Your Honor. If he's the corporate
3 representative, how can it be hearsay?

4 THE COURT: I understand that, but we will argue
5 that at the appropriate time, but you will be fully heard on
6 it.

7 And preliminarily I think plaintiffs may be
8 protecting the record, but I understand what you say.

9 MR. WALL: Okay.

10 THE COURT: All right. Now, anything else by way
11 of anything preliminarily?

12 Mr. Boger?

13 MR. BOGER: Yes, Your Honor.

14 I have failed yesterday to put some objections on
15 the record as to a witness that at some point they are going
16 to play a video of, Mr. Waters, and we can -- if you want to
17 take them up now, we can get it on the record, or we can do
18 that prior to the witness being presented by the video.

19 MS. MCVEY: I thought you did argue that. Didn't
20 you file a motion and --

21 THE COURT: We --

22 MR. BOGER: We filed a motion.

23 THE COURT: You filed a motion. We argued it and
24 I ruled on the matter.

25 Is this just some more argument?

1 MR. BOGER: There was -- I didn't get my argument
2 before the ruling, Your Honor.

3 MR. WALL: You ruled on the briefs.

4 THE COURT: Well, true, but I had your position in
5 front of me, but you did not have a chance to orally argue
6 it?

7 MR. BOGER: Yes, ma'am.

8 THE COURT: Why don't we just do that before he
9 gets up and let you place anything else you want to place
10 before us at that time so that we can kind of --

11 MS. MCVEY: That would be fine, Your Honor. We
12 plan on playing Mr. Waters' deposition, which is a short
13 deposition.

14 THE COURT: When?

15 MS. MCVEY: Before Mr. Glenn testifies this
16 afternoon.

17 THE COURT: Okay. Well, we will have some breaks
18 before then where we will accommodate what you want to do,
19 Mr. Boger.

20 MR. BOGER: Thank you, Your Honor.

21 THE COURT: Very good.

22 MS. MCVEY: Thank you.

23 THE COURT: All right. Bring me the jury.

24 THE BAILIFF: Yes, ma'am.

25 (The following takes place in the presence of the

1 jury panel)

2 THE COURT: Ladies and gentlemen of the jury --

3 You may be seated, counsel.

4 Ladies and gentlemen of the jury, I hope you had a
5 pleasant evening. I certainly did watching home run derby.

6 Although I'm not a Nat's fan, so I'm not a big Bryce Harper
7 fan, but, boy, that was a lot of powerful hitting going on.

8 Illustrating the wisdom of having alternates, one
9 of your members has had to be excused from jury service
10 because of a serious personal issue that has arisen and she
11 is sorry about it, and so are we. It's juror number 168,
12 and she will now be replaced by juror number 62. Raise your
13 hand, please. Juror 62 is now a full member of the jury.

14 And thank you, alternates, and, again, as you can
15 see, that illustrates the reason for having alternates,
16 because you can become a part of this jury at any moment in
17 time.

18 Our day will go like this. Plaintiff is in the
19 midst of presentation and will begin with a video?

20 MS. MCVEY: With a stipulation.

21 THE COURT: She will begin with some stipulations
22 that both sides have agreed to. Then Dr. John Maddox will
23 testify. There will be some videos played of Mr. Crawford
24 and perhaps other witnesses. There will be some other
25 witnesses presented. And while we will kind of see how this

1 day goes, but my target is sometime between 5:00 and 5:30
2 for completion of this day's activities. So that's kind of
3 what you are looking at.

4 You may proceed, Ms. McVey.

5 MS. MCVEY: Thank you, Your Honor.

6 Good morning.

7 A stipulation: The plaintiffs and Covil
8 Corporation stipulate that Jerry Crawford's reasonable and
9 necessary medical bills related to his treatment for
10 mesothelioma total \$567,937.64. \$567,937.64. Thank you.

11 Your Honor, I would like to admit that in
12 evidence. We have marked it as Plaintiffs' 804.

13 THE COURT: Admitted, without objection.

14 (Whereupon, Plaintiffs' Exhibit No. 804 was
15 entered into evidence).

16 MS. MCVEY: Thank you.

17 MR. CHAPMAN: Your Honor, the plaintiffs would
18 like to call Dr. John Maddox.

19 THE COURT: Very good.

20 Dr. Maddox, come around, please, sir, and be sworn
21 by the clerk.

22 DR. JOHN MADDOX, having been first duly sworn,
23 testified as follows:

24 THE WITNESS: Yes, ma'am, I swear.

25 THE COURT: Thank you, Dr. Maddox. You may be

1 seated.

2 Ladies and gentlemen of the jury, Dr. Maddox is an
3 expert witness. And as I have explained to you yesterday,
4 we will hear his education, training and experience. And
5 unless I'm gravely mistaken, I will probably qualify him as
6 an expert witness, which means he may give you opinions
7 about his areas of expertise.

8 You are the judges of the facts and you will
9 examine this evidence and give it the credibility you think
10 it deserves. You are the sole judges of the facts, not me,
11 not anyone else in this room. Thank you.

12 And you may proceed, Mr. Chapman.

13 MR. CHAPMAN: Thank you, Your Honor.

14 DIRECT EXAMINATION BY MR. CHAPMAN:

15 Q. Good morning, Dr. Maddox.

16 A. Good morning, sir.

17 Q. How are you doing this morning?

18 A. Very well. Thanks.

19 Q. Can you please introduce yourself to the members of the
20 jury?

21 A. Sure. My name is John Colter Maddox, M.D.. I am a
22 pathologist practicing in a community hospital called
23 Riverside Regional Medical Center located in Newport News,
24 Virginia.

25 Q. You said M.D.. What kind of physician are you?

1 A. I'm a good one.

2 My degree is medical doctor, M.D., and I practice
3 laboratory medicine.

4 Now, I also practice hematology, which involves seeing
5 a few patients for hematologic problems. I perform some
6 biopsies myself.

7 I spend a lot of time at a microscope reading biopsies
8 and helping to interpret other types of laboratory work.

9 Q. Doctor, for how many decades have you been analyzing or
10 examining tumors in order to diagnose what condition a
11 person is suffering from?

12 A. Well, for 42 years. The same year I was married I
13 started a pathology internship and residency program after
14 medical school.

15 Q. Doctor, where did you go to school?

16 A. Well, I grew up in Charlottesville, Virginia, where I
17 attended the public schools and the Baptist Church.

18 I then went to college at the University of Virginia,
19 again in Charlottesville, and took a B.A. in biology.

20 Then I went to medical school, again in
21 Charlottesville, and took the M.D. Degree in 1976.

22 MR. CHAPMAN: Your Honor, may I approach the
23 witness?

24 THE COURT: You may.

25 BY MR. CHAPMAN:

1 Q. Dr. Maddox, I'm going to hand you what I have
2 pre-marked as 806.1.

3 MR. CHAPMAN: And, Your Honor, I have a fresh copy
4 for the bench.

5 THE COURT: Thank you, sir.

6 BY MR. CHAPMAN:

7 Q. Dr. Maddox, what are we looking at?

8 A. This is a copy of my curriculum vitae.

9 Q. And is that a fair and accurate summary of your
10 education, experience and publications?

11 A. Yes, sir, it is.

12 MR. CHAPMAN: Your Honor, move to admit.

13 THE COURT: Without objection?

14 MR. WALL: Your Honor, as I said earlier, it's
15 hearsay, but I understand the court is going to allow it in.

16 THE COURT: Very good. Overruled. It would be
17 admitted.

18 (Whereupon, Plaintiffs' Exhibit No. 806.1 was
19 entered into the record as evidence).

20 MR. CHAPMAN: Thank you, Your Honor.

21 BY MR. CHAPMAN:

22 Q. Doctor, have you provided me with a set of slides so we
23 can get some background explanations on these topics?

24 A. Yes, sir, power point slides.

25 Q. Okay. And are these these slides?

1 A. Yes, sir.

2 THE WITNESS: May I stand while we are going
3 through these, or --

4 THE COURT: Certainly, whatever is most
5 convenient, Dr. Maddox. Just be sure the jury can see you
6 and hear your presentation.

7 THE WITNESS: Yes, ma'am. Thank you very much. I
8 just can't really see them from sitting in the chair.

9 BY MR. CHAPMAN:

10 Q. Dr. Maddox, we started to talk about your education.
11 Can you give this jury just kind of a thumbnail of your
12 background and training?

13 A. Sure.

14 After college and medical school I did what's called
15 postgraduate training. That includes an internship, a
16 residency and a fellowship at Stanford University, which is
17 a university located in Palo Alto, California. Nowadays
18 they call that the Silicon Valley, but this was so long ago
19 that they called it The Farm back then. At any rate, I took
20 this training in anatomic pathology.

21 Anatomic pathology essentially is where a surgeon takes
22 a biopsy. A pathologist then examines that biopsy and looks
23 at cells under a microscope to figure out what it is,
24 whether it's a malignant tumor, whether it's an infectious
25 disease, or what.

1 And while I was there I had an opportunity to work with
2 Dr. Charles Carrington. At the time Dr. Carrington was the
3 chairman of the U.S. and Canadian Mesothelioma Panel, which
4 was an expert group that was formed to help other physicians
5 figure out whether they were dealing with mesothelioma, or
6 lung cancer, or some other type of tumor. And through Dr.
7 Carrington I learned the essential facts of asbestos-related
8 medicine.

9 So I finished my training period there at Stanford and
10 I went and took a fellowship at M.D. Anderson Hospital and
11 Tumor Institute located in Houston, Texas. It's one of the
12 big regional cancer centers around the United States, like
13 Memorial Sloan-Kettering, Mayo Clinic, places like that.

14 While I was there I had an opportunity to work with Dr.
15 David Dale, who was a lung pathologist and who was the
16 co-author of the standard textbook of lung pathology called
17 Pulmonary Pathology, which is now in its third edition.

18 At any rate, the point is that I saw some additional
19 cases of lung tumors, including mesotheliomas, while I was
20 at M.D. Anderson.

21 Then in 1980 I moved from Houston, Texas to Richmond,
22 Virginia, where I spent two years studying hematology and
23 clinical pathology.

24 In 1982 I took my board examinations in anatomic and
25 clinical pathology and I was certified in both of those

1 subspecialty fields.

2 Then in 1998 I finally went ahead and took the board
3 examination in hematology, because I had already done
4 hematology training. I just never bothered to take the
5 exam, so I took it in 1998. I passed that exam and I was
6 certified as a subspecialist in hematology as well.

7 So that's the basis of the post-graduate education.

8 Q. Doctor, throughout your career have you actually
9 treated or reviewed mesothelioma?

10 A. Oh, yes, sir.

11 Since we started keeping computerized records in 1985,
12 we have had at our hospital over 500 patients that were
13 treated -- either diagnosed or diagnosed and treated for
14 mesothelioma at our hospital.

15 Back in the 1980's there were a couple of years where
16 we were seeing 30 new mesotheliomas per year at one
17 hospital, which is fantastic. That is like one percent of
18 all the mesotheliomas in the country at that one hospital,
19 so I have had a lot of hands-on practical experience with
20 the diagnosis of malignant mesothelioma.

21 Q. Is there a reason for that?

22 A. There is. Newport News, Virginia is home of the
23 Newport News Ship Building and Dry Dock Company and that's
24 the place where they built battleships, aircraft carriers,
25 submarines. And, you know, much of the Navy's fleet during

1 World War II came from Newport News shipyards, so they built
2 a lot of warships.

3 Warships during the 2nd World War and up until the --
4 until about 1970 were built with a lot of asbestos
5 insulation in them.

6 We have a fairly stable population base in Newport
7 News. We have a lot of people that are retired now, but
8 they worked at the shipyard when they were younger and they
9 had heavy exposure to asbestos during the construction of
10 those ships. Consequently we see a lot of asbestos-related
11 disease at our hospital.

12 Q. Doctor, can you tell me a little bit more about what
13 your role has been specifically at the hospital?

14 A. Sure. Well, currently I'm the senior partner of the
15 pathology group at the hospital, which includes six doctors
16 and some technical assistants and some clerical people. So
17 over the years I have gone from the youngest guy there to
18 now I'm the old guy there.

19 What I do on a daily basis is examine tissue slides to
20 see if there is a malignant tumor, or an infectious disease,
21 or what.

22 I also review a lot of blood samples, blood smears. I
23 look at them under a microscope to see whether those cells
24 represent anemia, or leukemia, or something else. As a
25 matter of fact, last week we even diagnosed a case of

1 malaria, so that's the kind of work I do on a daily basis.

2 Also I consult on asbestos-related disease cases,
3 because now I have got years or decades of experience and I
4 can help to guide people when they are trying to make
5 decisions on that.

6 Q. Doctor, have you been published in peer reviewed
7 literature about asbestos disease?

8 A. Yes, sir, I have. I have -- I have -- I'm not an
9 academician. I'm not a university professor. There is
10 nothing in my job description that says that I have to write
11 any papers at all. My job is basically to take care of sick
12 people, but, nonetheless, I have managed to publish about
13 four papers on asbestos-related disease. And also about the
14 same number of papers on hematology. So that's what I have
15 done. It's not as much as a university professor, who may
16 have 300 articles on a bibliography, but it's my
17 contribution.

18 Q. Is mesothelioma a rare type of cancer?

19 A. Yes, sir, it's pretty rare. There is about 3,000
20 cases, or 3,000 new cases of mesothelioma in the United
21 States every year. Compare that to about 180 to 200,000
22 cases of lung cancer per year in the United States. So it's
23 not real common.

24 Q. Doctor, you mentioned that now you do some consulting
25 work. Let me ask you, does that include consulting work for

1 other doctors and other hospitals?

2 A. Yes, for other doctors, for other hospitals, and also
3 for legal groups, and I have been doing that for years.

4 Now, also during the period from 1985 through 2000, we
5 had an electron microscope unit at our hospital and we would
6 use the electron microscope as a higher magnification type
7 of machine that would allow us -- that would help us in
8 making diagnosis of tumors, particularly undifferentiated
9 tumors, where you couldn't tell just using an optical
10 microscope.

11 So during that period of time I used the electron
12 microscope to do approximately 1,200 samples of lung tissue
13 to look at the particles that were contained within the lung
14 tissue, and that was a procedure that I performed at the
15 request of other doctor's groups, plaintiffs' attorney's
16 firms, and defense attorney's firms that accounted for
17 approximately one-third of that work.

18 Q. Doctor, whether you are doing this kind of work for a
19 hospital, another doctor, or someone like me, is your
20 process of examination any different?

21 A. No, there is no difference in the process of
22 examination or the way I come to conclusions. I try to use
23 published criteria as my guide for how to make a decision.

24 Q. You said that you try to review published criteria.
25 Have you reviewed medical and scientific literature about

1 asbestos and asbestos-related diseases?

2 A. Oh, surely I have. In fact, I submitted a reliance
3 list of medical articles and books that I depend upon and/or
4 have reviewed and that's 60 pages long. I know because I
5 typed it myself.

6 Q. Is diagnosing and determining the cause of disease
7 something that you do as a pathologist?

8 A. Yes, sir, it's the type of thing I do every day.

9 Q. And, doctor, are you as a pathologist who looks at the
10 diagnosis of asbestos diseases through your education,
11 experience and training able to evaluate the causes of those
12 asbestos-related diseases?

13 A. Yes, sir, in many cases I am. I would use the
14 published criteria, specifically a publication called
15 Helsinki Criteria, because it's from a conference that was
16 held in Helsinki, Finland. Not the one with President Trump
17 and President Putin, but this was one that was held back in
18 1997.

19 Q. And is this something that you have done throughout
20 your career?

21 A. Yes, sir, it is.

22 MR. CHAPMAN: At this time, Your Honor, plaintiffs
23 would tender Dr. Maddox as an expert in the diagnosis and
24 causation of asbestos-related diseases from various
25 asbestos-containing products.

1 THE COURT: By reason of Dr. Maddox's --

2 Well, let me stop.

3 Voir dire?

4 MR. WALL: No, Your Honor.

5 THE COURT: All right. Any objection to his
6 qualification as a witness?

7 MR. WALL: No, Your Honor.

8 THE COURT: Very good.

9 By reason of Dr. Maddox's education, training and
10 experience, he is recognized and qualified as an expert in
11 the fields just recited by Mr. Chapman that deal with the
12 pathology and treatment and diagnosis of mesothelioma.

13 You may proceed, Mr. Chapman.

14 And, Dr. Maddox, you can either stand or be
15 seated, as you please.

16 I stand often when I address the jury because I'm
17 so short, I can't see them. Look at you this way, but at
18 your pleasure.

19 THE WITNESS: Thank you, ma'am. I certainly
20 appreciate it. I think I will probably stand, because I
21 really can't see the screen from the chair.

22 THE COURT: Very good. That's perfectly okay.

23 BY MR. CHAPMAN:

24 Q. Dr. Maddox, will you agree that the opinions that you
25 give in this case will be to a reasonable degree of medical

1 and scientific certainty?

2 A. Yes, sir, they will.

3 Q. Now, you mentioned that in addition to consulting for
4 doctors and hospitals, you do this kind of work for
5 attorneys?

6 A. Yes, sir, I do.

7 Q. How did this happen?

8 A. Well, it started with the patients that we had at the
9 hospital in the early 1980's. Many of them went to local
10 attorneys looking for compensation for their lethal
11 malignant disease and I was contacted by those local
12 attorneys. And then gradually by word of mouth, not by any
13 kind of advertising that I did, my experience, or the fact
14 that I could help, spread and I started being contacted by
15 more and more firms over the years.

16 Q. And, doctor, whether you are doing this kind of work
17 for a hospital, or a doctor, or someone like me, do you
18 charge for your time?

19 A. I personally don't charge, but the company that I work
20 for called Peninsula Pathology Associates, Incorporated,
21 charges \$500 an hour for my time.

22 As a partner in that group I receive approximately \$112
23 an hour for my time after it's split with all of the rest of
24 the people, the partners in the group.

25 Q. And, doctor, you and my law firm have worked together

1 in the past doing this same kind of thing?

2 A. Yes, sir, I have done -- I have done previous cases
3 with your law firm before.

4 Q. Okay. In this particular case have you had a chance to
5 review Mr. Crawford's pathology?

6 A. Yes, sir, I have.

7 Q. And do you have any opinions about what diseases he may
8 have?

9 A. Yes, sir, in my opinion Mr. Jerry Crawford has a
10 malignant mesothelioma of the biphasic type of his right
11 pleura.

12 Q. Okay. So we are going to get into more of that more
13 specifically, but let me ask you just generally, doctor,
14 what causes mesothelioma?

15 A. Well, the main cause of malignant mesothelioma is
16 asbestos.

17 There is various estimates on the percentage of cases
18 that are caused by asbestos. Some people would say 90
19 percent of cases are caused by asbestos. Some people would
20 say more. The German Mesothelioma Registry says 94 percent
21 of their cases have a definite history of asbestos exposure.

22 The Helsinki Criteria say that 80 percent of the people
23 with mesothelioma have occupational asbestos exposure that's
24 a cause of the tumor, but there is other causes besides
25 occupational. There can be domestic take-home exposure as

1 well.

2 So I would say that at least 90 percent of
3 mesotheliomas are caused by asbestos exposure.

4 There are rare cases of mesothelioma that can be caused
5 by a relatively high level radiation exposure. Like, for
6 example, people with Hodgkin's Disease who have received
7 mantle radiation for the Hodgkin's Disease, or ladies with
8 breast cancer who have had external beam radiation to the
9 breast cancer, high level radiation, there is an increased
10 rate of malignant mesothelioma in those patients.

11 Now, radiation can act hand in hand synergistically
12 with asbestos exposure, so you can have multiple causes for
13 one tumor.

14 Q. Okay. So we will get more into the details of it later
15 on, but let me just ask you, do you believe that Mr.
16 Crawford's mesothelioma was asbestos-related?

17 A. Yes, sir, I certainly do believe that it was. And I
18 did not see any other factor, any other type of exposure
19 that had contributed to his mesothelioma.

20 Q. And, doctor, in your examination of his slides to make
21 your determination that he had malignant mesothelioma, were
22 you able to determine whether or not that was consistent
23 with what his treating physician said?

24 A. Well, yes, it was, as far as I could determine. It was
25 certainly consistent.

1 Q. Okay, doctor.

2 So just to kind of give everybody -- let everybody know
3 where we are going, here are the things I would like to
4 cover with you today. I just want to make sure that you are
5 prepared to talk about all these things.

6 First is that when it was understood that asbestos can
7 cause disease.

8 Second, what the literature says about exposure to pipe
9 insulation in asbestos products.

10 Third, what exposure to a direct or substantial
11 contributing -- what exposure -- excuse me, what exposures
12 were a direct or substantial contributing cause to Mr.
13 Crawford's mesothelioma, based on a set of facts I'm going
14 to ask you to assume.

15 And lastly about his treatment and diagnosis.

16 Are you prepared to talk to me about all those things?

17 A. Yes, sir, I am.

18 Q. Now, we talked about the literature that you relied on,
19 doctor. I also want to get an idea of some of the
20 literature that you have reviewed. Can you talk to me about
21 what it is that doctors like you consider in making these
22 sort of causation diagnoses?

23 A. Well, there is a whole variety of types of medical
24 literature that doctors would consider. There are things
25 like case reports of people who have had similar types of

1 exposures.

2 There is series of cases. Like, for example, one of
3 the very first papers, and we will mention it again soon, I
4 bet you, was a paper from 1960, where there was about 30
5 people that were asbestos miners in a mine in South Africa
6 and they got malignant mesothelioma. There weren't that
7 many people that worked in the mine, but a large number of
8 them did. That was not an epidemiologic report, but it was
9 a case series that carried a lot of weight.

10 At any rate, in addition to case reports and case
11 series there is also epidemiologic studies.

12 There is several different types of epidemiologic
13 studies. One type is called a cohort study.

14 A cohort study is where you start with a defined group
15 of people that are doing a similar job or have some similar
16 type of exposure, and then you follow the development of
17 those people over a period of time. You would call that a
18 prospective study.

19 There is also a different type of study called a
20 retrospective study or a case-controlled study.

21 A case controlled study is where you start with a group
22 of people that have malignant mesothelioma and then you look
23 backwards. You look retrospectively and try to determine
24 what type of occupation or what type of exposure, what type
25 of asbestos were they exposed to. How. So, you see, you

1 can look in either direction.

2 There is other types of epidemiologic studies called
3 registries, and that would be something like a government
4 unit that tracks the development of mesothelioma and then
5 records occupational exposures that people may have had.

6 There are animal studies that should be considered,
7 like where you have a test animal that's either given
8 inhalation of asbestos dust or an injection of asbestos
9 fibers into the peritoneal cavity.

10 And then there is -- in addition to that there is in
11 vitro studies; in other words, studies in test tubes, where
12 cell cultures are dosed with asbestos fibers to see what
13 kind of harmful effects those fibers will have on the
14 cultured cells.

15 So there is all this body of information out there and
16 what it says is basically asbestos causes mesothelioma. Not
17 only that, but all types of asbestos cause mesothelioma and
18 it doesn't take much to do it.

19 Q. Doctor, you told us about a list that you typed up of
20 articles that you reviewed. Do you recall that?

21 A. Yes, sir.

22 Q. Doctor, I'm going to hand you what I have marked for
23 identification as 806.2.

24 A. Yes, sir.

25 MR. CHAPMAN: And, Your Honor, I have a copy for

1 you as well.

2 THE COURT: All right.

3 BY MR. CHAPMAN:

4 Q. Doctor, can you tell the jury what we are looking at?

5 A. Well, this is the reliance list that I have typed.

6 This particular copy of it is dated May of this year.

7 Q. And, doctor, I know you may not agree with every single
8 word and every single study on there, but do you find the
9 studies in that report authoritative and reliable?

10 A. Generally speaking, yes.

11 In one section, the section on brake dust, I have
12 included some articles that I do not agree with, simply for
13 the sake of completion, but most of the other articles on
14 the list are ones that I have general agreement with.

15 Q. Okay.

16 Now, we talked to Dr. Brody yesterday, Dr. Maddox --

17 A. Yes, sir.

18 Q. -- and Dr. Brody told us that all types of asbestos
19 cause mesothelioma. Do you agree with that?

20 A. Yes, sir, I do.

21 Q. Can you tell us a little bit about that?

22 A. Sure. I guess I need to define first the types of
23 asbestos.

24 There is two general types of asbestos.

25 One type is called serpentine asbestos and that type is

1 represented by one type of fiber that's called chrysotile
2 asbestos. Chrysotile asbestos is the type of asbestos that
3 was most commonly used in the United States during the 20th
4 Century.

5 There is a second family of asbestos called amphibole
6 asbestos. In the amphibole family there is three types of
7 commercially used asbestos, namely amosite, crocidolite and
8 anthophyllite. Of those three, amosite was the one that was
9 most commonly used, with only a few places or a few products
10 in the United States that ever used crocidolite or
11 anthophyllite.

12 Now, in addition to that there is also amphibole types
13 of asbestos that are not used commercially, but instead they
14 are found as impurities in chrysotile asbestos, the first
15 type that we discussed. Those impurity types include
16 tremolite and actinolite asbestos.

17 There is also some other lesser varieties of asbestos
18 that are found as impurities. For example, in Libby,
19 Montana there was a big vermiculite mine that had a number
20 of amphibole asbestos types included with that.

21 In some other mineral deposits you can find slight
22 variations on the theme of anthophyllite -- excuse me, on
23 the theme of amphibole asbestos, but that is -- that's a
24 whole catalog for you.

25 In this particular case I think you need to think about

1 chrysotile asbestos, the serpentine form. And then the
2 amphibole asbestos that's pertinent in this particular case
3 would be amosite asbestos.

4 Q. Doctor, what are we looking at here on the screen?

5 A. This is a diagram, a picture, of human lungs.

6 Now, what you see here --

7 Did you want me to use a laser pointer or something to
8 illustrate this?

9 Q. I think the clicker has one, if we can figure out how
10 to get it to work.

11 Yes. The red button there, doctor?

12 A. Thank you much.

13 These are the human lungs.

14 Now, this is the trachea here in the midline, the big
15 pipe that you feel in your neck. It comes down. It splits
16 into the right and left main stem bronchi.

17 This is the right lung, which has three lobes. This is
18 the left lung, that has two lobes.

19 Once you get down into the smaller and smaller bronchi
20 from the main stem down in the segmental, the sub-segmental,
21 and so forth, you eventually get to the respiratory
22 bronchials. And the respiratory bronchials empty into
23 alveolar air sacs. The alveolar air sacs are where
24 respiration actually takes place.

25 Now, around those alveolar air sacs there is a system

1 of capillaries; arteries, veins, and capillaries. That's
2 where the exchange of gasses actually takes place. That's
3 where fibers will start to enter the systemic circulation.
4 Also that's where fibers can penetrate the walls of the air
5 sacs, get into the interstitium of the lung and enter into
6 another type of vascular channel that's in there called
7 lymphatic channels.

8 Lymphatics are like a low pressure drainage system that
9 drains off excess tissue fluids from the lungs or from other
10 organs.

11 In the lungs the lymphatics run in two directions. In
12 one direction they run to the pleura. They open to the
13 pleura through the -- they open to the pleural space through
14 the pleura covering the surface of the lung.

15 They also run into the middle part of the chest where
16 lymph nodes are. Lymph nodes are like filters that help
17 clean the fluid that's draining out of the lung. They try
18 to fight against bacteria, viruses, or other types of
19 particulate material that may be coming out of the lungs.

20 So the point is that's how asbestos fibers get into the
21 lung. They come down the -- they come down the trachea.
22 They get out into the air sacs and then they slip into the
23 interstitium, where they get into some of these vessels.
24 That's how they get into the pleural space.

25 Sometimes you can find them later on. You can find

1 some of them later on still lodged in the lung tissue, or
2 even you can sometimes find them in these lymph node
3 structures that are up here in the center portion of the
4 chest.

5 Q. Doctor, can you tell us some of the diseases that
6 asbestos can cause? You can hang onto the clicker.

7 A. Okay.

8 Q. If you want to --

9 A. Some of the diseases that asbestos can cause.
10 There are four main diseases that can be caused by
11 asbestos.

12 First of all, there is a scarring injury that asbestos
13 fibers can have on the lung tissue itself that's called
14 asbestosis.

15 Asbestosis is when these fibers that remain in the lung
16 are so numerous that they cause an inflammatory reaction and
17 cause scar tissue development.

18 The scar tissue is generally first located in the
19 respiratory bronchials; that is to say those smallest tubes
20 just before they open into the alveolar air sacs, but as
21 asbestosis progresses the fibrosis goes from just the
22 respiratory bronchials into the walls of the alveolar air
23 sacs. As those alveolar walls become denser and denser,
24 thicker and thicker, it becomes harder to exchange air back
25 and forth across them from the air sacs into the capillaries

1 that are -- that's where oxygen and carbon dioxide are
2 exchanged. At that point the person starts to develop
3 respiratory failure. In severe cases asbestosis can
4 actually kill a person.

5 Another process is called pleural plaques.

6 Now, pleural plaque are benign. They are not a
7 malignant disease, but they are also accumulations of scar
8 tissue that are found on the inside of the chest wall.
9 Sometimes they run parallel to the ribs. Sometimes they
10 calcify. Generally they are a hard pearly material. They
11 form in a human being on the chest wall the way that a grain
12 of sand will cause a pearl in an oyster.

13 Q. Let me ask you something, doctor. Does an individual
14 have to have pleural plaques or asbestosis before you can
15 make a diagnose of mesothelioma?

16 A. No, many people with mesothelioma do not have pleural
17 plaques, do not have pulmonary parenchymal asbestosis
18 either. It depends upon the level of exposure. The more
19 heavily exposed you are to asbestos, the more likely you are
20 to have asbestos -- excuse me, asbestosis, the more likely
21 you are to have pleural plaques, and the more likely you are
22 to develop a malignant pleural mesothelioma, but this is not
23 a linear sequence that's dependent upon each other. It's
24 different outcomes of that original asbestos exposure,
25 either to form asbestos, or plaques, or mesothelioma, or any

1 combination of the three, depending upon the level of
2 exposure.

3 Q. Dr. Maddox, with your own eyes have you seen people
4 with mesothelioma that do not have asbestosis?

5 A. Yes, sir, I certainly have. I would estimate about
6 half the people with malignant mesothelioma do not develop
7 pleural plaques.

8 You know, it's a question of individual's
9 susceptibility. People react different to various stimuli
10 or trauma. Have you ever seen people who develop
11 hypertrophic scars when they cut their hand or when they
12 pierce their ears? Sometimes they will develop a nodule at
13 the site of that scar, called a hypertrophic scar. Some
14 people do that. Other people don't. Likewise, some people
15 will form pleural plaques, other people won't.

16 Q. Let me ask you asbestosis, can a person die from
17 asbestosis?

18 A. Yes, sir, it can be so severe that in some cases people
19 will die from respiratory failure and that's a pretty tough
20 death.

21 Q. Let me ask you, doctor, what levels of exposure does a
22 person need in order to pass away from asbestosis?

23 A. It needs to be pretty high. It needs to be pretty
24 high. It needs to be on the order of 10,000, or more, times
25 higher than the normal background environmental level.

1 Q. Okay. And we will get to background later, but let me
2 ask you, doctor, what are we looking at here?

3 A. Well, this is an example of lung cancer and an example
4 of mesothelioma. These are two different diseases.

5 The lung cancer is a cancer, a malignancy that develops
6 either from one of those bronchial tubes that brings air
7 into the lungs or from the spongy air filled portion of the
8 lung itself, the lung parenchyma.

9 You know, lung cancers can be caused by asbestos, but
10 they can also have other causes as well. They can be caused
11 by cigarette smoking. They can be caused by uranium dust
12 inhalation. They can be caused by other chemical agents, or
13 a combination of all those. They can even be caused by
14 radon gas exposures, like comes out from the foundation of
15 some houses.

16 Well, mesothelioma, on the other hand, does not develop
17 in the lung itself, but it develops in the pleural space.

18 The pleura is the covering of the lung and the lining
19 of the chest wall. There is a space called the pleural
20 space, which in a normal person is a potential space, but in
21 mesothelioma patients there tends to initially be an
22 accumulation of fluid, called a pleural effusion. That
23 pleural effusion develops large numbers of malignant cells
24 and groups of malignant cells within it. Some of those will
25 implant on the pleural surfaces and they will start to grow

1 as a malignant and eventually invasive malignancy, and
2 that's what you have got here.

3 Now, this is a fairly late stage of this particular
4 mesothelioma where the pleural effusion has been drained
5 away and essentially the tumor has started to grow into the
6 lung and also grow into the chest wall, and also some of the
7 tumor has metastasized to the lymph nodes in the center
8 portion of the chest.

9 Q. Doctor, would you be able to give this jury an idea of
10 how early on in the medical community it was accepted that
11 asbestos can be lethal?

12 A. Well, there first started being case reports about the
13 lethality of asbestos back in the late 1890's, around the
14 turn of the century then. There were textile workers,
15 asbestos textile workers, in Britain who had asbestos
16 exposure and they died of respiratory failure. They had
17 very high levels of exposure.

18 In 1930 there was a study done by the British
19 Commissioner of Factories, I think the title was. The
20 surveyors were Meriweather and Price in 1930 determined that
21 there was a significant hazard to asbestos textile workers.

22 And at that time they also warned about exposures to
23 asbestos in other types of material, including things like
24 woven brake linings, or jointings. Jointings is the British
25 word for gaskets that are used between pipe flanges. They

1 warned about this in 1930. They warned about it in the
2 context of asbestosis, however, because at that time it
3 really wasn't appreciated the risk of developing
4 mesothelioma, because it was such a rare disease.

5 Q. What about the 1940's and '50's, doctor?

6 A. In the 1940's and '50's people became more gradually
7 aware of the fact that malignant diseases could result from
8 asbestos exposure. At first this was in terms of lung
9 cancer, carcinoma of the lung.

10 Back in the 30's there were very heavy exposures in
11 shipyards and mines, in other industrial applications of
12 asbestos. So those were the levels that were sufficient to
13 cause asbestosis. Those were the levels that were
14 sufficient to cause, particularly in conjunction with
15 cigarette smoking, a significant risk of developing lung
16 cancer.

17 So finally by 1950 there came out a big editorial in
18 the Journal of the American Medical Association. It said
19 asbestos clearly causes lung cancer. There should be no
20 further question or doubt of that fact.

21 A big epidemiologic study came out in 1955 that shows
22 statistical proof for that -- for that determination.

23 Q. And what about the 1960s, doctor?

24 A. Well, in 1960's there were several articles that dealt
25 with malignant mesothelioma. The most important or the most

1 well known of these landmark articles was one by Dr. J.C.
2 Wagner. That's a South African pronunciation of what we
3 might call Wagner, but he called himself J.C. Wagner. He
4 studied a group of asbestos miners, crocidolite mines in
5 South Africa, 20 or 30 people in the study group. All of
6 them -- well, most of them were miners. Some of them were
7 family members. Some of them lived nearby the mines, near
8 the tailings that were taken from the asbestos mines, and
9 all of them had very high levels of exposure to crocidolite
10 asbestos. They developed mesothelioma. It wasn't an
11 epidemiologic paper. It was a case series, but it was such
12 a significant case series that it swung people's opinion to
13 realize asbestos definitely causes malignant mesothelioma.

14 That same year there was another paper by Dr.
15 Eisenstock from Texas, from outside of Houston, Texas, in
16 what's call the oil patch, where they have a lot of
17 refineries, chemical refineries and petroleum refineries.
18 And the workers in the refineries, which were insulated with
19 chrysotile asbestos, were also developing malignant
20 mesothelioma. Again, not a statistical series, but a case
21 series that pointed this out.

22 MR. CHAPMAN: Your Honor, may I approach?

23 THE COURT: You may.

24 BY MR. CHAPMAN:

25 Q. Dr. Maddox, what have I just handed you?

1 A. This is a graph that shows the recognition of the
2 association with asbestos exposure in terms of lung cancer
3 mesothelioma, and possibly cancers in other organs.

4 MR. CHAPMAN: Your Honor, before we continue, may
5 I publish this graph to the jury?

6 THE COURT: Any objection?

7 MR. WALL: It's not in evidence, Your Honor. It's
8 a publication, correct?

9 MR. CHAPMAN: Correct.

10 THE COURT: You got to speak up, Mr. Wall.

11 MR. WALL: It's not in evidence. It's publishing
12 it to the jury.

13 MR. CHAPMAN: That's right, Your Honor.

14 THE COURT: Right. It's not in evidence. He is
15 just publishing it as a demonstrative piece of evidence to
16 the jury.

17 MR. CHAPMAN: That's right, Your Honor.

18 THE COURT: All right. You may do so.

19 MR. CHAPMAN: Thank you.

20 A. Yes, sir. This -- this graph came from an original
21 peer reviewed medical article by Dr. Becklake and it comes
22 from a reproduction in the textbook, the Dale & Hammer
23 textbook that I have already alluded to a couple of times.

24 BY MR. CHAPMAN:

25 Q. This graph we have on the screen, is that the same

1 thing that's in your hand?

2 A. Yes, sir, it is.

3 Q. Okay. Can you tell us a little bit about that, please?

4 A. Sure.

5 This shows the year, from 1980 -- excuse me, from 1880
6 through 1980, and this Y axis of the graph talks about the
7 world's commercial production of asbestos, the commercial
8 usage of asbestos.

9 Chrysotile was used at the start. It was used
10 primarily in textiles.

11 Crocidolite started to be used soon after that in
12 textiles and other applications.

13 Amosite was used after that and it got used as a
14 thermal system insulation; in other words, pipe insulation,
15 boiler insulation, things of that sort.

16 Anthophyllite asbestos was used after that, but only in
17 certain specialty goods. It was used in Scandinavia a lot
18 more than it was in the United States. To my knowledge,
19 there is only maybe two places in the United States that
20 used anthophyllite.

21 Other uses multiplied. It started being used in
22 brakes, started being used in gaskets, and a whole variety
23 of different products. I think it's been estimated that
24 over 3,000 products contained asbestos by the 1960's.

25 The use went up and up. Particularly it accelerated

1 during World War II, when it was used for insulation in
2 warships. And along that time people started realizing the
3 various diseases that it was related to.

4 The first to be recognized was asbestosis, which is
5 really just seen in really, really high dose exposures, but
6 then lung cancer, malignant mesothelioma, other cancers as
7 well.

8 Now, this mesothelioma bar graph should basically turn
9 from probable association to definite association right at
10 1960. That's when it really became indisputable.

11 There had been case reports or small series of
12 mesothelioma cases even back into the 1940's, so there was a
13 suspicion, but in 1960 it really became crystal clear that
14 it was a very significant association there.

15 Q. Doctor, this jury has heard the name Irving Selikoff.
16 Do you know who that is?

17 A. Yes, sir, Irving Selikoff was a physician who practiced
18 at Mount Sinai Hospital in New York City.

19 Dr. Sinai (sic) came to the United States during the
20 1930's from Europe. He was a specialist in pulmonary
21 medicine and he began studying this question of what
22 diseases are caused by malignant -- excuse me, what diseases
23 are caused by asbestos, chrysotile asbestos, amosite
24 asbestos, whatever type, what diseases are caused by them.

25 In order to study this he selected a group of people

1 for a cohort study; that is to say, a prospective study.

2 The people that he began to study were asbestos
3 workers. I think it was called the Heat and Frost Union of
4 New York. He registered these people, looked at how long
5 they were exposed, what type of asbestos they used, and
6 whether they developed any kind of disease from it;
7 asbestosis, lung cancer, mesothelioma.

8 Some of the people in the group were studied with
9 radiology to see if they developed pleural plaques, or any
10 evidence of pulmonary asbestosis. And he collected these
11 figures and published them during the 1960's.

12 He held a large conference in 1964, at which not only
13 other physicians, but also representatives from the asbestos
14 industries were invited to discuss this, to talk about
15 whether they had seen people in their industries with
16 asbestos-related diseases to find out how widespread this
17 problem really was.

18 Q. So you talked about the conferences that Dr. Selikoff
19 held to talk about this. And I think you mentioned that
20 members of industry would attend those as well?

21 A. Yes, sir, members of industry were invited to the
22 conferences and many did attend.

23 Q. And, doctor, if someone attended a Selikoff conference
24 in 1967, would you be able to tell this jury what they would
25 have learned about the hazards of asbestos at that

1 conference?

2 A. Well, they would have learned many things that we know
3 today. Number one, that it causes these four different
4 diseases that I have spoken about. They would have seen
5 evidence that some people could develop malignant tumors,
6 including mesothelioma, at relatively low exposure levels.
7 There was some cases that were presented in the conference
8 where the exposures were exceedingly brief, but the people
9 went on to develop malignant mesothelioma.

10 They began to understand that this was a dose response
11 disease. In other words, if you had a high level of
12 exposure, you had a high level of risk for developing
13 mesothelioma. If you had a lower level of exposure, you had
14 a lower level of risk for developing mesothelioma. And, of
15 course, we know today also that if you have no exposure to
16 asbestos above normal background environmental ambient air
17 levels, then you have no increased risk of developing
18 malignant mesothelioma.

19 Q. Doctor, let me ask you, if an individual attended a
20 Selikoff conference in 1967, what, if anything, would they
21 have learned about asbestos-containing pipe insulation?

22 A. Well, they would have learned that some asbestos --
23 some pipe insulation does contain asbestos, first of all.
24 Some of it contains chrysotile asbestos. Some of it
25 contains amosite asbestos. Some of it contains a mixture of

1 both types.

2 There is also asbestos-free pipe insulation that's
3 sometimes referred to as calcium silicate, but, you know, if
4 you have got one of the types that contains either a single
5 type of asbestos or mixed asbestos content, then that
6 material is hazardous.

7 Also by the sixties some of the initial studies had
8 been done on pipe insulation, boiler insulation, showing the
9 levels of exposure that could be encountered if one was
10 doing that type of work. In other words, when you bring in
11 a half round piece of pipe insulation, you may have to cut
12 it with a knife or a saw to the right length. It's somewhat
13 friable; in other words, it can crumble or release fibers
14 fairly easily. You bring in a second piece of half round,
15 you then may have to wire them together or wrap them in
16 cloth to keep them to stay together.

17 Okay. So the asbestos is in place, and then years
18 later you come in, you have to revise something, add in a
19 joint or an extra feed pipe, or something of that sort, you
20 are going to have to pull that stuff off. And it's not
21 usually pulled off as gently as it is when it's applied.

22 When you pull off or tear down friable asbestos
23 insulation, you can have very high levels of exposure. You
24 can have levels of exposure -- or I should say levels of
25 exposure have been measured during the job of greater than a

1 100 fibers per CC of air during that type of work.

2 During that type of work there is so much asbestos in
3 the air that there is a misty cloud of dust that surrounds
4 the work site. That's a cloud of dust that remains in the
5 air for a period of time and a cloud of dust that can be
6 carried into adjacent spaces. There is studies in the
7 literature that even show that that dust can be measured in
8 the next room, depending upon the ventilation.

9 So, yeah, that's the type of stuff that you might have
10 been starting to hear even during the 1960's at the Selikoff
11 conferences.

12 Q. Doctor, you said something a second ago that the
13 exposures from pipe insulation could be up to a 100 fibers
14 per CC. What does that mean?

15 A. Well, that means that you have enough fibers suspended
16 in the air to create a cloud of dust that's easily
17 visualized in normal light without any kind of special
18 equipment or microscopes or anything. I mean, that's --

19 If you have gone down a country road following too
20 close to another car, you get cloud of dust that comes up
21 from the car. That's the type of cloud of dust that I'm
22 referring to, except it's not just clay. It's asbestos
23 fibers and whatever other type of binder is mixed in, like
24 calcium silicate.

25 Q. Is that a high exposure or a low exposure?

1 A. That would be a very high exposure.

2 Q. Doctor, what is signature disease? What does that
3 mean?

4 A. Well, it means that this is a type of malignant disease
5 that is usually caused only by one thing and that's by
6 asbestos exposure.

7 We have already talked about how there are a few cases,
8 a handful of cases, where there may be high dose radiation
9 involved that can cause mesothelioma, but almost all cases
10 of mesothelioma are caused by asbestos exposure.

11 There is some other tumor types, likes angiosarcoma of
12 the liver, that can be caused by vinyl chloride exposure and
13 that's about the only agent that will cause angiosarcoma of
14 the liver.

15 Well, even more frequently we see cases of drowning.
16 What causes drowning? Well, it's usually water. I mean,
17 it's possible that you could drown in olive oil, but you
18 don't see much of that, so I guess signature disease
19 drowning and water would be the association there.

20 Q. Doctor, Dr. Brody talked to us about this yesterday.
21 Could you just kind of briefly give us an understanding of
22 latency?

23 A. Latency is an important concept.

24 Now, the point is it takes a while for the asbestos
25 fibers to sink in, interact with cells and have their effect

1 of causing malignancy. It doesn't happen overnight. I
2 mean, you can't just have the tumor and then, you know, get
3 some asbestos out of a salt shaker and breath it in and
4 blame that the next day if you die of a tumor. It takes
5 years for those asbestos fibers to sink in and have their
6 effect before they can be considered to be a cause of the
7 malignant mesothelioma.

8 The Helsinki Criteria require at least a ten year
9 latency period. In fact, most cases of mesothelioma have a
10 30 to 40 year latency period.

11 Latency period is defined as that period of time from
12 the first exposure to asbestos until the time of diagnosis
13 of mesothelioma. Like I say, a minimum of ten years, more
14 commonly 30 or 40 years.

15 Q. Doctor, would you be able to tell us about individual
16 susceptibility briefly?

17 A. I think I already mentioned that concept earlier. With
18 people with hypertrophic scars, ear lobes, their skin
19 somewhere, some people develop that type of response, other
20 people don't.

21 Likewise, some people are exposed to asbestos and never
22 develop a malignant mesothelioma.

23 In fact, the most highly exposed groups of people,
24 like, for example, Selikoff's insulation workers, or some of
25 the factory workers that worked with amosite asbestos to

1 incorporate that type of asbestos fiber into products, or
2 some of the miners that worked with extremely high levels of
3 asbestos, even in those most highly exposed groups only 10
4 to 15 percent of the workers developed malignant
5 mesothelioma.

6 On the other hand, some of them die of asbestosis, or
7 of lung cancer as well, but there are some other people that
8 never develop a malignancy. Because of their genetic
9 makeup, perhaps? They have better tumor suppressor genes
10 that helps them avoid developing a malignant disease.

11 So what you will see then is that lower levels of
12 exposure, instead of having 10 to 15 percent of people
13 developing malignant mesothelioma, it may only be one
14 percent or a tenth of one percent.

15 Normally malignant mesothelioma is not found in people
16 that are not exposed to asbestos.

17 There have been historical studies that look back at
18 the lung tumors, the chest tumors that were found in people
19 from the 1800's at places like the Mayo Clinic, or at
20 Harvard University, where they have maintained samples that
21 go back over a century, and they just didn't see
22 mesothelioma back in those days before it started being used
23 commercially. They just didn't see it. It wasn't there.

24 Q. Doctor, in this particular case did we ask you to look
25 at Mr. Crawford's pathology report and accompanying

1 materials?

2 A. Yes, sir, you did. You asked me to look at that so
3 that I could confirm the diagnosis. And I did, in fact,
4 confirm the diagnosis, malignant mesothelioma, biphasic
5 type.

6 Q. What I'm going to do, doctor, is hand you what i have
7 pre-marked as Plaintiffs' Exhibit 803.1.

8 MR. CHAPMAN: A copy for Your Honor.

9 BY MR. CHAPMAN:

10 Q. Doctor, what are we looking at there?

11 A. You are looking at the pathology report from the
12 original hospital where he was treated for -- or where the
13 diagnosis of the mesothelioma was made.

14 MR. CHAPMAN: Your Honor, move to admit.

15 THE COURT: Any objection, Mr. Wall?

16 MR. WALL: No objection, Your Honor.

17 THE COURT: Without objection.

18 (Whereupon, Plaintiffs' Exhibit No. 803.1 was
19 entered into the record as evidence)

20 MR. CHAPMAN: May I publish to the jury?

21 THE COURT: You may.

22 BY MR. CHAPMAN:

23 Q. Doctor, what we have on the screen, is it the same
24 thing that you have in your hand?

25 A. Pretty much. They called it epithelioid type. I

1 called it biphasic type, because I found that there was
2 approximately ten percent of the tumor that was composed of
3 spindle cells and that's just a very, very minor difference.

4 I agree that predominantly it was epithelioid neoplasm
5 mesothelioma.

6 Q. This pathology report, who is it done by?

7 A. It's done by Dr. Alfred Campbell, who is a pathologist
8 at the Spartanburg Regional Health Care System.

9 Q. And this apology report, doctor, what does it indicate
10 to you?

11 A. Well, I believe that it is a correct report.

12 They observed that it was this type of a malignant
13 neoplasm, with which I agree.

14 They did certain types of immunostains that helped them
15 identify the type of tumor. And the results given by those
16 immunostains is indicative of this being mesothelioma and
17 not lung cancer, not cancer of the stomach or somewhere
18 else. This is mesothelioma.

19 Q. Okay. And, doctor, you looked at the slides yourself,
20 is that right?

21 A. I did. I was sent a stack of the original microscope
22 slides that I looked at with my own optical microscope in my
23 office and I confirmed their findings.

24 Q. And for Mr. Crawford, did you personally author a
25 report?

1 A. I did.

2 Q. Okay. Doctor, I'm approaching and I'm going to hand
3 you your report in this case.

4 A. Yes, sir.

5 MR. CHAPMAN: Your Honor.

6 BY MR. CHAPMAN:

7 Q. What are we looking at, doctor?

8 A. This is a copy of my surgical pathology report.

9 The entire report is 17 pages long. The first four
10 pages have to do with the tumor, and then the last 13 pages
11 are photographs of what the tumor looked like.

12 Q. And what was your conclusion, doctor?

13 A. My conclusion was malignant mesothelioma, biphasic
14 type.

15 Q. And in order to come to that conclusion, you said you
16 looked at stain slides. What does that mean?

17 A. Well, I looked at the original slides. I looked at the
18 original microscope slides, the very same ones that they
19 used at the Spartanburg Medical Center.

20 Q. All right. Doctor, I'm going to hand you what has been
21 pre-marked as Plaintiffs' Exhibit 807.1 through 807.7.

22 A. Yes, sir.

23 Q. What are we looking at here, doctor?

24 A. These are some representative photographs of what the
25 tumor cells looked like. It was a solid tumor. It formed

1 sheets of cells without obvious glands, papilla, or other
2 tertiary structures within it.

3 The cells were relatively large. They had a big
4 nucleus in their center. They had a prominent nucleolus in
5 the center of the nucleus. That's an organizing region
6 where RNA transcribes proteins that are used in cellular
7 proliferation. In other words, if you have a big nucleolus,
8 that means that you are probably a very active cell.

9 Q. Doctor, let me ask you, are these slides, are these a
10 fair and accurate representation of the slides that you
11 reviewed of Mr. Crawford?

12 A. Yes, sir, I photographed them myself and I tried to
13 make them representative of what the tumor looked like.

14 MR. CHAPMAN: Your Honor, I move to admit.

15 THE COURT: Mr. Wall?

16 MR. WALL: No, Your Honor. No objection.

17 THE COURT: No objection. Admitted.

18 (Whereupon, Plaintiffs' Exhibit No. 807.1 was
19 entered into the record as evidence).

20 (Whereupon, Plaintiffs' Exhibit No. 807.2 was
21 entered into the record as evidence).

22 (Whereupon, Plaintiffs' Exhibit No. 807.3 was
23 entered into the record as evidence).

24 (Whereupon, Plaintiffs' Exhibit No. 807.4 was
25 entered into the record as evidence).

1 (Whereupon, Plaintiffs' Exhibit No. 807.5 was
2 entered into the record as evidence).

3 (Whereupon, Plaintiffs' Exhibit No. 807.6 was
4 entered into the record as evidence).

5 (Whereupon, Plaintiffs' Exhibit No. 807.7 was
6 entered into the record as evidence)

7 MR. CHAPMAN: May I publish?

8 THE COURT: You may.

9 MR. CHAPMAN: Could you bring the lights down for
10 just a little bit, please?

11 BY MR. CHAPMAN:

12 Q. Okay. Is what's on the screen the same thing that's in
13 your hand, doctor?

14 A. Yes, it is.

15 This is from patient Crawford.

16 This is my surgical pathology consultation report on
17 this case.

18 And what I have here is an H&E slide at 20 X
19 magnification.

20 H&E, that means hematoxylin and eosin. That is the
21 routine stain that we put on every slide that comes out of
22 our histology, our slide-making laboratory section.

23 The nucleus of a cell is usually going to be darker
24 blue. The cytoplasm, light blue, or sometimes blue pink or
25 blue gray.

1 So these are solid sheets of cells without any
2 glandular structures, tubules, papillae, or any other
3 tertiary structure.

4 Next slide.

5 Q. For the record we are now looking at Exhibit 807.2.
6 What are we looking at here, doctor?

7 A. Here is an area in which the architecture becomes a
8 little bit more complex. You can start to see sort of a
9 swirling pattern in it.

10 There is also these small dark cells that represent
11 lymphocytes, a lymphocytic infiltrate in the tumor.

12 Lymphocytes are cells of the immune system and
13 sometimes tumors will have variable numbers of lymphocytes
14 in them and they represent a host response to the tumor.

15 The host, the patient, is trying to mount something of
16 an immunologic response to damp down the tumor,
17 unsuccessful, but, nonetheless, that's what the body is
18 trying to do.

19 Next slide.

20 Q. This is 807.3.

21 What are we looking at here, doctor?

22 A. This is part of the tumor where there is a spindle cell
23 component. Instead of just being coarsely clumped islands
24 or nests of epithelioid tumor cells, now we have spindle or
25 sarcomatoid tumor cells here.

1 Q. And what are we looking at here, doctor?

2 A. Again, a variant pattern in the tumor, the so-called
3 trabecular pattern, where the tumor cells start to line up
4 in parallel strands with collections of fibrous connective
5 tissue in between them.

6 This is kind of halfway between an epithelioid and a
7 sarcomatoid morphology. That doesn't really mean much as
8 far as the aggressiveness of the tumor. It just says that
9 sometimes part of the tumor looks different than another
10 part of the tumor.

11 Q. That was the next exhibit.

12 Now we are onto the next one.

13 A. So then we got into staining of the tumor cells with a
14 variety of immunologic stains.

15 Let me explain what an immunostain is.

16 Earlier I said with hematoxylin we can stain a cell red
17 or blue, but that's not enough these days to figure out what
18 a tumor is. What you have to do is you have to look at the
19 structural proteins that the tumor is made up of. In order
20 to do that you generate in an experimental animal an
21 antibody. You put some of that structural protein into the
22 animal. The animal has an immunologic response. The animal
23 starts to produce an antibody against that protein.

24 You then take the animal's spleen, which is where these
25 immune cells are. You put it into long-term culture and you

1 turn those cells into a factory that will produce more and
2 more of this very specific antibody against a very specific
3 structural protein. That then is called an immunostain.
4 That's done commercially at various drug companies
5 throughout the United States. These antibody reagents are
6 commercially available.

7 You buy a reagent against calretinen, an antibody
8 reagent against calretinen, and then you stain your tissue
9 to see if you get reactivity for the presence of calretinen.

10 Calretinen is a structural protein that is found in
11 most mesotheliomas, but very few lung cancers. So finding
12 it positive is helpful in discriminating mesothelioma from
13 lung cancer. And that's what we did.

14 And although the reproduction on this little elmo
15 machine is kind of poor, there are clumps and clusters of
16 positive staining tumor cells here and there within this. I
17 would estimate that a percentage of maybe 10, 15 percent of
18 the tumor cells were positive, up to moderately positive for
19 this particular immunostain.

20 Continue.

21 There are other immunostains that were done.

22 Q. This is the next exhibit.

23 A. This is called WT-1. This is a structural protein
24 that's present in the nucleus of mesothelial cells or
25 mesothelioma cells and you can see that that's even more

1 strongly positive in various clumps and clusters of these
2 tumor cells.

3 Again, this is an antigen, WT-1, that can be found in a
4 few other types of tumors, mostly pediatric tumors of the
5 kidney or soft tissues, but if the differential diagnosis is
6 between lung cancer and mesothelioma, this is a clear
7 pointer pointing to the diagnosis of mesothelioma.

8 Q. Next exhibit.

9 What we looking at here, doctor?

10 A. First of all, let me just say that we did additional
11 immunostains besides the two that we just illustrated. We
12 did a whole list, as a matter of fact. I think there was
13 like -- the list -- the list of special stains went from
14 here to here. That's six on this page and then about ten
15 more on this page, so about 16 different immunostains, to
16 develop a panel or a pattern. And the panel -- the results
17 of the panel pointed towards it being mesothelioma, not lung
18 cancer. It's not just two stains. It's about 16 different
19 stains, but for the sake of brevity we didn't try to show
20 all of them to you.

21 Now, what this, this is a cytology specimen. Remember,
22 I said earlier that when a person first presents with
23 malignant mesothelioma, usually they have a chest full of
24 fluid. That fluid contains numerous individual and small
25 clumps of tumor cells suspended within it.

1 All that fluid makes it difficult for a patient to
2 breath, because the fluid is displacing oxygen from the
3 lungs, displacing air from the lungs. The patient can't get
4 a full breath. His lung doesn't inflate all the way. It
5 only inflates a small way, and so the person becomes short
6 of breath.

7 You drain that flood off to make it easier for the
8 patient to breath. And then also once you have that fluid,
9 you send it to the laboratory so that they can do a
10 microscopic exam of that fluid to see if they can pick up
11 these small clumps and clusters of tumor cells.

12 And that's exactly what this is right here. There is
13 about maybe 10 or 15 cells in that particular cluster.
14 There weren't very many of these clusters and by themselves
15 they are not quite enough to say that this is definitely a
16 malignant tumor, but now in retrospect, because we had that
17 biopsy that I showed you a moment ago, it's clear that these
18 fragments were little fragments of tumor that were breaking
19 off and getting suspended in that pleural effusion.

20 Q. And the last exhibit here, doctor?

21 A. This goes back to the biopsy and this shows an
22 antibody, an immunostain called cytokeratin 5-6. This
23 refers to a particular molecular weight, cytokeratin, that
24 is very, very characteristic of malignant mesothelioma
25 cells. And, sure enough, these malignant mesothelioma cells

1 are pretty strongly positive with it. Not only the
2 epithelioid cells, which are those round or tuboidal cells,
3 but also the spindle cells that you can see pretty easily
4 along in here. So that's a little bit out of order, but it
5 confirms what I was saying about that panel of stains that
6 point towards mesothelioma, not towards lung cancer.

7 Q. And so just to follow up on all of this, doctor, your
8 review of these pathology and the staining, what are you
9 able to conclude from that?

10 A. From that I can conclude that this is definitely a
11 malignant mesothelioma. No question about it.

12 Q. Okay. Thank you.

13 MR. CHAPMAN: Can we get the lights back up?

14 BY MR. CHAPMAN:

15 Q. All right, doctor.

16 I want to talk next about how doctors like you
17 determine the cause of mesothelioma, okay?

18 A. Well, simply put, I refer to the Helsinki Criteria,
19 because they give a clear road map of the criteria that
20 should be used for that determination.

21 MR. CHAPMAN: Approaching the witness.

22 BY MR. CHAPMAN:

23 Q. Dr. Maddox, what did I just hand you?

24 A. You handed me a copy of the Helsinki Criteria. The
25 formal title of this is Consensus Report. Asbestos,

1 asbestosis, and cancer: The Helsinki Criteria for diagnosis
2 and attribution. Published in the Scandinavian Journal of
3 Workers Environmental Health, 1997.

4 MR. CHAPMAN: Your Honor, may I publish to the
5 jury?

6 THE COURT: Mr. Wall?

7 MR. WALL: No objection, Your Honor.

8 THE COURT: Without objection, you may publish.

9 MR. CHAPMAN: Thank you.

10 BY MR. CHAPMAN:

11 Q. Doctor, can you tell us about the importance of the
12 Helsinki Criteria?

13 A. Yes, sir.

14 This is the report of a conference that was attended by
15 19 participants from all over the world; from Australia, the
16 United States, from Finland, from several European
17 countries. All of these were countries that were not
18 producing asbestos exports.

19 This group included pathologists. It included
20 pulmonary medicine specialists. It included oncologists.
21 It also included other scientists who were not physicians
22 who were interested in research on asbestos-related disease.

23 And what they had between them was collectively they
24 had already published over a 1,000 papers on
25 asbestos-related disease.

1 So they held this conference to try to determine
2 general what you might call rules of the road for studying,
3 diagnosing, and attributing asbestos-related disease.

4 Q. All right. So I want to go through some of that with
5 you, doctor.

6 First up there it says consensus report. Can you tell
7 me about that?

8 A. Yes, sir. I tried to already explain that, that this
9 was a multi-disciplinary gathering of pathologists,
10 radiologists, physicians of various types. Epidemiologists,
11 toxicologists, industrial hygienists, and clinical and
12 laboratory sciences specializing in tissue fiber analysis.

13 Q. Okay.

14 And more specifically what I'm trying to get at is it
15 says diagnosis, and I think we all understand what diagnosis
16 means. What does it mean by attribute and attribution here?

17 A. Cause.

18 Q. All right.

19 And I think you said, doctor, that this group has
20 studied or published a 1,000 articles, looked at a 1,000
21 articles?

22 A. Prior to this conference they had published over a
23 1,000 articles.

24 Q. And, doctor, so do they evaluate how and when it is
25 appropriate to say that mesothelioma is attributable to

1 asbestos exposure?

2 A. Yes, sir, they did.

3 Q. Can you tell me about that?

4 A. Yes, sir.

5 They make several statements throughout the paper.

6 They make, first of all, a general statement in general
7 reliable work histories provide the most practical and
8 useful measure of occupational asbestos exposure.

9 And then they dig down a little deeper. In the next
10 slide they talk about some specific features of these
11 mesotheliomas. They state that all types of malignant
12 mesothelioma can be induced by asbestos with the amphiboles
13 showing greater carcinogenic potency than chrysotile. In
14 other words, on a fiber per fiber basis -- excuse me, on a
15 fiber per fiber basis, amosite fibers are stronger than
16 chrysotile fibers.

17 Q. And that's because amosite is considered an amphibole?

18 A. Yes, amosite is the amphibole that we are really
19 dealing with this in particular case.

20 Q. Okay. So let's look at the criteria. Can you explain
21 this to us?

22 A. Sure.

23 These are the types of things that as we dig deeper
24 into these criteria that would be accepted each by itself as
25 an indicator of asbestos attribution of malignant

1 mesothelioma.

2 Number one, if you have a sample of lung tissue that
3 you can look at under the microscope.

4 If you do an asbestos fiber count in that lung tissue
5 and there is an elevation in the amount of asbestos in that
6 lung tissue, then that would suffice for causation, for
7 attribution.

8 That's the type of the thing that I did for 15 years
9 when I had the electron microscope lab. I don't have that
10 any more.

11 The other problem is that we really didn't have any
12 lung tissue in the biopsy sample on Mr. Crawford to do that
13 type of analysis on, so we can't really consider that
14 particular one.

15 Q. So, doctor, if I'm understanding you correctly, is
16 occupational exposure history by itself sufficient to
17 attribute mesothelioma to asbestos?

18 A. Yes, it is. A history of asbestos exposure, including
19 brief or low dose exposures, as long as there is at least a
20 ten year latency period, that would be sufficient just by
21 itself, according to the Helsinki Criteria.

22 Q. Okay.

23 A. We don't have pleural plaques in this gentleman, but
24 like I said, that's not usually -- that's not always found
25 in malignant mesotheliomas.

1 We don't have asbestosis either, not in this particular
2 patient, but we do have a positive exposure history.

3 Q. Now, we have said the phrase occupational exposure
4 history a couple of times. Can you kind of explain what
5 that actually means, what all that entails?

6 A. Yes, sir.

7 There is several different situations of exposure.
8 There is occupational exposure. That's when you are working
9 with asbestos at arm's length. It's within maybe two, three
10 feet of your face. You are breathing it in directly from
11 the product, from the material that you are manipulating.

12 If you are -- for example, if you have got pipe
13 insulation, you are cutting it with a saw, that saw could be
14 kicking back dust right in front of your face.

15 If you are tearing stuff down, boiler insulation, pipe
16 insulation, then you are going to have it sort of swirling
17 up right in front of your face. That's occupational
18 exposure.

19 If you are working on gaskets and you are scraping it
20 off, or if you are using a power brush to scrape off that
21 gasket, that's kicking up dust and particles. Again, that
22 could be right in your face. That's direct occupational
23 exposure.

24 But what if that gentleman over there is the one doing
25 the work and I'm sitting over here doing my work, which is

1 something different? Then that's not direct occupational
2 exposure, but it's exposure within a few feet of where the
3 work is actively being done. So that would be indirect
4 occupational exposure, or you could say that's bystander
5 exposure.

6 Let's say that I have to deliver papers throughout the
7 job site and there were several people down there doing
8 insulation work or doing some sort of asbestos dust
9 generation and I have to walk back and forth through there
10 every half hour, then that would be indirect exposure,
11 secondary exposure.

12 What if I had to push a broom along the floor to sweep
13 stuff up at the end of the day? That would probably be
14 direct occupational exposure, because it's at arm's length,
15 even though the dust was originally generated by somebody
16 else. So there is that.

17 There is other types of secondhand exposure, including
18 take-home exposure. So you work all day and maybe you have
19 work clothes, special work clothes, maybe you don't. Maybe
20 you are just wearing street clothes and they get covered
21 with dust. You take them home and before you wash them they
22 have to be shaken out to get the dust out of the cuffs.
23 People still wears pants sometimes with cuffs, although that
24 was something in the past, but, you know, out of the pockets
25 get that dust out. Shake the clothes to get some of the

1 dust off before it goes into the washing machine. And, you
2 know, that's going to cause take-home exposure. That
3 exposure will be to the family member that's doing the
4 laundry, but also it can contaminate the entire house. It
5 can get into the rugs. It can get into the sofas. It can
6 get into the car where you drive back and forth to work. So
7 that's domestic exposure, a type of second-hand exposure.

8 Okay. What if you live downwind from an asbestos
9 factory? There is reports where there have been long-term
10 asbestos factories and they have tracked out where people
11 have lived, like the concentric circles on a bulls eye. You
12 can see an increase as people get closer to the factory of
13 the asbestos-related disease they are talking about. Might
14 be pleural plaques, might be pleural mesothelioma, whatever.
15 That would be a type of environmental exposure that would be
16 sufficient in some cases to cause malignant mesothelioma.

17 The rate of mesothelioma from that type of an
18 environmental exposure is not as high as the rate of
19 mesothelioma from a direct occupational exposure, certainly,
20 certainly not, but still there is no threshold. There is no
21 bottom limit that you have to exceed before you can get
22 mesothelioma. As long as you have got exposures that are
23 significantly above normal background environmental levels,
24 you will start to develop or acquire an increasing risk of
25 developing malignant mesothelioma.

1 MR. CHAPMAN: Your Honor, I'm about to switch to a
2 different topic here, so if you wanted to take a break, now
3 would be a good time to do that.

4 THE COURT: That would be good. All right.

5 Let's take a break at this time, members of the
6 jury. Be refreshed, and we are now at about 23 of, so why
7 don't we come back about ten of, or around that period of
8 time when --

9 Let the bailiff know, Madam Foreperson, when all
10 are refreshed and ready to go.

11 You may go to your jury room.

12 (The following takes place outside the presence of
13 the jury panel)

14 THE COURT: Dr. Maddox, you may be at ease. Don't
15 discuss your testimony, as you know.

16 THE WITNESS: Yes, ma'am. Thank you.

17 (Whereupon, proceedings were recessed)

18 (Whereupon, proceedings were reconvened).

19 THE COURT: Y'all ready for the jury?

20 MS. MCVEY: Yes, ma'am.

21 THE COURT: Very good. Bring me the jury.

22 (The following takes place in the presence of the
23 jury panel)

24 THE COURT: All right. Now, before we proceed --
25 please keep your seats, but listen up. Before you

1 proceed --

2 Dr. Maddox, if you would have a seat for a minute.

3 Members of the jury, I'm advised by our bailiff
4 that several of you indicate that you are familiar with the
5 name of the pathologist at the Spartanburg hospital. And so
6 I would like first to ask all who are familiar with the -- I
7 think it's -- is it Dr. Nguyen?

8 THE WITNESS: Well, the pathologist was Al
9 Campbell.

10 THE COURT: Excuse me, Alfred Campbell, M.D..

11 All right. Each juror that is familiar with Dr.
12 Alfred Campbell, M.D., raise your hand and give me your
13 number.

14 Yes, ma'am.

15 JUROR NUMBER 117: 117.

16 THE COURT: 117.

17 JUROR NUMBER 117: I also am professionally
18 affiliated with Dr. Woolen.

19 THE COURT: Who?

20 JUROR NUMBER 117: Dr. Woolen.

21 THE COURT: Dr. Woolen?

22 JUROR NUMBER 117: Yes.

23 THE COURT: All right.

24 And anybody else that's familiar with any -- with
25 Dr. Campbell or others at Spartanburg General?

1 (No response).

2 THE COURT: All right. Would the fact that you
3 are familiar with Dr. Campbell and with Dr. Woolen in any
4 way interfere with your ability to render a fair and
5 impartial verdict in this matter?

6 JUROR NUMBER 117: No.

7 THE COURT: Very good.

8 Any other discussions by any of y'all?

9 MR. WALL: No, Your Honor.

10 MR. CHAPMAN: No.

11 THE COURT: Very good.

12 Thank you very much for disclosing that and we
13 will now proceed.

14 Mr. Chapman?

15 MR. CHAPMAN: Yes, Your Honor.

16 THE COURT: Very good.

17 BY MR. CHAPMAN:

18 Q. Dr. Maddox, when we left off -- and I think we are
19 nearing the end here, just got a little bit more to go.
20 When we left off we were talking about bystander exposure.
21 Can you briefly explain to the jury what bystander exposure
22 is?

23 A. It's a type of exposure where you are not actually
24 working directly with the product, or at least you are not
25 actually generating dust from the product, but you come in

1 contact with that dust, either simultaneously in a different
2 part of the room; or subsequently, in the case of, for
3 example, cleanup where you would be sweeping that dust up,
4 re-suspending it in the air, or sweeping up bits of scrap
5 that can be broken up and generate dust at that time. That
6 would be an example of secondary exposure.

7 Q. And, doctor, is the literature or the textbooks, are
8 there any discussions of workers working around
9 asbestos-containing insulators doing their job and those
10 bystanders contracting mesothelioma?

11 A. Yes, they are. The literature, including textbooks,
12 has examples of that.

13 Q. How well is that understood?

14 A. It's very well understood. I mean, that's -- it's not
15 what you are doing that causes the mesothelioma. It's the
16 asbestos that causes the mesothelioma, and whatever route
17 that you get it into your lungs, into your body, is -- I
18 mean, it's important, but it's the asbestos itself that's
19 even more important.

20 Q. So if there is an individual who is working around
21 insulators doing work an asbestos-containing insulation, is
22 that considered to be an occupational exposure?

23 A. Yes, an indirect occupational exposure, which overlaps
24 with a type of secondary exposure.

25 Q. And what about individuals, doctor, who is sweeping up

1 after work was done on asbestos-containing insulation? Is
2 that an occupational exposure?

3 A. Yes, I would consider that to be a type of direct
4 occupational exposure.

5 Q. And can you take just a second, doctor, and briefly
6 tell this jury about the levels of exposure a person may
7 receive from sweeping up asbestos-containing dust?

8 A. Well, I can.

9 You know, I'm sure that it's going to vary from time to
10 time, depending upon what you are sweeping up, what part of
11 the plant you are working in, how much dust there is in that
12 part of the plant.

13 However, let me just say that at the Newport News
14 shipyard I had an opportunity to do lung fiber counts on
15 some cleanup workers, you know, that would clean up the
16 scrap and the dust that was on the floor at the end of the
17 day, and those unfortunate workers had the highest levels of
18 fiber counts that I studied in my laboratory during those
19 days.

20 Like I say, it's going to vary from time to time, from
21 place to place. It's going to vary with how long you did
22 that type of work, obviously, but what I'm trying to say is
23 that exposure does have the potential of being very intense.

24 Q. Doctor, just so I understood and make sure the jury
25 understood, are you telling me that exposures from sweeping

1 up have some of the highest fiber counts that you saw?

2 A. In some of the -- they have some of the highest fiber
3 counts, lung burden fiber analysis that I studied in my
4 laboratory back when I was doing that type of examination.

5 Q. Okay, doctor.

6 A. You know, I would -- I would estimate that you would
7 probably be able to generate fiber count levels of at least
8 one fiber per CC air concentration, at least intermittently,
9 doing that type of work, depending upon the type of asbestos
10 content of the stuff that you are sweeping up off of the
11 floor.

12 Q. Okay. And that -- one fiber per CC, what's the
13 significance of that?

14 A. That's ten times higher than the current permissible
15 exposure limit.

16 Q. Is there a safe threshold to asbestos, doctor?

17 A. Well, not really. I mean, there is a normal background
18 environmental ambient air level, which is very low, but when
19 you significantly exceed that normal background
20 environmental level, then you are going to start to have a
21 gradual increase in your risk of developing malignant
22 mesothelioma.

23 It's not a threshold. It's not like a on-off switch.
24 It's like a reostat, like a gradual increase in the risk.

25 Q. Doctor, are there government agencies that say that

1 there is no safe levels of exposure to any type of asbestos?

2 A. Every government agency that has ever considered the
3 question of is there a threshold level or not has said there
4 is no threshold level.

5 The American Society of Epidemiology, which has
6 considered that in a physician paper a couple years ago,
7 there is no threshold.

8 Regulatory agencies, there is no threshold.

9 Even though there is a permissible exposure limit, at
10 the same time people have -- the congressional record had a
11 discussion of the PEL, in which it was clearly stated that
12 this is probably going to be sufficient to prevent any
13 future cases of asbestosis, but it's -- there is still going
14 to be cases of mesothelioma that come through, even under
15 the PEL, permissible exposure limit, that we are going to
16 put in place.

17 Q. Okay. Since we are on the topic, doctor, have you
18 heard of OSHA?

19 A. The Occupational Safety and Health Administration.

20 Q. What is OSHA?

21 A. It's a regulatory body of the U.S. Government, the aim
22 of which is to make the workplace safer for workers.

23 Q. Does OSHA say anything about asbestos?

24 A. Yes, sir, some of the first considerations that it had
25 when it was first created back in the 1970s was for creating

1 exposure limits having to do with asbestos exposure.

2 Q. Just to skip ahead here for time purposes, you talked
3 about ambient air levels, doctor, and background levels.

4 A. Yes, sir.

5 Q. Can you kind of briefly explain what that actually
6 means, what that is?

7 A. Okay. Well, the normal background ambient air level,
8 according to Rodley's textbook, third edition, on page 26,
9 is defined as an average concentration of 0.00005 fibers per
10 CC.

11 A CC is about the size of a sugar cube. So you don't
12 really have that fraction of a single fiber in a sugar cube.
13 What you have is a larger space. And if you do the math, it
14 works out to 0.00005 fibers per CC. That's the average
15 normal level.

16 The PEL, the permissible exposure limit, is 0.1 fiber
17 per CC. So that is approximately 2,000 times higher an
18 average background, according to the figures given in
19 Rodley's textbook.

20 Occupational levels -- well, it depends on the
21 occupation. It depends on what you are doing. If you're an
22 asbestos miners, or if you're doing tear-out on friable
23 insulation, you can achieve an exposure level of a 100
24 fibers per CC, which would be a 1,000 times higher than the
25 PEL, which would then be -- I'm not sure of the math here,

1 but I think that would be 5 million times higher than a
2 normal background environmental level, or at least if that's
3 not the precise number, it's somewhere in that range.

4 Q. Okay. So, doctor, you talked about a 100 fibers per CC
5 potential level. Let's scale it down to just one fiber per
6 cubic centimeter, okay?

7 A. Yes, sir.

8 Q. Have you done the math to try to figure out how many
9 fibers you might breath in an eight-hour day?

10 A. Yes, sir, I have prepared a slide that would show --
11 that would show what you would get in an eight-hour day.

12 I also attempted to compare that to what you would have
13 in a normal day just from normal background environmental
14 air.

15 So these are the calculations.

16 If you are working, you are going to be breathing
17 harder than if you were sleeping or just sitting in a chair.
18 So if you are sleeping, sitting in a chair, maybe only 10 or
19 12 breaths per minute, but if you are working doing some
20 sort of physical work, maybe 16 breaths per minute.

21 One breath has about 500 CC's of air. So 16 times 500
22 hundred would mean every minute you breath in about 8,000
23 fibers. This is at a level of one fiber per cubic
24 centimeter, which is about ten times higher than the PEL.

25 So continuing the math, you would eventually in an one

1 eight-hour working day at a continuous level of one fiber
2 per CC, you could breath in 3.8 million fibers in one
3 eight-hour working day.

4 Q. And, doctor, this is -- if I understand you correctly,
5 this is at a level of one fiber per CC?

6 A. Correct, which is ten times higher than the PEL, which
7 is 10,000 times higher than the normal background average
8 ambient air level.

9 Q. So 3.8 million, approximately, in a setting of one
10 fiber CC, are you telling me the exposures we are talking
11 about in this could be up to a 100 fibers per CC?

12 A. Well, intermittently that would be possible.

13 Q. Have you done this same math for background ambient
14 exposures?

15 A. I have.

16 Q. Can you tell us about this, please?

17 A. At a normal average level of 0.00005 fibers per CC, in
18 a 24 hour day you might breath in about 430 asbestos fibers.

19 So there is a big difference between 430 and what, did
20 we say, 3.8 million asbestos fibers.

21 Q. Okay, doctor.

22 I want to talk about Mr. Crawford specifically for a
23 minute.

24 A. Yes, sir.

25 Q. We did not ask you to read Mr. Crawford's deposition,

1 is that true?

2 A. Yes, sir, that's correct.

3 Q. You have not read it?

4 A. I have not read his deposition.

5 Q. Okay. We have talked about how the literature and
6 history with the kind of exposures that can cause
7 mesothelioma. Now I want to talk to you about the exposure
8 specific to Mr. Crawford.

9 I want to provide you, doctor, with a set of facts and
10 ask you some opinions about the facts that I give you. Can
11 I do that?

12 A. Yes, sir.

13 Q. Will you please assume for me, doctor, that Mr.
14 Crawford is a 72 year old man who worked at the Celanese
15 Spartanburg facility from 1970 to 1974.

16 I further want you to assume that in this time period
17 thermal systems insulation was being worked on and
18 installed.

19 I further want you to assume that the existing thermal
20 systems insulation and the newly installed thermal systems
21 insulation were asbestos containing and that fiber type was
22 amosite.

23 I further want you to assume that Mr. Crawford was
24 close enough to the dust from the thermal systems insulation
25 as a bystander, that he said he breathed the dust from the

1 thermal systems insulation.

2 Further, he said that he swept up work that was being
3 done on that thermal systems insulation.

4 And I further want you to assume, doctor, that this
5 work happened regularly throughout his time at Spartanburg
6 from 1970 to 1974, and that the sweeping occurred after
7 every shift.

8 I would lastly like you to assume for me that Mr.
9 Crawford was diagnosed with mesothelioma.

10 Do you have those facts in mind?

11 A. Yes, sir, I do.

12 Q. Based on the set of facts that I just described to you,
13 was that exposure a substantial contributing cause to the
14 development of his mesothelioma?

15 A. Yes, sir, it was, and I say that with medical
16 certainty.

17 Q. Do you have an opinion, doctor, as to whether or not
18 that mesothelioma will cause his death?

19 A. Yes, sir, unless there was some other extenuating
20 circumstance, he will surely die from this malignant
21 mesothelioma.

22 Q. Okay. I want to talk to you for just a moment about
23 the effects that mesothelioma will have on a person.

24 What kind of things does a person with mesothelioma
25 experience?

1 A. Well, it depends on what stage of the disease.

2 When the person first comes in to see the doctor, he
3 usually comes in because of shortness of breath, and that's
4 because of an accumulation of fluid inside the chest.

5 Sometimes the patient will have other symptoms at
6 presentation. There could be chest wall pain, if there is
7 early invasion of the chest wall by the tumor. Very
8 commonly there is anorexia or weight loss. Anorexia means a
9 loss of appetite because you're sick. You don't feel like
10 eating. And because you don't eat, you lose weight.

11 Now, as the disease progresses, the symptom pattern
12 changes somewhat.

13 At presentation they probably drain away the pleural
14 effusion, so for at least a little while it becomes easier
15 to breath, because you don't have that fluid there blocking
16 the air going in and out of the lung.

17 Q. Now, you said pleural effusion. I don't think we have
18 talked about that. Can you briefly describe what that is,
19 please?

20 A. Sure.

21 When a mesothelioma first develops you start to get the
22 accumulation of fluid in the chest, because that's one of
23 the things that these tumor cells do. They cause fluid to
24 be released from the soft tissues and the chest fills up
25 with fluid.

1 Now, other things can cause pleural effusions. You can
2 have a pleural effusion because you have pneumonia on one
3 side of your chest.

4 You can have a pleural effusion because you are going
5 into heart failure and fluid seeps out into the pleural
6 spaces. Usually, however, that will be on both sides. When
7 its just on one side, it's usually due to a more localized
8 cause, like tumor. It's not specific to mesothelioma
9 tumors. It could be due to lung cancer tumors or to
10 metastatic tumors, or other chest wall tumors even, but
11 approximately 90 percent of mesotheliomas at the time they
12 present, pleural mesotheliomas, at the time that they
13 present will have an accompanying pleural effusion.

14 Q. What, if anything, can doctors do about a patient who
15 has pleural effusion?

16 A. They can drain it away. They put a needle in between
17 the ribs, usually in the lateral or posterior lateral
18 portion of the chest, and either let gravity draw fluid, or
19 sometimes we will use a syringe to pull off fluid, and then
20 they study that fluid to see if they can see why the
21 effusion develops.

22 Sometimes you can see bacteria or pus from pneumonia
23 that's in that fluid and that says oh, this is reactive due
24 to -- it's an inflammatory thing. Or sometimes you will see
25 clumps and clusters of tumor cells. They saw those in this

1 case, but, you know, there weren't very many of them at that
2 time and they weren't sure whether they were actually tumor
3 or reactive, but later on when the biopsy was done it became
4 obvious.

5 Q. Now, you described doctors pulling off this pleural
6 effusion. Is this painful for the patient?

7 A. Usually it's somewhat painful. Sometimes there is
8 sharp stabbing pain and they use a local anesthetic to numb
9 up that area as best they can, but very often at the time
10 that they are pulling it off there is a sharp stabbing pain.
11 Sometimes there is something called a vasovagal reflex,
12 which is a reflex down the vagal nerve that slows the
13 beating of the heart and causes a temporary feeling of
14 nausea and sometimes you can pass out from it, but I did not
15 see in the medical records that our patient actually had
16 that, but it could happen.

17 Q. Let me ask you, doctor. If Mr. Crawford had this
18 procedure and there was one and a half or two liters of
19 fluid taken off, would that be unusual?

20 A. No, that's pretty much par for the course. In fact,
21 some people will undergo repeated thoracentesis, sometimes
22 three or four times, with a liter or a liter and a half of
23 fluid taken off each time. A liter is approximately the
24 size of a quart. So a gallon is 3.7 liters.

25 Q. Now, you -- I know -- I think we are talking about the

1 same thing, but you said thoracentesis. Is that the
2 procedure where the fluid is drawn off?

3 A. Yes, sir. Yes, sir, that is the Greek name, I guess,
4 for drawing off fluid from the chest.

5 Q. Okay.

6 A. If you draw it off from the abdomen, it's called
7 paracentesis.

8 Q. Now, doctor, I think you already said mesothelioma is
9 fatal?

10 A. Yes, sir, it is pretty much uniformly fatal. Either
11 the mesothelioma itself or one of the complications of it
12 will kill 99 percent of the people with malignant
13 mesothelioma.

14 Q. Okay. We will get to that in just a second, but let me
15 ask you, is chemotherapy a treatment?

16 A. Yes, chemotherapy is very useful and it will usually
17 extend the life of patients, as long as they are -- as long
18 as the tumor is sensitive to that type of chemotherapy.

19 It's generally used in most patients, unless they're
20 very elderly, or if they personally refuse to take
21 chemotherapy, or if they have such far advanced disease at
22 the time of presentation that it's not much use.

23 Q. And, doctor, can you -- hopefully none of us have had
24 to go through this, but can you briefly explain to the jury
25 what it's like to go through chemotherapy?

1 A. Well, it depends on the type of chemotherapy that you
2 get.

3 Now, let me start and get more intense.

4 If you start with single agent chemotherapy used just
5 for the purpose of palliation, you would generally be given
6 a dose every three weeks. The drug that would be used is
7 called Alimta. You can usually tolerate a single agent
8 chemotherapy with Alimta fairly well. It doesn't cause a
9 lot of toxicity. It doesn't cause a lot of nausea,
10 vomiting, gastrointestinal symptoms. It will produce a
11 gradually increasing state of fatigue or tiredness.

12 Okay. A second level of chemotherapy would be
13 combination chemotherapy with Alimta and Cisplatin; again,
14 given just about every three weeks. That will cause the
15 development of more nausea, possible vomiting, possible
16 diarrhea, depending upon the person's reaction to it.
17 That's because the addition of the Cisplatin causes injury
18 to cells in the gastrointestinal tract and that's where
19 those symptoms come from. The patient will also have
20 fatigue, tiredness, probably some loss of appetite as
21 another type of side effect to that level of chemotherapy.

22 There are certain types of drugs that can be added to
23 that. One is called Avastin, and what that drug does is it
24 helps to prevent the growth of new blood vessels into the
25 tumor tissue. In other words, it tries to deprive growing

1 tumor of a blood supply; therefore, aiding it to die.

2 There is other types of chemotherapy, the so-called
3 immune checkpoint inhibitors, things like PBL-1, which
4 sometimes is extremely effective with lung cancer even. I
5 believe that former President Jimmy Carter had a malignant
6 melanoma, which is a different type of tumor, in his brain
7 and it was PBL-1 sensitive. He was given that chemotherapy
8 and he had a complete response regression of that tumor.

9 I have seen just a handful of patient that have
10 received PBL-1 that have had at least partial remissions as
11 a result of the use of that drug. However, it's -- it's
12 pretty new. It's only in the last year or so that people
13 have been starting to use that. That type of chemotherapy
14 does not induce a lot of toxicity.

15 Q. So let's back up a second, doctor, and -- we know
16 mesothelioma is fatal?

17 A. Yes, sir.

18 Q. How do patients that have mesothelioma, what causes
19 them to actually pass away?

20 A. Well, it depends, and also the spectrum of symptoms
21 will change in the later stages of the disease.

22 Most mesotheliomas continue to proliferate, eventually
23 are no longer inhibited by chemotherapy of any sort. They
24 will invade local structures first. They may invade the
25 heart. They may go right through the pericardium and invade

1 the surface of the heart. If that happens, that can cause
2 an irregular heartbeat, a so-called cardiac arrhythmia, and
3 they can die from that. That can be the mechanism of death.
4 It's the tumor that's killing them, but it's the mechanism
5 that is used and it's cardiac arrhythmia.

6 Other times the tumor can invade the chest wall and the
7 lung. Lung invasions can cause another set of episodes of
8 shortness of breath, but this time it's not because the lung
9 is compressed. It's because the lung is invaded.

10 That invasion of the lung can also lead to pneumonia.
11 So the patient then can die of pneumonia or of sepsis, a
12 blood-borne infection due to the pneumonia that was caused
13 by the invasive tumor. That's also a tumor death.

14 Sometimes the mesothelioma terminally will metastasize
15 to other parts of the body. Sometimes it will metastasize
16 to the brain. The percentage of mesotheliomas with brain
17 metastasis at the time of original presentation is very low,
18 but by the time that you're in the terminal stages of the
19 disease it's much higher.

20 Other causes of death. Well, sometimes people can
21 become very depressed. Sometimes people are suffering so
22 much from the air hunger that's due to the shortness of
23 breath that they could commit suicide. It's that bad of a
24 disease.

25 MR. WALL: Objection, Your Honor. That's way

1 speculative.

2 THE COURT: What's that?

3 MR. WALL: He says they can commit suicide. I
4 said that's way speculative in this case.

5 THE COURT: All right. Overruled.

6 BY MR. CHAPMAN:

7 Q. Please continue, doctor.

8 A. Yes, sir.

9 What I'm trying to say is in the end stages whatever
10 the cause of death may be, it's going to be extremely
11 unpleasant.

12 Air hunger is usually very prominent. Air hunger is
13 when you are smothering. You're unable to catch a breath
14 because you don't have lung tissue sufficient to breath any
15 more. That's generally treated by morphine. Morphine
16 reduces air hunger, but then it also reduces the impulse to
17 breath, so it becomes in a downward spiral.

18 Q. Doctor, will Mr. Crawford have to incur future medical
19 expenses as a result of his mesothelioma?

20 A. I'm sure that he will and the medical expenses will
21 mount, depending upon his response to chemotherapy. The
22 longer he goes, the more imaging studies that he will need
23 to document the progression of his disease.

24 If he enters hospice care eventually, there will be
25 costs for that.

1 So they will continue to mount and the better that he
2 responds to treatment, the longer they will continue to
3 mount.

4 Q. Doctor, what's the life expectancy of Mr. Crawford?

5 A. Well, with a diagnosis at age 72, the actuarial tables
6 that you can look up, they are produced by the Department of
7 Social Security, shows that he would have an expectancy of
8 living to about 87 and a half years at age 72. About 13
9 years, or a little bit more than 13 years, but, you know,
10 that's an average.

11 There are some people that have other things wrong that
12 are serious that may shorten that. There are other people
13 that might not have things wrong that would be extended to
14 an even later age, so that would be if he did not have the
15 mesothelioma. With the mesothelioma his life expectancy is
16 significantly shortened.

17 On the average, and this is not specific to Mr.
18 Crawford, but on the average most people presenting with a
19 pleural mesothelioma of this cell type, their average
20 survival is about 14 months.

21 By two years, usually 90 percent of them have died of
22 the disease.

23 And then there will be a small tail to that survival
24 curve that goes out up to several years, if they happen to
25 be one of the people that is responsive to the type of

1 chemotherapy. If it's somebody that's had a good surgical
2 approach that removed the bulk of the tumor to start with,
3 if they presented early, if they are in otherwise pretty
4 good health without too many other things wrong to them,
5 there is a possibility of maybe having several years
6 survival, but the average is 14 months.

7 Q. Doctor, lastly, was Mr. Crawford's mesothelioma
8 preventable?

9 A. Probably so. I mean, it probably could have been
10 prevented by not having asbestos exposure in the first
11 place.

12 As I said before, studies have been done looking back
13 into the previous century to see how many mesotheliomas
14 there were at Harvard Medical School, at the Mayo Clinic,
15 they didn't find any.

16 Q. And it's your opinion, doctor, that Mr. Crawford's
17 mesothelioma was caused by asbestos?

18 A. Yes, sir, with medical certainty it was a result of his
19 cumulative asbestos exposure.

20 Q. Okay. Thank you, doctor.

21 MR. CHAPMAN: I pass the witness, Your Honor.

22 A. Thank you, sir.

23 THE COURT: Mr. Wall, cross-examination.

24 MR. WALL: Thank you, Your Honor.

25

1 CROSS EXAMINATION BY MR. WALL:

2 Q. Dr. Maddox, how are you doing today?

3 A. Very well, sir. Thank you very much.

4 Q. We met face to face the first time a little earlier?

5 A. Yes, sir, we exchanged greetings this morning when we
6 came into court.

7 Q. And I have been on the phone on several occasions
8 listening to you testify?

9 A. Yes, sir, I believe so.

10 Q. Okay.

11 A. Some of the depositions are given with -- some or -- on
12 occasion all of the people present by telephone rather than
13 in person.

14 Q. Okay. Now, you mentioned OSHA?

15 A. Yes, sir.

16 Q. Are you familiar with OSHA?

17 A. Yes, sir, OSHA was this regulatory commission that was
18 started by Richard Nixon during his first presidency period.

19 Q. When did it become the law -- it became the law in the
20 United States about 1970?

21 A. '70, '71, something like that.

22 Q. And isn't it true that OSHA says it's employer's duty
23 to provide a safe workplace for the employee?

24 A. Well, sir, I think that's probably correct. However, I
25 am not an industrial hygienist and I really don't feel that

1 I'm personally qualified to give testimony about the medical
2 legal aspects of OSHA.

3 Q. Are you aware that OSHA says it's employer's duty to
4 warn the employee of any hazards at the work site?

5 A. Well, sir, I think that's correct, but I really
6 couldn't quote that chapter and verse to you.

7 Q. All right.

8 Now, do you have in front of you your report?

9 A. Yes, sir, I have a copy here.

10 Q. Could you pull it out?

11 A. Yes, sir.

12 Q. Now, in the report there is a clinical history,
13 correct?

14 A. Yes, sir, that clinical history was provided to me by
15 the law firm. It is a concise preliminary type thing
16 subject to subsequent modification by exposure witnesses in
17 the case. I'm personally not an exposure witness.

18 Q. That's correct, but they sent this to you for purposes
19 of you making your diagnosis that Mr. Crawford has
20 mesothelioma, correct?

21 A. Well, sir, not so much the diagnosis of mesothelioma.
22 It's actually based on other criteria, but as far as the
23 attribution or causation, yes, sir, this would give --

24 Q. All right.

25 A. -- a basis for attribution.

1 Q. And because of the Helsinki Criteria, you had to get
2 items one, two, and three, which is fiber counts,
3 asbestosis, or pleural plaques, correct?

4 A. Well, yes, sir, that's right, because there wasn't any
5 lung tissue to study in this case. It was like pleural
6 tissue alone that was biopsied.

7 Q. And so as far of your diagnosis, you had to rely upon
8 the clinical history that was given to you?

9 A. Yes, sir, just like it says on the first page, that
10 that is the single most practical and reliable --

11 Q. Right.

12 A. -- aspect of basing attribution.

13 Q. Would you read into the record the information sent to
14 you by the plaintiffs' lawyers in this case for purposes of
15 helping you make your diagnosis?

16 A. Yes, sir. This will be a quotation.

17 Q. Yes, sir.

18 A. "For your reference. We are" --

19 MR. CHAPMAN: Your Honor, may I please an
20 objection on the record as to hearsay?

21 THE COURT: What's that?

22 MR. CHAPMAN: May I place an objection on the
23 record as to hearsay? This is Dr. Maddox's report and I
24 think Mr. --

25 THE COURT: Overruled. You introduced it and he

1 can use it.

2 MR. WALL: Thank you.

3 MR. CHAPMAN: Yes, ma'am.

4 A. Yes, sir. Here is what I received.

5 "For your reference, we are investigating Mr.
6 Crawford's work history and believe he was exposed to
7 asbestos at different times throughout his life. Mr.
8 Crawford worked at Celanese in Spartanburg, South Carolina,
9 for several years in the early 1970's. He worked in areas
10 containing insulated steam pipes. Mr. Crawford repeatedly
11 worked in close proximity to the removal, repair and
12 replacement of asbestos-containing insulation. This work
13 created visible dust. Later in his career for a few years
14 in the late 1970's he worked at Collins & Aikman in
15 Spartanburg, South Carolina. There were times that he
16 worked with and around insulated pipes. The work cleaning
17 asbestos from the pipes created visible dust.

18 "Additionally, for several years during the late to
19 mid-1960's Mr. Crawford spent most weekends and some
20 evenings at an auto repair shop that his brother-in-law
21 built behind his house. Mr. Crawford assisted with some of
22 the brake work performed there, but he mainly observed it
23 while standing two to three feet away. His brother-in-law
24 used compressed air to clean the brake drums he worked on,
25 which dispersed visible dust into the air."

1 BY MR. WALL:

2 Q. Thank you.

3 A. "While -- it continues.

4 "While we are not providing you with the case specific
5 testimony for Mr. Crawford at this time, please assume that
6 at the time of trial or deposition we will ask you
7 hypothetical questions regarding certain exposures and
8 whether or not such exposures would have been a substantial
9 contributing factor to Mr. Crawford's development of
10 asbestos-related disease."

11 Q. Thank you.

12 Then on page three of your report you listed your
13 opinions to a reasonable degree of medical certainty,
14 correct?

15 A. Yes, sir, correct.

16 Q. And you say based upon that exposure history that you
17 just read "the place of patient's cumulative asbestos
18 exposure caused the mesothelioma," correct?

19 A. Yes, sir, correct, his cumulative exposures to
20 asbestos.

21 Q. And cumulative exposure means every exposure?

22 A. Well, every significant exposure.

23 There are possible such things as trivial exposures,
24 but what was described today, in my opinion was not a trivial
25 exposure. It was a relatively high dose exposure, so there

1 can be multiple components to a person's cumulative
2 exposure.

3 Q. And I want you to further assume that in addition to
4 working with the brother-in-law, that Mr. Crawford worked on
5 his own personal vehicles and changed brakes,
6 asbestos-containing brakes.

7 Based upon the information that you gave about brake
8 work and the additional information I gave to you about
9 brake work, do you have an opinion to a reasonable degree of
10 medical certainty whether his brake work was a substantial
11 contributing factor for his development of mesothelioma?

12 A. I'm going to have to start off by answering maybe. May
13 I explain that answer?

14 Q. Sure.

15 A. Okay. If you look at people that are career brake
16 mechanics, that perform multiple brake jobs every single day
17 and do that work for years, then you are going to find that
18 those individuals in some recent reports do have a
19 measurable increase in their risk of developing malignant
20 mesothelioma.

21 However, for the shade tree mechanic who may do his own
22 brake job, or his friends, or his family's brake job a few
23 times, there is probably some exposure and that may
24 constitute a minor contributory component of the overall
25 exposure, but you have to look at the amount. I mean, I

1 personally have done two brake jobs in my lifetime that I
2 can remember. I suppose that I probably had a little bit of
3 asbestos exposure during the time that I did that, but
4 relative to the occupational level exposures that he had
5 elsewhere, it's just not as much.

6 Q. I understand that, but it is an exposure, correct?

7 A. Depending upon the techniques that he used and the
8 things that I just mentioned a moment ago, there may be some
9 exposure there.

10 Q. And it is cumulative, correct?

11 A. Sir?

12 Q. It accumulates? It is cumulative exposure?

13 A. Well, yeah, I mean, the exposure doing that type of
14 work is additive to whatever other component exposures that
15 he would have had, including his occupational exposure.

16 Q. I want you to go back in your mind and remember the
17 hypothetical question that Mr. Chapman gave you.

18 A. Yes, sir.

19 Q. And I want to make a few additions to it.

20 I want you to assume that Mr. Crawford was exposed to
21 asbestos materials that was being removed by Daniel
22 Corporation at Celanese, and that materials that were
23 removed were placed there in the 1960s, and were sold and
24 manufactured by Johns Manville, Owens Corning, Unibestos
25 between 1970 -- the removal was between 1970 and 1974, on a

1 regular basis.

2 Do you have an opinion which you hold a reasonable
3 degree of medical certainty whether or not that exposure was
4 significant?

5 A. I would say that the asbestos that was involved in the
6 exposures that you just described was probably significant,
7 yes, sir.

8 Q. And would that exposure contribute to the development
9 of mesothelioma?

10 A. I would say that asbestos exposure probably would
11 contribute.

12 Now, as far as the legal responsibilities for that,
13 that aspect of the question I have to bounce back to you
14 because I'm not a legal expert.

15 Q. I understand.

16 Now I want you to assume again further that Mr.
17 Crawford was exposed to asbestos pipe insulation at Celanese
18 from 1970 to 1974, that was installed by Daniel Corporation
19 and manufactured and sold by Johns Manville, Owens Corning
20 and Arco from 1970 to 1974, on a daily basis. Was that
21 exposure significant, in your opinion?

22 A. In my opinion, the asbestos involved in those exposures
23 contributed to his cumulative dose which caused his tumor,
24 so that would be a yes.

25 Again, I have to bounce back the aspect that deals with

1 legal responsibility because I just don't know.

2 Q. And that's up to the jury?

3 A. Well yes, sir, certainly.

4 Q. Thank you.

5 MR. WALL: That's all I have.

6 A. Yes, sir. Thank you, sir.

7 MR. CHAPMAN: Nothing further, Your Honor.

8 We ask Dr. Maddox be excused.

9 THE COURT: Very good.

10 Yes. Dr. Maddox, thank you so much for your
11 testimony in this matter and you may be excused.

12 THE WITNESS: Yes, ma'am. Thank you very much.

13 THE COURT: Yes, sir.

14 All right, Ms. McVey?

15 MS. MCVEY: Your Honor, we would call Jerry
16 Crawford by video.

17 THE COURT: All right. The plaintiff, Jerry
18 Crawford, is called by video. You may proceed.

19 MS. MCVEY: Thank you, Your Honor.

20 (Whereupon, the videotape of Jerry Crawford was
21 played to the jury panel).

22 MS. MCVEY: That concludes Mr. Crawford's video.

23 THE COURT: All right.

24 Put the lights up, please.

25 All right, Ms. McVey.

1 MS. MCVEY: Your Honor, it's 12:30. I didn't know
2 if you wanted to break for lunch, or we can go forward with
3 more.

4 THE COURT: I think it's time to break for lunch.

5 Let's break for lunch now. It's 12:30. Let's be
6 back here at -- will 1:30 give us enough time, y'all? I'll
7 understand if you are not quite assembled, but let's at
8 least shoot for 1:30, and if it's a little later than that,
9 people needs to be back and refreshed before we start, but
10 we will make that a target. Thank you.

11 You may be dismissed from the jury room.

12 (The following takes place outside the presence of
13 the jury panel)

14 THE COURT: All right, ladies and gentlemen,
15 anything before we break for lunch?

16 MR. BRANHAM: Judge --

17 MS. MCVEY: Go ahead.

18 MR. BRANHAM: -- we wanted to take up that issue
19 regarding corporate hearsay. I can do it after lunch or
20 right now, either way you would prefer.

21 THE COURT: How about let's take it up -- let's
22 try for about 1:15 or 1:20.

23 MR. BRANHAM: Perfect.

24 THE COURT: Okay. Very good.

25 (Whereupon, proceedings were recessed)

1 (Whereupon, proceedings were reconvened)

2 THE COURT: Okay. Ms. McVey?

3 MS. MCVEY: I'm going to --

4 THE COURT: Mr. Branham?

5 MR. BRANHAM: I hope you had a nice lunch, judge.

6 Judge, if Mr. Crawford had come into this
7 courtroom and attempted to say that one of his co-workers
8 told him that Covil was the insulator and working around him
9 and he was exposed to Covil insulation and he tried to say
10 that from the stand, that's 602, it's hearsay, it's not made
11 with personal knowledge. He can't say that from the stand.

12 And the same thing is true of Covil.

13 602, which is the rule of evidence in South
14 Carolina, says very, very clearly that a witness may not
15 testify to a matter unless the evidence is introduced
16 sufficient to support a finding that the witness has
17 personal knowledge of the matter. And personal knowledge is
18 defined in Blacks means that they personally perceived it.
19 And there is no exception under Rule 602, the hearsay rule,
20 for a corporate representative. It doesn't exists. It's
21 not there anyplace.

22 30(b)(6) witness is designed to allow the
23 plaintiffs to take a single deposition, rather than having
24 to take depositions seriatim of corporate witnesses to get
25 the answer. And this isn't just me saying that. This is

1 the Fifth Circuit Court of Appeals and any number of other
2 courts around the country.

3 And the central case here in 602 in South Carolina
4 is identical to -- not the South Carolina 602. The Federal
5 Rule of 602 and South Carolina Rule 602 are identical. And
6 what the Union Pump Centrifugal Technology case says from
7 the U.S. Fifth Circuit Court of Appeals in 2010, is that it
8 allows the corporate representative to testify and that
9 32(a) allows an adverse party to use that testimony at
10 trial. However --

11 So an adverse party, that's me, I can use the
12 testimony against them, because there is an exception to the
13 hearsay rule. That's admission by a party opponent. Okay.
14 On the other hand, they can't.

15 However, a corporate representative may not
16 testify to matters outside his own personal knowledge to the
17 extent that the information is hearsay not falling within
18 one of the exceptions. And they cite the Brazos River case,
19 which is the predecessor to the Union Pump case, which says
20 exactly the same thing as the Union Pump case.

21 Then there is cases all over the country that say
22 the exact same thing. And that's exactly what we have here.

23 Mr. Glenn first heard about Covil Corporation four
24 weeks ago. He has zero personal knowledge of anything that
25 Covil ever did, said, act upon. You heard Mr. Wall say in

1 his opening they have been defunct since 1991. He can't
2 know anything of his own personal knowledge.

3 So they have a corporate representative and I'm
4 entitled to take his deposition and those are admissions.
5 We all know that that's an exception to the hearsay rule.

6 On the other hand, he has no personal knowledge of
7 what Covil knew or did. The only thing he knows is what
8 he's read. That's a hearsay statement. Or what he's read
9 from Jim Palmer -- or Jim Covil or Palmer Covil. Those are
10 hearsay statements.

11 So if it's good for them, candidly, they can't
12 come in and put that up any more than Jerry Crawford could.
13 It's hearsay without exception, and that's just the simple
14 truth of it and it's against not just me, it's lots of
15 courts interpreting the exact same evidentiary rule that
16 South Carolina has here.

17 I will tell you that Judge Norton from the
18 District of South Carolina in a case called Morris, 2013
19 Westlaw 212587 from 2013 has cited the Brazos River case,
20 which is cited in the middle of middle of block post,
21 approvingly, albeit for a different issue.

22 THE COURT: All right.

23 Mr. Wall?

24 MR. WALL: Yes, Your Honor.

25 Your Honor, as you recall we -- not this witness,

1 but in Whitmire we tried to quash the deposition -- I mean
2 the trial subpoena notice that they served on our corporate
3 representative -- served on me for the corporate
4 representative, and we said you can't make them come more
5 than a 100 miles, blah, blah, blah, blah, blah, and we filed
6 a motion to quash that subpoena and the court denied that
7 subpoena -- yes, that subpoena, said that the corporate
8 witness can be required to come to trial. And because of
9 that we have brought our corporate witness here.

10 Your Honor, and since they have subpoenaed him
11 here, because he's more than a 100 miles from Charleston
12 where he lives, they have him. He's here. If they put him
13 up, they're at risk of anything he says.

14 In that same motion, we argued that they are
15 correct. The rules say you can use a 30(b)(6) deposition
16 for any purpose, but it doesn't say you can bring the
17 witness here. It's against the rules. So that's why we
18 filed the motion. We did not file it in this case, because
19 you turned us down in the other case.

20 Second, the rule says unless there is an exception
21 to the hearsay. And the things we would have this man
22 testify about are records regularly kept in the conduct of
23 the business, which is exception number six, and number 16,
24 which are ancient documents. The documents are more than 20
25 years old that he would be testifying about.

1 And, again, once they put him up, I think he is
2 open to examination by me.

3 MR. BRANHAM: Just briefly in response?

4 THE COURT: All right, sir.

5 MR. BRANHAM: We are complaining two different
6 issues. Covil is a party, just like Mr. Crawford is.
7 Parties can be subpoenaed, so that's that issue.

8 The issue of the business records and ancient
9 documents, those are exceptions to the hearsay rule for
10 those documents. In other words, if they want to take a
11 document and put it on the elmo and publish it as a business
12 record, by all means. Those documents are accepted from the
13 hearsay rule. That is very different than handing Mr. Glenn
14 a document and asking him about that document. Mr. Glenn
15 has no idea how that document was created. He has no idea
16 what the thought process was going on in the document.

17 The only thing that they can do is publish those
18 documents to the jury because those documents will transmit
19 whatever information is within them. It's when he begins to
20 get into "well, this is what it meant; this is why it was
21 written; this is what was going on," that you get into a
22 problem with the hearsay rule.

23 So we are conflating two different issues. I have
24 no problem with business records being published to the
25 jury, you know, or ancient documents being published to the

1 jury that otherwise would be an exception to the hearsay
2 rule, but that's very different than putting him on the
3 stand and asking him to parrot information about which he
4 has no personal knowledge. Under 602 he has to have
5 personal knowledge and there is no exception to the hearsay
6 rule for that, and that's what those cases say.

7 MR. WALL: We are not putting him up for any
8 knowledge that he has or he gleaned from.

9 We could publish the documents to the jury anyway
10 we want to and we prefer to have Mr. Glenn publish the
11 documents that this is what -- "this is what I found," or
12 "this is what I didn't find. I went through all the records
13 and couldn't find anything," and that's what he is going to
14 say. He's going to say "I went through all the records we
15 have." He says in his deposition, read his deposition, "I
16 went through all the documents I have. There is no document
17 of Celanese," and we have some documents of Celanese that
18 says Covil worked at Celanese. We have documents from
19 Dupont -- excuse me, from Daniel and there is no document
20 that says Daniel hired Covil on the project. That's what
21 Mr. Glenn is going to say. Basically those are the things
22 that he's going to say, "either I have it or I don't have
23 it, and this is what I have and this is -- I'm not going to
24 interpret them at all. These are the documents."

25 MR. BRANHAM: I have no objection to that at all.

1 If what he wants to say is "I looked --

2 MR. WALL: Right, that is all he can say.

3 MR. BRANHAM: But -- so here is the thing, right?

4 We are going to ask him when Covil first learned about

5 mesothelioma, which is in 1966 at the Selikoff conference.

6 That's admission by a party opponent, right? We know that's

7 been said and he's going to testify that that's true.

8 On the other hand, if Mr. Wall wanted to elicit

9 "well, Covil didn't really learn about mesothelioma, they

10 only learned about asbestosis," that's hearsay without

11 exception.

12 And so we are permitted, because his statements

13 are admissions by party opponent, which is an exception to

14 the hearsay rule, to elicit things that go beyond his

15 personal knowledge, whereas they are not, and that's the

16 issue here. And as long as I'm hearing that they are not

17 going to do that, then we don't have any argument.

18 MR. WALL: Your Honor, that's one of the reasons

19 that they are saying that he was not prepared, because they

20 wanted him to do all of this, "what does that document mean?

21 "I don't know, Palmer Covil never wrote it down."

22 That's why they made sanctions against us, because

23 he can't do that. He can't get into Palmer Covil's mind.

24 He cannot think about what Palmer Covil thought about 30, 40

25 years ago.

1 All he can say is "this is all I have. This is
2 what it is." That's all he's doing.

3 MR. BRANHAM: And if that's all he's doing, judge,
4 I'm fine with it. It's just if we get into that historical
5 knowledge and they are attempting to elicit what that means
6 from Mr. --

7 THE COURT: Okay. Y'all have said the same
8 thing --

9 MR. BRANHAM: Sorry.

10 THE COURT: -- several times.

11 MR. BRANHAM: Sorry.

12 THE COURT: I don't want to hear it a fourth --

13 MR. WALL: Your Honor, to turn around, he should
14 not be allowed to ask Mr. Glenn "well, why don't you know
15 what this means? Why don't you know what they did? Why
16 don't you know what they didn't do? Why don't you know what
17 went on there?" All he can do is talk about the documents
18 themselves.

19 THE COURT: Mr. Wall, the rules put you in a
20 different position from Mr. Branham with respect to this
21 witness, in my view. He is a --

22 Covil is required to designate a corporate
23 representative and I have sanctioned Covil for their failure
24 to designate someone who could adequately respond to
25 reasonable questions about Covil, as well as sanction them

1 for spoliation of evidence.

2 What I don't want to do is open the door to Mr.
3 Glenn talking about things of which he has no knowledge.

4 I agree completely that the ruling that a 30(b)(6)
5 witness cannot be offered by someone in your position to
6 testify as to hearsay.

7 The 30(b)(6) is discovery. If in discovery they
8 find out things, they can be entered as admissions of a
9 party opponent, which is another exception to the hearsay
10 rule, but I want to be darn sure that -- you can, of course,
11 except to the ruling, but if you ask him questions there,
12 they are going to be strictly limited to asking him
13 questions about documents that you want admitted.

14 Documents -- he's going beyond his brief when you
15 ask him about documents he can't find. I don't know what
16 the reason is he can't find them. That is one of the things
17 that was the subject of a good deal of conversation in
18 connection for sanctions against Covil for not doing a
19 proper job of finding and maintaining these records. They
20 obviously were in existence at one time and that's going to
21 be testified to. So if --

22 You started out by saying all we want to do is
23 deal with the two exceptions to the hearsay rule we think
24 pertain to his testimony, which is records and ancient
25 documents. And if that's what you are asking him about, he

1 can proffer the records and the ancient documents you want
2 to put into evidence. In fact, you can put those in without
3 him. But if you want to put those in and you say "I want to
4 have him put them in," that's fine, but if you get into the
5 business of asking about things he can't find, he doesn't
6 have enough knowledge to know what happened to those things
7 and I'm not going to permit that testimony.

8 MR. WALL: Your Honor, I was going to ask him if
9 he looked at every record that he's aware of that --

10 THE COURT: Well, we already know that that's not
11 so. He was furnished with 25,000 pages of material and he
12 examined about a 100 pages of that material, according to
13 his 30(b)(6) deposition, and then he flipped through the
14 depositions of the two Covils and that's -- and Mr. Crawford
15 and that is it, from what I understand he said in his
16 30(b)(6). Am I wrong about that?

17 MR. WALL: You are close enough. I'm not going to
18 argue with it.

19 THE COURT: Well, that is why I'm not going to
20 permit him to say he could not find. He has no basis for
21 saying that, because he didn't even examine all the records
22 that were given to him by Covil.

23 MR. WALL: He word searched them and -- under
24 Celanese and under Daniel he word searched all the documents
25 and these are the only ones that showed up.

1 THE COURT: Well, that's not good enough for me.

2 What he is wanting to testify to is that he can't
3 find any records of Covil supplying these folks. There
4 might be many different ways that could be done, but he is
5 going to make a blanket statement about that without having
6 looked at all those documents and I'm not going to permit
7 it. So that's my ruling. And I know that you except it to
8 and I respect that.

9 Very good. Bring the jury in, please, sir.

10 MR. WALL: Your Honor, before we come back, at
11 this point I think I need to make a motion for a mistrial.

12 THE COURT: Denied.

13 MR. WALL: I understand that, but I just wanted to
14 put on the record that I'm making a motion for a mistrial
15 because of this ruling, cumulative on the other rulings
16 about the evidence.

17 THE COURT: All right, sir. You are protected and
18 it's denied.

19 MR. WALL: Thank you.

20 MR. BOGER: And, Your Honor, just to put a bug in
21 your ear, I still want to put something on the record about
22 one of the witnesses they are showing today. Perhaps --

23 THE COURT: Waters?

24 Yeah, I noticed more filings than a show dog can
25 jump over in the Waters case in Richland County. I'm not

1 going to try that case on the side here today.

2 MR. BOGER: We will give some for food for
3 thought, but if maybe if we take a break --

4 THE COURT: I haven't read any of it. I just got
5 the notification of electronic filings about like this.

6 MR. BOGER: But -- yes, ma'am. If we could maybe
7 at a break discuss what I would like to put something on the
8 record before they play this video or not in front of the
9 jury.

10 THE COURT: Well, wait a minute.

11 MS. MCVEY: We are going to play the video.

12 MR. BOGER: You are going to play it right now?

13 MS. MCVEY: We are going to play Harley Neelands,
14 who is really quick, and then we are going to play Mr.
15 Waters.

16 MR. BOGER: All right. Well, I need to say what I
17 need to say.

18 THE COURT: Well, I can't bring the jury in here
19 and then have that go on.

20 MS. MCVEY: I agree, Your Honor. I think we have
21 already argued it. You had a filing on it. You have ruled
22 on it. I think he's protected without making the argument.

23 THE COURT: This?

24 All right, two things.

25 Number one, they got something else they want to

1 put on the record, so we got to keep my jury back for a
2 minute.

3 The second thing is they don't need this TV until
4 tomorrow.

5 THE BAILIFF: Thank you.

6 THE COURT: So you are cool.

7 All right. Let's put this on the record.

8 Quickly, Mr. Boger.

9 You know, let me just say this. After a judge has
10 ruled, our rules say that only the judge invites further
11 comments, if that comment is needed, and I thought we had
12 our complete discussion of that. You submitted a brief.

13 The rules don't entitle you to submit a brief and
14 put additional material on the record, unless I invite it,
15 so I don't want this to be lengthy. I promised the jury I
16 wouldn't do this and here I am doing it. You were right
17 there. You could have insisted on that, but you didn't.

18 MR. BOGER: I apologize, Your Honor. I will be
19 brief. I appreciate the court's indulgence.

20 As you know, we have filed a motion and objected
21 to the presentation of Mr. Waters in this matter.

22 Mr. Waters filed his own case that was ongoing.

23 As the court is aware, just generally what we
24 suspect Mr. Waters' video is going to show and what he's
25 going to testify to, which we object to, Mr. Waters was a

1 Covil employee beginning in 1972. He's identified in his
2 deposition several different plants and locations around the
3 south that he worked in. There is no mention of Mr.
4 Crawford in his deposition or being a co-worker of Mr.
5 Crawford. And Mr. Waters identified that at some point he
6 worked at a Celanese plant in Greenville. There is no time
7 line of when he worked in the Celanese Greenville plant and
8 there was no mention of a Spartanburg plant that he worked
9 in.

10 And there are two pieces of testimony that we
11 believe are irrelevant to this case and prejudicial.

12 In that one Mr. Waters alleges that Covil
13 employees committed theft of materials from a plant owned by
14 Duke Power, the McGuire plant, in the late seventies and
15 early eighties. Clearly Mr. Crawford did not work at that
16 plant. It was after what we have all agreed upon is the
17 period of exposure and we think that is highly prejudicial
18 more so than probative in this matter.

19 Additionally, Mr. Waters has testified that Covil
20 at one point was placing asbestos products in boxes that
21 were labeled asbestos free. The plaintiff designated
22 testimony as such, but did not include testimony from Mr.
23 Waters that essentially says that that occurred when he was
24 at the BASF plant in 1974 and 1975. There is no mention of
25 that occurring at the Celanese Spartanburg plant during the

1 time frame of relevant exposure to Mr. Crawford in this
2 case.

3 And, again, there is no testimony about any theft
4 occurring by Covil employees at the Spartanburg Celanese
5 plant.

6 And, again, nothing about Covil placing asbestos
7 products in asbestos-free boxes at the Spartanburg plant
8 from 1970 to 1974. That's -- it's irrelevant to this case,
9 Your Honor. Thank you.

10 THE COURT: All right. Anything further?

11 MS. MCVEY: Do you need to hear any argument?

12 THE COURT: I don't think so.

13 MS. MCVEY: Okay.

14 THE COURT: I have made the ruling that he will be
15 allowed to testify and the ruling stands.

16 All right. You may bring in the jury.

17 (The following takes place in the presence of the
18 jury panel)

19 THE COURT: Ladies and gentlemen of the jury, I'm
20 sorry I'm tardy. There are -- you can put that on me, but
21 we had to take up some matters that required some rulings
22 and they had to be done before I could bring you back, but
23 don't blame these very fine lawyers, but blame this judge,
24 if you want to blame somebody.

25 I hope you had a pleasant lunch and we will

1 continue now.

2 Ms. McVey?

3 MS. MCVEY: Your Honor, the plaintiffs calls
4 Harley Neelands by video.

5 THE COURT: Very good.

6 MS. MCVEY: If y'all can't hear, if you will just
7 wave. I can turn it up or down.

8 THE COURT: How are y'all hearing these things?
9 Are you good? All good.

10 (Whereupon, the Video Deposition of Harley
11 Neelands was played to the jury panel)

12 MS. MCVEY: Your Honor, we have got one more short
13 video.

14 THE COURT: Very good.

15 MS. MCVEY: We will call Dwaine Waters.

16 THE COURT: All right. Dwaine Waters was called.
17 All objections preserved.

18 MR. WALL: Thank you, Your Honor.

19 (Whereupon, the Videotaped Deposition of Dwaine
20 Waters was played to the jury panel)

21 MS. MCVEY: Your Honor, that concludes the video
22 depositions.

23 We have got Mr. Glenn, but I didn't know if you
24 want to take a break in between.

25 THE COURT: All right. Well, let's put the lights

1 back up.

2 Yeah, why don't we take our afternoon break.

3 We will take a break for the afternoon. It's
4 about 12 after. Why don't you just be back here at 25 after
5 and be sure everyone is refreshed and ready to go, Madam
6 Forelady.

7 JURY FOREPERSON: Okay.

8 THE COURT: Very good.

9 (The following takes place outside the presence of
10 the jury panel).

11 THE COURT: All right. Anything further? If not,
12 be at ease.

13 MS. MCVEY: Thank you.

14 THE COURT: We will start back up about ten or
15 twelve minutes.

16 (Whereupon, proceedings were recessed)

17 (Whereupon, proceedings were reconvened)

18 THE COURT: Everybody ready?

19 MR. WALL: Your Honor?

20 THE COURT: Yes, sir.

21 MR. WALL: I would like to put -- I guess to state
22 my objection on the record.

23 THE COURT: All right. Yes, sir.

24 MR. WALL: I have no idea what the plaintiff is
25 going to do, but it's my position that they are limited to

1 the examination of Mr. Glenn to the matters that were
2 brought up in his 30(b)(6) deposition and they cannot go far
3 afield from that, because this is not just a -- this is not
4 a magistrate's court witness. This is a special 30(b)(6)
5 witness and they should not be allowed to go anywhere they
6 want. They need to be limited to the notice on the 30(b)(6)
7 witness.

8 THE COURT: Right.

9 I understand what you are saying, Mr. Wall.

10 I have taken the position in all of these trials
11 that 30(b)(6) witnesses are corporate witnesses. They are
12 the representative of the corporation. They may be
13 subpoenaed and they may be asked questions about anything.

14 30(b)(6) is a discovery tool. It does not limit
15 the role of the witness.

16 The limitations that I have placed on your use of
17 the witness proceed from the hearsay rule, its exceptions in
18 part being admissions of a party opponent. And because this
19 witness is a designee of the corporation as its corporate
20 representative, he is not only someone who had to respond to
21 the 30(b)(6)'s, but he's also present in this courtroom as
22 the voice of the corporation. And as the voice of the
23 corporation, his 30(b)(6)'s are admissible admissions of a
24 party opponent and his presence can be required by them to
25 answer questions that they propound to him about this

1 matter, if he knows, because he is a representative of the
2 corporation.

3 MR. WALL: But he's not required to know under
4 Rule 30(b)(6) everything in the world. He is only required
5 to know about those issues that were set forth in the
6 notice.

7 THE COURT: Well, the 30(b)(6) contains its own
8 requirements and responsibilities for a witness. I have
9 already visited that subject and found that he was not
10 responsibly prepared by Covil Corporation to be its
11 corporate representative and responsive to 30(b)(6) and
12 sanctions have been issued for that. That topic is beyond
13 us. It's over. I have ruled.

14 With respect to this matter, you are raising
15 something different. You are saying, for reasons I'm not
16 quite sure I understand, that he should be confined to those
17 matters he was asked about at his 30(b)(6) deposition.

18 What I'm saying to you is I view the matter
19 differently. I view the corporation as an entity that
20 speaks only through its representatives. Covil has chosen to
21 make this man the voice of the corporation. He's -- that
22 Covil has already been sanctioned because they didn't
23 prepare him well enough, but he is still the voice of the
24 corporation. He's the designated corporate representative
25 of Covil. And, in fact, the only other person I know of

1 that might have any knowledge sufficient to be the
2 corporation representative has refused to testify and that's
3 Mr. Jim Covil, because it's been represented that he's not
4 capable of testifying.

5 So the only individual that's been identified by
6 the corporation as its corporate witness representative is
7 this gentleman, Mr. Glenn, and I am not going to limit the
8 questions the plaintiff may ask him in that capacity.

9 I am limiting your questions because of the cases
10 under 30(b)(6) that say that you are so limited by the
11 hearsay rule and I place those limitations on you.

12 That's the ruling I have made. I think I have
13 done everything that I can do. I don't know what else.

14 MR. WALL: Under the rules the corporate
15 representative who is going to testify only has to do --
16 have knowledge that they tell us in advance they want him to
17 be knowledgeable about.

18 THE COURT: That is in his role as a 30(b)(6)
19 witness.

20 He is now here in his role as a corporate
21 representative and they have subpoenaed him in that capacity
22 and he just is a regular old normal witness in that capacity
23 and if he knows, he can say he knows. And if he doesn't
24 know, he says he doesn't know. That's different from the
25 requirement that you make available an individual that you

1 prepare to be -- to give discovery information about the
2 corporation.

3 MR. WALL: Your Honor, I don't want to get back
4 into it, but he's traveled more than a 100 miles, and so
5 he's only here as a corporate representative under 30(b)(6).

6 THE COURT: No, sir, he's here because he's a
7 subpoenaed witness.

8 And corporations who are subject to lawsuits in
9 the State of South Carolina cannot escape responsibility to
10 have their representative here by the 100 mile limitation.
11 They are able to be subpoenaed because they are defendants
12 in this lawsuit and you all have chosen to make him your
13 representative in that regard. Therefore, his attendance is
14 not constrained by the 100 mile limitation.

15 I'm still not sure how you are relating that to
16 30(b)(6), but I have ruled on that matter. I have ruled on
17 it about three times now and I believe your objection is in
18 the record and my ruling is in the record, so we are going
19 to go forward.

20 MR. WALL: All right, Your Honor.

21 And I -- just according to notice I have a feeling
22 they are going to go all over the world and there's things
23 that we have never talked about, things that he never
24 considered, and I know I can't do it in advance, but I'm
25 going to make another motion for a directed -- excuse me,

1 a --

2 THE COURT: Mistrial?

3 MR. WALL: Mistrial. Thank you, Your Honor. A
4 mistrial, if, in fact, they go too far.

5 THE COURT: Well, I don't want you -- I'm not
6 going to inhibit you from making a motion, but I don't want
7 to have us get into all that colloquy in front of the jury.

8 MR. WALL: That's what I'm saying, Your Honor.

9 THE COURT: All right. You have made your motion
10 for a mistrial. If you want to repeat that notation --

11 What I'm just trying to avoid is having the jury
12 sit through a whole bunch of objections and me have to send
13 them back out again and all that kind of thing.

14 MR. WALL: I don't know --

15 THE COURT: But I'm not constraining you. You are
16 going to do what you are going to do, I feel sure, so let's
17 go get at it and we will see how it goes.

18 MR. WALL: Yes, Your Honor.

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

21 Y'all had sent me a draft by e-mail, Ms. McVey, of
22 your jury charges. Do you also have a hard copy for me?

23 MR. BRANHAM: Yes, I can have one very shortly for
24 you, Your Honor.

25 THE COURT: Very good. Thank you.

1 (The following takes place in the presence of the
2 jury panel)

3 THE COURT: All right, ladies and gentlemen of the
4 jury, the plaintiffs' case continues.

5 Mr. Buha?

6 MR. BUHA: Mr. Glenn of the Covil Corporation.

7 THE COURT: All right. You are calling Covil
8 Corporation in the person of its corporate representative,
9 Mr. Robert Glenn, correct?

10 MR. BUHA: That's correct.

11 THE COURT: Mr. Glenn, if you will come around,
12 please, sir, and the clerk will administer the oath.

13 ROBERT GLENN, having been first duly sworn,
14 testified as follows:

15 THE WITNESS: I do.

16 DIRECT EXAMINATION BY MR. BUHA:

17 Q. Mr. Glenn, we met briefly. I'm Mark Buha and I
18 represent --

19 THE COURT: Mr. Buha, I'm going to ask you to
20 speak up a little bit, please, sir.

21 MR. BUHA: Absolutely.

22 BY MR. BUHA:

23 Q. Mr. Glenn, I'm Mark Buha and I represent the plaintiff.
24 Could you please state your name for the record?

25 A. Yes, it's Robert Glenn.

1 Q. And Mr. Glenn, where do you currently reside?

2 A. I live outside of Charleston, South Carolina, Johns
3 Island.

4 Q. Okay. And Mr. Glenn, you are the person that Covil
5 Corporation designated as its representative, correct?

6 A. That is correct.

7 Q. And the Covil Corporation selected you to speak on
8 behalf of the company in matters relevant to the Covil
9 Corporation in this case, correct?

10 A. That's correct.

11 Q. And you understand that today you are the voice of
12 Covil Corporation as it relates to the matters in this case,
13 correct?

14 A. Yes, sir.

15 Q. Okay. And in preparing to become the representative
16 for Covil Corporation you have learned that you are not the
17 first person to be its representative in an asbestos case,
18 correct?

19 A. That is correct.

20 Q. And first someone named Palmer Covil gave a deposition
21 in 1977 as the representative of Covil, correct?

22 A. I'm aware of that, yes, sir.

23 Q. And Palmer Covil was the founder of Covil Corporation,
24 right?

25 A. I'm aware of that, yes, sir.

1 Q. And he founded Covil in about 1947, 1948, right?

2 A. I have seen both of those dates, yes, sir.

3 Q. Okay. And he gave a deposition over about three days
4 in 1977, correct?

5 A. Yes, three volumes of his deposition.

6 Q. And by that time, in the 1970's, Covil employed several
7 hundred employees, is that right?

8 A. Yes.

9 Q. And Palmer Covil, he's no longer with us, is that
10 correct?

11 A. No, he passed away in 1984.

12 Q. Okay. And then someone named James Covil has given a
13 few depositions as a representative for Covil in asbestos
14 cases, is that correct?

15 A. He's given two that I have seen.

16 Q. And James Covil, he's the son of Mr. Palmer Covil,
17 correct?

18 A. That is correct.

19 Q. And James Covil began working full time for Covil
20 Corporation in about 1974, correct?

21 A. That is correct.

22 Q. And he continued to work there until about 1991,
23 correct?

24 A. That's correct.

25 Q. And you read the depositions of Mr. James Covil,

1 correct?

2 A. Yes, I did.

3 Q. And, of course, you read that he gave these depositions
4 as a representative of Covil Corporation in February and
5 March of this year, correct?

6 A. Yes, that's correct.

7 Q. And, of course, you understand that James Covil lives
8 in Greenville, South Carolina, correct?

9 A. That is my understanding.

10 Q. You have never worked for Covil Corporation at any
11 point in your life, correct?

12 A. I have never been an employee per say.

13 Q. Okay. And you were asked to be a representative for
14 Covil Corporation less than a month ago, correct?

15 A. Yes, about three weeks.

16 Q. And prior to that time, about three weeks ago, as you
17 said, you had never even heard of Covil Corporation, is that
18 correct?

19 A. That is correct.

20 Q. Okay. And you have never been in the thermal
21 insulation contracting business, is that correct?

22 A. I have not.

23 Q. Now, Mr. Glenn, you personally -- you are a certified
24 industrial hygienist, is that right?

25 A. That is correct, yes.

1 Q. And you are currently a principal at the Glenn
2 Consulting Group, right?

3 A. Yes, I am.

4 Q. And you are the only principal there?

5 A. That's correct.

6 Q. And that's operated since about 2010, is that right?

7 A. Yes.

8 Q. And among other things, you testify as an expert
9 witness in litigation, correct?

10 A. I do.

11 Q. And you spend about 20 to 25 percent of your time as a
12 consultant and expert in litigation, correct?

13 A. That's correct.

14 Q. And you have been testifying as an expert --

15 MR. WALL: Objection, Your Honor. This has
16 nothing to do with the corporate history of Covil
17 Corporation.

18 MR. BUHA: It goes to bias, Your Honor.

19 THE COURT: Overruled.

20 BY MR. BUHA:

21 Q. And you have testified as an expert witness by
22 companies defending themselves in litigation for about four
23 or five years now, right?

24 A. That's correct.

25 Q. And you have given about four depositions as an expert

1 witness by companies defending themselves in asbestos
2 litigation, is that right?

3 MR. WALL: Your Honor, could I have a continuing
4 objection?

5 THE COURT: Yes, sir. Continuing objection is
6 noted. Overruled.

7 A. I think there are two depositions in asbestos and the
8 other two are related to other agents.

9 BY MR. BUHA:

10 Q. Okay. Fair enough.

11 And you do that for free, or are you compensated for
12 your time?

13 A. I'm compensated.

14 Q. And I understand that for your time as a consultant as
15 an expert and an expert, you are compensated at a rate of
16 about \$415 per hour?

17 A. That is correct.

18 Q. And in 2002 you started working in D.C. for a law firm
19 called Crowell & Moring, is that correct?

20 A. That was actually in 2004.

21 Q. 2004.

22 Okay. And Crowell & Moring is an international law
23 firm, fair?

24 A. They are.

25 Q. And from about 2004 to 2010, you worked out of D.C. in

1 the litigation group of Crowell & Moring as an in-house
2 consulting scientist, correct?

3 A. Yes.

4 Q. And you read depositions, provided summaries, made
5 reports on different medical aspects of cases, things of
6 that nature, right?

7 A. That's correct.

8 Q. And Crowell & Moring has defendant companies in
9 asbestos litigation, right?

10 A. Yes.

11 Q. And you participated in that, among other things,
12 during your time while employed at this firm Crowell &
13 Moring, correct?

14 A. As a non-testifying expert, yes.

15 Q. And although it's not a substantial part of your time,
16 Crowell & Moring still engages you to do work to this day,
17 correct?

18 A. I haven't done anything for them lately.

19 Q. Okay.

20 A. We separated in 2015.

21 Q. I see.

22 And you are familiar with an entity called the National
23 Mining Association, correct?

24 A. Yes, I am.

25 Q. And the National Mining Association represents

1 corporations in the coal and metals industry in the United
2 States, fair?

3 A. That is correct.

4 Q. And you have served an a lobbyist for the National
5 Mining Association, correct?

6 A. No.

7 Q. Has that always been been your testimony, sir?

8 A. I'm not a lobbyist.

9 Q. Okay.

10 A. I'm not a registered lobbyist.

11 Q. Okay. In what capacity have you served the National
12 Mining Association, sir?

13 A. I have provided opinions on public policy.

14 Q. Okay. It's always been your testimony that you are --
15 is that you are not a lobbyist for the National Mining
16 Association, is that correct?

17 A. I have never been registered as a lobbyist, and I don't
18 consider myself to be a lobbyist, and never have.

19 Q. Okay. And you worked for the National Mining
20 Association during a period when the Mine Safety and Health
21 Administration wanted to lower the permissible exposure
22 limit for coal mine dust, is that correct?

23 A. I was -- I was consulted to the National Mining
24 Association. I worked for Glenn Consulting Group.

25 Q. Okay. And you worked for them during this time when

1 the Mine Safety and Health Administration wanted to lower
2 the permissible exposure limit, correct?

3 A. Yes, I consulted at that time.

4 Q. And just so the jury understands, permissible exposure
5 limit is the legal limit for exposure to a chemical
6 substance or a physical agent that a regulatory body allows
7 a person to be exposed to in a workplace, correct?

8 A. Yes, that's pretty much the definition.

9 Q. And when the Mine Safety and Health Administration
10 wanted to lower the amount of coal dust someone could be
11 exposed to in the workplace, the coal mining companies or
12 the National Mining Association hired you as a consultant in
13 that, correct?

14 A. Yes, because of my experience in research on coal mine
15 dust.

16 Q. And you have testified on behalf of companies that sell
17 mineral dust in the public policy arenas, correct?

18 A. Industrial minerals.

19 Q. Industrial minerals?

20 A. Yes.

21 Q. Okay. And you have testified on behalf of companies
22 that might be affected by regulations concerning exposure to
23 industrial minerals in front of state legislative bodies, is
24 that right?

25 A. Yes, I have done that.

1 Q. And you have testified before the Missouri legislature
2 on proposed legislation related to silica dust, is that
3 right?

4 A. That is correct.

5 Q. And you have testified before the Maryland legislature,
6 correct?

7 A. Yes.

8 Q. And you also submitted comments to an entity called the
9 National Institute of Occupational Safety and Health,
10 correct?

11 A. The Maryland testimony was not related to any agency or
12 occupational agency. I was testifying on recreational
13 fishing.

14 Q. Okay. I understand.

15 A. I was on the executive board of the Coastal
16 Conservation Association of Maryland.

17 Q. Okay. My question following that was you have
18 submitted comments to the National Institute of Occupational
19 Safety and Health on behalf of the Coalition For Litigation
20 Justice, correct?

21 A. National Institute For Occupational Safety and Health
22 and I was formerly employed by them for ten years.

23 Q. Okay. But you submitted comments to that institution,
24 the National Institutional For Occupational Safety and
25 Health on behalf of the Coalition For Litigation Justice, is

1 that correct?

2 A. That's correct.

3 Q. And Crowell & Moring, the D.C. law firm that you worked
4 for for a number of years, formed that group, The Coalition
5 for Litigation Justice, is that correct?

6 A. They did.

7 Q. And without getting too much into the weeds here, your
8 comments were about how to define asbestos versus
9 nonasbestos in minerals, such as talc, is that correct?

10 A. No, it was actually in asbestos minerals, not talc
11 minerals in that specific case. It dealt with both, talc
12 and asbestos.

13 Q. Okay. It dealt with talc and asbestos?

14 A. Yes, and it also dealt with the health aspect.

15 Q. And you have been retained as an expert witness a
16 company called Pfizer, correct?

17 A. Yes, I have.

18 Q. And you were retained by Pfizer in asbestos litigation,
19 correct?

20 A. Talc potentially contaminated with asbestos.

21 Q. Now, Mr. Glenn, you gave a deposition in this case last
22 week, is that correct?

23 A. That is correct.

24 Q. And at that time you were aware that there have been
25 about 24,000 pages of documents that have been produced by

1 Covil in this case, is that correct?

2 A. Yes, I'm aware of that.

3 Q. And prior to that deposition, in your preparation as a
4 role -- for your role as a corporate representative, you
5 read about a 100 pages of those documents, is that correct?

6 A. That's probably right at that time. I searched more of
7 them since then.

8 Q. Okay. And to be sure, you also read some depositions
9 prior to your deposition last week, right?

10 A. Yes, I did.

11 Q. And you read the deposition of Palmer Covil that took
12 place in 1977?

13 A. I did.

14 Q. And you read the depositions of James Covil that took
15 place earlier this year, right?

16 A. Yes.

17 Q. Now, you or your consulting group has charged Covil for
18 your time in preparing and testifying as a representative
19 for Covil, is that correct?

20 A. Yes, we will be. We haven't yet.

21 Q. I see.

22 And you testified in your deposition last week that up
23 until that time, a week ago, you had spent about 40 or 50
24 hours preparing for your role as a representative, is that
25 right?

1 A. Yes.

2 Q. And you charged Covil, was that also at the rate of
3 \$415 per hour?

4 A. That is.

5 Q. And did you charge Covil for the drive up from the
6 Charleston area up to here?

7 A. My fee structure is I charge door to door.

8 Q. That's about a three hour drive, something like that?

9 A. Yes.

10 Q. And do you charge for your time in the courtroom today?

11 A. Yes.

12 Q. Okay. And that's also at the same rate of \$415 per
13 hour?

14 A. That is.

15 Q. Now, between your deposition last week and when you
16 came to the courtroom today have you done any additional
17 work to prepare to testify as a representative for Covil
18 Corporation?

19 A. Yes, I have had some limitations of the time that I
20 could spend, but I have spent time, more time, but there is
21 a limitation to it.

22 Q. And could you estimate for us how much time that you
23 have spent since your deposition last week?

24 A. It's probably 40 hours.

25 Q. 40 hours in the last week?

1 A. 40 to 45, yes.

2 Q. Okay. So it was at least 40 hours before your
3 deposition last week?

4 A. Yes.

5 Q. And then another 40 hours in the last week, correct?

6 A. Approximately.

7 Q. And then at least three hours for your drive from the
8 Charleston area up to here, correct?

9 A. Correct.

10 Q. And you are going to bill Covil Corporation \$415 per
11 hour for all of that?

12 A. Correct.

13 Q. And so we are looking at at least 83 hours in which you
14 are going to bill at \$415 per hour, is that right?

15 A. Yes.

16 Q. Now, I'm not the best mathematician, but that comes out
17 to a little bit over \$34,000, is that right?

18 A. Sounds about right. I don't have -- I'm not great at
19 mathematics in my head either, so --

20 Q. Okay. Now, I'm going to switch gears -- switch gears
21 real quick -- real quick and not talk so much about you, but
22 I'm going to start asking some questions about Covil.

23 A. Okay.

24 Q. Now, Covil formed some time around 1947 or 1948, like
25 we talked about, right?

1 A. Correct.

2 Q. And Covil shut down or ceased operating in about 1991,
3 correct?

4 A. Yes, sir.

5 Q. And I want to go over briefly what Covil did as a
6 business during that time. Do you understand that?

7 A. Yes.

8 Q. And Covil sometimes acted as a distributor to
9 industrial sites in which it would purchase materials
10 manufactured by others, hold it in stock, and then sell it
11 to an industrial site. Is that one of the things that Covil
12 did?

13 A. Yes, they did. They sold it to industrial insulators.

14 Q. Right.

15 And other times Covil acted more as a broker than a
16 distributor. It would arrange for a sale between a
17 manufacturer of a product and an industrial site and the
18 manufacturer would then sell it directly from its
19 manufacturing site to the industrial -- to the industrial
20 site, correct?

21 A. Yes, they would sometimes have it shipped from the
22 manufacturer to the site where the work was going to be
23 done.

24 Q. And for brokering that deal Covil would receive a
25 commission for that work, is that fair?

1 A. Yes, I expect so.

2 Q. And among other products that Covil would distribute
3 between about 1948 and 1991 was asbestos-containing thermal
4 insulation during at least some of those years, right?

5 A. They did supply that, yes.

6 Q. And although Covil never manufactured any thermal
7 insulation products, Covil has put its brand name Covelite
8 on products manufactured by others, is that right?

9 A. There are two, yes.

10 Q. Okay. And in addition to acting as a distributor or
11 selling products, Covil sometimes would act as a contractor
12 or a subcontractor in which it was hired to do the labor of
13 installing thermal insulation at an industrial site, is that
14 right?

15 A. Yes, they did.

16 Q. And in those cases Covil's employees were on a job site
17 installing thermal insulation, is that right?

18 A. Yes.

19 Q. And sometimes in addition to installing insulation at a
20 site, Covil had maintenance contracts at a facility, right?

21 A. Yes.

22 Q. And Covil had to maintain the insulation at a facility
23 and the maintenance contract would define how long Covil
24 would be there, is that fair?

25 A. Yes.

1 Q. And Covil agrees that the contract business in which it
2 would install or maintain insulation represented about 60
3 percent of Covil's business and the distributor aspect was
4 about 40 percent, is that a fair estimate?

5 A. Yeah, I understand that 60 percent and 40 percent of
6 the revenue stream.

7 Q. And I think we said this earlier, but in the 1970's --
8 by the 1970's Covil had a couple hundred employees, is that
9 right?

10 A. Yes, 250, or so.

11 Q. Okay. And Covil agrees that it was the second largest
12 insulation contractor in the southeast United States in the
13 1960's and 1970's, is that right?

14 A. Yes.

15 Q. And Covil would sometimes have multi-million dollar
16 insulation contracts, is that right?

17 A. They did some large contracts, yes.

18 Q. And we mentioned that Covil sold at some time
19 asbestos-containing thermal insulation products, right?

20 A. They did.

21 Q. And prior to about 1974, or so, Covil sold a number of
22 different brands of asbestos-containing thermal insulation
23 products, right?

24 A. They did.

25 Q. And Covil sold asbestos-containing insulation products

1 made by a company called Owens Corning, correct?

2 A. Yes, they did.

3 Q. And have you ever heard of a product called Kaylo?

4 A. Yes, I have.

5 Q. And Owens Corning made this product called Kaylo, is
6 that right?

7 A. That's right.

8 Q. And during certain years, at least until about 1972, or
9 1973, Kaylo was an asbestos-containing calcium silicate
10 insulation, correct?

11 A. Yes.

12 Q. And Covil sold asbestos-containing Kaylo during certain
13 years, is that right?

14 A. I'm sorry, repeat that one.

15 Q. Okay. Covil sold asbestos-containing Kaylo during
16 certain years, correct?

17 A. Yes, sir.

18 Q. And Covil didn't just sell asbestos-containing theraml
19 insulation products from Owens Corning. It also sold
20 asbestos-containing insulation products from Johns Manville,
21 correct?

22 A. Yes. Yes, they did.

23 Q. And have you ever heard of a product called
24 Thermobestos?

25 A. Yes.

1 Q. And the name itself, Thermobestos, it sort of indicates
2 it was an asbestos-containing product, is that fair?

3 A. It is. It does.

4 Q. Okay. And Covil agrees that sometime Thermobestos
5 contained asbestos, right?

6 A. I have not seen where -- what Thermobestos contains in
7 their records, and I'm not that familiar with the term. I
8 have heard the term.

9 Q. Okay. And Covil also sold asbestos-containing
10 insulation products made by Armstrong Cork, is that correct?

11 A. Yes.

12 Q. And when Covil acted as a contractor at contracting
13 sites, Covil sometimes used raw asbestos, right?

14 A. They did.

15 Q. And Covil used the raw asbestos to mix cement or mud?

16 A. The mud, yes.

17 Q. And employees would mix the raw asbestos fiber with
18 water to make a kind of a paste or a mud and then apply that
19 mixture to curves or joints in the pipes, correct?

20 A. Elbows, around valves, and things -- T's and things of
21 that nature, yes.

22 Q. Now, Covil agrees that from 1948 to 1973, not all of
23 the thermal insulation products that Covil sold were
24 asbestos containing, correct?

25 A. No, that's right. They handled fiberglass for one.

1 Q. Right.

2 Covil sold some insulation products that could insulate
3 pipe and other machinery that was asbestos free, correct?

4 A. Yes.

5 Q. And one of those examples would be fiberglass, right?

6 A. Yes.

7 Q. Okay. And I'm going to briefly switch gears here for a
8 moment.

9 Now, Covil had a warehouse and an office located in
10 Greenville, South Carolina, is that right?

11 A. They did.

12 Q. And to be sure, in the 1970's Covil had a number of
13 other branches, right?

14 A. Yes, they did. They had other offices.

15 Q. And those other branches also had warehouses, correct?

16 A. The Greensboro operation did. I believe the Wilson
17 did. I'm not sure about the Albany, but it probably did.
18 I'm not sure.

19 Q. Okay. And Covil eventually or also had a branch in
20 Columbia, South Carolina, correct?

21 A. They bought a small insulation company in Columbia,
22 yes, and they had an office there.

23 Q. Okay. And so Covil had branches and warehouses in
24 Albany, Georgia, correct?

25 A. Yes.

1 Q. Columbia, South Carolina --

2 A. Yes.

3 Q. -- correct?

4 Greensboro, North Carolina?

5 A. Yes.

6 Q. And I believe you said Wilson, North Carolina?

7 A. Yes, and Greenville, South Carolina.

8 Q. And the headquarters or kind of the main office,
9 though, in the 1970's, that was nearby here in Greenville,
10 correct?

11 A. Greenville, in the Berea Industrial Park.

12 Q. Okay. And a fire occurred at that warehouse in May of
13 1973, is that right?

14 A. It did.

15 Q. And the fire did not destroy all of the warehouse, but
16 part of the warehouse, is that right?

17 A. From what I have learned, it was a pretty drastic fire.
18 I have seen photographs from the Greenville News where they
19 described it as an atomic fireball. The pictures in the
20 newspaper, it's pretty devastating. So I don't know exactly
21 how much was destroyed, but it looked pretty bad from the
22 photos that I have seen.

23 Q. Okay. And at the Greenville, South Carolina
24 headquarters, at that warehouse, there was also a vault, is
25 that correct?

1 A. It -- it was described in Mr. Covil's deposition as a
2 vault. I think now that it was actually a safe.

3 Q. Okay. And now it has been Covil's position that all of
4 its sales invoices prior to May of 1973 were destroyed in
5 that fire, is that correct, sir?

6 A. All of their invoices, yes.

7 Q. I'm going to ask you some general questions about Covil
8 and a company that the jury has heard a little bit about.
9 It's called Daniel Construction. And I'm going to ask these
10 about Covil and Daniel generally and not with respect to the
11 Celanese plant in Spartanburg. Do you understand that?

12 A. Yes.

13 Q. Okay. Now, Covil --

14 A. I might say in preparing for today I thought we were
15 going to talk about Celanese Spartanburg, so I'm not -- I
16 have read something about their other operation with Daniel
17 but I'm not as familiar.

18 Q. Okay.

19 Now, Covil agrees that throughout the years Covil had
20 contracts as a subcontractor for Daniel Construction, is
21 that fair?

22 A. Yes, they did.

23 Q. And Covil agrees that Daniel Construction was one of
24 Covil's biggest customers, correct?

25 A. They were one of the largest, yes.

1 Q. And Covil agrees that this relationship with Daniel, in
2 which Covil did work with Daniel Construction, this
3 relationship began by at least the early 1960's, correct?

4 A. Yes.

5 Q. And Covil has agreed -- or Covil agrees that Daniel
6 Construction, the contractor, was present at the Spartanburg
7 Celanese plant, is that correct?

8 A. Daniel was at that plant, yes. They built the original
9 plant.

10 Q. Now, this plant that we have been calling Celanese in
11 Spartanburg, it also went by the name Hoechst Celanese,
12 correct?

13 A. It did.

14 Q. And so if somebody identifies it as Hoechst in
15 Spartanburg, they are talking about this plant Hoechst
16 Celanese in Spartanburg, correct?

17 A. I would expect so, yes.

18 Q. Now, Covil claims that Covil's pipe insulation started
19 going asbestos-free in about 1973 or 1974, is that right,
20 sir?

21 A. It's '72, '73, '74, that time frame, yes.

22 Q. Okay. And as I understand it, it's Covil's contention
23 that Covil received a letter from Owens Corning that Owens
24 Corning was going to stop manufacturing asbestos-containing
25 pipe insulation in November of 1972, is that correct?

1 A. Yes.

2 Q. And Covil agrees that that same letter that Covil got
3 from Owens Corning said that all of their inventory would be
4 depleted in another year, is that right?

5 A. I'm sorry, repeat that.

6 Q. Sure.

7 Covil agrees that over the next year all of Owens
8 Corning's inventory would be depleted over that period,
9 correct?

10 A. Yes, it -- yes, it would take a year to cycle out what
11 was in the warehouse.

12 Q. So if Owens Corning --

13 Well, I'll set this back for a moment.

14 Owens Corning was probably the biggest supplier of
15 insulation that Covil used and sold, is that correct?

16 A. Yes.

17 Q. And Owens Corning, that's the company that made that
18 stuff Kaylo, correct?

19 A. That's correct.

20 Q. And if Owens Corning stopped manufacturing this
21 asbestos-containing Kaylo insulation in November of 1972,
22 and it took a full year for them to get rid of their
23 inventory, that could mean they were selling
24 asbestos-containing Kaylo until about November of 1973, is
25 that right?

1 A. Up until that time, yes.

2 Q. Up until --

3 A. It could have been shorter. It could have been a
4 little longer.

5 Q. But it could have been up until November of 1973 that
6 Owens Corning was selling asbestos-containing thermal
7 insulation, correct?

8 A. That's not my understanding.

9 Q. What's your understanding, sir?

10 A. My understanding is they stopped manufacturing it and
11 that Covil's warehouse took a year for it to get their stock
12 out. I was not -- it was not my understanding that Owens
13 Corning continued to manufacture or sell asbestos in '73.

14 Q. All right. We will circle back on that.

15 So your understanding is that it would take Covil a
16 year for it to get rid of its inventory, is that correct?

17 A. That's correct.

18 Q. And that would take us to about November of 1973,
19 correct?

20 A. Yes.

21 Q. And the fire that occurred, that was only at
22 Greenville's branch, correct?

23 A. Yes. Yes.

24 Q. And Covil had warehouses in which they stocked
25 inventory of asbestos-containing material at places besides

1 Greenville, right?

2 A. None of them were as large as at Greenville warehouse,
3 I guess.

4 Q. Okay. And regarding the last date that Covil sold
5 asbestos-containing pipe insulation, in reviewing all the
6 documents that you have reviewed in preparation for your
7 role as a representative for Covil, are you aware of any
8 verbal or written communication to any of these other
9 branches that said hey, we are going to stop selling
10 asbestos at this particular date?

11 A. I did not find that in our records, no.

12 Q. And Covil has not found a written asbestos policy that
13 references the last date that they are going to sell an
14 asbestos-containing product, is that fair?

15 A. I have not seen that, not in the records.

16 Q. Now, we talked earlier about a product called
17 Thermobestos, right?

18 A. Yes.

19 Q. And Thermobestos, the name, it sounds like something
20 that might be asbestos-containing, correct?

21 A. Yeah. I'm not sure, but was that a Johns Manville
22 product?

23 Q. Yes, it is, sir.

24 A. Okay.

25 Q. Okay. And Covil agrees that Covil sold Thermobestos to

1 a Firestone plant in Wilson, North Carolina in 1974,
2 correct?

3 A. I'm not -- I haven't studied up on the Wilson
4 operation. I'm sorry. I thought this was going to be
5 Spartanburg Celanese.

6 Q. Now, I want to talk to you about the last date that
7 Covil was selling asbestos-containing thermal insulation.
8 You read the deposition of James Covil, correct?

9 A. Yes.

10 Q. And you read his deposition on March 27th of 2018, this
11 year, correct?

12 A. Yes, that was -- there were two; one in February and
13 one in March.

14 MR. BUHA: Your Honor, may I approach?

15 THE COURT: You may.

16 BY MR. BUHA:

17 Q. And you you said when you reviewed these depositions in
18 preparation for your role as a representative for Covil, you
19 also looked at the exhibits that were attached to those
20 deposition, correct?

21 A. I looked at many of them, yes.

22 Q. And you would agree this is a Covil invoice, correct?

23 A. Yes.

24 Q. And you can see Covil Insulation Company there on the
25 top left-hand corner, correct?

1 A. I do.

2 Q. Hold on. I got to figure out how to do this.

3 And you can see there, it says -- you can see a stamp
4 received February 9, 1974, correct?

5 A. Yes.

6 Q. And you can see a sale of 710 or 711 feet of
7 Thermobestos, is that correct?

8 A. Yes.

9 Q. And this is in 1974, right?

10 A. Yes. I cannot make out whose stamp it's received by,
11 but there is a received by stamp.

12 Q. Okay. And Covil agrees that it continued to sell
13 asbestos-containing products after OSHA was implemented,
14 correct?

15 A. The OSHA rule came out in '72, so they would have sold
16 some after that, yes.

17 Q. And Covil sold the product that was about
18 three-quarters of one percent asbestos that was called One
19 Shot or Covilite, correct?

20 A. Yes.

21 Q. And you read the deposition of Palmer Covil, correct?

22 A. Yes, sir.

23 Q. And that deposition took place in 1977?

24 A. Yes.

25 Q. And you, of course, saw that Palmer Covil stated that

1 Covil was continuing to sell that product in 1977, correct?

2 A. Yes, that was the three-quarter of one percent
3 asbestos, yes.

4 Q. And Covil also sold asbestos-containing cloth until the
5 time of that deposition in 1977, correct?

6 A. Yes. As I understand it they were using the cloth to
7 make thermal blankets in their fabricating shop in
8 Greensboro and the material that was fiberglass inside the
9 blankets, but the cloth was asbestos cloth.

10 Q. And Covil was continuing to sell that
11 asbestos-containing product until at least 1977, correct?

12 A. Yeah.

13 Palmer Covil, it was his understanding that that
14 material would not be released in manufacturing or using
15 that cloth, but --

16 Q. And you would agree, sir, that Covil never tested any
17 of its asbestos-containing products, true?

18 A. Yes, they never tested them.

19 Q. Okay. And so how did Covil know at that time that the
20 asbestos-containing blanket material wouldn't release any
21 asbestos dust, right? They didn't know that?

22 A. I could answer as an industrial hygienist.

23 Q. Okay. And I'm asking you Covil Corporation.

24 A. Okay.

25 Q. At that time given that it hadn't done any testing,

1 Covil wouldn't know whether that product released any
2 asbestos dust, correct?

3 A. They would not.

4 Q. Okay.

5 Now, today, in 2018, Covil understands --

6 Or Covil agrees that exposure to asbestos can cause
7 lung cancer, correct?

8 A. Today?

9 Q. Yes.

10 A. Yes, they do.

11 Q. And today Covil agrees that based on the science there
12 is a relationship between asbestos exposure and the disease
13 mesothelioma, correct?

14 A. Yes.

15 Q. And Covil agrees that asbestosis is also an
16 asbestos-related disease, correct?

17 A. That is correct, all three of those.

18 Q. And Covil agrees that asbestosis can be a fatal
19 disease, correct?

20 A. Yes.

21 Q. And Covil knew that ever since they found out about
22 asbestosis, correct?

23 A. About asbestosis, yes, and they knew in the sixties,
24 mid-sixties.

25 Q. Okay. And, sir, you understand that Mr. Palmer Covil,

1 he passed away in 1984, is that correct?

2 A. Correct.

3 Q. And it's true that he also died of an asbestos-related
4 disease, is that correct?

5 A. He did die of what could have been asbestos-related
6 disease. His son thought it was lung cancer. His attorney
7 thought it was mesothelioma.

8 Q. Okay. And he gave a -- I'm sorry, family members gave
9 a deposition in a case that he had regarding that
10 asbestos-related disease, is that correct?

11 A. I'm not sure of that.

12 Q. Okay. Now, we talked about how Covil started its
13 business in about 1947, 1948, right around there, right?

14 A. Yes.

15 Q. And Covil was a member of a few trade organizations,
16 correct?

17 A. Yes.

18 Q. And Covil was a member of those trade organizations
19 going back into at least the 1960's, correct?

20 A. Yes.

21 Q. Covil was a member of the Southeast Insulation
22 Contractorws Association?

23 A. That is correct.

24 Q. And, in fact, at one point Palmer Covil had been the
25 president and a board of director of that organization,

1 correct?

2 A. He served as a director and as president of that
3 organization.

4 Q. And that Covil was also a member of the National
5 Insulation Contractor Association, correct?

6 A. Yes, he was.

7 Q. Okay. And that's abbreviated NICA, correct?

8 A. That's my abbreviation for it.

9 Q. Okay. And Mr. Palmer Covil, he was the president of
10 Covil Corporation in the 1960's, correct?

11 A. Yes.

12 Q. And during that time, in the 1960's, Mr. Palmer Covil
13 went to conferences and conventions hosted by these trade
14 organizations, the insulation contracting industry, right?

15 A. Yes, he did.

16 Q. And Mr. Palmer Covil subscribed to the National
17 Insulation Contractors Association, the NICA's magazine?

18 A. Uh-huh.

19 Q. And that magazine was called NICA Outlook?

20 A. Yeah, the trade publication.

21 Q. And from reading the depositions, you saw that Mr.
22 Covil made it his practice to read those magazines, correct?

23 A. He did read them.

24 Q. Mr. Covil kind of knew and understood what was going on
25 generally in the industry in the 1960's, is that fair?

1 A. In the mid-sixties by then, yes.

2 Q. Now, Covil had an apprentice training program for its
3 employees that began in the 1950's, correct?

4 A. Yes.

5 Q. And Covil claims that it provided respirators to its
6 own employees in the fabrication shop since the 1950's,
7 correct?

8 A. Yes.

9 Q. And, as I understand it, a gentleman by the name of
10 Russell Johnson eventually took on as the leader of the
11 apprentice training program?

12 A. He was in charge of that and in charge of the field
13 operations.

14 Q. And I think we alluded to this, but I just want to be
15 clear for the jury. Covil learned that asbestosis can cause
16 asbstosis by about 1965, correct?

17 A. That's correct.

18 Q. Okay. And Covil agreed and understood -- Covil agrees
19 and Covil understood in 1965 that asbestosis can be a fatal
20 disease, right?

21 A. Yes.

22 Q. And Covil also heard from the asbestos insulation union
23 that they were starting to make noises about asbestos in
24 about the mid-1960's as well, correct?

25 A. Yes, he did. He had been a union member himself back

1 in his early career and he heard from some people in the
2 industry about concerns that the insulators -- association
3 of insulators and frost -- heat and frost insulators were
4 having.

5 Q. Okay. And Covil agrees that Mr. Palmer Covil, the
6 president of Covil Corporation, in the mid-1960's heard
7 about a gentleman by the name of Dr. Irving Selikoff, is
8 that correct?

9 A. Yes, Dr. Irving Selikoff, he did.

10 Q. And Mr. Palmer Covil heard him speak at a conference,
11 one of these industry conferences, in about 1966, correct?

12 A. Yes, he didn't -- he was unable to sit for the entire
13 presentation because he had to go to a board meeting, but he
14 did hear Dr. Selikoff at that meeting.

15 Q. And this was a meeting held by the National Insulation
16 Contractors Association, correct?

17 A. Yes.

18 Q. Now, Covil agrees that Dr. Selikoff is a reliable
19 source about asbestos hazards, correct?

20 A. It appears from what I have seen that Mr. Covil
21 certainly felt that way, yes, sir.

22 Q. And Covil --

23 Now, Covil started receiving warnings from other
24 companies at a certain point in time, correct?

25 A. Yes.

1 Q. And Covil first saw warning labels on
2 asbestos-containing products in about 1968, correct?

3 A. That's when the industry started putting labels on
4 voluntarily.

5 Q. Okay. And at Covil the first employee to file a claim
6 for asbestosis against Covil, that occurred in about 1972,
7 correct?

8 A. There was one in 1972, and one in 1975. Those were
9 worker compensation claims.

10 Q. And Covil agrees that in 1972, when OSHA was
11 implemented, that Covil had actual knowledge of the contents
12 of the OSHA regulations pertaining to asbestos at that time
13 in 1972, correct?

14 A. Yeah. Well, OSHA came about in 1971, April of '71, but
15 they published their first asbestos regulation in 1972,
16 June 7th.

17 Q. And, in fact, Mr. Palmer Covil ordered a federal
18 register when that was enacted, correct?

19 A. He did.

20 Q. And he read the contents of that?

21 A. I assume that he read the contents related to the
22 asbestos regulation, yes.

23 Q. And Covil agrees that OSHA is a reliable source on the
24 hazards of asbestos, fair?

25 A. Yes.

1 Q. Now, after OSHA was enacted in 1972, Covil put its own
2 employees under medical surveillance or x-ray analysis
3 programs, correct?

4 A. Yes, he did, and the North Carolina workers had been
5 under an x-ray program prior to that, because the State
6 required that people working in dusty trades in North
7 Carolina have annual x-rays to get a permit to work.

8 Q. And with Covil's own employees, after OSHA became
9 enacted in 1972, one of the things that Covil did was it
10 began mixing asbestos-containing cement in plastic bags,
11 correct?

12 A. They made several changes because of what was in the
13 regulation, and they also -- they had a more sophisticated,
14 more protective respirators. They started buying some
15 industrial vacuums to use for cleaning the worksite, and
16 they started putting some local exhaust ventilation on the
17 saws that they were sawing that asbestos with to reduce the
18 dust exposure.

19 Q. And Covil contends that it was Covil's position that
20 they started providing these respirators, well, more of them
21 after 1972, correct?

22 A. That's correct.

23 Q. And Covil's position that they started giving
24 respirators to its own employees when they were using a saw
25 since the 1950's, though, right?

1 A. Yes, power saws.

2 Q. Okay.

3 Now, sir, Covil agrees that a company that fails to
4 disclose hazards that they know about in their product to
5 its customers, that company should be held responsible,
6 right?

7 A. I did not see that in their documentation, you know, in
8 any of the records.

9 Mr. Palmer Covil in his deposition said it was his
10 opinion that it was up to the companies manufacturing the
11 products to pass that information downstream to the users
12 and he did not put warnings or modify what the companies
13 were sending out.

14 Q. Okay. And -- well, let me break that down, sir.

15 First we talked about a lot of things that Covil knew
16 about asbestos in the fifties and sixties and seventies, and
17 despite all this, Covil continued to sell
18 asbestos-containing insulation products until at least 1973,
19 correct?

20 A. Yes, and that's when industry generally started taking
21 asbestos out of products.

22 Q. And we saw that invoice there of them selling
23 Thermobestos in 1974, right?

24 A. Yes, and I don't know whether -- I'm not as familiar
25 with the Manville products, but I don't know whether they

1 had removed asbestos from Thermobestos by that time or not.

2 Q. Okay. And Covil continued to sell other
3 asbestos-containing products, like asbestos cloth that we
4 talked about, until at least 1977, true?

5 A. Yes, sir.

6 Q. And Covil never had a research department?

7 A. No, they did not. It was a small insulative company
8 and distributor. They did not have a department of the
9 research.

10 Q. Well, it was the second largest insulation contractor
11 in the southeast, as you said and told the jury earlier,
12 right?

13 A. It was small comparative to other organizations that at
14 that time were dealing with asbestos.

15 Q. Now, Covil never had a medical director?

16 A. No, they hired -- they had agreements with doctors in
17 the local areas to treat their people, take care of things
18 that might happen on the job, work-related job injuries or
19 any illness.

20 Q. Covil never hired someone to investigate the extent of
21 the hazards of exposure to asbestos at any time in which it
22 was selling asbestos-containing products, is that fair?

23 A. I'm sorry?

24 Q. Okay. Covil never hired any sort of doctor or
25 industrial hygienist to investigate the hazards of asbestos

1 for Covil during any point in time in which Covil was
2 selling asbestos-containing products, is that right?

3 A. They never hired industrial hygienists. I didn't find
4 anything related to dust exposures or asbestos fiber
5 exposures in their records.

6 Q. Okay. And Covil had multi-million dollar insulation
7 contracts in some instances, is that correct?

8 A. They did.

9 Q. Okay. Now, Covil agrees that supplying
10 asbestos-containing insulation in asbestos-free boxes, now
11 that would be a hazard, correct?

12 A. Yes, that -- yes, that would be.

13 Q. And if a box were labeled as asbestos free, Covil
14 agrees that a person coming towards that box would expect it
15 to be asbestos free, right?

16 A. Yes, it -- I found no records to indicate that they
17 were putting asbestos products in asbestos-free boxes,
18 though.

19 Q. And prior to your deposition last week you read about a
20 100 pages of the 24,000 pages of documents that had been
21 produced in this case, correct, sir?

22 A. In a word search in 24,000 since then.

23 Q. Okay. Now, Covil cannot say that post-OSHA, or after
24 1972, that every piece of asbestos insulation that Covil
25 sent had a warning on it, correct?

1 A. I'm sorry, after '72, there -- there was not yet a
2 requirement to distribute that information downstream. That
3 came in 1983.

4 Q. Okay. And so Covil agrees that in 1972 it was sending
5 out -- it would sell asbestos-containing insulation that
6 would not have a warning on it on some occasions, correct?

7 A. In '72?

8 Q. Yes.

9 A. Yes, it -- they sold it in boxes in the containers that
10 it came from the manufacturer, such as Owens Corning, Johns
11 Manville, 48 Insulation, any of the other manufacturers.

12 Q. And at no point in time in this time of selling
13 asbestos-containing products between 1948 and 1973, at no
14 point in time did Covil ever place a warning on its
15 asbestos-containing products that it sold, correct?

16 A. That's right, no legal requirement.

17 Q. Okay. And Covil agrees with me that it knew that
18 asbestos exposure can cause asbestosis by about about 1965,
19 correct?

20 A. Yes.

21 Q. And Covil knew that asbestosis is a fatal disease,
22 correct?

23 A. They did, yes.

24 Q. And the warnings that the manufacturers put on in
25 1968 --

1 A. Right.

2 Q. -- did any of those warnings say that inhaling asbestos
3 could cause death?

4 A. They started off very general description of "contains
5 asbestos. Do not breath. May be a health hazard." And
6 then they got more detail, more specific later.

7 Q. But Covil knew in 1965 that exposure to asbestos can
8 cause death, correct?

9 A. Yes.

10 Q. And at no point in time when Covil learned that in 1965
11 did Covil ever take it upon itself to place a warning on one
12 of those boxes of asbestos-containing insulation that it
13 sold, right?

14 A. They did not.

15 Q. And you said earlier that Covil had its own employees
16 wear respirators when it would use a power saw on insulation
17 products, right?

18 A. And later it became more mandatory to wear.

19 Q. But that started in 1950's. That's what you told the
20 jury a little while ago, right?

21 A. Yeah, they -- they had to wear it in the 1950's using
22 power saws.

23 Q. And between the 1950's and when Covil was continuing to
24 sell insulation, all the way through 1973, at least, Covil
25 never placed on any of those boxes of insulation that it

1 sold that people working with that stuff should wear a
2 respirator, fair?

3 A. They did not.

4 Q. And Covil has not seen any documentation that when
5 Covil was a job site and it was working with
6 asbestos-containing products that it warned others around
7 them about the hazards of asbestos, correct?

8 A. They did not.

9 Q. And so if I understand you correctly, it's Covil's
10 position that it did not have any responsibility to put
11 warnings on the insulation that it shipped to its customers,
12 is that right?

13 A. No legal requirement, yes, sir.

14 Q. And in Covil's view, it doesn't have a duty to pass on
15 the information that it knew to people downstream that were
16 using those asbestos-containing products that it was
17 selling, right?

18 A. That was Covil's position.

19 Q. And you gave a deposition a week ago, correct?

20 A. Just over a week ago.

21 Q. Now, you said that Covil had no obligation to do so
22 because it was a business decision that Covil made, is that
23 right?

24 A. Evidently that's what Mr. Covil based it on.

25 Q. Does Covil have a moral obligation to pass on the

1 information that it knows about the hazards of the products
2 that it sold to people that might use and work with this
3 product?

4 MR. WALL: Objection. No standard for morals in
5 this courtroom. It's either the law and I object.

6 THE COURT: All right. Overruled.

7 You may continue.

8 A. Do you want to ask that again, please?

9 BY MR. BUHA:

10 Q. Does Covil have a moral obligation to pass on the
11 information that it knew about the products that it sold to
12 the people that were using this product?

13 A. During what time period?

14 Q. During the time period which Covil sold
15 asbestos-containing products all the way up through at least
16 1973. During that period.

17 A. I don't know --

18 In my position as the corporate representative, I don't
19 know really what was in their minds and morally speaking
20 what they could have been thinking at that time. I can only
21 know what I would think.

22 MR. BUHA: That's all the questions that I have.

23 I think we actually need to put the exhibit that
24 we marked, that we talked about earlier, as entered into
25 Plaintiffs' Exhibit 825.1.

1 THE COURT: That's the invoice?

2 MR. BUHA: Yes.

3 THE COURT: All right. Objection?

4 MR. WALL: Yes, Your Honor.

5 THE COURT: All right.

6 MR. WALL: The objection is they are trying to
7 imply that included -- or Thermobestos included asbestos in
8 it and there is no testimony it was done.

9 THE COURT: All right. I'll overrule it on that
10 basis. The invoice says what it says.

11 MR. WALL: Yes, Your Honor.

12 THE COURT: And the witness has testified as he
13 has testified and the jury may evaluate it on that basis, so
14 it's admitted.

15 (Whereupon, Plaintiffs' Exhibit No. 825.1 was
16 entered into the record as evidence)

17 THE COURT: Mr. Wall?

18 MR. WALL: Your Honor, at this point I would like
19 to put a proffer for the record.

20 THE COURT: What's that, sir?

21 MR. WALL: A proffer.

22 THE COURT: Like to make a proffer?

23 MR. WALL: Proffer.

24 THE COURT: All right.

25 Ladies and gentlemen of the jury, please retire to

1 your jury room for a minute. We have got some matters I
2 have got to take up with him.

3 (The following takes place outside the presence of
4 the jury panel)

5 THE COURT: All right.

6 All right. Mr. Wall desires to make a proffer
7 with regard to Mr. Glenn's testimony.

8 Mr. Glenn is testifying on direct and in person.
9 Mr. Glenn testified on his 30(b)(6) and the --

10 All right. I can't talk with y'all --

11 MS. MCVEY: I'm so sorry, Your Honor.

12 THE COURT: All right.

13 Glenn testified on his 30(b)(6). All right.

14 The plaintiff made its designations and defendant
15 did not timely make its objections to designations and it
16 did not timely make its own designations, and, therefore, my
17 ruling was that the defendant could not offer its
18 designations in the plaintiffs' case.

19 Now, we got a different situation now. The -- Mr.
20 Glenn is on the stand. He's been offered live by the
21 plaintiff, and I want to hear y'all now on the question of
22 whether it --

23 Mr. Wall is making an assumption that I have
24 prevented him from cross-examining Mr. Glenn.

25 MS. MCVEY: I don't know --

1 THE COURT: I have not made any ruling on that,
2 nor has the plaintiff asked me to make a ruling on that.

3 MS. MCVEY: That's not our position. We believe
4 that he --

5 THE COURT: I understand that, and so I guess I'm
6 a little confused, Mr. Wall, as to why you would make a
7 proffer, because this witness is on the stand and he is --
8 they have now put him in their case and you can
9 cross-examine him, if you want to.

10 MR. WALL: Because you told me I couldn't go into
11 the record, in view of the record, as to Covil and Celanese
12 and Daniel.

13 THE COURT: Ms. McVey?

14 MS. MCVEY: Your Honor, that was not our position.
15 The position was they could go into the records. He could
16 not just testify to hearsay statements.

17 THE COURT: That's correct.

18 All that I restricted you to -- and let's be clear
19 about this, Mr. Wall, because my -- this thing -- we bobbed
20 back and forth about this several times.

21 I made the ruling that you cannot ask him
22 questions that will require him to speak about hearsay.

23 You said "I don't want to do that. All I want to
24 do is ask him about records, ancient records and ancient
25 documents."

1 And the plaintiff said "we don't object to that."

2 So if what you are going to do is to ask him about
3 those records, then you may ask him without objection.

4 It was the question of your putting him up to ask
5 questions that would involve hearsay that is covered by the
6 rulings that have already been made.

7 MR. WALL: I'm not arguing with the court, but I
8 wanted to put it in my -- may I ask the court if I could put
9 him up and ask him whether --

10 THE COURT: What is it that you want to ask him,
11 Mr. Wall? We got -- we --

12 MR. WALL: Whether he checked on the Daniel or the
13 Covil records concerning Celanese and Daniel. Did he find
14 anything in those records that indicated that Covil did work
15 at Celanese during '70 to '74, or that Covil did any work
16 for Daniel from '70 to '74.

17 THE COURT: All right.

18 MS. MCVEY: I'm sorry, I apologize, one more time
19 could you tell me those last three things you said?

20 MR. WALL: Whether he checked on the records at
21 Covil. And in those records did he find anything that
22 established that Covil did work at Celanese, and did he find
23 anything from those records that says that Covil did work
24 for Daniel at Celanese.

25 MS. MCVEY: Your Honor, I think the fact that

1 whether he said he searched the records and didn't find
2 anything I think is fair game, or did find stuff, whatever
3 that is.

4 MR. WALL: Okay. You said earlier I couldn't.

5 THE COURT: Those questions you can ask.

6 It's asking further questions that calls for
7 hearsay or calls for him to talk about things that are in
8 the many thousands of pages he didn't look at that we would
9 have heartburn with, but if what you are directing his
10 attention to is some word search he made, you may ask him
11 about that.

12 MR. WALL: Thank you, Your Honor.

13 I read down -- I wrote down that I couldn't do
14 that, so that's why I just wanted to do a proffer.

15 THE COURT: Are we straight?

16 MS. MCVEY: I think we are good.

17 THE COURT: Very good.

18 Bring me the jury, please, sir.

19 (The following takes place in the presence of the
20 jury panel)

21 THE COURT: Thank you.

22 Mr. Wall on cross-examination.

23 MR. WALL: Thank you, Your Honor.

24 CROSS EXAMINATION BY MR. WALL:

25 Q. Mr. Glenn?

1 A. Yes, sir.

2 Q. As you know, I represent Covil.

3 A. Yes.

4 Q. In fact, I'm the person that hired you to act as
5 Covil's representative, correct?

6 A. That is correct, yes, sir.

7 Q. And did I ask you to go through the records of Covil
8 and find out certain things?

9 A. You did, yes, sir.

10 Q. And did I ask you to word search all 25,000 documents?

11 A. Yes, sir.

12 Q. Did you actually physically look at some of the written
13 pages?

14 A. Yes, I did word searches and I was looking at pages
15 that were responsive to the word search.

16 Q. Did you look at the documents involving Celanese
17 Spartanburg?

18 A. Yes, we pulled out all of the documents with the search
19 term Celanese broadly.

20 Q. All right.

21 A. All.

22 Q. In review of those documents did you find any documents
23 that said that Covil worked at Celanese from 1970 to 1974?

24 A. No, there were none.

25 Q. Did you do the same thing with Daniel Corporation?

1 A. I searched -- there was another term I searched Daniel.

2 Q. And have you physically looked at some of those
3 documents?

4 A. I did. It brought up a much larger stack.

5 Q. And in your review of those documents did you find any
6 documents which established that Covil did any work for
7 Daniel from 1970 to 1974?

8 A. Not in those documents, no, sir.

9 Q. Did you also review the deposition of the corporate
10 representative at Daniel, Mr. Buck?

11 A. I did.

12 Q. And did you look in there for any connection of Covil
13 with the project that Mr. Buck was discussing, which is the
14 Celanese plant?

15 A. I didn't have the exhibits to his deposition, but he
16 referred to a document that seemed to say that Covil was
17 listed possibly as a vendor, but not as a contract on the
18 site.

19 And I think there was a -- he may have mentioned that
20 there was a Southern Insulation Company that was on that
21 site.

22 Q. Did you see the portion of the deposition where Mr.
23 Buck said his review of that file only showed three
24 employees of Covil on site doing --

25 . MR. BUHA: I object on the basis of hearsay, Your

1 Honor.

2 THE COURT: Sustained.

3 MR. WALL: Nothing further. Thank you.

4 THE COURT: All right. Anything further on
5 redirect?

6 MR. BUHA: Yes, just very briefly.

7 REDIRECT EXAMINATION BY MR. BUHA:

8 Q. You told the jury about an hour ago that it's Covil's
9 position that all of its sales invoices were burned and lost
10 in a fire in 1973, right?

11 A. Yes.

12 Q. All right.

13 MR. BUHA: That's all I got.

14 THE COURT: Anything further?

15 MR. WALL: Nothing from the defense, Your Honor.

16 THE COURT: Very good. Thank you, Mr. Glenn. You
17 may come down.

18 MR. WALL: May he be excused, Your Honor?

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: He may be excused.

21 You are released from your subpoena, Mr. Glenn.

22 THE WITNESS: Thank you.

23 THE COURT: Ms. McVey?

24 MS. MCVEY: Your Honor, at this time we would call
25 Machen Lee Carpenter by deposition.

1 THE COURT: Very good.

2 MS. MEVEY: Mr. Chapman is going to play Mr.
3 Carpenter.

4 THE COURT: All right. If you would come up here
5 and take the stand.

6 We are going to read portions of a deposition,
7 ladies and gentlemen of the jury, of a man, a Mr. Machen
8 Carpenter, and Mr. Chapman will be reading the answers and
9 Ms. McVey will be reading the questions in that deposition.

10 I don't think it's anything super lengthy, but
11 it's a piece of testimony that you may consider in the same
12 way as if Mr. Machen Carpenter was sitting here or appearing
13 before you in a video.

14 You may take the stand, Mr. Carpenter -- I mean
15 Mr. Chapman, please.

16 MR. CHAPMAN: I have a binder for you, Your Honor.

17 THE COURT: Yes, sir.

18 MR. CHAPMAN: And you can follow along and Mr.
19 Carpenter's testimony is underlined.

20 THE COURT: Very good.

21 (Whereupon, the Deposition of Machen Lee Carpenter
22 was read to the jury panel).

23 MS. MCVEY: Your Honor, that concludes the
24 deposition testimony of Mr. Carpenter.

25 THE COURT: All right. Very good. You may come

1 down.

2 MR. CHAPMAN: Thank you, Your Honor.

3 THE COURT: Ms. Mcvey?

4 MS. MCVEY: We are at about five o'clock. I don't
5 know --

6 THE COURT: Where are you in this case?

7 MS. MCVEY: Can we approach for two seconds?

8 THE COURT: Yes.

9 (Whereupon, the lawyers approached the bench for
10 an off-the-record discussion)

11 THE COURT: Okay, ladies and gentlemen of the
12 jury, I was just trying to get a picture of where the
13 plaintiffs are and they are fairly close to closing their
14 case. They have got two videos together will take about
15 thirty minutes and then they have got some other short
16 depositions to read in of family members. They think the
17 whole thing, if they started all this tomorrow morning at
18 nine, could be finished by noon. We would have some motions
19 that have to be put on the record, as they always do after
20 plaintiff closes its case. Then we would start the defense
21 case, which is likely to be very short, which means we could
22 go to the jury tomorrow, or at least do our closing
23 arguments tomorrow, so my question to you is this. Do you
24 want to go now and come back tomorrow morning at nine and do
25 all of what I have described, or do you want to hear some of

1 the 30 minutes of video depositions before you leave today?

2 JURY FORELADY: Come back tomorrow.

3 THE COURT: All right. The jury prefers to begin
4 fresh tomorrow and that suits me fine.

5 Jury members, let's try to not have me
6 dilly-dallying around and not let us start at the promised
7 nine o'clock hour. I hope I can adhere to nine, so be here
8 a little before and we will try to start promptly at nine
9 o'clock.

10 Have a good evening. Remember, don't do any
11 research. Don't talk to anybody about the case and all
12 those other things that I have previously instructed you,
13 and do have a nice evening.

14 (The following takes place outside the presence of
15 the jury panel)

16 THE COURT: Now, here is what we have got to do
17 and let's talk about how we want to make it happen.

18 We have got the jury charges. Ms. McVey has
19 transmitted and e-mailed the jury charges.

20 And, Ms. McVey, have you got a hard copy for me?

21 MR. CHAPMAN: We are stapling them right now, Your
22 Honor.

23 THE COURT: Very good.

24 And I'm sure that one of those would be given to
25 Ms. Wall and Mr. Boger.

1 MS. MCVEY: Yes, ma'am.

2 THE COURT: So my thinking would be that we might
3 come back here tomorrow morning a little early and get these
4 jury charges settled. Y'all are pretty familiar with them
5 and you have got yours and I have got what I have in the
6 Howe case and I'm sure all that is pretty well known to
7 everybody who practices asbestos litigation what I have been
8 charging before.

9 MS. MCVEY: And so just for your information and
10 for Mr. Wall, we took the Howe charges and tweaked them for
11 this case.

12 THE COURT: Yes.

13 MS. MCVEY: So they are pretty similar to what you
14 have --

15 THE COURT: Right.

16 MS. MCVEY: -- recently charged, with a few
17 differences.

18 THE COURT: Right.

19 MS. MCVEY: So --

20 THE COURT: And, of course, we would want to
21 also -- did you send me a form of the verdict?

22 MS. MCVEY: I think we sent a verdict form, yes.

23 THE COURT: Good. Which I'm sure is similar to
24 the verdict form in Howe. It was a one defendant case as
25 well --

1 MS. MCVEY: It is.

2 THE COURT: -- with three causes of action;
3 negligence, implied warranty, and strict liability, and I
4 presume those are the charges here.

5 MS. MCVEY: It's the same exact form. The damages
6 are different because Mr. Howe was deceased, so we have
7 got --

8 THE COURT: Correct.

9 MS. MCVEY: We have got Mr. Crawford's damages;
10 the estate of his wife's damages. I'll hand this up, as
11 well as the charge on a question on --

12 THE COURT: The question on punitive.

13 MS. MCVEY: Yes, just recklessness, right.

14 THE COURT: Just to explain this verdict form,
15 it's what I have been using before. It has the questions
16 about negligence, strict liability, and implied warranty.

17 Then it asks for actual damages for Jerry Crawford
18 and actual damages for Ms. Crawford's loss of consortium.

19 And then if any award is made pursuant to a
20 liability finding in any of the first three, then question
21 five needs to be answered. That is the predicate for
22 punitive damages, but that's all we say about it at this
23 time. If we had that, we would, of course, bifurcate and go
24 to that phase of the trial. So that's what we have got.

25 Yes, ma'am.

1 MS. MCVEY: So, two things. And we can be ready
2 to close tomorrow. And if we don't get it to tomorrow, we
3 can push it to Thursday morning --

4 THE COURT: Right.

5 MS. MCVEY: -- I suppose.

6 The one thing I do want to ask the court just
7 to -- in Mr. Wall's opening he talked about how Covil is no
8 longer in business, which I think is fine, but he also said
9 it doesn't have any assets.

10 MR. WALL: No, I did not. I didn't.

11 THE COURT: I didn't --

12 MR. WALL: I stayed away from no assets because
13 that was going to bring up insurance.

14 MS. MCVEY: Well, and that's my point. If we are
15 going to argue about --

16 MR. WALL: No.

17 MS. MCVEY: -- they are poor, they are defunct,
18 then I think it goes to ability to pay and we can talk about
19 insurance. So I just want to make sure --

20 MR. WALL: I was very -- I was very clear to
21 say -- no question of assets. We didn't talk about assets.

22 THE COURT: Very good. Well, let's just be sure
23 we stay away from that, unless you want to open the door.

24 MR WALL: No.

25 THE COURT: And I know you don't want to do that,

1 so let's just be careful about that.

2 MS. MCVEY: Okay.

3 MR. WALL: I got it written down from --

4 THE COURT: Sure. Sure.

5 MS. MCVEY: And I read it last night. I may have
6 just missed it. I thought that's what he said, so my --

7 THE COURT: Well, just check that again. If there
8 is some question about it, we can review that, but my
9 thinking would be this. Is --

10 MR. WALL: No business right here. Out of
11 business. No employees. No business. No owner.

12 THE COURT: All right. I would like to get
13 together about those charges sometime tomorrow and --

14 MS. MCVEY: Sure.

15 MR. WALL: -- we could do it at 8:30 tomorrow, or
16 we could do it on the lunch break.

17 MS. MCVEY: So is there going to be -- when we
18 rest, they are going to make the directed verdict motions.

19 When they rest we are going to have to move on
20 some of their affirmative defenses, assuming they are going
21 to pursue any affirmative defenses.

22 THE COURT: Right.

23 MS. MCVEY: We can talk baout that.

24 And then the jury charge we could do first thing
25 in the morning. I mean, depending on --

1 THE COURT: Okay. Then what we will plan to do is
2 this. Tentatively our idea would be to get the rest of the
3 case tried tomorrow and then stay afterwards, after I
4 dismiss the jury, and go over these jury charges. That will
5 give y'all plenty of chance to see exactly how the case has
6 developed, and then we go with the jury charges and we can
7 get those set so that I can finalize them and have Tyler or
8 one of y'all finalize them so that I can have my copy and
9 the jury's copy.

10 MS. MCVEY: So then that would mean we would close
11 Thursday morning.

12 THE COURT: We would close Thursday morning. Does
13 that sound reasonable?

14 MR. WALL: That's fine with me.

15 MS. MCVEY: Yeah, absolutely.

16 THE COURT: Okay. Very good. That's how we will
17 do.

18 MS. MCVEY: Thank you.

19 THE COURT: Tomorrow we may have, either tomorrow
20 or Thursday, new Judge McCloud with us. He's been training
21 with Judge Hayes and Judge Hayes' trial docket is finished
22 for the week and he may want to sit with me, so he may
23 preside with me. If you see somebody else in the black robe
24 up here, that's Tab and he's doing the new judge's training.

25 MS. MCVEY: Okay.

1 THE COURT: So.

2 MS. MCVEY: That's would be great.

3 THE COURT: Other than that I don't know.

4 Anything else?

5 MS. MCVEY: I think we are in good shape.

6 And just for the record, I'm going to hand the
7 court reporter what was read from Mr. Carpenter's
8 deposition --

9 THE COURT: Very good.

10 MS. MCVEY: -- because that was part of the court
11 record as a court exhibit we will mark it.

12 THE COURT: Excellent. All right. Very good.

13 Have a good evening and we will see you tomorrow
14 morning.

15 MS. MCVEY: Thank you, judge.

16 THE COURT: I'll try to arrive here a little early
17 in case there's something.

18 MS. MCVEY: That sounds good.

19 And I know Mr. Wall and Mr. Boger will share with
20 me any jury charges they want to share with us.

21 MR. WALL: The only thing we were going to show is
22 the ones were the other case.

23 THE COURT: Very good.

24 (Whereupon, proceedings were adjourned to July 18,
25 2018)

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF COMMON PLEAS
3
4 JERRY HOWARD CRAWFORD)
AND THE ESTATE OF)
5 EVELYN KAY CRAWFORD,) TRANSCRIPT OF RECORD
6 PLAINTIFFS,) 2017-CP-42-04429
7 -vs-) JULY 18, 2018
8 COVIL CORPORATION,) SPARTANBURG, SOUTH CAROLINA
(VOLUME III)
9 DEFENDANT.

10
11 B E F O R E:

12 THE HONORABLE JEAN HOEFER TOAL, JUDGE. ; and a jury.
13

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INDEX

(JULY 16, 2018)

WITNESSES

PAGE

JURY VOIR DIRE -- PAGE 85

JURY SWORN -- PAGE 117

OPENING STATEMENT BY MR. CHAPMAN -- PAGE 118

OPENING STATEMENT BY MR. WALL -- PAGE 139

DR. ARNOLD BRODY (PW)

DIRECT EXAMINATION BY MS. MCVEY

145

(NO CROSS EXAMINATION)

INDEX

(JULY 17, 2018)

WITNESSES	PAGE
DR. JOHN MADDOX (PW)	
DIRECT EXAMINATION BY MR. CHAPMAN	216
CROSS EXAMINATION BY MR. WALL	294
VIDEOTAPED DEPOSITION OF JERRY CRAWFORD (PW)	302
VIDEOTAPED DEPOSITION OF HARLEY NEELANDS (PW)	319
VIDEOTAPED DEPOSITION OF DWAIN WATERS (PW)	319
ROBERT GLENN (PW)	
DIRECT EXAMINATION BY MR. BUHA	326
CROSS EXAMINATION BY MR. WALL	373
REDIRECT EXAMINATION BY MR. BUHA	376
DEPOSITION OF MACHEN CARPENTER READ (PW)	377

INDEX

(JULY 18, 2018)

WITNESSES	PAGE
VIDEOTAPED DEPOSITION OF BRUCE BOYER (PW)	404
VIDEOTAPED DEPOSITION OF DON BUCK (PW)	406
DEPOSITION OF DON BUCK READ (PW)	407
PATTY GILES (PW)	
DIRECT EXAMINATION BY MS. MCVEY	410
(NO CROSS EXAMINATION)	
TESSA QUINN (PW)	
DIRECT EXAMINATION BY MS. MCVEY	432
(NO CROSS EXAMINATION)	
PLAINTIFFS RESTS -- PAGE 436	
DEPOSITION OF PALMER COVIL READ (DW)	456
VIDEOTAPED DEPOSITION OF BRUCE BOYER (DW)	456
VIDEOTAPED DEPOSITION OF DON BUCK (DW)	456
DEFENDANT RESTS -- PAGE 457	
VIDEOTAPED DEPOSITION OF HARLEY NEELANDS (PW)	457

INDEX

(JULY 19, 2018)

WITNESSES

PAGE

CLOSING ARGUMENT BY MR. CHAPMAN -- PAGE 533

CLOSING ARGUMENT BY MR. WALL -- PAGE 556

FINAL ARGUMENT BY MR. CHAPMAN -- PAGE 568

COURT'S JURY INSTRUCTIONS -- PAGE 588

JURY VERDICT -- PAGE 629

REPORTER'S CERTIFICATE -- PAGE 634

	EXHIBITS			
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	P-803.1	MEDICAL RECORDS		254
4	P-804	BILLING RECORDS & SUMMARY		215
5	P-805.1	PHOTOGRAPH		435
6	P-805.2	PHOTOGRAPH		436
7	P-805.3	PHOTOGRAPH		436
8	P-805.4	PHOTOGRAPH		436
9	P-805.5	PHOTOGRAPH		436
10	P-805.6	PHOTOGRAPH		436
11	P-805.7	PHOTOGRAPH		436
12	P-805.8	PHOTOGRAPH		436
13	P-806.1	DR. MADDOX CURRICULUM VITAE		218
14	P-806.2	DR. MADDOX CURRICULUM VITAE		218
15	P-807.1	DR. MADDOX REPORT		257
16	P-807.2	DR. MADDOX REPORT		257
17	P-807.3	DR. MADDOX REPORT		257
18	P-807.4	DR. MADDOX REPORT		257
19	P-807.5	DR. MADDOX REPORT		258
20	P-807.6	DR. MADDOX REPORT		258
21	P-807.7	DR. MADDOX REPORT		258
22	P-809	DR. BRODY CURRICULUM VITAE		155
23	P-822.1	MAP		405
24	P-822.2	MAP		405
25	P-822.3	INFORMATION ON ASBESTOS		406

EXHIBITS

	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	P-822.4	SUBCONTRACTOR LIST		409
4	P-822.5	CONTRACT		408
5	P-822.6	CONTRACT		408
6	P-822.7	CONTRACT		408
7	P-822.8	CONTRACT		408
8	P-822.9	ENGINEERING CONTRACT		408
9	P-822.10	CONTRACT		408
10	P-822.11	PURCHASE ORDER	12	
11	P-822.12	MAINTENANCE SERVICE CONTRACT		408
12	P-822.13	CONTRACT		408
13	P-822.14	CONTRACT		408
14	P-822.15	CONSTRUCTION REPORT		406
15	P-822.16	PROGRESS REPORT		406
16	P-825.1	BILLING		369
17				
18				
19				
20				
21				
22				
23				
24				
25				

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	CT-1	POWER POINT	84	
4	CT-2	JERRY CRAWFORD VIDEOTAPED DEPOSITION	527	
5	CT-3	HARLEY NEELANDS VIDEOTAPED DEPOSITION	527	
6	CT-4	DWAINE WATERS VIDEOTAPED DEPOSITION	527	
7	CT-5	DWAINE WATERS DEPOSITION	527	
8	CT-6	MACHEN CARPENTER DEPOSITION	527	
9	CT-7	BRUCE BOYER VIDEOTAPED DEPOSITION	527	
10	CT-8	DON BUCK VIDEOTAPED DEPOSITION	527	
11	CT-9	DON BUCK DEPOSITION	527	
12	CT-10	PALMER COVIL DEPOSITION	527	
13	CT-11	PALMER COVIL DEPOSITION	527	
14	CT-12	CD OF BRUCE BOYER, BRUCE BOYER,		
15		DON BUCK, HARLEY NEELANDS VIDEOTAPED		
16		DEPOSITIONS	527	
17	CT-13	HARLEY NEELANDS DEPOSITION	527	
18				
19				
20				
21				
22				
23				
24				
25				

1 (PROCEEDINGS, JULY 18, 2018)

2 THE COURT: All right. Good morning, ladies and
3 gentlemen.

4 MS. MCVEY: Good morning.

5 MR. WALL: Good morning.

6 THE COURT: I have your charges, both plaintiff
7 and defense. I have looked at them and I am prepared to
8 discuss them when we have an appropriate break. I have got
9 your spoliation charge. I have got the form of the verdict,
10 so we are ready to go and hopefully we can do that on a
11 break.

12 MS. MCVEY: Your Honor, I think -- I think even
13 after the jury goes for the day we can argue that and be
14 good to go.

15 THE COURT: But let's -- I'm going to try to press
16 as hard as I can to see how far we get and where we are.

17 We have got motions at the end of the plaintiffs'
18 case and I will tell you I'm going to be paying some
19 attention to those, given what has and has not come in about
20 this case.

21 MS. MCVEY: Okay.

22 THE COURT: All right. So I want to move to get
23 as close as we can get to being ready to go to the jury as
24 possible.

25 MS. MCVEY: Are we still planning on closing

1 tomorrow? I think that was our plan, tomorrow morning.

2 THE COURT: I understand that, but I want to see
3 how far we get, because if we got a big chunk of time that
4 we can do it, then we may do it today.

5 MR. WALL: Your Honor, I didn't prepare for
6 closing argument because I thought it was pretty clear we
7 weren't going to argue until tomorrow morning.

8 THE COURT: Let's see how far we get, Mr. Wall.

9 MR. WALL: Yes, Your Honor, but I feel that the
10 decision was made yesterday were to charge --

11 THE COURT: I understand that, but, you know,
12 again, we will see how far we get.

13 MR. WALL: Okay.

14 THE COURT: You know, I'm not about to close down
15 court at twelve o'clock for the whole day. I can tell you
16 that. I don't think people need that long to prepare to go
17 to the jury on a case like this, but we will see how we go.
18 All right.

19 Now, tell me what we have got for the balance of
20 the day.

21 MS. MCVEY: Your Honor, this morning we plan to
22 call Mr. Boyer by video.

23 THE COURT: Uh-huh.

24 MS. MCVEY: That's relatively short.

25 We have got Mr. Buck by video. Again short.

1 We have got a small read-in of Mr. Buck, a
2 continuation of a different deposition.

3 And then we are going to call Ms. Giles and Ms.
4 Quinn, the daughters.

5 THE COURT: Yes.

6 MS. MCVEY: And then we will be prepared to rest.

7 THE COURT: All right. And then --

8 MS. MCVEY: And, I'm sorry, Your Honor, we have --
9 we want to publish some verified interrogatories about the
10 Thermobestos, which was brought up yesterday.

11 THE COURT: Yes.

12 MS. MCVEY: But that will take all of five
13 minutes.

14 THE COURT: All right.

15 So you anticipate that you will be -- your case
16 will be ready to rest before lunch?

17 MS. MCVEY: Yes.

18 THE COURT: All right. Then we have got to argue
19 motions for directed verdict, and those would be done right
20 after lunch. I would take a lunch break and we would be
21 prepared to argue those right after lunch.

22 MS. MCVEY: Right.

23 THE COURT: And, as I say, I'm not going to waste
24 a whole afternoon on this thing. If we are ready to go to
25 the jury, we are going to be ready to go to the jury.

1 MS. MCVEY: They are going to have a little bit of
2 evidence to put in their case and then we will have directed
3 verdicts on some of their affirmative defenses?

4 THE COURT: Right.

5 MS. MCVEY: And then --

6 THE COURT: And that would take up the balance of
7 the day, as you see it?

8 MS. MCVEY: It could.

9 And then we have to argue the jury charges, so
10 that -- that's really why I think both sides were thinking
11 by the time we get all that done today, it makes sense to
12 open -- I mean, I'm sorry, to close and charge the jury the
13 first thing in the morning.

14 THE COURT: All right.

15 Now, tell me something about the defense case, Mr.
16 Wall. What have you got by way of witnesses?

17 Mr. Boger?

18 MR. BOGER: Yes, Your Honor, we have -- we are
19 going to read in some designations of Palmer Covil.

20 THE COURT: Yes.

21 MR. BOGER: And we have counter-video for Mr.
22 Boyer and Mr. Buck.

23 THE COURT: All right.

24 MR. BOGER: And that would be it. It will not --
25 our case will be short.

1 THE COURT: Okay. And so your -- I mean, just
2 kind of -- I'm not holding you to anything, but I just want
3 to get some sense of it.

4 So we would be prepared to argue motions for
5 directed verdict at the close of defense case. We will have
6 arguments and motions for directed verdict at the close of
7 the plaintiffs' case, but we would be able to argue all of
8 the directed verdict motions that would be appropriate at
9 that point, at the close of your case, and that sounds like
10 that would -- your case would be ready to close and argue
11 those things about -- what, about three o'clock, or --

12 MR. BOGER: Yes, Your Honor, I would --

13 THE COURT: In that ballpark?

14 MR. BOGER: I would think so.

15 THE COURT: And then we would argue that directed
16 verdict motions. And then the only thing that would
17 stand -- and then we would deal with the charges. We would
18 have a charge conference.

19 MR. BOGER: Yes, Your Honor.

20 THE COURT: So that's kind of how you see the
21 balance of the afternoon going?

22 MR. BOGER: Yes, Your Honor.

23 THE COURT: Don't be frightened, Mr. Wall, then.
24 You will have some time to prepare this morning.

25 MR. WALL: I'm always frightened.

1 THE COURT: Well, don't worry about it.

2 Don't be frightened. I have been in your --

3 MR. WALL: I have been doing this too long to be
4 frightened.

5 THE COURT: Well, I understand. I did it for
6 many, many years before I got on the Supreme Court and most
7 of it spent just as you are spending it, in the courtroom, a
8 lot on the defense side and a lot on the plaintiffs' side.
9 We did everything, my little firm. Okay.

10 MS. MCVEY: Your Honor, one -- I don't know that
11 we are going to get to lunch with our case, so two points on
12 that. I think we will be through by eleven.

13 THE COURT: Uh-huh.

14 MS. MCVEY: So I know they need to make directed
15 verdicts. I don't know if they want to make a -- put a
16 footnote for their directed verdict motion, put on their
17 defense case, let the jury go for lunch and we could argue
18 directed verdicts on both cases so the jury is not waiting.
19 I just wanted to throw that out there for you.

20 THE COURT: I'll give some thought to that.

21 MS. MCVEY: Okay.

22 THE COURT: Let's just see how it goes.

23 MS. MCVEY: Works for me.

24 THE COURT: All right.

25 Everything said that needs to be said?

1 MR. BOGER: The only other thing, Your Honor, we
2 were going to object to the introduction of the reading of
3 the interrogatories.

4 THE COURT: All right.

5 MR. BOGER: And also the reading of the witness
6 from the Howe case.

7 THE COURT: How about put that on the record right
8 now so that we are ready to go.

9 MR. BOGER: That's what I was thinking, Your
10 Honor.

11 So the plaintiffs are introducing interrogatories
12 from Johns Manville about Thermobestos product and we would
13 object to that as untimely, Your Honor. This is something
14 that we were notified of this morning and I think it should
15 be excluded from the case.

16 THE COURT: All right. This is a timeliness
17 objection on your part, not an objection on any other basis,
18 correct?

19 MR. BOGER: Yes, Your Honor.

20 THE COURT: Okay. I would regard it as proper
21 reply testimony to something that was brought up yesterday
22 about -- by the corporate representative.

23 The corporate representative professed not to know
24 whether Thermobestos had asbestos in it. And, therefore,
25 they are claiming surprise and claiming that they have the

1 right to define Thermobestos, which is a product he admitted
2 was sold during the time we are talking about. So I'm going
3 to permit that over your objection. Your objection is fully
4 preserved, of course.

5 MR. BOGER: Thank you, Your Honor.

6 And then the second, they are proposing to
7 introduce testimony of Mr. Boyer, the Celanese 30(b)(6) rep
8 from the Howe case, and we would object on --

9 MR. WALL: Buck.

10 MR. BOGER: Buck. I'm sorry, start over.

11 They are proposing to introduce 30(b)(6) testimony
12 of Mr. Buck from the Howe case. Mr. Buck was also deposed
13 in this case. They have had plenty of opportunity to ask
14 him relevant questions about this case and we think the
15 testimony from another case is irrelevant, where we have
16 actual video and testimony from Mr. Buck in this case.

17 THE COURT: Was Covil in the other case?

18 MS. MCVEY: Yes, Your Honor.

19 MR. WALL: Well, it wasn't until -- pleadings were
20 struck, Your Honor.

21 THE COURT: In other words, the portion of the
22 rule that talks about your being able to yourself exercise
23 confrontation rights and examination rights would be
24 complied with in that case, given that present Covil is in
25 the case, am I right?

1 MS. MCVEY: Yes, ma'am.

2 THE COURT: Okay. All right.

3 Well, over your objections I will allow the
4 admission of these further statements by Mr. Buck.

5 MS. MCVEY: Thank you.

6 THE COURT: Anything that you want to put on the
7 record about it, Ms. McVey --

8 MS. MCVEY: No, ma'am.

9 THE COURT: -- about why you are doing it, why you
10 are not satisfied with what you got on this case by way of
11 30(b)(6)?

12 MS. MCVEY: Your Honor, in a lot of these cases we
13 try to streamline the depositions, knowing that we can use
14 prior depositions of corporate representatives. That's what
15 we did in this case. Covil was present at the Howe, Buck's
16 deposition. They had the opportunity to cross-examine him.
17 I think it's fair game.

18 THE COURT: Very good.

19 Well, my ruling stands. You are fully protected
20 by your objections, Mr. Boger, of course.

21 MR. BOGER: Thank you, Your Honor.

22 THE COURT: All right. Now, bring --

23 We are ready for the jury?

24 Bring us the jury.

25 (The following takes place in the presence of the

1 jury panel)

2 THE COURT: Good morning, ladies and gentlemen of
3 the jury. I hope you had a pleasant evening.

4 I blame myself for the loss of the National League
5 in the all star game because I was intrepid enough to stay
6 up for all of it.

7 A little outline of what you are looking at today.
8 The plaintiff has a few more things to show you by way of
9 short videos and publication of one deposition excerpt that
10 involved company folks or co-workers. Then the two children
11 of Mr. Crawford will testify and we should be finished with
12 the plaintiffs' case this morning.

13 All right. The rules of the road require that I
14 then hear certain motions by the parties about the case.
15 When those motions are heard and dealt with, then the
16 defendant will put up its case. The defendant advises, that
17 based on what they know now, their case would be rather
18 short and will probably conclude about mid-afternoon.

19 I then have the requirement to hear certain other
20 motions and to deal with the parties about the charges to
21 the jury.

22 As you know, you are the complete and sole judges
23 of the facts. I cannot be the judge of the facts, only you,
24 but I am the judge of the law. And in a case like this I
25 have to give you a rather lengthy charge. It's not

1 something I love to do. The rules of the road that govern
2 how we try cases require that I give you a rather lengthy
3 charge about the law and I always print it out and give it
4 to you for you to have in the jury room. Now, you don't
5 have to scrutinize it and try to be a lawyer, but I have it
6 in there in case something comes up in your deliberations
7 and you all want to take a look at it, you are going to have
8 it, but it takes a while for me to deal with the lawyers
9 about what is going to be in that charge and the wording of
10 it. I will do that for the balance of the afternoon, which
11 means that when the defendant rests, I will let you go for
12 the day, which would probably be about mid-afternoon.

13 We will come back together tomorrow morning. I
14 will give you the charge. The parties will make the closing
15 arguments to you and you will have the case and deliberate.

16 So that's kind of what is in the prospect for
17 today and for tomorrow and I think we are very much on
18 target to complete our work tomorrow, which means that
19 Friday is all yours.

20 So with that, Ms. McVey?

21 MR. CHAPMAN: Your Honor, we --

22 THE COURT: Mr. Chapman.

23 MR. CHAPMAN: Your Honor, we would like to publish
24 some interrogatories to the jury.

25 THE COURT: All right. Very well.

1 Are you simply going to read out the
2 interrogatories to the jury, Mr. Chapman?

3 MR. CHAPMAN: And I would like to place them on
4 the elmo, Your Honor.

5 THE COURT: Very good. You may do that.

6 There have been objections lodged. They are
7 noted. They are noted here in this record at this time and
8 preserved.

9 MR. WALL: Thank you, Your Honor.

10 THE COURT: Very good.

11 Mr. Chapman?

12 MR. CHAPMAN: Can everybody see that okay?

13 In the United States District Court for the
14 Southern District of West Virginia, at Parkersburg, in the
15 case of Robert W. Patterson.

16 Question number 7.

17 "Describe in detail --

18 MR. WALL: Your Honor, the date --

19 THE COURT: Yes, sir.

20 MR. WALL: The date of the interrogatory?

21 THE COURT: Yes, I think it would be --

22 Well, let me tell you what you are looking at.

23 There are interrogatories, which is one of the
24 tools that was used by both sides, to ask questions to the
25 other side before you hear this case and get certain factual

1 information from the other side about the case.

2 Now, in this instance one of the principals --

3 Whose deposition is this -- whose interrogatory is
4 this? Is this an interrogatory propounded to Covil?

5 MR. CHAPMAN: Johns Manville, Your Honor.

6 THE COURT: Johns Manville.

7 Johns Manville. You heard that name mentioned was
8 a supplier in this case of asbestos material.

9 This is an interrogatory to that corporate
10 organization in another case in which it was sued and it is
11 proposed to read into the record certain things that Johns
12 Manville said factually I guess about its product.

13 Mr. Chapman, when was this interrogatory
14 propounded or answered?

15 MR. CHAPMAN: Give me one second. It's on the
16 verification.

17 It was November 2nd of 1989.

18 THE COURT: All right. And the caption and the
19 party in the case?

20 MR. CHAPMAN: The chief party was Robert W.
21 Patterson.

22 THE COURT: And among the defendants was Johns
23 Manville? Johns Manville?

24 MR. CHAPMAN: Yes, Your Honor.

25 THE COURT: All right.

1 MR. WALL: Your Honor, Covil was not a party.

2 THE COURT: Covil was not a party to this matter.

3 This is about a supplier of Covil's.

4 All right. You may proceed.

5 MR. CHAPMAN: Thank you, Your Honor.

6 THE COURT: Mr. Chapman.

7 MR. CHAPMAN: Interrogatory number 7:

8 "Describe in detail any asbestos-containing
9 product and/or product line which was mined, milled,
10 manufactured, produced, processed, compounded, converted,
11 sold, marketed, supplied, franchised, distributed, and/or
12 otherwise placed in the stream of commerce by any of the
13 predecessor and/or affiliated business entities identified
14 in the preceding interrogatories."

15 "Answer: See attached Exhibit A for a list of
16 Manville asbestos-containing thermal insulation or shipyard
17 products, as well as certain information relating to those
18 products."

19 Here is Exhibit A.

20 "Manville asbestos-containing thermal insulation
21 or shipyard product.

22 "Product name: Silicated Thermobestos.

23 "Product type: Sheet block pipe covering.

24 "Fiber type: Chrysotile and/or amosite.

25 "Percent fiber by weight: 7.0 to 14.3.

1 "Date manufactured: 1966.

2 "Date discontinued: 1974.

3 "Date labeled: 1966."

4 Finally, Your Honor, verification page for
5 November 2nd, 1989.

6 THE COURT: Very good. Thank you, Mr. Chapman.

7 MR. CHAPMAN: Thank you.

8 THE COURT: All right. Ms. McVey, you may
9 proceed.

10 MS. MCVEY: Your Honor, at this time we call Mr.
11 Boyer by video.

12 THE COURT: Very good.

13 Mr. Boyer is called and all objections to Mr.
14 Boyer's testimony have been made, have been noted, and are
15 preserved.

16 MR. BOGER: Thank you, Your Honor.

17 (Whereupon, the Videotaped Deposition of Mr. Bruce
18 Boyer was played to the jury panel)

19 MS. MCVEY: Your Honor, that concludes the video
20 of Mr. Boyer.

21 THE COURT: Very good.

22 MS. MCVEY: Your Honor, we would really like to
23 move into evidence the three documents that Mr. Boyer
24 discussed in that video, and I showed Mr. Wall and I don't
25 believe there is an objection to those.

1 MR. WALL: No objection.

2 THE COURT: Without objection.

3 All right. Are you going to display them?

4 MS. MCVEY: Yes.

5 THE COURT: Very good.

6 MS. MCVEY: This is just the unmarked map of
7 Celanese that Mr. Boyer was describing.

8 THE COURT: All right.

9 MS. MCVEY: That's 822.2.

10 (Whereupon, Plaintiffs' Exhibit No. 822.2 was
11 entered into the record as evidence)

12 MS. MCVEY: This is the annotated survey that Mr.
13 Boyer marked showing 1, 2, 3, 4, and 5.

14 THE COURT: All right.

15 MS. MCVEY: That's marked as 822.1.

16 (Whereupon, Plaintiffs' Exhibit No. 822.1 was
17 entered into the record as evidence)

18 MS. MCVEY: Your Honor, I'm going to highlight on
19 this one, but I will put a clean exhibit in for evidence,
20 but here is batch: Poly, linear feet 17,353. Square feet
21 12,763. Showing asbestos, 60 percent asbestos.

22 And the conti poly we have 77,349 square feet.
23 24,130 --

24 THE COURT: It's linear feet on the first -- on
25 77,749 linear feet.

1 MS. MCVEY: Yes, ma'am.

2 THE COURT: And 24,130 square feet.

3 MS. MCVEY: Yes, ma'am, I'm sorry.

4 And 90 percent asbestos.

5 And that's marked as 822.3.

6 (Whereupon, Plaintiffs' Exhibit No. 822.3 was
7 entered into the record as evidence)

8 MS. MCVEY: Your Honor, at this time we would call
9 Don Buck by video.

10 THE COURT: Very good.

11 (Whereupon, the videotaped deposition of Don Buck
12 was played to the jury panel)

13 MS. MCVEY: Your Honor, at this time we would like
14 to move in two exhibits that Mr. Buck discussed; 822.15 and
15 822.16, and we don't need to publish those. I don't believe
16 there is an objection to these.

17 THE COURT: Admitted without objection.

18 (Whereupon, Plaintiffs' Exhibit No. 822.15 was
19 entered into the record as evidence).

20 (Whereupon, Plaintiffs' Exhibit No. 822.16 was
21 entered into the record as evidence)

22 MS. MCVEY: Your Honor, at this time we would like
23 to call Don Buck by deposition, read it.

24 THE COURT: Very good.

25 Bring the lights up, please.

1 Ladies and gentlemen of the jury, what will be
2 done now, Mr. Buck you have just seen on video, and there
3 are a few more things from his sworn testimony that will now
4 be read to you out of one of his depositions.

5 Am I correct, Ms. McVey?

6 MS. MCVEY: Yes, ma'am.

7 THE COURT: Will you be reading the deposition
8 answers, Mr. Chapman?

9 MR. CHAPMAN: Yes, Your Honor.

10 THE COURT: Very good. You may come and sit in
11 the witness chair.

12 MR. CHAPMAN: Thank you.

13 THE COURT: You may proceed, Ms. McVey.

14 MS. MCVEY: Thank you, Your Honor.

15 (Whereupon, the deposition of Don Buck was read to
16 the jury panel).

17 MS. MCVEY: That concludes the deposition.

18 THE COURT: Very good.

19 MS. MCVEY: Your Honor, there is a few exhibits
20 that we want to move in.

21 THE COURT: Very good.

22 MS. MCVEY: The exhibits that we want to move in
23 are the contracts discussed in Mr. Buck's deposition. Those
24 are bates marked 822.5, 822.6, 822.7, 822.8, 822.9, 822.10,
25 822.12, 822.13, 822.14. Those are all admitted I believe

1 without objection.

2 MR. WALL: Yes.

3 THE COURT: Without objection they will be
4 admitted.

5 (Whereupon, Plaintiffs' Exhibit No. 822.5 was
6 entered into the record as evidence).

7 (Whereupon, Plaintiffs' Exhibit No. 822.6 was
8 entered into the record as evidence).

9 (Whereupon, Plaintiffs' Exhibit No. 822.7 was
10 entered into the record as evidence).

11 (Whereupon, Plaintiffs' Exhibit No. 822.8 was
12 entered into the record as evidence).

13 (Whereupon, Plaintiffs' Exhibit No. 822.9 was
14 entered into the record as evidence).

15 (Whereupon, Plaintiffs' Exhibit No. 822.10 was
16 entered into the record as evidence).

17 (Whereupon, Plaintiffs' Exhibit No. 822.12 was
18 entered into the record as evidence).

19 (Whereupon, Plaintiffs' Exhibit No. 822.13 was
20 entered into the record as evidence).

21 (Whereupon, Plaintiffs' Exhibit No. 822.14 was
22 entered into the record as evidence)

23 MR. WALL: Let me see that one.

24 MS. MCVEY: I want to publish this one.

25 We are also moving in 822.4, and this is

1 subcontractors/vendors at Hoechst Celanese Spartanburg job
2 site, November 1971 through January 1975. And here we have
3 Covil Insulation.

4 That's it, Your Honor.

5 THE COURT: All right. The exhibits are admitted.

6 (Whereupon, Plaintiffs' Exhibit No. 822.4 was
7 entered into the record as evidence)

8 MS. MCVEY: Your Honor, we have two live witnesses
9 now, but it may be a good time to take a quick break, if
10 that suits.

11 THE COURT: How do you feel? Are you good, or do
12 we want a break?

13 JURY FOREPERSON: I think we are good.

14 THE COURT: They are good.

15 MS. MCVEY: They are good?

16 THE COURT: Yes.

17 MS. MCVEY: Your Honor, we call Patty Giles to the
18 stand.

19 THE COURT: Come around here to the witness stand
20 and the clerk will swear you.

21 PATTY GILES, having been first duly sworn,
22 testified as follows:

23 THE WITNESS: Yes.

24 THE COURT: Please be seated.

25

1 DIRECT EXAMINATION BY MS. MCVEY:

2 Q. Patty, could you introduce yourself to the jury?

3 A. Yes, I'm Patty Giles. I'm Jerry Crawford's oldest
4 daughter. I'm the oldest child, but I'm his daughter.

5 Q. Are you nervous?

6 A. A little bit.

7 Q. Okay. You never testified in front of a jury before?

8 A. Never.

9 Q. Are you married?

10 A. I am.

11 Q. And who is your husband?

12 A. Mark Giles.

13 Q. All right. And do you have kids?

14 A. Two. Two daughters.

15 Q. And how old are your girls?

16 A. My oldest one is 28. My youngest one is 26.

17 Q. Okay. And you have grand kids?

18 A. I do.

19 Q. How many?

20 A. Three. Three daughters -- three granddaughters.

21 Q. So two daughters and three granddaughters.

22 A. Right. We can't buy a boy.

23 Q. Okay. You can't buy a boy.

24 Where do you live, Patty?

25 A. We live in Gaffney, but kind of close to Cowpens.

- 1 Q. Okay.
- 2 A. It's actually Gaffney, but it's closer to Cowpens.
- 3 Q. And where did you grow up?
- 4 A. In Gaffney.
- 5 Q. And who are your parents?
- 6 A. Jerry and Evelyn Crawford.
- 7 Q. Can you see that?
- 8 A. That's my dad.
- 9 Q. Is that your dad? He's making a silly face?
- 10 A. Yeah, he was -- he didn't want me to take his picture,
- 11 but he said "wait here," and he just like made that face and
- 12 I took the picture.
- 13 Q. So you are the oldest daughter?
- 14 A. I am.
- 15 Q. All right. And then Tessa is the next?
- 16 A. Yeah, she's the middle child.
- 17 Q. She's the middle child. I'm a middle child.
- 18 And then you have a younger brother?
- 19 A. I do.
- 20 Q. And where does -- what's your brother's name?
- 21 A. Danny.
- 22 Q. And where does Danny live?
- 23 A. He live in Amarillo, Texas.
- 24 Q. Okay. So he's not close?
- 25 A. No.

1 Q. All right. But y'all are all still a close family?

2 A. We are very close.

3 Q. All right.

4 How long were your parents married?

5 A. They married the year before I was born. Well, I don't
6 want to say, because I got to tell you how old I am.

7 Hold on. They were married for like 48 years.

8 Q. Okay. And devoted to each other?

9 A. Uh-huh.

10 Q. Tell me -- I understand your dad liked to work in his
11 yard. He told us that in his deposition.

12 A. Yeah. Yeah, he -- well, my mom did too. She liked
13 to -- she had flower beds everywhere and she would be out
14 there messing with the flowers and he would be out there
15 raking leaves, or cutting the grass, or, you know, doing the
16 hedges.

17 Q. Yeah.

18 A. And that's just something they did, you know, together.
19 Pretty much every day during the summer they would be out
20 there doing something in the yard.

21 Q. So she took good care of her flower beds?

22 A. Uh-huh.

23 Q. And your dad took care of the grass?

24 A. Right.

25 Q. Got it.

1 Could your mom drive?

2 A. No.

3 Q. So how did she get around?

4 A. My dad.

5 Q. Yeah.

6 A. Yeah. My mom never learned how to drive.

7 Q. Never did?

8 A. Uh-uh.

9 Q. I want to talk a little bit about -- well, who is that?
10 Can you see it?

11 A. That's -- that's me. I'm a long time ago at the beach.

12 Q. Yeah. They liked to travel a little bit?

13 A. Yeah. Well, yeah, they -- they took some trip. They
14 were day trippers --

15 Q. Yeah.

16 A. -- more than beach trippers. Like they would go to the
17 beach and maybe to the mountains, but they were like big
18 fans of like on Sunday driving up to Chimney Rock, or
19 something like that, Lake Lure.

20 Q. Right.

21 A. They used to follow us in the car. They would get my
22 grandmother on Sundays and just drive around in circles for
23 no apparent reason, which I -- and they still do that up
24 until -- I mean, up until, you know, my momma passed away,
25 they would still like -- and I have no reason -- you know,

1 idea why he would get in the car and he would ride around.

2 I have never done that since I have been grown, but --

3 Q. But they liked to Sunday drive?

4 A. Uh-huh.

5 Q. Your dad likes the grand babies?

6 A. Oh, Lord, yes. He loves them. Loves them.

7 Q. Let me ask you a little bit about your dad. Is he a
8 hard worker?

9 A. Yes. Yes.

10 Q. And you told me a story about a car breaking down and
11 he still got to work. Can you tell the jury that story?

12 A. Yes. This is when he worked at Wise, potato chip
13 place, which is in Whitney, the Whitney area of Gaffney --
14 Spartanburg, and dad's car had broke down. He lived in
15 Gaffney and rather than miss work, he walked from Gaffney to
16 Whitney to work for like several days. And like the days we
17 were off, we didn't work, we would go get him and bring him
18 home as much as we could, but we couldn't always do it, you
19 know. And so -- I mean, he just walked, you know -- I mean,
20 it's a long way. It was like 16, 17, 18 miles.

21 Q. And he would walk it every day?

22 A. And it would seem like -- he would walk home and it
23 seemed like by the time he got home it was time to go back,
24 walk back. And so -- until he got his car fixed. I mean,
25 it was probably a week and a half, two weeks maybe.

1 Q. But he wasn't going to miss a day of work?

2 A. Uh-uh, he never missed work.

3 Q. I want to talk to you a little bit about your dad and
4 the cancer that he has. Can we do that for a minute?

5 A. Uh-huh.

6 Q. The jury heard your dad talk about it, but can you talk
7 about that first ER visit and what took him to the ER?

8 A. Well, he had been -- all that summer he had been like
9 getting more and more short of breath and finally he really
10 couldn't breath at all and he had went to the emergency room
11 and they did an x-ray on him and admitted him to ICU because
12 he had the fluid on his lung. And my mom called me and
13 said, you know, "they got your daddy in the hospital." Of
14 course, everybody rushed to the hospital. You know, that's
15 the way we are. We all rushed to the hospital.

16 They kept him ICU for a couple days and they drained
17 the fluid off. They really didn't know what was going on.
18 And after that they referred him to the lung doctor, lung
19 specialist.

20 Q. And so that first time in the hospital he had the fluid
21 drained off?

22 A. Uh-huh.

23 Q. Did he have to go back several more time to have more
24 fluid drained off?

25 A. After he got referred to the lung doctor, the lung

1 doctor did it I want to say once or twice in his office and
2 then twice he went to Regional and the lung doctor went
3 there and did it, because for some reason they -- when they
4 did it in the office they could take less out, but when they
5 did it in the emergency -- in the ER -- not the ER, but in
6 the place, the Regional, they could take more out for some
7 reasons.

8 Q. In Spartanburg?

9 A. Yeah, because it was so dangerous to take, because he
10 had so much they would take like two liters out at a time
11 sometimes, and that was kind of dangerous, so they would do
12 that at Regional.

13 Q. Okay.

14 A. But in his office they would only maybe take a half a
15 liter or something.

16 Q. Okay. So in order to get the vast majority of fluid
17 out, he would have to go to the hospital?

18 A. Right.

19 Q. And when he had that done, was that painful?

20 A. Uh-huh.

21 Q. Okay. And when would he know if he needed to go back
22 to the hospital to have fluid taken off?

23 A. Because -- I mean -- I mean, it was like -- it got to
24 be like every couple of weeks, I mean, or every three weeks,
25 but he couldn't -- he couldn't breath. He would like more

1 and more be out of breath and it would, you know, be tight,
2 like he said his chest was tight.

3 Q. And that's when y'all knew to go?

4 A. Yeah.

5 Q. And at some point your dad described getting a catheter
6 put in?

7 A. Yeah, because we were going so often to have the fluid
8 drained out, doctor -- we call him Dr. O, and I can't even
9 pronounce his name, but it's a really long name, the lung
10 doctor. He referred us to another doctor to have like a
11 catheter, which is like a tube going into, you know, his
12 lung and coming out, that where we could like hook it up to
13 the bags at home and drain it ourselves at home, like every
14 three days, where we wouldn't have to keep taking him back.

15 Q. And so were you helping him? Were you and your mom
16 helping him drain it?

17 A. I went over every three days and drained it, and, you
18 know, because you had to like put on sterile gloves, take
19 sterile dressing off and clean it, hook it up to the little
20 bag and make sure it was like in the right position where
21 the gravity kind of helped drain it. You know, you could
22 only drain it for a certain amount of time and you took it
23 off, re-sterilized everything and bandaged it and -- so I
24 did that.

25 Q. Okay. And when he went to have the catheter placed,

1 did they also do a biopsy?

2 A. They did. When doctor --

3 Actually the doctors they sent us to get the catheter
4 was Dr. Nguyen at Spartanburg Regional and he turned out to
5 be in the oncology department, but at that time they had
6 sent his biopsies off a couple of time with the fluid and
7 they kind of -- they explained like it was inconclusive.
8 They never said they were cancer.

9 When we went to see Dr. Nguyen and before -- you know,
10 to talk to him before -- you know, just a couple of days
11 before he put the thing in, he told us, he said "we are
12 going to do a biopsy too" and he kept -- he just kept
13 dropping the word cancer on me. Like during the
14 conversation he was just saying the word. And I kept trying
15 to like say the other stuff, maybe, you know, because I
16 didn't want to think my daddy had cancer, but he just kept
17 saying that.

18 And when I got home that evening I called my little
19 brother in Texas, because I was -- you know, I always tried
20 to keep him informed. And I said "Danny", I said "I really
21 think that -- I said "Danny, I really think that doctor
22 thinks he has cancer," I said, "because he just kept saying
23 that word." I mean, I felt like he was trying to get us
24 used to the word. I told him "I think he thinks that he has
25 cancer."

1 And -- so -- so a few days later we did -- they put
2 those things -- went -- put daddy into the hospital to put
3 the drain in. He was going to have to stay overnight
4 because they were going to do like teach us how to, you
5 know, clean it and everything, you know. And I guess -- I
6 didn't realize that's what they were going to do, but they
7 send the biopsy while the patient is in -- you know, in the
8 operating room, they go ahead and send it to be tested.

9 And we had been sitting there forever and it was taking
10 longer than we thought it was going to take and my mom is
11 just sitting there waiting for the doctor to come out and
12 she was like really hungry, so I said "mom, let's just run
13 down there and get you something to eat in the cafeteria."
14 So we just went down to the cafe down there downstairs at
15 Regional and we didn't know the doctor came out while we
16 were there.

17 Well, my sister came to the cafe to tell us and I just
18 knew. I saw her walking up the hall and I saw her walk in
19 and I saw her face. She got to the table and she just like
20 kind of grabbed us at the table like, you know, like she was
21 about to fall down. She couldn't hardly get it out and
22 she -- she said "daddy has got cancer."

23 And then my mom, my goodness, she went hysterical. I
24 mean, the tower cafe. I mean, she was just hysterical. And
25 so I tried to calm them down and get them out of there and

1 take them back to the surgery waiting room.

2 And then doctor -- you know, Dr. Nguyen came back out
3 and talked to us and it --

4 For a little bit before that and he was saying he was
5 going to come -- my daddy was still in recovery and asleep
6 and he was going to come back the next day and talk to dad.
7 And we were trying to decide, because we knew we were going
8 to be gone when daddy woke up and we were trying to decide
9 what we were going to tell daddy when he woke up, when we
10 were going to tell him, or, you know, wait until and let the
11 doctors tell him, because, you know, we didn't want to like
12 bust out crying and stuff and --

13 Q. In front of your dad?

14 A. Right, exactly.

15 And so we finally decided we would just play it by ear.
16 And I told them, I said --

17 We got in there and dad woke up, and, sure enough, he
18 was like -- the first thing he said, you know, "what did
19 they say?" And I just looked at him and I said "they just
20 found a little bit of cancer, daddy. Don't worry about it.
21 They are going to take care it," you know? And that's --
22 you know, that's all I could say, you know.

23 And he just -- he just kind of took it in stride and
24 said okay. You know, he didn't -- I guess he was trying to
25 be strong for us, you know, and --

1 Q. Right.

2 A. -- we were trying to be strong for him. So --

3 Q. So after that diagnosis and you found out it was
4 mesothelioma cancer?

5 A. That day they didn't tell us. That day they told us it
6 was cancer.

7 Q. Okay.

8 A. And they -- when we went back the next week for the
9 followup with Dr. Nguyen, that's when he told us that they
10 had sent off for, I guess, further tests to see what kind of
11 cancer it was and that's what it was.

12 Q. Okay. And shortly after he was diagnosed with
13 mesothelioma, did he start chemotherapy?

14 A. He did.

15 Q. And what is that right there?

16 A. Oh, that's at the Gibbs Cancer Center. They had
17 those -- those butterfly benches and one day my
18 granddaughter had went with us to Dr. Nguyen's, to the
19 appointment at Dr. Nguyen's office, and she loved those
20 butterflies, so she insisted that everybody take pictures on
21 those butterfly benches.

22 Q. So your dad is on the butterfly bench, but at the
23 cancer center?

24 A. Yes. And he put his wings out like he had -- like he
25 was -- put his arms out like he was flying.

1 Q. So your dad started chemotherapy?

2 A. He did.

3 Q. So he still had the catheter in, right?

4 A. Yes, he did.

5 Q. To keep the drainage out.

6 And then -- did he have to have a port plate?

7 A. He did, on the other side. We had to go -- Dr. Nguyen,
8 after he told us it was mesothelioma, he referred us to the
9 oncologist, Dr. Khomani.

10 And we went and talked to Dr. Khomani and he said -- he
11 said "I'm going to send you back to Dr. Nguyen." And, you
12 know, they were kind of -- they kind of like get together.
13 They have like some kind of cancer board where all the
14 doctors call and talk and he said "Dr. Nguyen put this port
15 in and, you know, we were going to discuss what we were
16 doing." So we went back and put the port in.

17 All that happened really fast, but we saw Dr. Khomani;
18 you know, a couple days later we went back to Nguyen, went
19 back in the hospital to put the port in, came back out,
20 maybe a day later, we'd went back, he had the chemo.

21 Q. And the port allowed the cancer nurse, the chemotherapy
22 nurse, to give him the chemotherapy?

23 A. Right.

24 Q. Right?

25 A. Right.

1 Q. Okay. And so how did your dad do as he was taking
2 chemotherapy? How did he react?

3 A. Well, it made him really, really bad sick. At first he
4 kind of okay.

5 The very first one they did was -- the way the nurse
6 explained it to us is it makes your immune system go down.
7 About a week after you take it is when your immune system
8 starts going down. And for a couple weeks your immune
9 system goes down and it starts going back up. It hasn't
10 responded to the chemo yet, and the very first one he did
11 was a week before Christmas. So they said, you know, he --
12 during that time when his immune system was down he had to
13 wear a mask whenever he was around people, which we tried to
14 keep him away from people, but we always, always, always did
15 holidays at my parents' house. So that Christmas my dad had
16 to wear a mask. So I told everybody, I said "we will all
17 wear masks and we will decorate them. We will put like
18 Christmas trees on them," you know, look -- you know, Santa
19 Clause, or just whatever, you know, so my dad --

20 Q. Everybody had a mask on at Christmas.

21 A. Everybody had a mask. We didn't all keep them on, but
22 the children did. The children loved them. But adults,
23 those are really hard to breath. You know, I don't know how
24 dad does it.

25 Q. So I understand your dad every three weeks would have

1 chemotherapy?

2 A. Every three weeks.

3 Q. And the idea was to try to reduce the size of the
4 tumor?

5 A. Uh-huh. Yeah, so that doctors -- possibly Dr. Nguyen
6 could do the surgery.

7 Q. And we'll get to the surgery in just a minute, but I
8 understand -- tell me -- I understand in February as your
9 dad was undergoing chemotherapy your mom got sick?

10 A. She did.

11 Q. And can you discuss a little bit how your mom was
12 caring for your dad that time period between his diagnosis
13 and when she got sick?

14 A. Yes.

15 My mom, it started out kind of like she had like a
16 little cough. Maybe at the beginning of February she had a
17 little cough and she went to the doctor and they said it was
18 bronchitis, but she kept coughing and she -- she really
19 didn't tell anybody how bad she was. I mean, she didn't
20 make a big deal out of it. And you haven't -- we knew that
21 she was sick and feeling bad, you know, coughing, or
22 whatever, but like you never think when you are trying to --
23 you got one parent that's dying. You know, you don't think
24 another parent is going to -- you know, going to die, when
25 you are trying to protect the first one. So -- but, anyway,

1 I feel like she didn't -- she was just so worried about my
2 dad that she was -- didn't want to like make -- you know,
3 make a big deal about how she felt, because she was like,
4 daddy -- my dad has cancer, what am I going to complain
5 about a cough?

6 But, anyway, her bronchitis got worse and finally daddy
7 just drug her, made her go to that urgent care in Gaffney
8 and they -- her heartbeat was beating really, really fast,
9 and her oxygen was really low, so they sent her by ambulance
10 to Regional, and this was on Valentine's Day. My dad called
11 me and I rushed up to the emergency room and I'm trying -- I
12 was just joking with her. I said "momma, leave it up to you
13 to go on Valentine's Day with a heart problem to the
14 emergency room."

15 They even put her in ICU and she was there until March
16 the 6th, and she was on and off the ventilator. They kept
17 trying to get her off and then she would -- her oxygen would
18 just get low again and they would have to put her on. She
19 had -- at this point she had done got pneumonia and she was
20 so bad off that, you know, they were doing all they could.
21 But, I mean --

22 Q. Patty, let me ask you. When she was on the ventilator,
23 could she communicate with you all?

24 A. Yeah, we had a white board.

25 Q. And what was she worried about?

1 A. She was worried about my daddy. She said "make your
2 daddy go home. Make your daddy eat. Make sure" -- the
3 whole time she was worried about my dad.

4 Q. Was she writing that the white board?

5 A. She was.

6 And a couple times she was able to talk, because they
7 did get her ventilator off. It would only stay off for like
8 maybe a day. We would go home, we went back and the
9 ventilator would be off, and then they would call us that
10 night "we had to put the ventilator back in," you know.

11 Q. And I know your mom died on March 6th?

12 A. She did.

13 Q. And how -- how did your dad -- was he still going
14 through chemotherapy while she was in the hospital?

15 A. He was.

16 Q. And did --

17 A. And we actually -- his chemo was at Gibbs in Gaffney
18 and we had it transferred to the Gibbs in Spartanburg so
19 that he could get it in the same -- while we were there with
20 mom.

21 Q. What happened on March 7th? Your mom died on March
22 6th. What happened on March 7th?

23 A. Where my mom was in the ICU, we had -- we always went
24 through the heart center to get to where she was at.

25 On March 7th, the day after my mom died, we went -- we

1 had to go to the funeral home to kind of make arrangements,
2 and then I was -- I left with my dad from the funeral home.
3 We had to go back to Gibbs to the heart center. That same
4 door where we always went in with my mom where we walked
5 down the night before after my mom died, because my dad had
6 to get a PET scan, and they couldn't -- they couldn't
7 postpone -- you know, he had to get it then. So I had to
8 take my dad back right to that place the next day after we
9 left the funeral home.

10 Q. That's the PET scan to see if the cancer had spread?

11 A. Uh-huh.

12 Q. After your mom died, I understand that your daughter
13 took over, moved in with your dad?

14 A. Well, actually when my dad -- my daughter lived in
15 Simpsonville. When my dad first got chemo -- started
16 getting chemo, my daughter decided to move in with my dad,
17 because, you know, dad was on the pain medicine and he was
18 throwing up and stuff and my mom couldn't drive. So it was
19 just to, you know, to be able to drive to places and run
20 errands. And she actually had got a job in Gaffney.

21 When momma got sick, she went on leave, because, you
22 know, because mom was in the hospital and all that stuff.
23 And than mom passed away, and like my sister and I -- like
24 all the family discussed it and we just decided it would be
25 better for Pamela to not go back to work and just stay and

1 take care of dad and like we help her out, you know, if she
2 needed any help. So that's what she did. She just didn't
3 go back to work and she lives full time with my dad now.
4 She like, you know, cleans, does the shopping, makes sure
5 his prescriptions were filled. Like the days when he takes
6 his pain medicine, she don't let him drive. So, you know,
7 if he needs to go anywhere, she will take him, or she will
8 go for him.

9 Q. Right.

10 So Pamela moved in to kind of take care.

11 And then did your dad ultimately undergo the surgery
12 that he wanted to do?

13 A. He finally did go.

14 Q. And who did that surgery?

15 A. Dr. Nguyen.

16 Q. And that was at Spartanburg Regional?

17 A. Uh-huh. He is my hero.

18 Q. He is?

19 A. Dr. Nguyen is great.

20 Q. And the surgery, did they remove the lining of your
21 dad's lung?

22 A. They removed -- they said 95 percent of the lining.
23 They just left the part that was near the heart.

24 Q. Okay. And the linings where the tumor was?

25 A. Uh-huh, yeah. He said it was pretty thick, because the

1 lining is supposed to be like really, really thin, like a
2 couple pieces of paper, and he said, you know, it was pretty
3 thick for -- the tumor had -- the tumor was pretty, I guess,
4 thick, you know, but it was -- it was like in different
5 places. It wasn't just like one tumor. It was like
6 different spots of his lung.

7 Q. Right.

8 And did they take out part of his right lung?

9 A. They did, like a part of the bottom lobe.

10 Q. Okay. And can you tell the jury a little bit about
11 what that recovery, what that surgery recovery was like for
12 your dad?

13 A. He was in the ICU for a while. They said he might be
14 in ICU for a month, and dad was actually out in probably a
15 week, because he was just so stubborn. He actually ended up
16 going back to the hospital. So he got home and ended up
17 back in the hospital. So he went home earlier than he
18 should have, but Dr. Nguyen had told us before we have --
19 even before like he even knew that he was going to do the
20 surgery, it was horrible, horrible surgery. He said like
21 one of the worst surgeries you can have, and he described it
22 like if you rode a motorcycle and had a wreck and went down
23 the road and got road rash just all over. And, you know,
24 how it would be like bigger and, you know, pieces of skin
25 off it. He said that's what the entire part of his lung

1 would be like.

2 And they basically like just had to like -- like they
3 do to open heart surgery, or something. They have to spread
4 you -- you know, crack you and spread your ribs to get to it
5 and he said it was a horrible, horrible surgery, and daddy
6 really had been in a lot of pain.

7 Q. And that is what I was going to ask you. So since the
8 surgery, has his pain -- is he still in pain?

9 A. Oh, yes.

10 Q. Is it worse?

11 A. Yes. We are hoping that it -- you know, that it for
12 nothing, but, yeah, it's worse.

13 Q. And what about his breathing? Is he having trouble
14 breathing?

15 A. Uh-huh, he is still having trouble breathing and he has
16 cough. He keeps a cough now for some reason.

17 Q. Is it hard for him to talk?

18 A. It is, and he gets really tired easy. Like since my
19 mom died we have been going to their house every since my
20 sister cooks every Sunday, Sunday dinner.

21 My dad, he wants us to be there all the time and he
22 will get so tired, he will have to go lay down and he will
23 just like beg us. He'll say "I'm just going to lay down for
24 an hour. Please don't leave. Please stay here until I get
25 up," you know. So, of course, we stay there.

1 Q. Everybody stays because he lets the grandchildren
2 torture him it looks like right there?

3 A. Yeah, I don't even know what she is doing. I don't
4 know --

5 Q. This is my favorite.

6 A. I don't know. He -- he does not tell those kids no.

7 Q. So I understand that your mom was the one that cooked
8 Sunday dinner every Sunday?

9 A. Yes.

10 Q. And everybody came?

11 A. Uh-huh.

12 Q. And now Tessa has taken over?

13 A. Yeah, Tessa cooks.

14 Q. Tessa cooks.

15 You don't cook?

16 A. No. I microwave.

17 Q. I hear you.

18 Your dad talked a little bit about in his deposition
19 how even though the doctor said 20 percent chance of
20 survival, that that really gave him hope?

21 A. Yeah, he said he was glad for the 20 percent, you know,
22 because the guy before him might not have had 20 percent,
23 you know.

24 Q. Okay. So even though he's in pain and he has trouble
25 breathing, he still has hope?

1 A. Yes.

2 Q. Thank you, Tessa.

3 A. Patty.

4 Q. I just called you Tessa. Thank you, Patty.

5 MS. MCVEY: I pass the witness, Your Honor.

6 THE COURT: All right.

7 Mr. Wall? Mr. Boger?

8 MR. BOGER: No questions, Your Honor.

9 THE COURT: Very good.

10 Thank you, ma'am, very much. You may come down.

11 Ms. McVey?

12 MS. MCVEY: Your Honor, we would call Tessa Quinn.

13 THE COURT: Ms. Tessa Quinn, if you would come
14 around, please, ma'am.

15 Ms. Quinn, please come on right up here and the
16 clerk will give you the oath.

17 TESSA QUINN, having been first duly sworn,
18 testified as follows:

19 THE WITNESS: I do.

20 DIRECT EXAMINATION BY MS. MCVEY:

21 Q. Hey Tessa.

22 A. Hi.

23 Q. How are you doing?

24 A. Good.

25 Q. Are you nervous?