

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

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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.

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1 A. Yes.

2 Q. All right. Never testified in front of a jury before?

3 A. No.

4 COURT REPORTER: You are going to have to speak
5 up, please.

6 THE COURT: Ms. Quinn?

7 THE WITNESS: Yes, ma'am.

8 THE COURT: I know this is tough, but if you could
9 try to speak up little bit, for two reasons. Number one,
10 your jury has to hear you. And number two, I have to hear
11 you and the attorneys, so do the best that you can.

12 BY MS. MCVEY:

13 Q. I'm going to ask you some really easy questions. Are
14 you ready?

15 A. (Shaking head yes).

16 Q. Okay. So you are the middle child?

17 A. (Shaking head yes)

18 Q. Just like me.

19 And I understand you are the only one that can cook
20 Sunday dinner?

21 A. (Shaking head yes).

22 Q. And would you please tell the jury whether or not Patty
23 does the dishes after you cook?

24 A. She does.

25 Q. She does?

1 A. She does sometimes.

2 Q. All right, that's what I thought.

3 THE COURT: It's just like an older sister would
4 do. I'm the older sister. There is five and I always --

5 MS. MCVEY: You always do the dishes.

6 THE COURT: Yeah.

7 BY MS. MCVEY:

8 Q. I just have a couple of questions for you. I'm not
9 going to go through all of it, but you grew up in Gaffney?

10 A. Yes, ma'am.

11 Q. Okay. And how many kids do you have?

12 A. Three.

13 Q. And how many grand kids do you have?

14 A. One.

15 Q. Okay. You have a younger brother Danny?

16 A. Yes, ma'am.

17 Q. All right. I know that you, as you said, kind of took
18 over the family dinner so everybody could be together, is
19 that right?

20 A. Yes, ma'am.

21 Q. Is that important for your dad for y'all to be
22 together?

23 A. Oh, extremely.

24 Q. I just want to ask you one question about the time that
25 your mom was in the hospital and she -- right before she had

1 the last trache put in. Could you tell the jury what she
2 said to you?

3 A. Just -- I'm sorry. I was the only person in the room.
4 She looked at me and she said "Tessa, I'm scared."

5 I said "what are you scared of, mommy. Don't be
6 scared."

7 She said "I'm really sick." She said "I'm not scared
8 of going. I'm scared of going knowing your daddy is sick
9 and leaving him here by himself and knowing he needs me."

10 Q. Thank you.

11 MS. MCVEY: No more questions.

12 THE COURT: Do you have any questions?

13 MR. BOGER: No questions.

14 THE COURT: Thank you.

15 MS. MCVEY: Your Honor, just briefly, I would like
16 to move into evidence the photographs that were displayed to
17 the jury.

18 THE COURT: All right. Thank you, ma'am.

19 MS. MCVEY: That would be bates number 805.1,
20 805.2, 3, 4, 5, 6, 7, and 8.

21 THE COURT: Without objection?

22 MR. BOGER: No objection.

23 THE COURT: Very good.

24 Bring the lights up, please, sir.

25 (Whereupon, Plaintiffs' Exhibit No. 805.1 was

1 entered into the record as evidence).

2 (Whereupon, Plaintiffs' Exhibit No. 805.2 was
3 entered into the record as evidence).

4 (Whereupon, Plaintiffs' Exhibit No. 805.3 was
5 entered into the record as evidence).

6 (Whereupon, Plaintiffs' Exhibit No. 805.4 was
7 entered into the record as evidence).

8 (Whereupon, Plaintiffs' Exhibit No. 805.5 was
9 entered into the record as evidence).

10 (Whereupon, Plaintiffs' Exhibit No. 805.6 was
11 entered into the record as evidence).

12 (Whereupon, Plaintiffs' Exhibit No. 805.7 was
13 entered into the record as evidence).

14 (Whereupon, Plaintiffs' Exhibit No. 805.8 was
15 entered into the record as evidence)

16 THE COURT: Ms. McVey?

17 MS. MCVEY: The plaintiffs rest.

18 THE COURT: Very good.

19 All right. Ladies and gentlemen, I think we are
20 about on target with the eleven o'clock that I predicted a
21 little bit earlier.

22 The plaintiff has rested the plaintiffs' case and
23 that means that I will, as I explained to you, have some
24 things that I have to do, communicate with the lawyers
25 about, and then they need to go to lunch. So I am going to

1 let you go now and I would like you back --

2 Let's kind of interact here for a minute,
3 attorneys? How about -- is 1:30 enough time, do you think?

4 MS. MCVEY: Yes, ma'am.

5 THE COURT: Members of the jury, be back here at
6 1:30, if you would. Thank you.

7 You may go to your jury room.

8 (The following takes place outside the presence of
9 the jury panel)

10 THE COURT: All right. Mr. Wall?

11 MR. WALL: Yes, Your Honor.

12 On behalf of Covil I would ask to move for a
13 directed verdict first on the issue of negligence.

14 Your Honor, in my opinion the evidence clearly
15 shows, one, that Covil was not present at the job site.

16 Two, that Covil did not install any insulation.
17 Daniel put the insulation in.

18 Three, there is no direct evidence that Daniel --
19 I mean that Covil sold any product to Daniel. And, as such,
20 there was no -- there was no sale.

21 There was -- the product, whatever was put in
22 there, was by done by specs, required by Celanese and
23 Daniel, and the plaintiff in this case did not work with any
24 product sold or installed by Covil, and, thus, Covil cannot
25 be negligent in this case.

1 I assume you want to do --

2 THE COURT: Yes, what we will do is for each of
3 your motions, your first motion is a motion for a directed
4 verdict on the first count, which is the negligence count,
5 and I will turn now to Ms. McVey.

6 MS. MCVEY: Your Honor, the evidence in this case
7 has been that Covil did it. They supplied the insulation.
8 That came from Harley Neelands.

9 Mr. Carpenter, Machen Lee Carpenter, said that
10 Covil and Daniel did these projects together. Covil said
11 that Daniel was its biggest customers.

12 Don Buck, Daniel said it was Covil and Daniel.

13 There is a record from 1971, a list of contractors
14 from 1971 to 1975, that showed that Covil was an insulating
15 contractor at Hoechst Celanese in Spartanburg.

16 MR. WALL: And prior to that, Your Honor, looking
17 at the document in evidence as -- as 822.4, and was
18 displayed, it's got the names of several companies.

19 And over on the other side of that it says
20 description work and across from Covil there is nothing.
21 And Mr. Buck said that means to him that Covil did not do
22 anything on the job site.

23 And if you go down to the bottom it says Southern
24 Insulation and it says AC installation.

25 And so I think any inference is, because we know

1 Daniel actually installed this asbestos, according to their
2 witness, Mr. Neelands, and the only question is did Covil
3 sell any information -- any asbestos, and there is no record
4 of any sale by Covil to Daniel for this project.

5 MS. MCVEY: Your Honor, two things just briefly,
6 if I could respond?

7 The first is that Harley Neelands said Covil
8 supplied the insulation.

9 MR. WALL: He didn't say that.

10 THE COURT: Well, let's not do it that way.

11 MR. WALL: Yes.

12 THE COURT: Let's have each person --

13 MR. WALL: I apologize, Your Honor.

14 MS. MCVEY: Harley Neelands said they supplied the
15 insulation, Covil did.

16 There is also spoliation charge that if Covil had
17 kept their records, as they should have, as they were
18 available to him, that it would show sales for that project.
19 That's the second thing.

20 The HVAC contractor -- I mean, I'm sorry, the
21 other insulation contractor that he talks about, the
22 evidence in this case was that they were just doing HVAC
23 work. They were not insulating the pipes. That was Covil's
24 job.

25 Your Honor, just in terms of -- and I don't know

1 if you want to get to exposure yet. That's part of the
2 negligence claim, but --

3 THE COURT: Why don't we just stick on negligence.

4 I will deny the -- I will deny the motion for a
5 summary -- the motion for a directed verdict by defendant
6 for a couple of reasons.

7 First of all, there is abundant evidence in the
8 record that Covil was the insulation subcontractor for
9 Celanese at the time frame that is in issue here, which is
10 '70 to '74, when it is claimed Mr. Crawford was exposed to
11 this product.

12 There is abundant evidence that Covil knew at the
13 time it performed its insulation work that asbestos was a
14 dangerous product which could cause, not only asbestosis,
15 but mesothelioma, if exposure was had to it.

16 There is abundant information to establish that
17 there were other products available during this time that
18 could have been used to insulate these very hot pipes other
19 than Kaylo and related asbestos-containing insulation
20 materials.

21 There's a good deal of evidence that this
22 asbestos-containing material was also used with a mud that
23 was used to apply the insulation to the pipes and that that
24 mud was mixed in a way that caused release of dust in the
25 atmosphere.

1 There is abundant testimony from Crawford and
2 others that they worked around the release of Kaylo dust
3 into the air as it was removed from pipes, as it was applied
4 to pipes.

5 And there is abundant evidence that Covil was
6 either a or the insulating contractor.

7 We don't have the invoices from this particular
8 period because it is claimed that Covil -- that these
9 materials were destroyed, but there is information from
10 Carpenter and others that this material was not destroyed by
11 the fire, because it was kept in the vault in the office
12 part of the Covil factory where it was protected by the
13 vault itself and by a firewall, but that material is no
14 longer available, and I have found that spoliation took
15 place with respect to that material. And, therefore, I have
16 read to the jury an instruction that Jerry Crawford was
17 exposed to asbestos insulation supplied and installed by
18 Covil Corporation at Celanese between 1970 and 1974.

19 In addition, one of the exhibits that has been
20 placed into evidence in this matter during the testimony of
21 Mr. Glenn, the corporate representative for Covil, is an
22 invoice from Covil Insulating Company dated 2-7-74 to
23 Firestone Tire & Rubber in Wilson, North Carolina, and it is
24 an example of invoices that Covil would send in connection
25 with the supply of Kaylo and Thermobestos on jobs in which

1 it was the insulating contractor. And this invoice form
2 that Covil uses shows the areas from where the job was
3 shipped, and it has six blocks, and the areas are
4 Greenville; Greensboro, North Carolina; Wilson, North
5 Carolina; Augusta, Georgia; and Albany, Georgia.

6 In this particular invoice that was sold to
7 Firestone Tire & Rubber in Wilson, North Carolina, in care
8 of Yeargin Construction Company, Wilson, North Carolina, the
9 invoice, which is dated 2-7-74, on a particular customer
10 purchase order number for a shipment dated 2-5-74, shows
11 shipped from and it says number one on here, and number one
12 is the Covil plant at Greenville, South Carolina, where the
13 fire in Berea Industrial where the plant was located
14 allegedly took place. This is a shipment after that time
15 from the location that we are talking about with an invoice
16 that had it -- and it is a shipment of Kaylo PC, \$1,460
17 worth, and Thermobestos, \$1,663 on this particular invoice,
18 and these two materials, the testimony has shown, are
19 asbestos-containing insulation materials.

20 If we had the Covil invoices from the period we
21 are talking about where Covil was the identified insulation
22 contractor for Daniel, those invoices would identify from
23 where the insulation was shipped, what kind of insulation
24 was shipped, and how it was shipped to the ultimate plant,
25 and the contractor to whom it was shipped care of. And that

1 evidence of plan and practice by Covil indicates to me that
2 had the information been preserved and not spoliated, it
3 would clearly show the shipments to Celanese, in care of
4 Daniel Construction Company; and it indicates that the plan
5 and practice of Covil was to itself supply this
6 asbestos-containing information on jobs in which it was the
7 insulating contractor.

8 So I think there is -- the evidence is, of course,
9 on this point viewed in the light most favorable to the
10 nonmoving party, and the nonmoving party is, of course, the
11 plaintiff in this matter, and I think there is plenty of
12 information in the record from which a jury could find that
13 Covil supplied the asbestos-containing material and sold it
14 for use on the job, and participated in the installation of
15 this material on the job, according to the testimony of
16 several of the co-workers, including Covil co-workers. So
17 that's my ruling on the negligence cause.

18 All right. Mr. Wall, you may proceed.

19 MR. WALL: Your Honor, Covil now moves for
20 directed verdict on the strict liability charges.

21 THE COURT: On what?

22 MR. WALL: Strict liability.

23 THE COURT: Strict liability.

24 MR. WALL: I will incorporate my comments from the
25 negligence count and only add again that there was no proof

1 of any sale of any product by Covil to either Celanese or to
2 Daniel. That, again, Daniel, by their own -- by their own
3 witness, upon its own witness, installed the insulation on
4 this project. And so, therefore, again, I believe that
5 there is no proof that we were negligent -- excuse me, or
6 strictly liable installing these products.

7 Again, this property was built by specification
8 and there is no evidence that the plaintiff ever worked with
9 any product by -- sold, or installed by Covil.

10 THE COURT: Ms. McVey?

11 MS. MCVEY: Your Honor, for all the reasons that
12 you articulated so well, his negligence claim would apply to
13 the strict liability claim. There is abundant evidence that
14 not only Covil either supplied or installed insulation at
15 the Celanese plant, that Daniel used them and their
16 insulation subcontractor, and that it is clear that Mr.
17 Crawford had significant causative exposure to asbestos
18 insulation, the Kaylo and other product described by the
19 witnesses in this case, and, therefore, they would be
20 strictly liable.

21 THE COURT: Very good.

22 All right. I will deny the motion for a directed
23 verdict on strict liability for the reasons stated
24 previously in the analysis of the negligence cause.

25 And, in addition, there is certainly information

1 from the deposition -- from the live testimony of the
2 corporate representative before us for Covil that verifies
3 the relationship between Daniel and Covil as Covil -- as
4 Daniel being its largest customer for the supply of
5 insulation and for subcontracting work on insulation during
6 the time we are talking about.

7 There is plenty of information from Covil workers,
8 as well as from Mr. Crawford's coworkers at Celanese, to
9 indicate that Daniel was involved in the contracting of new
10 work, as well as repetitive maintenance work, and that in
11 that connection it used materials supplied by its insulator.

12 And when you put those -- connect those dots,
13 there is more than a scintilla of evidence to suggest and
14 for the jury to find strict liability for the sale of these
15 asbestos-containing products by Covil, so I'll deny the
16 motion.

17 All right, Mr. Wall.

18 MR. WALL: Yes, Your Honor.

19 Covil now moves for a directed verdict on the
20 implied warranty claim, and I'll reincorporate all my
21 arguments for the negligence and the strict liability claim
22 in the warranty. And, again, add there was no proof of any
23 warranty, either implied or otherwise, by Covil as to any
24 product. There was no evidence of any product used by Covil
25 or sold by Covil or -- sold by Covil that Mr. Crawford

1 worked with.

2 Again, the Covil sales record that you are
3 referring to was post-'73, post-fire. It was not pre-fire.
4 And the arguments we have in this case are that documents
5 pre-fire are the ones that were destroyed, not post-fire.
6 And, again, we didn't search for that particular sales
7 invoice because it was not involved in this case in any form
8 or manner.

9 And, again, there is no evidence that the
10 plaintiff worked with the product and the property and was
11 built according to the specifications, so whatever we did
12 was required to by contract.

13 THE COURT: All right. Ms. McVey?

14 MS. MCVEY: Your Honor, I won't reincorporate all
15 our other arguments -- I mean I will reincorporate all our
16 other arguments about going through this again, but just in
17 terms of whether or not Mr. Crawford worked with their
18 defective product, it is undisputed that Mr. Crawford was
19 around insulation contractors installing, sawing, removing
20 insulation as a bystander.

21 It's undisputed that every day he swept that
22 asbestos insulation. That would make it direct exposure,
23 significant direct exposure as articulated by Dr. Brody and
24 Dr. Maddox.

25 And, in fact, there is no expert testimony on the

1 other side disputing the causation of his mesothelioma as a
2 result of his exposure to this insulation. It's actually
3 undisputed in this case.

4 THE COURT: All right.

5 I incorporate the analysis I have made in the
6 denial of directed verdict in the other two causes, but I
7 will say with respect to implied warranty, that implied
8 warranty does not depend on the exhibition to the jury of a
9 written contract.

10 Implied warranty is implied by the law, as I will
11 instruct the jury, and those who place into the stream of
12 commerce materials that are dangerous and provide no warning
13 have particular responsibilities based on strict liability,
14 but they also have responsibilities because they implied the
15 warrant, the fitness of the product for the purpose for
16 which it will be used. And here the evidence is abundant
17 this product was not fit for the purposes for which it was
18 used because of the severe danger involved in its
19 application and removal, to not only those who install it,
20 but those who are around it. Both the expert testimony and
21 the testimony of workers and the testimony of the corporate
22 representative is that these materials are dangerous and
23 that they can cause death and that they can cause severe
24 illness, and that they can cause mesothelioma. And based on
25 that, the implied warranty count is supported by more than a

1 scintilla of evidence sufficient that the jury would be
2 entitled to find that there was an implied warranty with
3 respect to the use of this material supplied by Covil and
4 that there was a breach of that warranty due to the supply,
5 the knowing supply, by Covil of material that it knew was
6 not fit for the purposes for which it was supplied because
7 of its dangerous propensity. And, therefore, I will deny
8 the motion for directed verdict on the issue of implied
9 warranty.

10 Does that complete your motions, Mr. Wall?

11 MR. WALL: No, Your Honor. I'm going to move for
12 a directed verdict on the question number five as to
13 punitive damages.

14 I will incorporate all my other arguments and add
15 in the standard of proof on punitive damages is clear and
16 convincing evidence. And I suggest to the court that there
17 is no evidence in this record of clear and convincing
18 evidence that Covil did anything willfully, wanton, or
19 reckless in this case. They complied with the request of
20 the owner, request of the contractor, and the only testimony
21 that they have that may go to that issue is Mr. Waters, and
22 Mr. Waters did not work at Celanese, did not work with Mr.
23 Crawford, and I would suggest to the court as such his
24 testimony is, one, irrelevant, and, two, does not meet the
25 standard anyway.

1 THE COURT: Very good.

2 Ms. McVey?

3 MS. MCVEY: Your Honor, I think in this case there
4 is more than almost any other I have been involved in in
5 terms of evidence of recklessness.

6 The first is that they never tested their product
7 to see if it was dangerous.

8 The second is even when they knew beyond any doubt
9 in 1965 that asbestos could not only hurt people, it could
10 kill people, they never warned about it. In fact, in the
11 fifties they gave their own employees respirators, but never
12 told anybody else who would be using their products about
13 the dangers of that. They didn't warn. They didn't test.

14 They also, the testimony is, in the seventies,
15 when everybody knew -- went asbestos-free, what they did is
16 they used asbestos-free boxes, but they wanted to get rid of
17 their asbestos supply, so they put asbestos-containing
18 insulation in asbestos-free boxes and shipped them out to
19 workers. And not only did they not know that they were
20 working with asbestos, they couldn't protect themselves.
21 That's recklessness.

22 THE COURT: All right.

23 I find that the directed verdict motion on
24 punitive damages should be denied. The standard is clear
25 and convincing.

1 And in addition to the evidence of recklessness,
2 willfulness, and wantonness that has been discussed by Ms.
3 McVey, an additional piece of evidence that is important, in
4 my view, is the evidence given by the corporate
5 representative himself who says that Mr. Palmer Covil, who
6 was the head of the company at that time, well knew the
7 dangers of asbestos, had attended conferences in which the
8 dangers of asbestos had been discussed with a high level
9 official with the national insulators trade group, its
10 president, as well as on its board of directors, and was
11 well aware of industry knowledge about the danger of
12 asbestos.

13 In addition to that, the corporate representative
14 testified under oath that despite Covil's knowledge of the
15 dangers of asbestos, that he allowed the use and continued
16 use of asbestos in the product his company sold as a
17 business decision. That indicates a very conscious decision
18 to distribute the material that he knew.

19 So there is evidence of recklessness and there is
20 evidence of willfulness and wantonness sufficient to
21 constitute more than a scintilla and more than a clear and
22 convincing standard.

23 The degree of the standard does not have to be
24 determined at this time. It's just simply the existence of
25 evidence, not the weight of it, but I will find on this

1 record that there is enough evidence from which a jury could
2 find by clear and convincing evidence that in this
3 particular case the Covil Corporation made a deliberate
4 decision and a reckless and wanton decision to distribute
5 this product.

6 All right. That's the rulings on the directed
7 verdict motions.

8 Now, does the plaintiff have directed verdict
9 motions?

10 MS. MCVEY: Your Honor, they have not finished
11 their evidence, obviously, but we can go ahead and argue our
12 directed verdict on a couple of issues, if that would suit
13 the court. I know they --

14 THE COURT: Well, I'm simply protecting you and
15 the record in this regard, because I believe that you would
16 want to make whatever motions you want to make of a directed
17 verdict status in order to be able to make any kind of
18 motions you would want to make at the close of the
19 defendant's case, and then at the close of the -- after we
20 receive a verdict.

21 MS. MCVEY: Your Honor, I don't think we have any
22 directed verdict motions at this time.

23 THE COURT: All right.

24 I will tell you that -- both sides that I will be
25 listening very carefully to defendant's case. I have not

1 had a case, and I have tried a bunch of these. Certainly
2 tried a number of cases when I was in the trial work and
3 heard a number of appeals in the long period of time I
4 served on the Supreme Court. I have not seen a case that
5 contained as strong a constellation of liability evidence as
6 I see in this case, and so I will be looking very carefully
7 of what my responsibilities should be in terms of whether to
8 direct a verdict on liability before this case is submitted
9 to the jury. I'm not saying I'm going to do it, but I
10 simply want to be fair to everyone and say that I am
11 concerned about this. It's not Mr. Wall's fault or he can
12 deal with only what he's given by the client to deal with,
13 but quite apart from the direction of finding that I made as
14 a response to the discovery violations of this defendant,
15 the evidence that's been presented in the case quite
16 separately from that is at this point almost un-controvered
17 evidence of liability. And so I'm concerned about that and
18 I just want to let you know that.

19 All right. Now, we dealt with our motions. It's
20 a quarter after eleven. We've got the defendant's case to
21 put up, and I take it y'all want to do your charges after
22 that?

23 MS. MCVEY: Yes, ma'am.

24 THE COURT: That's fine. That's fine. I just
25 want to be sure we are all on the same page.

1 MS. MCVEY: I think so, just make sure what
2 evidence they have came in.

3 THE COURT: I think that's fair to both sides. We
4 need to see exactly what the submission of evidence is going
5 to look like before we make a final decision.

6 If you have anything else you want me to look at,
7 y'all let me know, but otherwise I'm going to take an early
8 lunch, as I guess you will.

9 MS. MCVEY: Great.

10 THE COURT: And we told the jury to be back here
11 at 1:30, so we will look forward to the presentation of the
12 case. And after that we will go into the charges, but I'm
13 going to tell you, if I had to do it from scratch, I would
14 try this case and send it to the jury today, because we got
15 plenty of time to do that and I'm all about trying to get
16 the thing moving along, but I'm sympathetic to the fact that
17 I told you I would let you close tomorrow, so --

18 MS. MCVEY: I think we are just not as quite
19 organized as we would like to be for closing.

20 THE COURT: I understand that and I think lawyers
21 work mighty hard. They don't need to be surprised by a
22 judge who promises one thing and then reneges on it, so I'm
23 not going to do that, but hopefully we can move with
24 alacrity this afternoon on the tasks we can perform.

25 MS. MCVEY: Absolutely.

1 THE COURT: Very good.

2 All right. We will see you at 1:30.

3 MR. WALL: Thank you, Your Honor.

4 (Whereupon, proceedings were recessed).

5 (Whereupon, proceedings were reconvened)

6 THE COURT: All right. Ms. McVey?

7 MS. MCVEY: Just briefly.

8 I note they are going to play two videos and read
9 in Palmer Covil's deposition. They have told us that they
10 are not countering Harley Neelands, or not playing their
11 portion of Harley Neelands. I expect that we, depending on
12 what's played, we may have a 45 second rebuttal, but I
13 didn't want to mess you up with the jury. They would rest.
14 After they rest we may put up 45 seconds of video to play to
15 rebut some of the stuff that's coming in their testimony.

16 THE COURT: And then we would dismiss the jury?

17 MS. MCVEY: That's right.

18 THE COURT: Very good.

19 MS. MCVEY: But I don't want to waive my directed
20 verdict motion in between, if that makes any sense.

21 THE COURT: Yeah, it does.

22 MS. MCVEY: Okay.

23 THE COURT: You know, we can all proceed. If we
24 got any problem along those lines, that will be the way it
25 is.

1 MS. MCVEY: Okay.

2 THE COURT: All right. Bring me the jury.

3 (The following takes place in the presence of the
4 jury panel)

5 THE COURT: All right. Please be seated.

6 All right. The defendants will begin the
7 presentation of the defense case.

8 Mr. Wall or Mr. Boger.

9 MR. BOGER: Yes, Your Honor, the defendant calls
10 by deposition Mr. Palmer Covil.

11 THE COURT: All right.

12 MR. BOGER: We are going to read into the record.
13 Mr. Buha has agreed to assist with the reading.

14 THE COURT: Mr. Buha, if you would come to the
15 witness box, and I take it that you have the transcript with
16 you?

17 MR. BUHA: I do.

18 THE COURT: Very good.

19 All right, ladies and gentlemen of the jury,
20 portions of the deposition of Mr. Palmer Covil, who is the
21 founder and chief executive officer of Covil Corporation for
22 many years, is going to be read.

23 This particular deposition was begun on July the
24 14th, 1977.

25 And, Mr. Boger, you may proceed.

1 MR. BOGER: Thank you, Your Honor.

2 (Whereupon, the Deposition of Palmer Covil was
3 read to the jury panel)

4 MR. BOGER: This will conclude Mr. Covil.

5 THE COURT: All right. Thank you Mr. Buha.

6 Mr. Wall, call your next witness.

7 MR. WALL: Mr. Boger is doing it, Your Honor.

8 THE COURT: All right. Mr. Boger?

9 MR. BOGER: Your Honor, defense calls Bruce Boyer,
10 CNA Celanese by video.

11 (Whereupon, the videotape of Bruce Boyer was
12 played to the jury panel).

13 (Off the record).

14 (Back on the record)

15 MR. BOGER: Your Honor, I apologize. I'm having a
16 little technical difficulty here.

17 (Whereupon, the Videotape of Bruce Boyer was
18 continued to be played to the jury panel)

19 MR. BOGER: Your Honor, defense would like to call
20 Mr. Dan Buck of Daniel by video.

21 (Whereupon, the videotape of Dan Buck was played
22 to the jury panel)

23 MR. BOGER: No further witnesses, Your Honor.

24 THE COURT: All right.

25 Bring the lights up, please.

1 All right. Mr. Boger, does the defendants rest?

2 MR. BOGER: Yes, Your Honor, the defendants rest.

3 THE COURT: All right. Motions are noted, but I
4 understand you have a slight piece of reply evidence, Ms.
5 McVey, for the plaintiff?

6 MS. MCVEY: Yes, Your Honor, without waiving our
7 motions we discussed earlier, we have about a minute and
8 eleven seconds rebuttal witness; Harley Neelands by video.

9 THE COURT: All right. Harley Neelands by video.
10 (Whereupon, the videotape of Harley Neelands was
11 played to the jury panel)

12 MS. MCVEY: That concludes our rebuttal, Your
13 Honor.

14 THE COURT: All right. Rebuttal has been
15 concluded.

16 Anything further from either side?

17 MS. MCVEY: No, ma'am.

18 MR. BOGER: No, Your Honor.

19 Well, the motions.

20 THE COURT: Very good.

21 Ladies and gentlemen, you are going to be
22 dismissed now for the day. We will continue here with
23 necessary matters I have to take up with them and we will
24 prepare the charges to the jury and we will begin tomorrow
25 morning at nine o'clock with closing arguments to the jury,

1 which will be presented to you as soon as you are seated.
2 After that I will give you your charge and then you will
3 begin to deliberate this case.

4 Please have a pleasant afternoon and evening.

5 Don't discuss the case. Don't do any research on
6 social media. Don't post on social media or do any research
7 on the Internet. And other than that, please do have a
8 fruitful afternoon and evening and I'll see you at nine
9 o'clock tomorrow morning.

10 (The following takes place outside the presence of
11 the jury panel)

12 THE COURT: All right. Be seated.

13 And Ms. McVey, are you prepared?

14 MS. MCVEY: I am.

15 THE COURT: Very good.

16 MS. MCVEY: Your Honor, we would like to make
17 directed verdict motions at this time.

18 As you know, directed verdicts should be granted
19 when the evidence as a whole is susceptible to only one
20 reasonable inference and there are no jury issue is created
21 and directed verdict is appropriate.

22 We would argue that there is no genuine issue of
23 material fact left in this case, other than the decision of
24 damages.

25 First, Your Honor, let me go over the testimony

1 with you that Covil was, in fact, the supplier of --
2 supplier and installer in certain circumstances of asbestos
3 insulation at the Celanese Spartanburg plant. There is a
4 lot of testimony to that.

5 First, there's Harley Neelands. He was working as
6 a Daniel employee at the Celanese Spartanburg plant. He
7 says Covil supplied the insulation that they put on. He
8 says he saw a Covil truck driving up to the Celanese plant
9 with a Covil logo on it supplying the insulation at Celanese
10 Spartanburg.

11 Mr. Carpenter, Machen Lee Carpenter, who, as you
12 know, was the warehouse manager. He was the vice president
13 of operations at certain times. He testified that Daniel
14 and Covil were like this, meaning very tight together.

15 And, Your Honor, before -- let me pause and I'm
16 meant to say this at the beginning. I would like you to
17 consider this directed verdict motion without any
18 consideration to either the spoliation charge or the
19 presumption that you gave. I think we are entitled to a
20 directed verdict without either of those things. I don't
21 want to waive our ability to get that, if we need it, but
22 for your purposes today I would like you to consider this
23 directed verdict motion without either the spoliation or the
24 presumption that was given.

25 We talked about Harley Neelands.

1 We talked about Mr. Carpenter saying that Daniel
2 and Covil worked together all the time.

3 Covil, Mr. Glenn, Covil's representative, says
4 that Daniel was Covil's biggest customer.

5 Mr. Buck and other depositions testified that
6 Covil and Daniel always did work together. In other words,
7 when Daniel was insulating something, they got their
8 insulation from Covil. Sometimes Covil did the insulation
9 themselves. Sometimes they just supplied the insulation.

10 Your Honor, the vendor list shows Covil on the
11 list at the facility between 1971 and 1975, and there is no
12 other insulation contractor on that vender list. There is
13 one, but it's clear they were only doing HVAC type
14 insulation.

15 That's the information we have that Covil was
16 there.

17 We don't have any information from Covil that they
18 weren't there. The only thing they are saying is "we don't
19 know because we don't have any documents." That's the only
20 thing. That's not enough. That's not enough for them. And
21 so when there is only one reasonable inference, you have to
22 believe that Covil was there.

23 So, one, Covil was there.

24 Two, the insulation that they provided was
25 asbestos-containing and we know that from Bruce Boyer. He

1 did a survey and he showed and the very buildings where Mr.
2 Crawford was working and that they were 15 miles of asbestos
3 insulation, 90 percent of which was asbestos-containing.

4 Harley Neelands testified when they were putting
5 all that insulation in, it was Kaylo. And we know from
6 Covil that the Kaylo that they were using was asbestos
7 containing. And we know from the Celanese specifications
8 that they called for the use of amosite asbestos insulation.

9 There is no other information, other than that
10 this was asbestos-containing insulation, in the very areas,
11 in the poly-1 and continuous poly building where Mr.
12 Crawford was working.

13 So we have that Covil was there.

14 We have that they were selling asbestos-containing
15 insulation.

16 So now we have is Covil liable on strict
17 liability, breach of warranty, and negligence?

18 And what we have to show, when there is no other
19 reasonable inference, is that the product they sold, the
20 asbestos was defective and unreasonably dangerous. Every
21 witness who has come in here has said that the
22 asbestos-containing insulation was defective and
23 unreasonably dangerous.

24 The product was essentially in essentially the
25 same condition as when it left the defendant's hands.

1 Clearly it was. It came in boxes and they put it on the
2 machines, as Covil knew they would, on the piping.

3 We have to show that the plaintiff was injured by
4 the product.

5 And other than a failure to warn, we have to show
6 that there was a feasible alternative design.

7 And, Your Honor, let me tell how we can do all
8 those things. Not only that we can do it, but that there is
9 no other reasonable inference other than we have.

10 So let me first discuss Mr. Crawford's exposure.

11 First, his direct exposure. There is testimony
12 that for every day that Mr. Crawford worked over those four
13 years, from 1970 to 1974, he was sweeping up work done by
14 the insulators and he was working around these insulated
15 pipes. He was cleaning up, including sweeping up
16 insulation.

17 Dr. Maddox came and testified that his exposure,
18 when he was sweeping up at peak times, could be as high as a
19 100 fibers per CC. That is a 1,000 times higher than the
20 PEL allowed of .1 fibers per CC. That's incredible
21 exposure. And that happened daily, multiple times a day,
22 over a four year period.

23 He also had bystander exposure. Mr. Crawford
24 testified that several times a day he would walk through the
25 continuous poly building where construction was going on to

1 either use the bathroom or go to the locker room. He saw
2 people doing insulation work, and that included installing
3 and cutting.

4 Harley Neelands testified that they would beat in
5 the chicken wire; that they were mixing mud and when you
6 mixed the powder into the water, it created dust in the air.
7 They were applying mud and smoothing out that mud. Mr.
8 Crawford testified he could see the dust when that was going
9 on. Harley Neelands described it as a very dusty process.
10 Dr. Maddox said that type of exposure is significant.

11 The only evidence in this case is that that direct
12 exposure, as well as the bystander exposure, were the
13 substantial contributing causes of Mr. Crawford's
14 mesothelioma. That's the only testimony. And, in fact,
15 there was no other testimony that any other exposure caused
16 Mr. Crawford's mesothelioma, only the asbestos insulation.
17 That came from Dr. Maddox and Dr. Brody. The defendants put
18 up no expert witness to contest that.

19 So, Your Honor, we would move for those reasons
20 and --

21 I'm sorry, we also need to talk about -- in terms
22 of a negligence case, we need to talk about Covil's
23 knowledge.

24 Covil knew, at least by 1965 or 1966, that
25 asbestos could kill workers. In 1965 or 1966 they knew that

1 asbestos could kill workers. They were getting that
2 information from the Selikoff conference. They were getting
3 that information from the union. They were getting that
4 information from magazines. And Mr. Palmer Covil testified
5 that he knew in 1965 that asbestos could kill people. And
6 yet they continued to sell asbestos through at least 1974,
7 if not later -- I'm sorry, they continued to sell asbestos
8 insulation until at least 1974. They sold other
9 asbestos-containing products for longer than that. They had
10 knowledge that asbestos was dangerous and they continued to
11 sell it.

12 Your Honor, we believe that we are entitled to a
13 directed verdict on strict liability, on implied warranty,
14 as well as negligence.

15 Finally, Your Honor, I'm not sure exactly what, if
16 any, affirmative defenses that Covil would be pursuing, but
17 as to their jury charges it looks like they are pursuing two
18 affirmative defenses. The first one is comparative
19 negligence. The second one is intervening cause.

20 First as to comparative negligence, there is not a
21 single piece of testimony this Mr. Crawford did anything
22 wrong, let alone anything wrong that contributed to his
23 mesothelioma. No factual testimony, no expert testimony, no
24 inference of that. We should be given directed verdict as a
25 matter of law on that.

1 And, finally, Your Honor, they move on intervening
2 cause. And I don't know exactly what they think the
3 intervening cause is, but my assumption is it would be
4 Daniel. Daniel was installing the pipes.

5 And the law in South Carolina talks about
6 intervening cause and it says "a chain of causation between
7 defendant's negligence and the injury may be broken by the
8 independent and intervening acts or omissions of another
9 over who the defendant has no control and where the actions
10 were not foreseeable."

11 In this case Daniel was using a Covil --
12 insulation supplied by Covil in using it exactly how Covil
13 knew it would be used. They were insulating pipes and
14 equipment with it, as Covil knew they would.

15 Therefore, Your Honor, we believe that the
16 intervening charge, we should be given directed verdict on
17 intervening cause as well.

18 THE COURT: All right.

19 MS. MCVEY: Thank you, Your Honor.

20 THE COURT: Thank you.

21 Mr. Wall or Mr. Boger?

22 MR. WALL: Yes, Your Honor.

23 First of all, the evidence is contested as to what
24 causes problems. And --

25 THE COURT: Mr. Boger, why don't you get up here

1 and help Mr. Wall find what he needs to find.

2 MR. Wall: He doesn't know what I'm looking for,
3 Your Honor.

4 THE COURT: Well, he will help you.

5 MR. WALL: I'm looking for a number of the
6 exhibits.

7 This is the February monthly report in '73.
8 Here it is.

9 THE COURT: All right. What exhibit are you on?

10 MR. WALL: I'm on Exhibit 822.15 and 822.4.

11 THE COURT: All right.

12 MR. WALL: These are entered in, without
13 objection, by the plaintiff.

14 THE COURT: All right.

15 MR. WALL: All right.

16 Also let me start by saying Dr. Maddox did testify
17 that the brakes that Mr. Crawford were exposed to was
18 sufficient contact with asbestos to be a proximate cause of
19 his mesothelioma, and he said that directly.

20 Two, Mr. Buck, a representative of Covil -- excuse
21 me, of Daniel, looked at all the records and he said point
22 blank Daniel installed all the asbestos-containing products,
23 all the pipe covering.

24 He also said Daniel purchased material directly
25 from the manufacturer, not from Covil. He said "I looked in

1 the files. The only mention of Covil is that they had three
2 people on the job at some point who were fireproofing the
3 surface of the steel."

4 Again, no testimony that Covil installed any
5 insulation or purchased any insulation.

6 Finally, Mr. Buck says, because Covil isn't listed
7 on Exhibit 822.4 of doing any work, Covil was not doing any
8 work at the plant.

9 And, lastly, the February report, which is a
10 monthly report done by Daniel, says on page -- exhibit bate
11 stamped Crawford 02 -- 012862, and the caption reads number
12 of employees on the payroll. Number of employees on the
13 Daniel payroll, and it lists under insulators 39 insulators
14 on the payroll of Daniel during this period of time.

15 Next, on page number 24, it lists the
16 subcontractors. There is a whole section that says
17 subcontractors. Covil is not listed as a subcontractor on
18 this job.

19 So clearly directed verdict is not appropriate.
20 In fact, it just supports my motion for a directed verdict.
21 Thank you, Your Honor.

22 THE COURT: All right. All right.

23 Hand up the materials that you referred to, if you
24 don't mind --

25 MR. WALL: Yes.

1 THE COURT: -- Mr. Wall.

2 I'll turn to you in a minute, Ms. McVey, but let
3 me just look at these for a second.

4 MS. MCVEY: Yes.

5 (Off the record).

6 (Back on the record).

7 THE COURT: All right. Ms. McVey.

8 MS. MCVEY: Your Honor, I'm looking at the '73
9 document that I think is the right one and the one I'm
10 looking at doesn't list the names of subcontractors.

11 THE COURT: That's true, it -- I am looking at
12 February 1973, 822.15, and it does contain on page --

13 MR. WALL: 14.

14 THE COURT: -- 14 for the February 1973
15 subcontractors, Southern Contractors, Gainwell Mechanical,
16 Stewart Ramseur, Freeman Mechanical, Thomasson Engineering.

17 MS. MCVEY: Okay. I just want to make sure I'm
18 looking at the right. I'm not, so that helps.

19 THE COURT: Okay. Which one are you looking at?

20 MS. MCVEY: I don't know if we even admitted this
21 one. It was a '73.

22 THE COURT: I got you.

23 MS. MCVEY: But --

24 THE COURT: This is a monthly report.

25 MS. MCVEY: Okay. Okay.

1 MR. WALL: And two pages later it says there were
2 that many insulators on the job at that time during that
3 same month.

4 MS. MCVEY: Are you ready for me?

5 THE COURT: Yes.

6 MS. MCVEY: Your Honor, so a monthly report means
7 he's got one month. The contract obviously started in 1970.

8 And the bigger issue is Harley Neelands, who was a
9 Daniel employee, talked about Daniel doing the insulating
10 using Covil insulation. They are the subcontractor. They
11 are a supplier of it and a broker of insulation and that is
12 undisputed.

13 Further, Your Honor, in terms of whether or not
14 there was any testimony about whether the brakes were a
15 substantial contributing cause, in fact, it's the exact
16 opposite. Dr. Maddox testified there was probably some
17 exposure and that may constitute a minor contributory
18 component. That does not meet the standard. The standard
19 is substantial contributing factor.

20 They have no evidence to say that the brake -- any
21 brake work Mr. Crawford did was a substantial contributing
22 factor. Therefore, we are only entitled to one reasonable
23 inference on that case.

24 THE COURT: All right.

25 MR. WALL: Your Honor, I say we now have put the

1 evidence the court has in front of it, which creates a
2 question of fact.

3 THE COURT: All right.

4 With regard to the directed verdict motions as to
5 whether there is a genuine issue of material fact, setting
6 aside spoliation and presumptions for a moment, in terms of
7 whether Covil was the or a supplier, at best, all right,
8 what defense argues, as I see it, is the negative inference
9 from the absence of information about Covil in the memory of
10 certain witnesses and in certain documents. I heard no
11 witness say Covil was not a supplier, and I heard no witness
12 say Covil never performed any insulation services.

13 What I did hear was "we've searched the records we
14 have and Covil's name does not appear," or, "Daniel did the
15 insulation work with its own forces." That's argument Mr.
16 Wall makes, but I see no testimony that says that Daniel was
17 the exclusive insulator, nor do I see any evidence that some
18 manufacturer was the exclusive supplier. In fact, to the
19 contrary, most of the evidence is that Covil was the
20 exclusive supplier, that Daniel was its largest customer.
21 There are any number of witnesses who testified that Covil
22 supplied asbestos-containing material to Celanese, to the
23 Hoechst Celanese plant, during this period of time. And
24 Daniel's own corporate representative, Harley Neelands,
25 confirms that, says that Daniel -- Covil was a supplier,

1 Daniel and Covil worked together, and Covil was an
2 installer.

3 Now, the vendor list. This vendor list, what it
4 does is this. It contains subcontractor vendors for '71
5 through '75, and that clearly means to me that everyone
6 listed on the left is a subcontractor and/or a vendor on the
7 Hoechst Spartanburg job site.

8 I noticed that there are some suppliers who are --
9 or some companies, because it lists company and description
10 of work, and it contains a number of listings about work in
11 floor painting, AC duct, roofing, lab equipment, prefab
12 building, exhaust ducts, AC ducts, AC ducts, concrete
13 curbing, install lockers and ship silos, sprinkler system,
14 building, compressor, breaker testing, painting,
15 fireproofing, cooling tower, erecting building, sheet metal,
16 AC ducts, roofing, roofing, steel insulation, and AC --
17 steel erection, AC insulation, air washers, AC ducts,
18 ceiling and chillers.

19 Well, we know from -- there is no dispute but what
20 in addition to AC insulation, there was a heavy use of
21 piping insulation throughout more than 15 miles of piping in
22 this plant, which is quite typical of all plants that carry
23 these high levels of heat, whether they are power plants, or
24 paper plants, or in this case fiber plants.

25 I noticed also that when it says description of

1 work, many of these companies you can't tell from the name
2 what that work would be. And in those cases their work is
3 specified, but I do not interpret this as some kind of use
4 of the name of Covil without Covil having any connection to
5 this project.

6 I conclude that Exhibit 822.5 puts Covil directly
7 in the picture as a subcontractor/vendor Hoechst Spartanburg
8 job site November '71 to November '75. And I find Mr.
9 Buck's testimony to the contrary not believable, in the
10 light of what everyone else has said about this. He bases
11 it -- he then kind of equivocates a little bit when he's
12 asked more questions about what this list means.

13 Now, with respect to whether the insulation that
14 was provided was asbestos, there is no real disagreement
15 about that. That was the standard during that time. There
16 is direct testimony that 90 percent of the insulation used
17 was asbestos and that the specs spec'd amosite, which is a
18 form of asbestos.

19 Now, with respect to the defective nature of the
20 material, the expert witnesses, and even the corporate
21 representative, including Mr. Palmer Covil himself, agree
22 that asbestos is unreasonably dangerous and that they
23 learned about that early on. So there is no question but
24 what it's defective and there is no question but that there
25 are other insulations that was nonasbestos containing that

1 could have been used and has been around for years and
2 ultimately were used.

3 There is no question but what Mr. Crawford has
4 been injured by this asbestos-containing product. There is
5 no disagreement that he's been diagnosed with mesothelioma
6 and the un-controverted evidence is that it's caused by
7 asbestos. And the evidence is very clear that that asbestos
8 was at least, in part, Covil's supplied asbestos, and that
9 there was an alternative design that could have been used in
10 those years that was not used.

11 In terms of his exposure, he was exposed daily to
12 many different kinds of areas of asbestos dust, both direct
13 exposure as he swept it up and indirect exposure as he
14 passed through various parts of the Celanese plant that
15 contained piping that was being actively worked on as he
16 passed through it; with mudding insulation, beating in
17 chicken wire and other activities around the piping and its
18 insulation, which discharged Kaylo and other forms of
19 asbestos surrounding the piping, and mudding, which
20 discharged raw asbestos as it was being mixed with fluids
21 and used as mudding to complete the insulation.

22 The doctors testified, both Dr. Brody and Dr.
23 Maddox, that this exposure was substantial and significant
24 and both testified that it would have caused his
25 mesothelioma.

1 With respect to comparative negligence, there is
2 not one piece of testimony of any negligence on Mr.
3 Crawford's part. There is no testimony or information that
4 he knew this material was dangerous and deliberately did not
5 protect himself. There is no testimony that Covil, or
6 anyone else, provided any protection. Mr. Palmer Covil
7 testified that it was a business decision to continue to
8 have asbestos in the product they sold, even though he knew
9 it was dangerous and could kill people.

10 In terms of intervening cause, I will charge the
11 jury, as you know, that the negligence does not have to be
12 the cause, but rather it can be a cause.

13 Intervening cause is a cause which is independent
14 and intervening of the negligent act and, in effect,
15 supercedes the effect of the negligent act with an
16 intervening cause and that the act was not foreseeable.
17 There is no testimony to support either of those
18 contentions, in my view.

19 I do not read Dr. Maddox's testimony on brake
20 exposure as saying this is an intervening cause, but while
21 at most it was a contributing cause to Mr. Crawford's
22 development of mesothelioma, which is not enough to
23 establish a defense of intervening cause.

24 With respect to the citation of Mr. Buck's
25 testimony that Daniel installed all asbestos-containing

1 products, I do not read all of what has been shown with Mr.
2 Buck to say that.

3 And I do not read Mr. Buck's testimony to say that
4 Daniel only purchased directly from a manufacturer. He did
5 not say that. He did cite some purchases he thought had
6 been made directly from manufacturers, but he does not say
7 that that was the exclusive means of Daniel getting the
8 asbestos insulation that was used to insulate the plant
9 where they had the contract and Covil had a subcontract. He
10 says that he only saw Covil work with three men fireproofing
11 structural steel, but many other witnesses testified to a
12 much larger work force by Covil and/or work force that
13 directly worked on insulation, including Covil employees
14 themselves.

15 I do not regard a one month example of a progress
16 report by Daniel as establishing exclusively that Daniel and
17 only Daniel insulated, nor do I regard the listing of work
18 force as a listing of Daniel's employees only. I think the
19 work force is composed of both Daniel's direct employees and
20 those subcontractors who were working on the job and that is
21 how the listing in that document reads. It reads work
22 force.

23 In short, there has been no testimony, expert or
24 direct factual testimony, that contravenes the testimony
25 that has been offered, even by the defendant, which

1 establishes that Covil knew at the time they sold
2 asbestos-containing materials that it could cause death,
3 that there were alternatives, and that, as Mr. Covil said,
4 they made a business decision to continue to sell
5 asbestos-containing materials. There is no contest to that
6 in anything that's been offered on behalf of the defendant.
7 And that alone, if not contested, would establish a strict
8 liability claim, as well as the implied warranty claim.

9 With respect to the negligence claim, again,
10 about -- Mr. Wall says that on the negligence claim the
11 un-controverted evidence is that Covil was not present on
12 the work site. I don't read anything in any witness who has
13 testified to exclude Covil's presence. Some don't know.
14 Some say the ones I saw were not doing any insulation.

15 Mr. Wall says that you have to direct a verdict on
16 there because the un-controverted evidence is that Daniel
17 put the insulation in. I don't think that's at all
18 un-controverted. I mean, I think the other, that the only
19 evidence we have got is that Daniel hired some
20 subcontractors to put the insulation in, but without regard
21 to who put the insulation in, the key factor in a
22 negligence, strict liability, and implied warranty to begin
23 with is that it is not successfully controverted in any
24 respect that Covil did not supply insulation materials to
25 this job. That has not been countered. The evidence that

1 has been offered that Covil was a supplier has not been
2 controverted. At best, it's either "we don't have any
3 records to show that. We did word searches and couldn't
4 find that," but there is plenty of direct evidence from
5 others that Covil, in fact, was a major player in insulating
6 in the time frame projected at the Celanese Spartanburg
7 plant.

8 MR. WALL: Your Honor, may --

9 THE COURT: Just a second. I'll certainly hear
10 from you. I just want to see if I have completed everything
11 I needed to place into the record.

12 And, again, it is not controverted that Crawford
13 experienced both bystander exposure and direct exposure.
14 About the best that could be said on the other side is we
15 "don't know or we don't have any knowledge," but he was an
16 employee who was in daily contact with this material from
17 those years and no one has disputed Mr. Crawford's testimony
18 in that regard.

19 So what I'm left with is this. I don't think
20 there is any genuine issue of material fact as to liability
21 on the three causes of action, nor do I think there is any
22 credible evidence to support comparative negligence or
23 intervening cause under our law, so I think I would be
24 justified in granting a directed verdict to the plaintiff on
25 all three causes of action and simply submitting this case

1 to the jury on liability.

2 And I also think that the two defenses, I should
3 grant a directed verdict on those, because they don't meet
4 the requirements of South Carolina law to even be asserted.

5 I will listen to anything that you got to say one
6 more time, Mr. Wall, before I make my ruling.

7 MR. WALL: Yes, Your Honor.

8 I was just going to point out again Mr. Buck
9 testified that they bought the insulation from the
10 manufacturers. He didn't say suppliers. He didn't say
11 anything else. He said "we bought it from the
12 manufacturers." I'm not going to argue with the court, but
13 that's what the record says.

14 THE COURT: All right.

15 All right. Well, I have really struggled with
16 this and I will direct a verdict with respect to your
17 affirmative defenses. I think that's beyond any
18 peradventurous doubt.

19 I -- the strict liability and implied warranty
20 causes deal with presence of law that are occasioned by the
21 sale of this product.

22 The negligence cause of action deals with the
23 knowledge that a purveyor the product has.

24 And, again, I am just -- if the only thing that
25 can be said is that one witness said "we bought from the

1 manufacturer," that is not a definitive enough statement,
2 given his other testimony, to exclude the purchase from
3 Covil as a subcontractor and just doesn't provide anything
4 definitive.

5 I ask you this, Mr. Wall. Other than Mr. Buck's
6 statement "we bought from the manufacturer," what else is
7 there in the record that excludes or even contests the
8 multitude of other testimony that Covil was the supplier?

9 MR. WALL: No one testified that Covil was the
10 supplier in this case.

11 THE COURT: Oh, yes, many people testified to
12 that.

13 MR. WALL: No, Your Honor.

14 Anyway, my opinion. I'm not going to argue with
15 the court.

16 There is -- the only testimony we have is Mr. Buck
17 looked at all the files on this case and said Covil was not
18 there.

19 THE COURT: Now, Mr. Covil -- Mr. Buck was looking
20 at whose files?

21 MR. WALL: Daniel's.

22 THE COURT: Uh-huh.

23 MR. WALL: He said here I went through 40 boxes
24 and, you know, reels of video -- not video -- film and could
25 find nothing about Covil anywhere near that project --

1 THE COURT: Uh-huh.

2 MR. WALL: -- except for three men. He did have
3 that reference. He did have for the record that three men
4 from Covil were there doing fireproofing. That's -- that's
5 the only document in the entire Daniel file on construction.

6 THE COURT: He's excluding from that that Daniel
7 Document 822.4 that contains the name of Covil.

8 MR. WALL: He said that means -- that means they
9 weren't there.

10 THE COURT: Yeah, I understand that.

11 MR. WALL: I know you disagree with him, but that
12 becomes a question of fact with the jury.

13 THE COURT: Uh-huh.

14 MS. MCVEY: Your Honor, just briefly in response
15 to that, two things. A Daniel employee is Harley Neelands.
16 A Daniel employee is Harley Neelands.

17 THE COURT: Who said they were there without a
18 doubt.

19 MS. MCVEY: Said not only were they there, they
20 were bringing in their big Covil truck.

21 Mr. Buck wasn't at the Celanese plant, the
22 Spartanburg Celanese plant. And whether or not he found it
23 in his records is a different beast than whether or not they
24 were there.

25 The un-controverted testimony that Harley

1 Neelands, who was there as a Daniel employee, saw Covil
2 there supplying insulation.

3 MR. WALL: Supplying something.

4 MS. MCVEY: No, supplying insulation. That's what
5 he said.

6 THE COURT: He does say that.

7 MS. MCVEY: All right, Your Honor. And this is --

8 In response to Mr. Buck, when he was talking about
9 buying from other manufacturers, he is talking about buying
10 asbestos-free insulation from other manufacturers, and
11 that's -- it's on page -- okay, I'm sorry, hold on.

12 MR. WALL: Page --

13 MS. MCVEY: Page 36.

14 Here, I can bring it up to you, if that would
15 helpful.

16 THE COURT: That would be helpful.

17 "Daniel. I know our client went asbestos free in
18 '73. '73 and '74.

19 "Okay. You are saying in those 40 boxes of
20 documents there are specifications for Spartanburg Celanese
21 post-'73 that show asbestos-free insulation?

22 "A. I didn't see any documents. Oh, yes I did.
23 I saw a specification document generated by Daniel engineers
24 that said our -- all of our insulation is asbestos free.

25 "And where were you getting that insulation from?

1 "The insulation manufacturers, whoever they were,
2 Johns Manville, Certanteed. I don't know who they bought
3 them from, okay?"

4 And that's the asbestos-free insulation I think
5 that's pretty clear we are talking about.

6 MS. MCVEY: And that was in '73 and '74.

7 THE COURT: Right.

8 All right.

9 I mean, most of the time what judges do is take
10 the easy road and say hey, hey, hey, we will let it go to
11 the jury.

12 This case is very different because it's very
13 clear that this case, and that Mr. Wall has been and client
14 has been very candid about this, this case is not being
15 controlled by Covil, the defendant. It's being controlled
16 by the insurance companies that ensure Covil and we are
17 going to have some discussions about them, who they are and
18 what needed to be disclosed about them in this case in just
19 a few minutes, but they have apparently directed the defense
20 of this case. And, therefore, Mr. Wall is really been
21 pretty hamstrung about what can be done. He's submitted
22 things from the records that have been disclosed in
23 discovery and the depositions that have been disclosed in
24 discovery and that's it. There has been no offering of any
25 expert witness. The only live witness that's been offered

1 is Mr. Glenn, who was asked a few questions in the
2 plaintiffs' case by defense and that's it. So there is no
3 real attempt to meet the issue of fact that are present in
4 this case about the manufacturer of this material, the
5 exposure of it, to it, its presence in Celanese, and this
6 thin reliance on one statement of many by Mr. Buck as the
7 foundation for the assertion that there was no Covil
8 insulation in this plant. I don't find that the statement
9 that was just read supports that. It is talking about
10 asbestos-free insulation and not the asbestos insulation
11 that we have been talking about. So I am in a dilemma.

12 I think my duty is to grant all of these directed
13 verdict motions and submit this matter to the jury on
14 liability, and that's what I'm pondering.

15 What I would like to do is take about a ten minute
16 break to ponder all that and then I'll come back and make my
17 ruling.

18 (Whereupon, proceedings were recessed)

19 (Whereupon, proceedings were reconvened)

20 THE COURT: All right. As I indicated in my
21 discussion before we took the break, I am convinced that
22 there are no genuine issue of material fact, setting aside
23 spoliation and presumption. And put those things into the
24 picture, I think the picture is even stronger, but I wonder
25 if I do the plaintiff any real favors if I grant these

1 motions, because I would certainly have the opportunity at
2 the judgment non abstante veredicto stage to deal with this,
3 if in the unlikely event the jury did not return a verdict
4 of liability in this matter.

5 So taking that into consideration I have decided
6 that the best course of action is the least expensive to
7 both sides of this equation is to deny the directed verdict
8 motions for negligence, implied warranty, and strict
9 liability at this time, but I will grant the motions to
10 direct a verdict with respect to the affirmative defenses of
11 intervening act and comparative negligence. I find
12 absolutely no supporting evidence at all for the notion that
13 there is any negligence of Mr. Crawford which could be
14 compared against the negligence of the defendant.

15 And, likewise, find that there is absolutely no
16 evidence in the record of any independent intervening act of
17 another and that such an act is not foreseeable.

18 And, therefore, I will direct that those
19 affirmative defenses not be presented to the jury, nor will
20 they be asked to render a verdict on those motions, the
21 verdict having been directed for the plaintiff in regard to
22 those two defenses.

23 All right.

24 MR. WALL: Your Honor, for the record I need to
25 make my motions for a directed verdict.

1 THE COURT: Yes, you do, and you certainly are
2 permitted to do that, Mr. Wall.

3 MR. WALL: Your Honor, first of all I would renew
4 my motion for directed verdict as stating at the end of the
5 plaintiffs' case.

6 THE COURT: Certainly.

7 MR. WALL: And now I, as I said, have renewed
8 those, plus I add to -- I consider the record that we put in
9 in the defense case that all insulation was purchased from
10 the manufacturer, not from Covil; that all the insulation
11 was installed by Daniel, as their own witnesses say that,
12 that they did all the work, and Mr. Buck says that; and for
13 Celanese, they have no record of any work being done by
14 Covil. And then we now have the two documents discussing
15 over their directed verdict motion which clearly shows that
16 Daniel did all the construction themselves and they had all
17 the insulation on site.

18 So we would move for a directed verdict as to
19 negligence, as to strict liability, and as to implied
20 warranty, and also as to punitive damages.

21 THE COURT: All right, sir.

22 And Ms. McVey?

23 MS. MCVEY: I'm happy to respond to all of these
24 issues, although we just --

25 THE COURT: Well, I think your response to the

1 directed -- your response in the form of your own directed
2 verdict is an adequate coverage to the information.

3 And so I would simply say I deny the motions for
4 directed verdict and simply observe with respect to the
5 assertion that the uncontradicted evidence is that all
6 insulation was installed by Daniel. I don't think that is
7 the case at all. And even Daniel's own corporate
8 representative, Mr. Harley Neelands, says that Covil and
9 Daniel worked together; that Covil -- he was asked whether
10 Covil supplied insulation on the Celanese job in the time
11 frames we are talking about. He said yes. And he was asked
12 how he knew that and he said that he saw Covil trucks coming
13 and delivering the insulation to the Celanese plant. That's
14 from Daniel's representative.

15 MR. WALL: Your Honor, Mr. Neelands was not the
16 Daniel's representative. Mr. Buck was the Daniel's
17 representative.

18 MS. MCVEY: He was the Daniel employee.

19 THE COURT: He was the Daniel employee.

20 MR. WALL: Yes, employee.

21 THE COURT: That's -- even Buck and those are
22 corporate representatives, but they don't have to have
23 direct knowledge of things that -- this gentleman was a
24 worker bee in the Celanese plant and he had direct
25 observation of what was going on in there and said that

1 Covil and Daniel were very much involved with each other and
2 that Covil supplied the insulation, was a big supplier.

3 And in addition to that, the portion of Mr. Buck's
4 testimony that was read does not say that all insulation was
5 purchased from manufacturers. What it simply says is that
6 all asbestos-free insulation was purchased directly from
7 manufacturers. So neither of those two assertions in any
8 way would support the motion for a directed verdict by
9 defendant, and, in fact, supports the opposite.

10 These are also asserted as reasons why the
11 affirmative defenses should be considered, but I hear
12 nothing by way of any further argument contradicting what I
13 have said with respect to those defenses, which is, A, no
14 evidence that Mr. Crawford did anything negligent;

15 And, B, with respect to the intervening cause,
16 absolutely no evidence that the legal requirements of
17 intervening cause are met.

18 So on that basis I deny the motion for directed
19 verdict.

20 Now we are at the charges.

21 MS. MCVEY: Yes, ma'am.

22 THE COURT: Now, first of all, let's take up the
23 verdict form.

24 MR. WALL: No objection, Your Honor.

25 THE COURT: No objection. Therefore, what I would

1 like to do --

2 MR. WALL: I assume you are going to take off the
3 word proposed, plaintiffs' proposed.

4 THE COURT: She's put verdict form up where jury
5 charge is. Strike jury charge out. Strike plaintiffs'
6 proposed and --

7 MS. MCVEY: Yes, ma'am.

8 THE COURT: And verdict form will be as has been
9 proposed, and that's great.

10 MS MCVEY: Yes, ma'am.

11 THE COURT: All right. Now, put aside the
12 spoliation charge for a minute.

13 My approach to this will be to go down the
14 plaintiffs' jury charge, and here is my how, and then go to
15 defendants and go down yours by number to be sure that I
16 haven't missed anything or that there is some alternate
17 wording that is preferred. So that's how I'm going to do
18 it. If we can do it that way, is that satisfy?

19 MS. MCVEY: Yes, Your Honor.

20 And just briefly I know I e-mailed everybody this,
21 but plaintiffs' proposed charge I believe number 19?

22 THE COURT: Yes, the intervening -- the --

23 MS. MCVEY: Duty of premises.

24 THE COURT: Duty of premises. Neither -- the
25 defendants have not asked for that charge. It's certainly

1 not applicable here and so I have notes to strike it when we
2 come to it.

3 MS. MCVEY: That would be great.

4 THE COURT: All right. So we now start with
5 number 1, the role of the jury.

6 The only thing -- I may have a typo in here and
7 I'm going to give my copy to plaintiff. It's on page number
8 3. This thing is a little awkwardly worded, but it's that
9 first line. "Anything I may have said or done during the
10 trial" -- well, don't worry about it. Keep it as it is.

11 MS. MCVEY: Okay.

12 THE COURT: It's kind of awkwardly worded.

13 MS. MCVEY: I'm happy to change it if you want to
14 make it --

15 THE COURT: Page 5 is charge 2. Burden of proof.

16 I told you at the beginning to strike that. I
17 didn't give them an opening charge.

18 MS. MCVEY: So that's right.

19 THE COURT: I figured they had heard enough from
20 Mark Hayes about how things generally worked, so I did not
21 give them an opening charge.

22 MS. MCVEY: We started with the burden of proof in
23 a civil case.

24 THE COURT: All right. "The plaintiffs have the
25 burden of proving their case. And the burden of proof in a

1 civil case is," so that's how it started.

2 MS. MCVEY: Okay.

3 THE COURT: Y'all just stop me any time that you
4 got a problem.

5 Mr. Boger, stop me any time that you got a
6 problem.

7 MR. BOGER: Yes, Your Honor. Thank you.

8 THE COURT: All right.

9 Number 3 is the charge on evidence, general charge
10 on evidence.

11 Number 4, direct and circumstantial evidence.

12 And the only thing I would change is on page 7,
13 second paragraph, that starts by of example, put that it was
14 raining outside. That will parallel with what was said up
15 above.

16 MS. MCVEY: Say one more time. "By way of
17 example, if a witness testifies?"

18 THE COURT: "You could conclude that it was
19 raining."

20 MS. MCVEY: Okay.

21 THE COURT: Just put "outside," period.

22 MS. MCVEY: Okay.

23 THE COURT: Add the word "outside".

24 MS. MCVEY: I'm so sorry, I just don't understand.

25 THE COURT: All right. The paragraph that starts

1 "by way of example, if a witness testifies that a witness
2 saw it was raining." Do you see that paragraph?

3 MS. MCVEY: Uh-huh.

4 THE COURT: "That would be circumstantial evidence
5 from which you could conclude that it was raining outside."

6 They brought into the room the circumstantial
7 evidence of the outside raining by the water on their clocks
8 and all that kind of thing.

9 MS. MCVEY: Okay. May I ask what you have done?
10 I just don't understand what you are telling me to take out.
11 I'm sorry.

12 THE COURT: I'm not telling you to take out
13 anything. Add.

14 MS. MCVEY: Okay. I'm sorry. I think I'm tired.

15 THE COURT: Charge number 5, elements evaluating
16 the witness testimony. Elements evaluating witness
17 testimony.

18 MS. MCVEY: I'm fine with that.

19 THE COURT: Number 6, expert testimony.

20 Number 7, expert witness and causation.

21 Number 8, deposition testimony.

22 Number 9, taking notes.

23 Number 10, summary of plaintiffs' claims.

24 Now, let me say this. Here is what I would do to
25 parallel this thing. It says "the plaintiffs claims in this

1 case are based on three theories. The first is negligence,
2 which includes product liability negligence and premises
3 liability negligence."

4 MS. MCVEY: I'll take that out.

5 THE COURT: The second is -- I would take that
6 premises liability negligence. And, frankly, I would just
7 say the first theory is negligence.

8 MS. MCVEY: Uh-huh.

9 THE COURT: Strike that.
10 The second is strict liability.
11 Third is called breach of implied warranty.

12 MS. MCVEY: Agreed.

13 THE COURT: Plaintiff is not required to prove
14 all.

15 Now, what I would do is say charge number 11 is --
16 where have we got negligence?

17 We got strict liability and we got all kinds of
18 things about reasonable alternative design, dangerous
19 product and so forth and so on. Duty of product
20 manufacturer.

21 MS. MCVEY: It's on charge 17, on page 17.

22 THE COURT: Right. That's the third and final
23 theory. I would put that as the first theory.

24 MS. MCVEY: You would put that as first?

25 THE COURT: Uh-huh.

1 MS. MCVEY: Okay. So I'll put -- I'm just going
2 to put --

3 THE COURT: So that's charge number 11 is what I
4 would do.

5 MS. MCVEY: So make charge number 17 charge number
6 11.

7 THE COURT: Right, and then you re-number these
8 12.

9 And then where is implied warranty?

10 MS. MCVEY: It is -- hold on.

11 Charge 16, or what was formerly 16, on page 15.

12 THE COURT: I would take charge 16 and make it
13 charge 13, or charge -- yeah, charge 13. I'd put -- that's
14 implied breach of warranty.

15 MS. MCVEY: Okay. So charge 11 would be
16 negligence.

17 Charge 12 would be strict liability.

18 Charge 13 would be warranty.

19 THE COURT: Warranty, and that gives you your
20 three causes of action.

21 Then just re-number the rest of them sequentially
22 so that they -- because they are all products liability
23 discussions or strict liability discussions, this kind of
24 thing.

25 MS. MCVEY: Okay. Got it.

1 THE COURT: Okay?

2 MS. MCVEY: Okay.

3 THE COURT: So that -- then that becomes --

4 Charge 12 is strict liability.

5 Charge 11 is negligence, right?

6 MS. MCVEY: Uh-huh.

7 THE COURT: Charge 11, negligence.

8 12, strict liability.

9 13, which is now 16, is implied warranty of
10 merchantability.

11 MS. MCVEY: Yes.

12 THE COURT: And then --

13 MS. MCVEY: And you have got --

14 THE COURT: Charge 12 is 14.

15 MS. MCVEY: Alternative design?

16 THE COURT: Alternative design.

17 MS. MCVEY: Okay.

18 THE COURT: Charge 13 is charge 15.

19 MS. MCVEY: Okay.

20 THE COURT: Charge 14 is charge 16.

21 Charge 15 is charge 17.

22 Charge 16 we say is 13.

23 Then charge 17 is charge 11. That's negligence.

24 MS. MCVEY: Uh-huh.

25 THE COURT: And then you get to charge 18, which

1 is going to be charge 20?

2 MS. MCVEY: I think it goes back to 18, right?

3 THE COURT: Oh, it goes back to 18.

4 MS. MCVEY: Uh-huh.

5 THE COURT: It's okay now. Okay.

6 Charge 19 is out.

7 MS. MCVEY: Yup.

8 THE COURT: Charge 20, state of the art.

9 MS. MCVEY: Uh-huh.

10 THE WITNESS: Charge 21, design defects.

11 Charge 22, breach of duty.

12 Charge 23, causation.

13 Charge 24, there can be more than one cause.

14 Charge 25, actual damages.

15 Charge 26, actual damages, personal injury. Let's
16 look at that.

17 Charge 27, future.

18 Charge 28, loss of consortium, subject, of course,
19 to the defendant's contentions that loss of consortium is
20 not recoverable.

21 Charge 29, jury deliberations.

22 Charge 30, the verdict form.

23 Charge 31, retire to the jury room.

24 All right. Now, the defendant's request to
25 charge.

1 I think I have covered everything in number 1, the
2 introduction, Mr. Boger?

3 MR. BOGER: Yes, Your Honor.

4 THE COURT: You speaking for the defense?

5 MR. BOGER: Yes, Your Honor. Generally speaking
6 my attempt in formulating these was to reduce some of the --

7 THE COURT: Verbiage?

8 MR. BOGER: Verbiage, yes, ma'am, just to be frank
9 about it.

10 THE COURT: Well, no, and frankly if I were
11 starting from scratch, I like what you have done and I may
12 well in future case use it, but I haven't got enough time
13 right now to go back and see whether I have covered
14 everything.

15 It's so terrible to give these juries this long
16 charge like I have got it and you worked very hard at
17 streamlining it, which, as I say, is something that I am
18 going to study in the future. This is the product of lot of
19 back and forth from a lot of different lawyers being sure
20 that I have satisfied everybody, but the economy of language
21 is to be much admired about what you have given me.

22 MR. BOGER: Well, thank you, Your Honor. I --

23 THE COURT: But grab me if there is something that
24 you think I have left out as I go through your numbers.

25 MR. BOGER: And I'm trying to keep up, but

1 crossing everything out. Let's go through them. I don't
2 think -- I think this is --

3 THE COURT: Number 1, introduction.

4 MR. BOGER: Got that.

5 THE COURT: Number 2, the burden of proof.

6 MR. BOGER: That's in there.

7 THE COURT: Number 3, the evidence. Supported by
8 evidence can't be influenced by passion or prejudice. Got
9 that.

10 Number 4, direct and circumstantial.

11 MS. MCVEY: It's in there.

12 MR. BOGER: That's in there.

13 THE COURT: I, of course, go on to do what you do
14 in 6 and connect the dots and so forth and so on.

15 Direct evidence and circumstantial evidence, 5 and
16 6.

17 MR. BOGER: Those are covered.

18 THE COURT: Number 7, statements of counsel.

19 MR. BOGER: Is that --

20 THE COURT: I believe we have got that in there
21 that the statements are not evidence. They are just their
22 position or contention, and I have got that it applies to
23 opening, as well as closing.

24 MR. BOGER: Okay.

25 THE COURT: Number 8, objections, and I have got

1 in there that you don't hold it against them and it's their
2 means of keeping out improper evidence is what they are
3 supposed to do. And don't read any opinion into me. I
4 don't have an opinion.

5 Number 9, questions. That one is a little
6 different and I have got don't speculate, but the
7 insinuation -- what you are zeroing in on is the question,
8 not the answer, right?

9 MR. BOGER: Correct.

10 THE COURT: All right. I'm going to just flag
11 that to see if maybe I need to do anything with that.

12 Unanimity of verdict. We certainly got that.

13 Expert witness.

14 MR. BOGER: Got that.

15 THE COURT: Expert and causation.

16 MR. BOGER: Got that.

17 THE COURT: Conflict among the experts, which
18 really have no need in this case because we don't have a
19 conflicting group of experts.

20 Evidence limited for -- admitted for limited
21 purposes. We don't really have anything on those.

22 Products liability.

23 MS. MCVEY: I think we have got that.

24 THE COURT: I think we have got --

25 MR. BOGER: Yeah, I think all these -- the next

1 few are --

2 THE COURT: Negligence elements.

3 Negligence, duty of care. Going to read them out.

4 You grab me if you have any problem.

5 MR. BOGER: Okay.

6 THE COURT: 18, products liability.

7 19, actual exposure.

8 20, proximate cause.

9 21, failure to warn.

10 22, warning. It's not automatic, but does it
11 contain a warning.

12 23, this is some kind of an intervening -- this is
13 where the plaintiff admitted he knew the dangers of the
14 product. We don't have that here.

15 24, failure to warn.

16 Warning would have made a difference. I don't
17 think we got that here. The only un-controverted testimony
18 is I would quit the job.

19 Products liability, strict liability. Got that.

20 Unreasonable dangers, so forth.

21 Product liability, state of the art. Got that.

22 Product liability, design defects. Got that.

23 Product liability, strict liability to statutory
24 defense. No, I don't think we have got that.

25 Reasonable alternative design. There is no -- 29,

1 we do have that.

2 Number 30, intervening cause. We have got that.

3 Number 31, this is the industry standards in the
4 state of the art. We have got that.

5 Products liability. Had no reason to know about
6 the danger. I think we have got. It's covered under the
7 duty to warn.

8 Fault of others, 33.

9 MR. BOGER: Do we have that in the --

10 MS. MCVEY: I think that's in there.

11 THE COURT: I believe that's in there.

12 MS. MCVEY: Actually I don't think it is, but I
13 think they can --

14 THE COURT: What evidence are we talking about
15 that deals with his injury and others alleged fault? At
16 best what you say is we didn't supply it, but --

17 MR. BOGER: Well, and others says that Daniel
18 would have been on site installing.

19 THE COURT: I'm going to put a question mark by
20 that.

21 Plaintiffs' claims against others.

22 MS. MCVEY: That --

23 THE COURT: That's violative of Smith v. Tiffany,
24 so I'm not going to charge that.

25 Number 35, comparative negligence. I have struck

1 that.

2 MR. BOGER: They are out.

3 THE COURT: Number 36, comparative negligence, I
4 have struck that.

5 So let's go back to the ones that I have flagged.

6 MR. BOGER: I believe it was just two, is that
7 correct?

8 THE COURT: Yes. Number 9, the questions.

9 MS. MCVEY: Your Honor, I think that's covered in
10 the other charge.

11 THE COURT: Give me a spot.

12 MS. MCVEY: It is -- hold on --

13 Charge number 3, under evidence. You get about
14 halfway down that paragraph past the stipulation sheet.

15 "We have had excellent lawyers in this case and
16 they have zealously advocated for their client's position,
17 but they are not the witnesses, so what they say is not
18 evidence. If you remember something different than what a
19 lawyer said, your memory controls," etcetera, etcetera.

20 THE COURT: Yeah.

21 MS. MCVEY: Which is the same thing as -- I mean,
22 lawyers are only asking questions.

23 THE COURT: The first cousin of what we are
24 talking about.

25 Here is what I want you to do. Take that --

1 All right, number 9.

2 MS. MCVEY: Uh-huh.

3 THE COURT: And add it to the bottom of number 1,
4 which is the role of the jury. The very last of it says "as
5 to any question to which objection is sustained, you may not
6 speculate," and add to it, "you must never speculate to be
7 true an insinuation by a question." Just take that sentence
8 and add it to the bottom. It's on page four of your
9 proposed charge.

10 MS. MCVEY: Okay. You mean after, after being
11 questioned which an objection was sustained you must not
12 speculate?

13 THE COURT: Just add to that another little
14 paragraph that contains exactly what was said in number 9,
15 which is "you must never speculate to be true any
16 insinuation suggested by a question asked the witness and a
17 question is not evidence may be considered only as supplied
18 meaning to the answer."

19 MS. MCVEY: Okay.

20 THE COURT: Just put that down at the bottom of
21 that.

22 MS. MCVEY: Yes, ma'am.

23 THE COURT: So that included, Mr. Boger.

24 MR. BOGER: Thank you, Your Honor.

25 THE COURT: And then as to -- I thought I had

1 something in here about an empty chair.

2 Ms. McVey?

3 MS. MCVEY: Hold on, I'm sorry. Let me look. I
4 usually know this by heart, but --

5 THE COURT: Empty chair is not in there.

6 No, that's just my colloquial. I would never put
7 empty chair in there, but I thought I had something about
8 fault of others. And I think it's in that part where I say
9 it can be a cause or not the cause, or words to that effect.

10 MS. MCVEY: Here you go. It starts charge 24, on
11 page 26.

12 THE COURT: 26?

13 MS. MCVEY: Yes, ma'am. It's not exactly it, but
14 if you read through the next paragraph.

15 THE COURT: Yeah, charge 24, there can be more
16 than one cause --

17 MS. MCVEY: Uh-huh.

18 MR. BOGER: Which I think goes to the cause, but
19 maybe necessarily within a defendant's cause to assert that
20 other entities contributed to that injury or cause.

21 THE COURT: He said he is taking this from Machin
22 v. Carus Corporation.

23 Pull up Machin.

24 MS. MCVEY: That's a different -- I think it was
25 in a different charge than Machin.

1 THE COURT: I do too, but I'm just going to take a
2 look at it since that's where he's citing it for this. He's
3 citing the claim it's an empty chair case.

4 MS. MCVEY: Okay.

5 THE COURT: Although empty chair, we're really
6 talking about more -- this is comp case. An empty chair is
7 what we are talking about when we really are talking about
8 Smith v. Tiffany.

9 All right, you look up Machin v. Carus Corp, and
10 I'm going to look up Smith v. Tiffany.

11 That's what y'all need to be looking at. That's
12 what I'm trying to do.

13 I'm trying to look up Smith v. Tiffany and Machin
14 v. Carus.

15 Mr. Boger, tell your folks that when they do this,
16 this number 33 is an accurate recitation of the law that was
17 given to us in the following case: Smith v. Tiffany,
18 T-I-F-F-A-N-Y, 419 SC 548, 799 S.E. 2d at 479, 2017. It
19 could be more than one cause. All right.

20 All right, troops, turn to charge number 24.

21 MS. MCVEY: Do you want me to add it after 24?

22 THE COURT: Yeah.

23 MS. MCVEY: Okay.

24 THE COURT: Just put -- don't start it off with
25 under South Carolina law.

1 MS. MCVEY: Okay.

2 THE COURT: Just start it off "a defendant is
3 entitled to assert that other persons or entities, whether
4 or not parties to the case." Strike whether or not "parties
5 to the case."

6 MS. MCVEY: Okay.

7 THE COURT: "Other persons or entities contributed
8 to the alleged injury or damages and are liable for any or
9 all the damages. Matters of the others alleged fault in
10 causing plaintiffs' injuries" --

11 MS. MCVEY: Your Honor --

12 THE COURT: Strike the "matter of the others
13 alleged fault in causing has been raised by the defendant."

14 MS. MCVEY: What I strike --

15 THE COURT: Strike that.

16 MS. MCVEY: Hold on. I have got -- "so a
17 defendant is entitled to assert that other persons or
18 entities" --

19 THE COURT: "Contributed to the alleged injury or
20 damages and are liable for any or all the damages."

21 Hang on.

22 "And it is proper for you to consider the actions
23 of others in determining fault and causation."

24 MS. MCVEY: Your Honor, I was just reading Smith
25 v. Tiffany again, but I thought there was some burden of

1 proof for them to assert that. In other words, they come
2 forward with some evidence that others were at fault.

3 THE COURT: That's what Machin v. Carus says.

4 Now, let's see what Machin v. Carus says. Let's
5 see if they are going to get this. Machin v. Carus.

6 (Off the record).

7 (Back on the record)

8 THE COURT: The Carus charge speaks of it in terms
9 of employer versus other party and this defense has not
10 been -- or this contention has not been postured quite this
11 way. It's -- he doesn't contend that Mr. Crawford was an
12 employer of Daniel, which is who he says did all the
13 insulation work. He just contends it's somebody else's
14 fault.

15 MS. MCVEY: Right.

16 THE COURT: I don't think I could charge it just
17 like that. I think I'm going to stick with what I said,
18 which is that I am going to add to the bottom of 24 "there
19 can be more than one cause.

20 "A defendant is entitled to -- out of 33.
21 Striking the first under the South Carolina law and saying
22 "a defendant is entitled to assert that other persons or
23 entities contributed to the alleged injury or damages and
24 are liable for any or all of the damages" period -- or
25 comma, excuse me, "and it is proper for you to consider the

1 action of others in determining fault and causation,"
2 striking out "that the matter of others" and so forth.

3 MS. MCVEY: Okay.

4 THE COURT: Okay. That's how I'm going to charge
5 it, Mr. Boger.

6 MR. BOGER: I agree with that, Your Honor. Thank
7 you.

8 THE COURT: All right.

9 MS. MCVEY: And, Your Honor, we can move on, but I
10 may e-mail you later if I think Smith v. Tiffany adds
11 another little burden to that --

12 THE COURT: That's fine.

13 MS. MCVEY: -- but I can't find it now.

14 THE COURT: I'll be looking.

15 MS. MCVEY: Okay. But I'll add it as is --

16 THE COURT: Right.

17 Now, let's talk about spoliation.

18 MS. MCVEY: Yes, ma'am.

19 So we did two charges.

20 THE COURT: Let me see if I can put my hands on
21 them.

22 MS. MCVEY: I have got extras, if you need them.

23 THE COURT: Now we got spoliation. Two charges.

24 One, "spoliation is the loss or destruction of
25 evidence, and when it is established, the jury may draw the

1 inference that the evidence lost or destroyed," E-D, "was
2 unfavorable to the party responsible for its loss or
3 destruction." Kershaw v. U.S. Gypsum.

4 MS. MCVEY: That's probably our reference. I
5 don't think we need both of them.

6 THE COURT: And then another version of it is
7 "spoliation is the intentional destruction of evidence and
8 when it is established, the fact finder may draw the
9 inference that the evidence destroyed was unfavorable to the
10 party responsible for its destruction."

11 And you like the first one because it's got loss
12 in there.

13 MS. MCVEY: Right.

14 THE COURT: Okay. And it's a quote from Kershaw
15 County Board of Education against U.S. Gypsum.

16 MS. MCVEY: Which is a South Carolina case.

17 THE COURT: Right.

18 Mr. Boger?

19 MR. BOGER: I think I cited that case in one of
20 our response briefs, Your Honor.

21 THE COURT: Yes.

22 MR. BOGER: That is the law and I can't -- I don't
23 like it, but --

24 THE COURT: You don't love it, but you preserved
25 your position completely, because I ruled against you on

1 spoliation. You said there isn't any spoliation, and so
2 your position is protected and I'm simply going to regard
3 this as a reassertion of the matters that you have already
4 asserted by way of objection to my spoliation ruling, and
5 that Mr. Wall has asserted, and -- all right.

6 In that framework I'm going to say -- I'm going to
7 charge this one out of Kershaw County, which is the case you
8 cited.

9 MR. BOGER: Thank you, Your Honor.

10 THE COURT: Very good.

11 So just add that I guess at the end, or wherever
12 you think best.

13 MS. MCVEY: I'll probably put it in before
14 damages, if that suits?

15 THE COURT: Yes, just put it in wherever you think
16 it fits.

17 Now, we do have one other thing. Is there -- I'm
18 asking this. I'm not just suggesting I have to do it. Is
19 there any need to repeat the factual -- the directed factual
20 charge that I gave them?

21 MS. MCVEY: I don't think so, Your Honor.

22 THE COURT: Y'all are going to talk about it, so I
23 don't think I need to reiterate it, correct?

24 MS. MCVEY: I agree.

25 THE COURT: You agree, Mr. Boger?

1 MR. BOGER: I agree with that, yes, Your Honor.

2 THE COURT: All right.

3 Now, I had one other question.

4 All right. I want to talk to you for a minute
5 about trying to blue sky what would happen if some
6 unexpected happening.

7 I have read over what Mr. Wall said and he got
8 kind of close to the line, but he didn't say they were no
9 assets. Defunct is a mighty broad word that implies out of
10 existence, no longer in existence, so forth, but it isn't
11 quite the same thing as no assets.

12 MR. WALL: Right.

13 THE COURT: So I'm not going to tell them about
14 insurance on that basis, but I am concerned about whether
15 they are perceptive enough to take what was said by way of
16 they are no longer in existence and try to ask some kind of
17 question about well, who is going to pay for this. And
18 that's one aspect of it that concerns me, what am I to say
19 to them.

20 Now, then let's blue sky a little bit further than
21 that and speculate that the jury awards an actual damage
22 verdict, and in addition to that answers the question about
23 willful, reckless and wrongful conduct by -- in the
24 affirmative, that they say Covil was willful, reckless, and
25 wanton, and intentional in its conduct. That's the

1 platform, of course, for going forward on the punitive side.
2 And then they are going to want to know something about and
3 who is going to pay for this. So what are we to tell them?

4 MR. BRANHAM: May I address?

5 THE COURT: Mr. Branham.

6 MR. BRANHAM: How are you doing, judge?

7 THE COURT: I'm just fine.

8 MR. BRANHAM: I think that on the issue of, you
9 know, money in terms of actual damages compensation, we at
10 least have some information about their factual worth,
11 right? They can afford to pay a \$400 an hour expert to come
12 and sit here on the stand.

13 THE COURT: Yeah, y'all were very careful to ask a
14 lot of questions that you normally wouldn't drill down into
15 about the payment of experts and the expectations of the
16 experts to be paid in order to not invade Mr. Wall's
17 province of what he's being paid, but at the same time
18 suggest to them they got enough money to pay \$30,000 here
19 and \$70,000 there and so forth.

20 MR. BRANHAM: Right.

21 And so I think if Mr. Wall wants to talk about how
22 broke his client is --

23 MR. WALL: No, Your Honor, I'm not going to say a
24 word about that.

25 MR. BRANHAM: Well, but he did in opening now.

1 THE COURT: Yes, he did.

2 MR. BRANHAM: And he put it out there and so he's
3 either got some evidence of it and he's going to talk about
4 it in closing, or he's not.

5 THE COURT: He's not.

6 MR. BRANHAM: But I think we certainly have the
7 opportunity and right to put up what he said in opening and
8 say that he didn't prove that, right?

9 And I also think we have the ability to say they
10 can clearly afford a \$400 an hour expert.

11 THE COURT: Yeah, all those things can properly be
12 said. I don't think -- that's not what I'm talking about.

13 MR. BRANHAM: Okay. So, I mean, so I think that's
14 the first thing.

15 And if you get to punitive damages, and there is
16 no requirement that we put any net worth information in.

17 THE COURT: It's true.

18 MR. BRANHAM: And I think if they would attempt to
19 put anything about their inability to pay in, then we have a
20 different conversation about coverage and all the rest.

21 THE COURT: Sure, and I think Mr. Wall is too
22 smart to do that.

23 MR. BRANHAM: And so then the issue is, and I
24 think what we candidly would probably say is "you guys look
25 at what they did and you pick a number that makes sense and

1 let us worry about collecting it."

2 THE COURT: Well, I think that's probably the way
3 to handle it, and it's the first cousin of what Mr. Chapman
4 said in his opening statement, which was you don't need to
5 worry about the apportionment of responsibility. What you
6 need to worry about is what is a full recompense for the
7 injuries suffered, if you find that the injury was suffered
8 and that Covil was the cause of it. And so if it's
9 discussed in that framework, then I don't think we are
10 inviting the jury to ask these other speculations, because
11 I'm very sensitive to the notion that South Carolina does
12 not want juries to have anybody talk to them about
13 collateral source. The old cases say that and it's very
14 much underscored by this new contribution on tort feasons
15 case, the case of Smith v. Tiffany and the comp case, Machin
16 v. Carus. So I just want to be sure we don't get the jury
17 in a posture where they are going to say that. And,
18 therefore, if they were to come off the wall and ask some
19 question like that, I would direct them that that's not
20 something that you need to consider. I would -- I have no
21 instructions about that, other than to tell you you can't
22 speculate about that and you find yourself with what you
23 have heard from the witness stand and from my law.

24 Is that --

25 MS. MCVEY: I think that's right.

1 And if they are asking about ability to pay in
2 particular, I think in response you can say you award
3 whatever it is you think the law says or whatever it is, and
4 whether or not they can pay is a different story. I just
5 want to make sure we are not --

6 THE COURT: Burdening them with something.

7 MS. MCVEY: Yeah.

8 THE COURT: Well, I think, frankly, that y'all is
9 going to make that clear in your argument and they will
10 understand that, but I just wanted to cover that with you.

11 Now, it would be a different situation if we have
12 some other proceeding here that some award was made and
13 there is some problem about collectability and then you
14 might have to investigate what apparently the North Carolina
15 courts are investigating, which is how much insurance they
16 actually have, but I don't feel the need to investigate
17 anything like that at the moment. So --

18 Okay. Are we all clear about that?

19 MS. MCVEY: Yes, ma'am.

20 THE COURT: Anything else you can think of that I
21 need to be doing for or with you?

22 MS. MCVEY: No.

23 The only thing, we corrected a verdict form. I
24 can go ahead and at least hand that up and I will e-mail the
25 corrected jury charges to everyone in a little bit.

1 THE COURT: Lovely.

2 And needless to say, Mr. Boger and Mr. Wall, if
3 you all have any heartburn about anything that's e-mailed to
4 you about the charges, why simply e-mail me about that.

5 I will try to get here about 8:15 tomorrow morning
6 just in case there is anything we need to talk about and we
7 can finalize on those charges so that we can seamlessly go
8 into the closing arguments.

9 Now let's talk about closing arguments for a
10 moment.

11 Ms. McVey, Mr. Chapman, what are you asking for in
12 time? I'm not saying I'm going to give it to you, but I
13 want to double check because I want to be able to hold you
14 to it.

15 MR. CHAPMAN: Your Honor, frankly I'm not entirely
16 sure yet. My closing is not totally written, but --

17 THE COURT: You got -- we are going to decide that
18 right now and your closing would be written to conform with
19 it.

20 MR. CHAPMAN: Your Honor, I think that the court
21 would allow me, I could max to be an hour and a half and
22 hopefully shorter than that.

23 THE COURT: Well, here is what I want you to do.
24 I want you to try for one hour in your opening arguments to
25 the jury, and then I want you to have in reserve fifteen or

1 twenty minutes, so if you need it in reply to the close.

2 Mr. Wall is going to be a man of economic words,
3 it would be my bet, and I'm not putting any limitations on
4 him because I don't think he would exceed an hour.

5 MR. WALL: No, not in closing.

6 THE COURT: Well, I think we have an
7 understanding.

8 This thing is more complicated when you have
9 multiple defendants. I just tried to talc case that ended
10 up in a hung jury and a very minor defendant took all of the
11 time of Johnson & Johnson.

12 MS. MCVEY: I have watched that.

13 THE COURT: I couldn't do anything about it
14 because the parties, they had agreed, but this attorney went
15 on and on and on and the poor -- the main defendants, J & J,
16 were just sitting there dying by the minute. So I think
17 it's simpler when we have got what we have got right here,
18 but sometimes economy of words is better, I will tell' you,
19 Mr. Chapman.

20 MR. CHAPMAN: I understand, Your Honor.

21 THE COURT: All right. Very good.

22 Anything else?

23 MS. MCVEY: No, ma'am. Thank you.

24 THE COURT: All right. See you tomorrow morning.

25 (Whereupon, proceedings were adjourned to July 19,

2018)

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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
) 2017-CP-42-04429
 6 PLAINTIFFS,)
) JULY 19, 2018
 7 -vs-) SPARTANBURG, SOUTH CAROLINA
)
 8 COVIL CORPORATION,)
 (VOLUME IV)
 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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1 (PROCEEDINGS, JULY 19, 2018).

2 (Videotaped Deposition of Jerry Crawford marked as
3 Court Exhibit No. 2 for identification)

4 (Videotaped Deposition of Harley Neelands was
5 marked as Court's Exhibit No. 3 for identification)

6 (Videotaped Deposition of Dwaine Waters was marked
7 as Court's Exhibit No. 4 for identification)

8 (Deposition of Dwaine Waters was marked as Court's
9 Exhibit No. 5 for identification)

10 (Deposition of Machen Carpenter was marked as
11 Court's Exhibit No. 6 for identification)

12 (Videotaped Deposition of Bruce Boyer was marked
13 as Court's Exhibit No. 7 for identification)

14 (Videotaped Deposition of Don Buck was marked as
15 Court's Exhibit No. 8 for identification)

16 (Deposition of Don Buck was marked as Court's
17 Exhibit No. 9 for identification)

18 (Deposition of Palmer Covil was marked as Court's
19 Exhibit No. 10 for identification)

20 (Deposition of Palmer Covil was marked as Court's
21 Exhibit No. 11 for identification)

22 (CD of Bruce Boyer, Don Buck and Harley Neelands
23 was marked as Court's Exhibit No. 12 for identification)

24 (Deposition of Harley Neelands was marked as
25 Court's Exhibit No. 13 for identification)

1 MS. MCVEY: I talked with Mr. Boger this morning
2 and do not have any additions to what we had last night.

3 THE COURT: Good.

4 MS. MCVEY: I think I incorporated all the changes
5 that you wanted?

6 THE COURT: Yes, I looked at what you submitted
7 last night. It looks complete to me and accurate of what
8 we've added and so forth.

9 MS. MCVEY: Do you want an extra copy to give to
10 the jury?

11 THE COURT: I want an extra copy to give to the
12 jury and I want an extra copy that Judge McLeod may --

13 MS. MCVEY: Okay.

14 THE COURT: -- examine while I'm reading it to the
15 jury.

16 MS. MCVEY: I'm going to hand you up two extras.

17 Are you okay on the verdict form?

18 THE COURT: The verdict form is fine and I hope we
19 have copies of it for the jury, as well as for -- as well as
20 for everybody else. I will want -- you know, I reach the
21 part of the charge where I discuss the verdict form. Of
22 course, I will by handing it up and showing it to them --

23 MS. MCVEY: Okay.

24 THE COURT: -- showing them how it works.

25 MS. MCVEY: I think we have got an extra copy. If

1 not, we will print it out.

2 THE COURT: Now, the only other thing that I have
3 done just out of a super abundance of caution, and I don't
4 know that it will be needed, but I will have some material,
5 if the second phase of the trial becomes necessary,
6 concerning what would have to be charged to them.

7 MS. MCVEY: That's a great point.

8 THE COURT: And so -- but I have simply
9 accumulated it and I'm not going to get into it, because we
10 may never need to use it, but I'm just letting y'all know
11 that I do have some material that's, you know, Gamble
12 charges and whatnot that could be used, if we reach that.

13 MS. MCVEY: Okay. Great.

14 And we will also have some.

15 THE COURT: Now here is the plan. They will come
16 and we will go right into -- I will introduce Judge McLeod
17 we will go right into the opening statements.

18 When the -- when both sides opening statements are
19 completed, I will let the jury go to their jury room and be
20 refreshed. Then I'll bring them out and charge them.

21 We have already taken orders for their lunch from
22 a delicatessen, so it's cold food, so it will -- it will be
23 here at noon.

24 MS. MCVEY: Okay.

25 THE COURT: But if it's a little after that before

1 they commence deliberations, that's fine. It will be
2 available for them.

3 MS. MCVEY: Okay.

4 THE COURT: And then they will start their
5 deliberations and we will see where -- but my target is to
6 place them in their jury room for their lunch and their
7 deliberations around mid day, but no restrictions. I'm sure
8 y'all --

9 MR. WALL: I think it would be earlier than that.

10 THE COURT: It might be earlier than that. And if
11 they begin to deliberate before their lunch arrives, they
12 can do that. That's not a problem. They have other things
13 they can have to refresh themselves in there, so I think
14 they will be fine.

15 (Off the record).

16 (Back on the record)

17 THE COURT: All right. We all ready to go?

18 MS. MCVEY: Yes, ma'am.

19 THE COURT: Let's be sure Mr. Wall is comfortable
20 and then we will get started.

21 MR. WALL: I'm always comfortable.

22 THE COURT: Good.

23 All right. Bring me the jury.

24 (The following takes place in the presence of the
25 jury panel)

1 THE COURT: Good morning, ladies and gentlemen of
2 the jury. I'm pleased to have us now be able to approach
3 the final presentations to you before you begin to
4 deliberate.

5 Before I do that, let me introduce W.J. McLeod,
6 IV. Tad McLeod is a new judge, and we have a training
7 program in South Carolina that has our newest judges, before
8 they begin their active service, train with more experienced
9 judges, and it is my pleasure to have Judge McLeod on the
10 bench with me this morning to observe the final phases of
11 this trial. He was here in the jury box earlier this week
12 to see the opening of the trial. He's now been sitting with
13 other judges this week on other cases and learning how all
14 different kinds of cases occur, but this is an unusual case,
15 as you know, and one that involves complexities that are
16 sometimes not present in the average jury trial. So this is
17 going to be a good experience for him to see the closing
18 arguments to you, to see the charge to the jury, and to
19 follow your deliberations until you complete deliberations.

20 So with that, I will now turn to plaintiffs'
21 counsel.

22 You will be hearing your -- to kind of outline
23 this morning is you will hear the opening arguments by the
24 plaintiffs' counsel. Then you will hear the arguments,
25 closing argument of defense counsel, and then you will hear

1 a reply from the plaintiffs, if they reserve sufficient time
2 to do that.

3 When the arguments are complete I'll send you to
4 your jury room to be refreshed and then you will come back
5 out and I will give you the charge on the law to the jury.

6 And then when I send you back to the jury room, I
7 will send you with all the exhibits, of course, and with
8 these charges, so you will have them. I don't say you have
9 to have them, you have to read them, you have to become a
10 law student, or anything of that nature, but if there come
11 up issues that you don't feel like you need to send a
12 question out to me, but you want to refresh yourself on what
13 was said, you will have that in your jury room with you.

14 At the time that you go back to -- at the time
15 that you retire after you hear the charges to the jury, we
16 will have lunch ready for you at that time. You may be back
17 there before lunch comes, in which case you can begin your
18 deliberations and then if you will let me know if you have
19 questions. The bailiffs, of course, is your life line for
20 anything that you need from us and we will proceed from
21 there. So that's kind of the outline of what we are looking
22 at as this day begins. Thank you very much.

23 I have been a lawyer for almost 50 years and I
24 have been a judge for 30 of those years and I have did a lot
25 of work as a trial lawyer and I have seen a lot of trials in

1 my time. I haven't seen any jury that would exceed your
2 attentiveness.

3 I told you when we began that we begin these
4 trials, you are kind of like a deer in the headlights. I
5 am, because this is not material that you hear every day,
6 even for somebody who tries a lot of these types of cases,
7 and all that terminology the first day that you listen to
8 it, you are kind of like reeling from it. Maybe even get a
9 little sleepy, but as time progresses I can see on your face
10 the kind of attention that you have paid and the kind of
11 more comfortable feeling that you have about your ability to
12 embrace this material and there is a good reason for that.
13 Our jury system and our system of justice in this country is
14 founded on the concept of justice delivered by a jury of
15 your peers, regular ordinary citizens who use their common
16 sense and law as the judge explains it and try to reach a
17 verdict that is objective and fair, and I am very, very
18 confident in your ability to do that, so I thank you to
19 begin for the kind of attention that you have paid, and now
20 the closing arguments.

21 Plaintiffs, you may begin.

22 MR. CHAPMAN: Thank you, Your Honor.

23 Good morning, ladies and gentlemen.

24 It's an intense few days. It's crazy for me to
25 believe that it was just a few days ago that I had stood up

1 here and told you everything that you were going to hear in
2 this case.

3 I promised you that you were going to hear that
4 Covil knew it, they did it, and they hid it. I think I have
5 kept that promise.

6 This is the most open and shut case I have ever
7 seen in my life.

8 You have seen a lot of evidence, a lot of
9 documents, a lot testimony. I think the one thing that
10 those things have made clear, and I say this without
11 hesitation, Covil is a terrible company. Covil did terrible
12 things.

13 There is an old proverb I think is significant
14 here. "When a person dies, worlds are destroyed." I think
15 what that means to you is that when Mr. Crawford dies, which
16 he will, worlds are going to be destroyed. This affects not
17 only Mr. Crawford, this affects his wife. This affects his
18 kids, his grand kids, the grand kids he's never going to get
19 to meet, and this didn't have to happen. It should not have
20 happened.

21 What the evidence has made clear, ladies and
22 gentlemen, is that Covil did not value human life. They
23 didn't care about it in 1950. They didn't care about life
24 in 1965, 1970, 1974. And what's clear is that Covil doesn't
25 care about human life today. That's why you're here.

1 That's the question we have to answer because they refused
2 to do it.

3 I want to take a second and go through some of the
4 undisputed facts that we have in this case. It is
5 undisputed that Jerry Crawford worked at Celanese
6 Spartanburg from 1970 to 1974. It is undisputed that he was
7 exposed to asbestos-containing pipe insulation. He has
8 mesothelioma and he is going to die. No one told you any
9 different than that. And importantly, ladies and gentlemen,
10 he didn't do anything wrong. Not a single soul sat here and
11 told you Mr. Crawford did anything wrong. That is
12 undisputed.

13 This is the disputed facts. I told you at the
14 very beginning we have a fundamental disagreement about the
15 value of human life.

16 MR. WALL: Your Honor, I object. The issue is not
17 the value of human life. It's the damages to its survivors,
18 and I object.

19 THE COURT: Overruled. I consider it fair
20 argument on the matters that are submitted.

21 MR. CHAPMAN: Thank you, Your Honor.

22 THE COURT: You may continue, Mr. Chapman.

23 MR. CHAPMAN: The fundamental disagreement we have
24 is the value of human life. Beyond that what you have to
25 decide is were Covil's actions willful, wanton, and

1 reckless. That's what we are going to get into.

2 Here is what the evidence shows. The evidence
3 shows that Covil supplied asbestos-containing insulation to
4 the Celanese Spartanburg facility. The evidence shows Covil
5 did that when they knew their products would kill people.
6 The evidence shows that not only did they know it, not only
7 did they do it, but they hid the information. They hid it
8 from people like Jerry Crawford. There is direct evidence
9 documents and testimony that shows every single one of those
10 and it is un-controverted.

11 They knew it. They knew it. Covil knew asbestos
12 could kill. You heard by deposition from Palmer Covil, the
13 founder of Covil Insulation. He admitted to you by his
14 deposition he knew asbestos could kill. He attended the
15 Selikoff conference. You heard about Dr. Selikoff; knew all
16 about mesothelioma; knew all about the link between asbestos
17 and mesothelioma and he told people like Palmer Covil.
18 Palmer Covil knew that.

19 You also heard that Palmer Covil said the union
20 was making noise about this kind of stuff. You know what
21 that means? It means his employees were concerned about it.
22 You know what he did? Nothing. Nothing.

23 The only thing that they did do was they made
24 their employees wear respirators going back into the 1950's,
25 right? They knew their employees should be protected from

1 this. They had that knowledge and they didn't pass that
2 along to Mr. Crawford, protecting themselves, and I think
3 that's the overall theme of this case. Covil is protecting
4 themselves.

5 I want to read you -- this is exact testimony from
6 Mr. Palmer Covil.

7 "Q. Well, it would be safe to say that by 1968
8 you were aware of asbestosis?

9 "We were aware of it. Yes, sir.

10 "I believe you indicated in 1965 or 1966 you
11 became aware of it?

12 "Yes, sir."

13 Direct admission. He knew it.

14 Not only Palmer Covil, you heard Mr. Glenn,
15 Covil's representative. He took the stand and he told you:

16 "Q. Covil knew in 1965 asbestos can cause death?
17 Yes."

18 Covil knew in 1965 asbestos can cause death. They
19 knew it.

20 "And today Covil agrees that based on the science
21 there is a relationship between asbestos exposure and the
22 disease mesothelioma?

23 "Yes. Yes." No hesitation.

24 Covil knew asbestos caused asbestosis. They knew
25 it causes mesothelioma, the exact disease Mr. Crawford has.

1 They knew these diseases were fatal. What did they do about
2 it? What did they do about it? Nothing. Not a thing. Not
3 a thing.

4 "At no point in time, when Covil learned that in
5 1965, did Covil take it upon itself to place a warning on
6 one of the boxes of asbestos-containing insulation that it
7 sold, right?

8 "That's correct."

9 Covil didn't do that. Covil had the information.
10 They knew it could kill. They knew it could cause the exact
11 disease that Mr. Crawford has. They didn't even put a label
12 on the box.

13 They knew it and they did it. They did it anyway.

14 I think what this evidence has made clear that
15 Covil was at Celanese. Covil Insulation was at the Celanese
16 plant, and I think we get there through a number of ways.

17 The first way is that the judge instructed you
18 that this was presumed. All right.

19 The second is that Covil -- let me back up.

20 Covil's entire argument in this case is that they
21 weren't there. Covil wasn't there. "Couldn't be us."

22 The only evidence that they gave you to support
23 any of that is a bunch of people saying "I don't know. I
24 don't know. I looked through documents, didn't see them, so
25 I don't know." By the way, the documents that they looked

1 through, after the fire in 1973.

2 They asked Daniel, "did you look through the
3 documents?

4 "Well, I looked through some of them.

5 "You didn't see them in there?

6 "Oh, I guess they weren't there."

7 Celanese, "did you look through the documents?

8 "I didn't look through every one.

9 "Well, I guess they are not there."

10 Covil does not know.

11 You know who does know? Harley Neelands. Harley
12 Neelands. He was there. He's an eyewitness, physically at
13 the plant at the same time. He knew it was Covil. He saw
14 it. You heard his testimony. In fact, let's look at it.

15 (Whereupon, a portion of a videotape of Harley
16 Neelands was played to the jury panel)

17 MR. CHAPMAN: He saw the truck. He saw the truck.
18 The truck said Covil on it. That's his testimony. That
19 means he saw Covil Insulation bringing in
20 asbestos-containing pipe covering literally by the
21 truckload. Covil doesn't know. I agree they don't know.
22 He does. He does.

23 More than that, the documents show it. You saw
24 this. This was a document. It's a Daniel document. It
25 lists the vendors and subcontractors at Hoechst Spartanburg,

1 '71 through '75. Look who is on there. Covil Insulation.
2 Right there. This is a Daniel document. It's in black and
3 white.

4 Another concept here is Daniel equals Covil. You
5 heard throughout the testimony, ladies and gentlemen, that
6 Daniel equals Covil. Specifically Mr. Machen Carpenter. He
7 said Daniel and Covil were like this. If Daniel did the
8 job, Covil did the insulation. That's what he said and they
9 have put on no evidence to the contrary. Zero. If Daniel
10 did the job, Covil did the insulation, and it's undisputed
11 Daniel did this job. Covil did this insulation. That's
12 what the evidence shows.

13 In fact, Mr. Buck -- I'm sorry, Mr. Glenn agrees.
14 This was his testimony and Covil agrees that Daniel
15 Construction was one of Covil's biggest customers. "They
16 were one of our largest. Yes."

17 Mr. Buck said the same thing.

18 MR. WALL: Your Honor --

19 MR. CHAPMAN: The Daniel's rep.

20 MR. WALL: I object. That is not certified
21 testimony. I don't think it should be showed to the jury.

22 THE COURT: Overruled. My own memory
23 substantiates that this is the testimony.

24 MR. WALL: I'm not arguing that, but to actually
25 be showing the transcript and it's not a certified

1 transcript.

2 THE COURT: I don't think demonstrative evidence
3 in connection with argument requires showing the certified
4 copy, so I overrule.

5 MR. CHAPMAN: That's what Mr. Glenn said. Their
6 rep, that's what he said.

7 Mr. Buck. What did Mr. Buck say?

8 "Did Daniel do business with Covil?

9 "Yes. They were our insulation subcontractor.

10 "Do you know when?

11 "At all different times."

12 You heard this from Covil and now you heard this
13 from Daniel. You heard this from Mr. Machen Carpenter. You
14 have seen it in the documents. Covil was there. Come on,
15 Covil was there. Daniel equals Covil.

16 Every time Covil stands up here and says Daniel,
17 Daniel, Daniel, what they are really saying is Covil, Covil,
18 Covil. That's what the evidence supports.

19 And what they sold was asbestos insulation.
20 That's just proven.

21 The judge instructed you on this too and Covil
22 admitted it to you. Mr. Glenn admitted this to you.

23 "Q. And among other products that Covil would
24 distribute between 1948 and 1991 was asbestos-containing
25 thermal insulation during at least some of those years,

1 right?

2 "They did supply them, yes." Yes.

3 More than that, ladies and gentlemen, you don't
4 just need the testimony, we have got the documents.
5 Celanese document. This shows what the material was in
6 their plants. The poly house where Mr. Crawford worked.
7 The continuous poly house where Mr. Crawford worked.
8 17,000 -- 77,000 square feet of asbestos-containing
9 insulation.

10 Now, I don't know, ladies and gentlemen, if you
11 have done the math on that. That's over 15 miles of
12 asbestos-containing insulation in the very buildings where
13 Mr. Crawford was working. 15 miles of asbestos-containing
14 insulation supplied by Covil, that they knew was going to be
15 worked on, that they knew had to be cut.

16 They knew it. They did it. And they tried to
17 cover it up. They hid it.

18 They knew it would kill. They did it anyway and
19 then they covered this up for decades. We are talking about
20 stuff that happened in, what, 1950's, 1965. We are here in
21 2018 talking about it. Why is that? Because they covered
22 this up for decades. They protected themselves.

23 The documents. Exhibit A of this is their
24 documents. They destroyed their own documents.

25 You heard about the fire in 1973. It wiped out

1 all the documents. Coincidentally, at the exact same time
2 they say they went asbestos free. Is that a coincidence? I
3 don't know. I don't know, but the evidence shows Mr. Machen
4 Carpenter, "fire didn't destroy the documents." That's what
5 he said. The documents were saved by a firewall. They were
6 in a vault. They didn't burn. And they are gone, all
7 right. Not because of a fire. Because Covil threw them
8 away. Covil literally threw them away.

9 Not only that, not only did they try to cover that
10 up, they didn't warn them. They didn't warn a soul. Covil
11 admitted to you they didn't put any warnings on these
12 products. They admitted to you they didn't even test their
13 products that they were selling to see if they were
14 dangerous. Why? Why didn't they warn? They didn't legally
15 have to. They didn't legally have to. I think what the
16 judge is going to tell you, ladies and gentlemen, is that's
17 wrong. That's wrong. They did have to and they didn't.

18 Even if you assume for a second they didn't
19 legally have to, fine, let's just assume that. I told you
20 you were going to hear this and we asked him on the stand
21 "sir, ethically, morally, why wouldn't you tell people your
22 products were going to kill them?

23 "It was not a requirement to distribute
24 information. Business decision. Business decision."

25 You know what that means? That means that Covil

1 Corporation had this information. They sat in the board
2 room, or a conference room, or whatever, and talked about
3 it. They weighed the pros and the cons and they made a
4 conscious choice not to tell people their products were
5 going to kill them. Business decision.

6 Do you know what that also means? You know what
7 they were worried about? Not worried about Mr. Crawford.
8 They were worried about their bottom line. They were
9 worried that if people knew that their products were
10 dangerous, they would stop using them. It meant they would
11 stop buying them. Means less money in their pocket.

12 You heard Mr. Crawford tell you that if he knew he
13 was working with deadly asbestos, he would have found
14 another job. That's exactly what Covil was afraid of.
15 That's exactly why they didn't warn them. That's exactly
16 the business decision that they made. And who was here to
17 tell us about it?

18 I want to talk about Robert Glenn for a second.

19 Robert Glenn is the voice of Covil. He is the
20 person that they picked to be the person most knowledgeable,
21 to come and talk to you on behalf of Covil as the mouthpiece
22 of Covil. The problem with that, never heard of Covil.
23 Until three weeks ago, he had literally never heard the name
24 of Covil.

25 More than that, he's an expert for defendants like

1 Covil in asbestos litigation. He has spent his career
2 lobbying to change laws that would affect asbestos and
3 affect people like Jerry Crawford. That's the guy that they
4 picked? That's the guy that represents Covil? You know
5 what? Maybe that makes sense. Maybe that represents what
6 Covil is. The more I think about it, the more sense it
7 makes to me. Maybe that's just the Covil way.

8 Speaking of that, at the very beginning of this
9 case Covil promised you a lot of things. They promised you
10 the evidence would show you that Daniel didn't buy
11 insulation from Covil. That's what they said. That's
12 wrong.

13 They promised they would show you the whole place
14 burned down, documents included. That's wrong. Robert
15 Glenn reviewed all the records and found nothing.

16 I want to take a second and talk about this. I
17 mean, that's wrong, right, but I want to talk about this.
18 Mr. Glenn said that he reviewed 25,000 documents. Now, they
19 claim that that's all the documents that they have from 1973
20 until the nineties? I don't know. But he says he reviewed
21 them. When we asked him, we drilled down on this, "did you
22 actually review them?

23 "No. I looked at about a 100 of them." A 100 out
24 of 25,000 to learn everything I needed to know to talk to
25 you about Covil. He didn't review the documents.

1 All of their insulation was asbestos free by '73.
2 Wrong. Wrong. You saw this in a couple of ways. One, we
3 showed you the document where they were supplying
4 asbestos-containing pipe covering to a different plant in
5 1974. Mr. Glenn took the stand and told you they were
6 selling these products until '77. Which one is true? The
7 documents? The sworn testimony?

8 Now, in this case we brought three causes of
9 action I want to talk to you about. I mentioned negligence
10 at the very beginning of this case. There is also a cause
11 for strict liability and for implied warranty, and I want to
12 go through each one of those and what they mean.

13 Strict liability. This means liability without
14 fault. It does not matter for strict liability if Covil was
15 negligent or not. Okay? Here are the elements of strict
16 liability, and you are going to see this when you go back to
17 deliberate. The products were in a defective condition.
18 Literally -- and I'm not exaggerating. Literally every
19 person that took the stand by deposition, or physically, or
20 video, told you that Covil's products were defective; told
21 you that Covil's products had deadly asbestos in them when
22 they shipped them from the plant, from Covil's warehouse.

23 The products was in the same condition when it
24 left Covil. No argument there. Pipe insulation. Took it
25 from the warehouse, shipped it to Spartanburg, put it on the

1 pipe. No evidence to the contrary to that.

2 And then the plaintiff was injured. I think we
3 know that. I think we know Jerry is going to die.

4 We have met all of those. We have met all of
5 those.

6 Implied warranty. This is not necessarily common
7 sense and so I want to take just a second. Every sale of a
8 product, every sale of a product comes with an implied
9 warranty that the goods, in this case the pipe insulation,
10 are fit for sale and they are free of significant defects.
11 Contract or not, that comes with every product that's sold.

12 The elements of that. Basically the same as
13 strict liability. Basically the same. We have met those
14 for all the reasons I just told you. The product has
15 defects. It has asbestos. Asbestos was the defect.

16 There is this concept alternative design, okay.
17 That means that they had to have an alternative design,
18 something else they could have used.

19 Mr. Glenn told you that they sold fiberglass the
20 same time they were selling asbestos. Fiberglass is
21 asbestos free. They didn't sell that. They chose to sell
22 the asbestos. That was a conscious choice that they made to
23 deal with when they had something else they could have done.

24 And then negligence. Another word for negligence
25 is carelessness. Was Covil careless here? The answer is a

1 resounding yes.

2 There are several elements and I want to take you
3 through each one. They are not complicated. Duty, breach,
4 causation, proximate cause, and damages. Okay.

5 First duty. You owe a duty to a person when there
6 is a known risk of harm. Known risk of harm. I mean,
7 that's abundantly clear. Covil knew it. They had the duty.

8 You breach that duty when you don't do anything
9 about it. Covil failed to warn. They hid that information.
10 That's a breach.

11 Causation.

12 Oh, breach, I'm sorry. There it is. I thought it
13 was changing.

14 Causation. Did their products cause Mr.
15 Crawford's disease? You heard Dr. John Maddox, pathologist,
16 doctor. He told you they did. He told you Covil's
17 products, the pipe insulation, caused Mr. Crawford's
18 mesothelioma. There is no testimony whatsoever to refute
19 that. That is undisputed.

20 Proximate cause. Proximate cause means that the
21 exposure that Mr. Crawford received was of such frequency,
22 regularity, and duration that it was a substantial factor in
23 bringing about the disease. Dr. Maddox told you this
24 exactly, and there is no evidence to refute anything Dr.
25 Maddox said.

1 Jerry was around it every day. He swept it up
2 every day. You heard the levels of exposure that a person
3 receives when they are sweeping that up. For four years he
4 did that. No one disputes this. No one disputes this.

5 And then damages. Was Mr. Crawford injured? Yes.
6 Yes.

7 We have met all the elements of negligence, ladies
8 and gentlemen. It's clear.

9 I want to be clear. We are not required to prove
10 all of these. We only need to prove one. I think we have,
11 but we only need to prove one.

12 And there is something else I want to talk about
13 that's not really intuitive. That's the standard of proof,
14 all right? Now, we are all used to thinking about courts
15 and thinking about courts of law and watching shows like Law
16 and Order, right? In a criminal context the standard of
17 proof is beyond a reasonable doubt. That's a high burden.
18 That's not what we are dealing with here. The burden that
19 we have, it's my burden, and the burden that we have in this
20 case is more likely than not. That's it. Is it more likely
21 than not that Covil knew asbestos could kill you? Is it
22 more likely than not that Covil supplied asbestos-containing
23 insulation to Spartanburg? Is it more likely than not that
24 Mr. Crawford was exposed, that they hid this information,
25 that they destroyed their documents? Of course it is. Of

1 course it is.

2 Covil's money. Now, Covil's lawyer stood up here
3 in opening and told you Covil is defunct, they have no
4 earnings. And my concern is maybe you are thinking, "well,
5 even if we find for you, how are you going to collect?"
6 Don't worry about that. Your job is to find whether or not
7 Covil is responsible for Mr. Crawford's disease. If you
8 find that, and if you give us a number, let me worry about
9 collecting. That's not something that you need to worry
10 about.

11 Now, the verdict form --

12 Jason, can we switch?

13 I want to show you this, because this is what's
14 going to go back with you when you decide. This is what
15 it's going to look like.

16 You are going to have some questions to answer,
17 some boxes to pick.

18 "We, the jury, find that Covil Corporation was
19 negligent and its negligence was the proximate cause of
20 Jerry Crawford's injury and damages."

21 Yes. The evidence is overwhelming.

22 Strict liability. Yes. The evidence is
23 overwhelming.

24 Implied warranty. Yes, the evidence is
25 overwhelming.

1 This is what you are going to see.

2 What's the result of all this? What's the result?

3 The result is Mr. Crawford's cancer. The result is his
4 family's loss. The result is he's missing out on
5 Christmases and Thanksgiving and family dinners. He doesn't
6 get to make angels, butterflies with his granddaughter. He
7 doesn't get to see his grand kids grow up. He doesn't get
8 to make those memories. He doesn't get to meet future
9 grandchildren. That's the result of this. That's the real
10 result of this. And in the face of all of this, the face of
11 all this is hope. Mr. Crawford told you he received the
12 news he had a 20 percent chance to live. That's
13 devastating. That's devastating. What did he say? He's
14 grateful. He had a shot. It wasn't a good one, but he had
15 a shot. Now we know that mesothelioma is fatal and it's
16 going to take his life, but he was grateful for the shot,
17 and so this is what we're left with, the value of a human
18 life. How do we determine that? How do we even start that?

19 Money is such a terrible exchange for life. If
20 Patty and Tessa could stand up here right now and ask you
21 for anything in the world, they would ask you for their dad
22 back, for their mom. They would ask you for their family,
23 for the memories that they can't make, that they are losing,
24 but they can't ask you that, and that's not something you
25 can give them. So this is all we have.

1 More than that, it's clear Covil doesn't care
2 about Mr. Crawford's life. Covil doesn't care about the
3 memories they are going to lose, about the grand kids he's
4 never going to meet. They care about money. That's what
5 they value. They made a business decision. Fine.

6 If that's where they want to go, let's make a
7 business decision. That's what they care about, let's talk
8 about money. If we are going to do that, how do we even
9 start? I have got some suggestions for you. They are just
10 suggestions. This is all going to be on you, but I don't
11 know if you guys are football fans. Dabbo Sweeney, Will
12 Muschamp, they make almost seven million, three million
13 dollars a year. I'm not saying that's right or that's
14 wrong, but society says those are values, they are okay for
15 someone to coach a game. We are talking about a life. We
16 are talking about a life that was taken away here in a board
17 room by a business decision so that Covil could make more
18 money. So here is my suggestion, and it's only that. It is
19 undisputed, ladies and gentlemen, that Mr. Crawford's
20 medical damages are just under \$568,000. Now, I submit to
21 you, ladies and gentlemen, that's the amount of money that
22 his life was worth to him the last year. That's how much
23 money he spent trying to stay alive for one year.

24 You heard Dr. Maddox tell you that if it were not
25 for his mesothelioma, he should live for another 13 years.

1 I think we give him that. I think we give him that. I
2 think that's what he values his life at.

3 Then there is Mrs. Crawford. You heard that
4 literally with her last breath she was worried about Jerry.
5 As she was dying and she couldn't speak, she was scared.
6 Not because she was going to die, but because she was
7 leaving Jerry alone to deal with this by himself and she
8 couldn't even die in peace. What's that worth? How do you
9 put a number on that? I don't know. I don't know. You are
10 going to have to decide that. I don't know what you do with
11 that.

12 And then I think you give them medical bills.

13 And what that comes to is about \$8,000,000, plus
14 whatever you decide for Mrs. Crawford, if anything. I don't
15 know how we get at this number. I think this is one way of
16 doing it. If we have to put a number on it, I think this is
17 one way of doing it.

18 There is one thing we haven't talked about and
19 that's how Covil was reckless. We all remember the
20 testimony from Dwaine Waters, how impactful, how significant
21 that was. Mr. Waters told you that Covil put asbestos
22 insulation in boxes labeled asbestos free. Let me say that
23 again. Covil put asbestos-containing insulation in boxes
24 labeled asbestos free. Do you understand how dangerous that
25 is? Even if you knew about the hazards of asbestos, you

1 wouldn't know to take precautions because what you think you
2 are working with is asbestos free. Not only did they know
3 it, they did it, they covered it up, but they actively
4 represented that their product was not what it was, that
5 their product was safe. Why would they do this? Because
6 they had to get rid of it. No one wanted it any more and
7 they had a warehouse full of it, so they had to sneak it
8 out. They had to sneak it out. They did it in these boxes.

9 Mr. Waters noticed this. You heard him say this.
10 He said "whoa, whoa, whoa, this is asbestos. Hold on." He
11 went and told his supervisor, "do you know this is asbestos?
12 It says asbestos free right there." What did Covil tell him
13 to do? Covil told him to keep quiet. He said "yes, I know,
14 but they don't, so don't tell them." I don't even know what
15 to say about that. That's got to be the most reckless thing
16 a company could ever do.

17 Chase, can you switch for a second?

18 And it's because of that you are going to see on
19 the verdict form number five, was Covil's conduct willful,
20 wanton or reckless? A resounding yes. Resounding yes.

21 Switch back, please.

22 Willful, wanton, reckless conduct. Reckless
23 conduct.

24 They took, ladies and gentlemen, what the
25 Crawfords value most in this world. They took their family.

1 They took their memories. That's all they want.

2 Take what they truly value. What's clear is they
3 don't value life. They value money. Take that. Make them
4 take responsibility for their choices. This did not have to
5 happen.

6 Thank you so much for your time and for your
7 attention.

8 Your Honor, I reserve any remaining time for
9 rebuttal.

10 Thank you.

11 THE COURT: All right. Thank you, Mr. Chapman.

12 And now we will hear from Mr. Wall for the
13 defendant.

14 MR. WALL: I'm getting there.

15 THE COURT: Is that -- is that up for Mr. Wall?

16 MR. WALL: Yes. No, no, that's --

17 THE COURT: All right. Take that down, please.

18 MS. MCVEY: He wants to use the elmo.

19 MR. WALL: I just want to use your elmo. That's
20 all.

21 THE COURT: Yeah, exactly, but you don't want
22 the other material up.

23 MR. WALL: No, I don't.

24 THE COURT: You are certainly entitled to that.

25 You may proceed, Mr. Wall.

1 MR. WALL: Thank you, Your Honor.

2 Good morning. We have met. I'm Mark Wall.

3 Covil Corporation, which lost its corporate
4 charter in 1993, and went out of business in 1991 --

5 MR. CHAPMAN: Your Honor, objection. There is no
6 evidence of this in the record.

7 MR. WALL: It's all over the record, Your Honor.

8 THE COURT: Just one moment.

9 Approach, counsel, please.

10 (Whereupon, the lawyers approached the bench for
11 an off-the-record discussion)

12 THE COURT: All right.

13 Ladies and gentlemen of the jury, Mr. Wall will
14 withdraw the statement as to when -- as to whether and when
15 Covil lost its corporate charter.

16 You may proceed, Mr. Wall.

17 MR. WALL: Yes, Your Honor.

18 But it did go out of business in 1991.

19 Covil is here before you today because it truly
20 believes that it did not, did not, sell asbestos insulation
21 to the contractor at Celanese and Daniel -- I mean to Daniel
22 who built the Spartanburg plant, or either that to Celanese,
23 because it's Celanese who actually paid for any -- according
24 to the testimony, any asbestos they bought, it was bought
25 through Daniel and was installed by Daniel.

1 We realize at the beginning of the trial Judge
2 Toal gave you an instruction that was based upon a jury --
3 discovery dispute, and that instruction was that Covil
4 was -- that Crawford was exposed to asbestos material at the
5 Celanese site, but that instruction did not set forth any
6 particular date of exposure. It does not set forth the
7 location of exposure, except Celanese, and never set forth
8 the amount of exposure. Those issues are still up to you.

9 Also there is still the issue of whether or not
10 any exposure by Covil, if any, was the proximate cause of
11 Mr. Crawford's mesothelioma and eventual death, and he will,
12 in fact, die. We don't dispute that.

13 The judge will charge you that plaintiffs' lawyers
14 have the burden of proof in this case. They have to prove
15 everything. Covil doesn't have to prove anything. Covil
16 can stand up and say "we weren't there, we didn't do it,
17 it's up to them to prove." However, I suggests to you we
18 did prove several things, and we will get into that later.

19 And as this claim of hiding it up, Mr. Covil, in
20 1977, you know how long ago that was, Mr. Covil in 1977 said
21 "yes, I went to Selikoff. Yes, I knew. Yes, I am not
22 hiding it from you." He said it under oath. Then in '77,
23 and then here again in 2018. And that's not hiding. He
24 said "I'm not manufacturing these products. Someone else is
25 manufacturing the products. I'm just buying the products

1 from the manufacturer."

2 In my opinion, it's the manufacturer's
3 responsibility to put on any warnings and the Federal
4 Government agreed. OSHA came out in the seventies with
5 regulations saying you, the manufacturer, needed to put
6 warnings on these boxes. It didn't say you need to put
7 warnings on the actual pipe covering. It says you need to
8 put warnings on the boxes.

9 Now, this trial was a lot shorter than I thought
10 it was going to be and in the greatest scheme of things was
11 only a three-day trial, which is very short for an asbestos
12 case. But even though it's short, I think there are a lot
13 of complications in this case.

14 Let's turn to some of the fact witnesses in this
15 case.

16 Mr. Waters and Mr. Carpenter had nothing to do
17 with any construction at Celanese. They had nothing to do
18 with the ultimate facts in this case. They had nothing to
19 do with anything that you need to consider in awarding
20 damages or a defense verdict for Mr. Covil.

21 Mr. Waters is suing Covil. Mr. Waters is suing --

22 MS. MCVEY: Your Honor --

23 MR. CHAPMAN: Your Honor.

24 MR. WALL: You asked him. He was asked.

25 MR. CHAPMAN: Judge --

1 THE COURT: One moment.

2 MR. WALL: I'm sorry.

3 THE COURT: One moment. One moment. One moment.
4 Come to the side, please.

5 (Whereupon, the lawyers approached the bench for
6 an off-the-record discussion)

7 THE COURT: Ladies and gentlemen of the jury, Mr.
8 Wall withdraws his statements that Mr. Waters is suing
9 Covil. There is no evidence about that placed before you
10 and you are to disregard that statement. Thank you.

11 MR. WALL: Sorry, Your Honor.

12 THE COURT: That's all right.

13 MR. WALL: I think it's up to you. You have read
14 or heard the deposition of Mr. Carpenter that he is the
15 disgruntled employee, former employee of Covil. He denied
16 when Mr. Covil said occurred that a huge fire that burned
17 most of the records. The records were not in a vault
18 because there was no vault.

19 You heard Mr. Glenn say he looked at the pictures
20 from the newspaper and read the accounts in the newspaper
21 and it was a huge fire, destroyed everything. And for today
22 it did, according to the newspaper, \$700,000 worth of damage
23 to Covil's plant.

24 I suggests to you that their testimony is
25 irrelevant for you to decide the appropriate issues in this

1 case; that is, whether or not Covil was a supplier or a
2 subcontractor or an applicator of asbestos-containing
3 products at Celanese. That is the issue before you. No
4 other issue.

5 Now, it was Mr. Neely (sic). Mr. Neely (sic) was
6 an interesting person. Mr. Neely (sic) proved our case. He
7 said "I worked for Daniel at Celanese for six to eight
8 months and I installed, along with Daniel employees, the
9 asbestos pipe covering at Celanese." He made it clear that
10 Daniel's own employees put on the asbestos materials at
11 Celanese. His only point was that he did not believe his
12 employer when his employer said we did not supply materials
13 for either Daniel or Celanese, but he did prove the point
14 that Daniel installed the asbestos materials at Celanese.

15 Now, let's look at some of the real issues in the
16 case. The judge will tell you that I have a duty as the
17 attorney for Covil to question every amount of proof that
18 the plaintiffs try and put into evidence. That's my job,
19 and I'm going to do it from the reverse.

20 When Mr. Chapman was up talking about issues, he
21 always put damages as the last issue. And generally
22 speaking that's how lawyers deal with it, but I'm going to
23 talk about damages first.

24 I suggests to you that you do not need to get to
25 damages. You don't need to discuss damages and don't have

1 to discuss it until you actually conclude that Covil put
2 product on this work site or installed product on this work
3 site and that that product was the proximate cause of Mr.
4 Crawford's death.

5 Now, in talking about damages, the law does not
6 place a value and the law does not want people trying to
7 place a value on human life. That is not the measure of
8 damages. The judge will give you the measure of damages.
9 You cannot put value on human life. So the law says, and
10 the judge will charge you, say to the jury if you award
11 damages, you look at the survivors and you put a value on
12 their injuries, their damages, their issues. You do not put
13 a value on human life.

14 Also they talked about punitive damages. Again, I
15 suggests to you, as shown by the verdict form, you don't get
16 to the issue of punitive damages until last and that's based
17 upon a different standard of proof. That standard is clear
18 and convincing. That means you have to be so sure that what
19 they allege Covil did was so reckless, willful and wanton
20 that you have no doubt about it in your mind. I suggests to
21 you there will be a doubt about it in your mind, because we
22 did not produce the material there. We did not sell the
23 material there, and Mr. Covil did not hide anything. He, in
24 1977, told you for the first time he was ever asked exactly
25 what he knew and what he did.

1 I would suggest to you also that it was not Covil,
2 regardless what it is in this case, that made any decision
3 about putting asbestos in the Celanese plant in Spartanburg.
4 It had nothing to do with that. It was a supplier. The
5 decision to put asbestos pipe covering at Celanese was a
6 choice made by Celanese and Daniel, not by Covil. If Covil
7 supplied something to Celanese, it was off a purchase order
8 from Celanese or a purchase order from Daniel. They, Covil,
9 only did what it was asked to do. The specs were made by
10 Daniel and changed or modified or used by Daniel, not by
11 Covil.

12 Let's look at the other witnesses in the case.

13 Covil does not contend that Mr. Crawford does not
14 have mesothelioma. He does, and we agree he unfortunately
15 is going to die. However, as usual, this case is not quite
16 that simple. What we have -- so we are not worried about
17 Dr. Brody.

18 Dr. Maddox, he came you up and again confirmed
19 that it was mesothelioma and we agree with him. The
20 question with Dr. Maddox is what was the cause of the
21 mesothelioma.

22 Now, Mr. Maddox, Dr. Maddox, wrote a report.
23 There it is. And he said -- and I had him read it, because
24 he didn't read it the first time, that he received a letter
25 from the plaintiffs' lawyers who told him what the exposure

1 was that the plaintiffs were alleging in this case. He
2 wrote the letter. And the letter said that the 1970s he
3 worked at Celanese for about four years.

4 The first time through Dr. Maddox did not mention
5 brake work, but the lawyer sent that same letter that said
6 for about ten years, first was four years, he spent most
7 weekends and evenings at an auto shop of his brother-in-law
8 and he testified was three feet of where he was working that
9 he blew out dust off the brakes and that he was exposed to
10 asbestos while working on the brakes. And that was for a
11 ten year period, from '60 to '70, when he moved away.

12 Dr. Maddox then -- this was his form, "with a
13 reasonable degree of medical certainty, based on the
14 exposure history, the patient's cumulative asbestos exposure
15 caused his lethal malignant pleural mesothelioma." That
16 means all, the total amount, of the exposure to asbestos was
17 the total cause of his mesothelioma. Thus, the brakes were
18 considered by Dr. Maddox as being a contributing cumulative
19 cause of his mesothelioma.

20 One of the things that Dr. Maddox said, which I
21 was somewhat surprised at, because it wasn't in his report,
22 was that he was familiar with OSHA and he actually had on
23 the big screen up there the word OSHA and he discussed about
24 it. Well, Dr. Maddox had to agree the OSHA regulations
25 require the employer - Daniel - and the site place -

1 Celanese - to provide a safe working condition for the
2 employees. It doesn't put that burden on Covil, whether
3 Covil was there or not. We say they were not there, but a
4 burden of a safe workplace is Celanese and Daniel, not
5 Covil.

6 Now, the records reflect that there was no
7 evidence of any sale of any product by Covil to Daniel or
8 Celanese. There is just no evidence of that fact. They are
9 trying to get you to -- direct evidence. They are saying
10 well, this person said this, this person said that. Covil,
11 granted, had a fire in '73, it has its documents after that
12 date and Mr. Glenn looked through those documents. Granted
13 they are only a 100 pages, but he said there is no mention
14 in here of any sale of any product of Covil's to Daniel or
15 Celanese.

16 Mr. Boyer, the representative of Celanese, said
17 that he went through all the records of Celanese. He could
18 find no sale of any product to Celanese. He went through
19 the records. He did a word search, because there were
20 20,000 documents and you can't sit there and go through
21 them. He did a word search of those documents. Covil was
22 not mentioned in those documents. He could not find any
23 reference to Covil selling anything to them.

24 Then he further said, however, the best
25 information is the information from Mr. Buck, because Mr.

1 Buck was there. Mr. Buck did the work, or his company did
2 the work. Mr. Buck has 40 boxes of documents of Daniel
3 concerning the work at Celanese.

4 Mr. Buck again testified that he, in fact, went
5 through all the 40 boxes, looked at them. As a result of
6 that he was able to state for certainty Covil was not on the
7 job doing insulation application. He said "in all those
8 documents, I saw a couple of documents that showed that
9 Covil at one point," and he wasn't even sure of the point,
10 "had three employees of Covil on site doing fireproofing on
11 the structural steel." That was it. He said it twice.
12 "That's all I ever saw of Covil in those 40 boxes."

13 Mr. Buck also said that Daniel purchased the
14 materials, asbestos materials, directly from the
15 manufacturer, not from Covil.

16 And, finally, Mr. Buck said that this was the self
17 job of insulation. He said that Daniel put all of the
18 asbestos on the premises, pipe insulation on the premises,
19 through its own employees. And there are several things to
20 look at in that regard.

21 First, we have a document -- let me get the
22 official ones.

23 This would be in your room. It's Exhibit 822.4.
24 Mr. Buck, whose document this is, this is a Daniel document,
25 says "we just list all our usual subcontractors and vendors

1 on this left column. And if they did work up there, we then
2 put description of work." This is for the entire period
3 from November '71 through '74 -- '75. Mr. Buck says this
4 again proves that Covil was neither a subcontractor nor a
5 vendor at Celanese during the period of '71 through '74 --
6 '75. Covil may be listed, but performed no services at that
7 location.

8 Also we have Exhibit 822.15. 822.15 comes out of
9 a document or a series of documents known as 822.16. This
10 is a series of monthly reports that Covil did every single
11 month during the years they worked at Daniel -- excuse me,
12 at Celanese, and they put that. You can look through these
13 in the jury room. There are -- it's only 1973, but they
14 testified the same thing every month for the entire job.
15 And when you look through this document, on page 17, the
16 number on the bottom, but the prior page is 16, and later
17 they have numbers again, it says "number of men on payroll."
18 Not subcontractors. "Number of men on the Daniel payroll,"
19 and it shows that there were 39 insulators on the Daniel
20 payroll on the job site in 1973, putting insulation into the
21 Celanese plant. And you can go down this list. There were
22 a total of 466 employees of Daniel on the site doing all the
23 necessary work.

24 And on page 14 of all these reports, including the
25 one I'm showing you, there is a listing of subcontractors.

1 It lists all the subcontractors on site for that period of
2 time. Nowhere in any of these reports is Covil listed as
3 its subcontractor.

4 So, again, this again proves that Daniel did all
5 the insulation at Celanese and that Daniel purchased it --
6 used it and purchased it at the insistence of Celanese, and
7 it was, as they said, in 1970 it was the standard way of
8 construction. Covil had nothing to do with that decision.
9 That decision was made by Celanese and by Daniel.

10 I submit to you that it's clear that Covil did not
11 supply asbestos pipe covering to the Celanese Spartanburg
12 site. It was supplied by Covil and/or Daniel -- excuse me,
13 Celanese and/or Daniel. Covil did not supply the pipe
14 covering. It was supplied by Daniel, who purchased it from
15 the manufacturers and it came in the manufacturer's box. It
16 didn't come in a Covil box. It came in a manufacturer's
17 box.

18 Finally, Covil did not apply any pipe covering at
19 Celanese.

20 As I said to you in opening statement, we were
21 going to put those facts into evidence for you to consider
22 and rule on, and that is that a period from 1974 -- 1970 to
23 1974 Covil did not supply any products that were used in the
24 Celanese plant. And my opening statement said "I'm going to
25 tell you those things and at the end of time I'm going to

1 ask you to bring back a verdict for the defendant, a verdict
2 for Covil." Thank you very much.

3 THE COURT: All right. Mr. Chapman, plaintiffs'
4 reply.

5 MR. CHAPMAN: Yes, Your Honor.

6 Ladies and gentlemen, Mr. Wall just proved my
7 whole case. I'm going to tell you how.

8 All I heard him say over and over and over was
9 Daniel, Daniel, Daniel, Daniel, Daniel. What that means is
10 Covil, Covil, Covil, Covil, Covil.

11 It's been a while but do y'all remember the old
12 Wizard of Oz scarecrow; "he went that way." That's what
13 Covil is saying. "It wasn't me. It was them. It was them.
14 It was them. It was them." They will not take
15 responsibility.

16 Daniel was installing the insulation. Where did
17 they get it from? Covil. Covil supplied the insulation.

18 Mr. Wall talked to you about the location of
19 exposure. We don't know where that was. Mr. Crawford told
20 you poly 1, poly 2. That's poly, continuous poly. Those
21 are the buildings that he worked. That's Celanese documents
22 that I showed you lists it out. That's poly, continuous
23 poly. 15 miles of insulation. 15 miles in the exact
24 location where he worked.

25 You know, Mr. Wall throughout that contradicted

1 himself a few times. I tried to write down every time that
2 he did. I couldn't, but he said proximate cause was an
3 issue, and then he said "you know what? We don't dispute
4 proximate cause." They don't dispute proximate cause.
5 There is no evidence that they do and that's what he said.

6 He also said they're not hiding it. Are you
7 kidding me? What evidence are they listening to? What
8 trial have they been at, because all the evidence that I
9 have heard, all the evidence that's been put before you is
10 that they did, and all they keep saying over and over and
11 over is Covil wasn't there. There is no evidence of that.

12 What's this? This is evidence of that. You are
13 going to be able to go through this, if you want. You can
14 take it back with you.

15 And, in fact, ladies and gentlemen, what they keep
16 ignoring over and over, and I don't know why they do it,
17 they keep ignoring this, because it's not good for them.

18 (Whereupon, a partial of the videotape of Harley
19 Neelands was played to the jury panel)

20 MR. CHAPMAN: He saw the trucks. Direct
21 eyewitness testimony. He saw the trucks bringing it in.
22 Covil has not mentioned this to you once. They keep
23 ignoring it and so I'm going to keep showing it to you,
24 because it's direct evidence Covil was there.

25 More than that, here is the document. Right --

1 here is the documents. Subcontractors and vendors, '71
2 through '75. We asked Mr. Buck about this, the Daniel's
3 rep, and asked him "does that mean Covil was there?"

4 "Yeah. Yeah." And then he hesitates and he says
5 "well, I don't know. Maybe not."

6 And I said "well, sir -- I asked him this. You
7 heard this. "You told me a few minutes ago that you found
8 documents Covil was there."

9 His response was "oh, yeah, that's right."

10 Covil likes to pick and choose the testimony that
11 they want to present to you, but when you look at the whole
12 picture it's clear. It's clear.

13 Covil wants you to believe that under OSHA they
14 did not have a responsibility to warn, that the manufacturer
15 did. Well, that's true, the manufacturer did, but what OSHA
16 also says is federal law says a supplier, a supplier of
17 asbestos insulation, Covil, has a duty to warn. That's what
18 the law actually says. Again, they pick and choose what
19 they want you to hear, but when you look at the whole thing
20 there is no doubt.

21 In fact, ladies and gentlemen, Judge Toal, she's
22 going to instruct you in this case. She's going to give you
23 your charge and she's going to tell you under South Carolina
24 law a supplier has a duty here. That's the law. I know Mr.
25 Wall wishes it weren't, but that's what it is.

1 I'm trying to stay professional here. Mr. Wall
2 said something that really has me angry. He said Mr.
3 Crawford had nothing to do with the plant at Celanese
4 Spartanburg, nothing to do with that insulation, nothing to
5 do with the installation. What in the world is he talking
6 about? Nothing to do with it? He's dying from it. He was
7 exposed to it, 15 miles of it. I don't know what he's
8 talking about. The evidence of that is overwhelming.

9 Mr. Wall also told you there was no vault. Covil
10 records burned up, there was no vault. Mr. Glenn, their
11 representative, Covil, sat right here and told you there
12 was. So, again, contradicting us, I don't know where he's
13 going with this. He is saying one thing, but the evidence
14 says another.

15 And I want to be perfectly clear about something,
16 ladies and gentlemen.

17 If we could switch back to the elmo, please.

18 There was literally, literally, zero evidence for
19 you to consider that Daniel or that Celanese knew a darn
20 thing about the hazards of asbestos. They didn't know.
21 There is no testimony, no evidence that they did. You know
22 who did know? Covil. Covil knew. I showed you this at the
23 beginning. You got a known hazard, you got to warn if you
24 are a supplier. Covil is a supplier, all right?

25 And we talked about the employer. Apply it to a

1 contractor. The supplier has to warn the employer or the
2 contractor because they didn't know. They didn't know.
3 Once they know, then, yeah, it's up to them to control and
4 then it's up to Mr. Crawford to follow, but none of that
5 happened. None of that could have happened because they
6 didn't warn. They had the knowledge. They didn't pass it
7 on. That's what the evidence shows you. That's what's
8 clear.

9 Mr. Wall wants you to believe all these people -
10 Mr. Glenn, Mr. Buck, Mr. Boyer - they looked through all
11 these documents. One, that's not true. They all told you
12 that's not true. They did that and they didn't find
13 anything; therefore, Covil is not there. Frankly, ladies
14 and gentlemen, I think that's a misrepresentation of the
15 facts. I think that's what that is. You heard it. You
16 know it. They didn't look at it. And the records that we
17 do have, the Daniel's record, the Celanese record, the
18 eyewitness testimony shows they were there. All they have
19 is "I don't know." That's it. We know. We have the
20 evidence. We have the documents.

21 They want you to believe that Daniel didn't buy
22 their insulation from Covil; they bought it straight from
23 the manufacturers. Again, they want to pick and choose.
24 Daniel -- Daniel says that in their deposition, but they are
25 talking about asbestos-free insulation. That's what they

1 bought from the manufacturers. Their asbestos insulation
2 they bought from Covil. Why? They were like this. That
3 relationship was strong. They were their supplier. They
4 didn't buy from any manufacturer.

5 At the end Mr. Wall wants you to believe -- he
6 showed you a Document, one of these. There are dozens of
7 insulators there from Daniel doing the work. Thank you for
8 saying that. Yes, there are dozens of insulators doing the
9 work. What with? Covil Insulation. He said it was Daniel.
10 Yes, it was Daniel. And because it was Daniel it was Covil.
11 And because of the eyewitness testimony we know it was
12 Covil.

13 This is a red herring. This is a textbook
14 definition of a red herring. He wants you to believe that
15 Mr. Crawford was around some automotive work, and he was.
16 He was. That this was the cause of his mesothelioma. Mr.
17 Wall stood there and asked Dr. Maddox that very question.
18 Dr. Maddox didn't say that was a significant cause. Dr.
19 Maddox said the insulation was. They didn't call any
20 experts. They didn't put on any evidence to refute what Dr.
21 Maddox said. Don't be fooled by this. They have nothing,
22 so they are grasping at straws. Don't follow the red
23 herring.

24 This is our burden of proof for recklessness.
25 This is what the judge is going to read to you. "Clear and

1 convincing is something more than simply the greater weight
2 of the evidence. It's something less than beyond a
3 reasonable doubt. It is proof that leaves you firmly
4 convinced. Clear and convincing proof establishes in your
5 mind not only that a fact is probable, but that it's highly
6 probable." That's the standard.

7 Are you firmly convinced Covil was reckless?
8 Covil's actions were willful, that they were wanton. That's
9 what the evidence makes clear. That's what everything makes
10 clear.

11 Mr. Wall wants to parse words, so I put them in
12 front of you. That's what you are going to see. That's
13 what the evidence proves. That's what you are going to
14 decide.

15 This is about Mr. Crawford. I don't want to make
16 this about Covil. This is about his loss. This is why we
17 are here.

18 They say you can't put a value on human life
19 because they don't want you to do that. They spent their
20 whole history burying their head in the sand. And because
21 of that I'm here asking you to put a value on a life.
22 That's what the evidence is.

23 Thank you for your time. Thank you for your
24 consideration and your attentiveness. Thank you.

25 THE COURT: All right, ladies and gentlemen of the

1 jury, you have heard the closing arguments. Now what I will
2 ask you to do is go to your jury room and be refreshed. We
3 will take a 15 minute break and I'll ask you to be back here
4 at five minutes of eleven.

5 Let me simply repeat again you say gosh, what's
6 going to happen to the alternate. You are still right on
7 the case. We will not deal with any composition of the jury
8 until all my charges are complete and I send you back to
9 begin to deliberate, and even then we will have the
10 alternates in another location, but available to us, because
11 we won't dismiss the alternates until the case is completely
12 decided to verdict. So that's what we are about now. We
13 are going to take our morning break. Be refreshed. I'll
14 bring you back in and then I will give you my charge and we
15 will go from there. Thank you very much.

16 You may retire to the jury room.

17 (The following takes place outside the presence of
18 the jury panel)

19 MR. WALL: Your Honor, may I apologize on the
20 record? I did not mean to over speak about Covil losing its
21 charter. I have been involved in this case only for 30 days
22 and I'm getting throwed with all of this information. I
23 thought that was well known by everybody. And as you know,
24 the next trial up is Mr. Waters trial, so I assumed
25 everybody knew that he has a lawsuit pending. I apologize

1 speaking out of turn.

2 THE COURT: Well -- all right. The apology is
3 accepted, and --

4 MS. MCVEY: Your --

5 THE COURT: But wait a minute. Just one moment.

6 MR. WALL: I know you are going to instruct.

7 THE COURT: Ms. McVey, I'll give you a chance to
8 respond, but let me just say this. Your apology is
9 accepted. I will certainly instruct the jury to disregard,
10 as I have when it was mentioned.

11 Ms. McVey, anything else from you at this time?

12 MS. MCVEY: I -- I do. I have some serious
13 heartburn about it for two reasons.

14 THE COURT: Yes, ma'am.

15 MS. MCVEY: One, we had a very long conversation
16 about defunct, ability to pay, all that kind of stuff.

17 MR. WALL: Not ability to pay.

18 MS. MCVEY: Mr. Wall, can I please finish?

19 MR. WALL: Certainly.

20 MS. MCVEY: We had that conversation yesterday and
21 the day before about that and he knew it and he violated
22 that rule, in my view. I think that opens a wide door and
23 we can talk about maybe how to handle that.

24 The other thing that is clearly a violation is
25 that Waters is suing Covil, so he's unreliable? That's

1 outrageous that he said that. It's a clear violation of
2 your ruling on a motion in limine. It's prejudicial. I
3 watched the jurors write it down, Your Honor.

4 THE COURT: All right. It is a violation. It's a
5 serious violation. All right. I granted a motion in limine
6 to prevent witnesses from being questioned about other
7 litigation for exactly that reason, so that no bias would
8 creep in. I will contemplate what you said. I don't know
9 what more I will be asked to do about that, so you will have
10 to contemplate that yourself on the break and let me know if
11 there is anything further you are requesting of the court.

12 MS. MCVEY: Yes, ma'am.

13 THE COURT: At this time I understand your
14 argument. I agree that both arguments were not proper.
15 Those matters were not in front of the jury, should not have
16 been placed in front of the jury, are potentially
17 prejudicial.

18 I have given a slight curative by way of direction
19 that the matters are withdrawn and should be disregarded,
20 but I will -- we will have our break and then we will see
21 what else needs to be discussed before I charge the jury, or
22 at any other time. So all positions are protected at this
23 point and we will address this matter when we come off the
24 break.

25 MS. MCVEY: Yes, ma'am.

1 THE COURT: Very good.

2 MS. MCVEY: Thank you.

3 (Whereupon, proceedings were recessed).

4 (Whereupon, proceedings were reconvened)

5 THE COURT: All right, ladies and gentlemen, what
6 issues do we have here before we bring our jury in?

7 MS. MCVEY: I have some significant issues, Your
8 Honor.

9 THE COURT: All right, ma'am.

10 MS. MCVEY: Two things. We talked about it
11 briefly before our break, but Mr. Wall violated two orders,
12 as I understand them.

13 The first is this idea that Covil is defunct,
14 Covil lost its charter. Your Honor, after opening I brought
15 this very issue up to you. We talked about it in open
16 court, not once but twice, because the only reason he's
17 doing it, he knows it, is to say Covil can't pay anything,
18 and he said he wasn't going to do it and he did it.

19 We want a charge that says, you know what, Covil
20 can pay. How they do it is not up to you, but Covil can
21 pay. That's the first thing.

22 The second issue, Your Honor, is this idea that
23 you can't believe Mr. Waters because Mr. Waters is suing
24 Covil. That's a clear violation of your order, your motion
25 in limine. It's not in front of this jury. It's

1 outrageously prejudicial, because I saw them writing it
2 down, so we want a charge saying Mr. Waters is not suing
3 Covil. I'm not even sure if that all cures the prejudice,
4 but I think the least that can be done as a result of clear
5 violation of court orders.

6 THE COURT: All right. Mr. Wall?

7 MR. WALL: Your Honor, I did not go over on the
8 first part. I did not go over what you said I could not do.
9 I did not say we had no assets. I just said we're out of
10 business and they lost its charter. I didn't say anything
11 other than those two words and then moved forward, because I
12 was not going to get -- that's no different than I said in
13 opening statement and the judge -- you said that was not
14 crossing the line in opening statement.

15 And, again, on the second point all I can do is
16 apologize. We never had the -- we never had the motion in
17 limine conference in this case. Now, there may be a
18 standing order. If there is, I'm not aware of it. Again,
19 all I can do is say I apologize. If you said at some point
20 you cannot mention a lawsuit brought by a plaintiff when he
21 is saying my people are liars, you know, I'm saying why
22 can't I? And, again, I'm not aware of any order that you
23 said on an issue, so I have nothing else I can say.

24 THE COURT: Okay. Let me just ask a couple of
25 questions here, Mr. Wall.

1 MR. WALL: Yes.

2 THE COURT: On the first matter, Covil lost its
3 charter, I said -- we have had this conversation several
4 times, because what concerns me even about defunct was that
5 it carried with it the suggestion that Covil could not pay.
6 And so, of course, we talked about that and whether Covil
7 could pay, whether they could respond to punitive damages,
8 what insurance there is, and so forth, and I declined to do
9 anything. I did say I thought it was close, but I did not
10 do anything then.

11 You said something that's not in evidence, which
12 is that Covil lost its charter. What other reason could
13 there be than ability to pay to talk about defunct and no
14 longer in business and even compounding then lost its
15 charter? Why are you mentioning that to the jury, except to
16 plant in their mind the seed that Covil can't pay?

17 MR. WALL: I -- in my opinion I stayed completely
18 away from the issue of can't pay, didn't go anywhere close.

19 THE COURT: Why -- why would you -- why would
20 you --

21 MR. WALL: Because those are the facts and the
22 jury should know the facts.

23 THE COURT: Why -- there is a lot of facts the
24 jury can't know. Why would they have to know or why should
25 they know that Covil lost its charter?

1 MR. WALL: I don't -- again, maybe I'm getting
2 slow, but I don't see any difference between out of business
3 in '91 and losing its charter in '93.

4 THE COURT: Well, frankly, I was concerned about
5 out of business in '91, because, again, it's not probative
6 of anything in this case.

7 MR. WALL: Except everybody put that into
8 evidence.

9 THE COURT: Huh?

10 MR. WALL: Everyone put that fact into evidence.

11 THE COURT: Well, after your opening statement and
12 my refusing to strike it or find anything wrong with it,
13 they put in information. Just like you have put in
14 information, although you objected to a particular line of
15 inquiry. Your rights are protected and their rights too, in
16 my view. I am very concerned about planting the seed that
17 they can't pay.

18 So let's turn to the second thing. Why would you
19 bring up Mr. Waters suing Covil except to suggest that he's
20 biased?

21 MR. WALL: Yes, sir, that's why I did it.

22 THE COURT: That's why you did it, of course, and
23 there are two things that are problematic about it, and one
24 is that it wasn't into evidence.

25 And number two, we had an extensive hearing on

1 motions in limine and I began those hearings by indicating
2 that the overlapping issues would be applicable to the
3 Crawford case as well, and one of the issues we did discuss
4 in a motion -- and I believe it was one of plaintiffs'
5 motions in limine, but it may have even been something
6 similar raised by one of the defendants, not Covil, because
7 I don't think y'all offered anything by way of motions in
8 limine, but the motion in limine by the plaintiffs asked
9 that I rule that there would be no introduction of
10 information about other lawsuits involving witnesses, and I
11 ruled that -- as I have many times before, that that's not
12 pertinent in these proceedings. And the reason they asked
13 for that is many times -- and you and I don't have to tell
14 someone as experienced in asbestos litigation as yourself
15 this, just for the record, many, many times, as with the
16 case here, conditions at a particular occupational exposure
17 case, conditions at the place of work will be discussed in
18 detail by co-workers, and many of those co-workers will be
19 claimants. You mentioned that the jury could see that these
20 people are on breathing apparatuses. They could see that a
21 couple of them were on breathing apparatus completely.
22 Maybe Mr. Waters, I think he was at the second part, that
23 certainly the people have COPD, they have a lot of things
24 that require breathing apparatuses, but there was absolutely
25 no suggestion made that his situation was related to a claim

1 and that is prejudicial, because it suggests that his
2 testimony is not believable, and I have been trying to --
3 that's why I took a little extra time talking to my brain
4 trust here to try to figure out what I could say to the jury
5 that would take the sting out of that.

6 One thing, Ms. McVey, that I'm not willing to do
7 is to instruct them that Mr. Waters does not have a lawsuit,
8 because that's instructing them as to something that is not
9 so, but I certainly am willing to instruct them in detail
10 about, number one, that that is not before them, and number
11 two, it's not properly something that could ever be
12 considered, that his status for truth telling cannot in any
13 way be impinged by suggesting information, one, that's not
14 in the record, and number two, that would be used to imply
15 that he cannot be truthful about what he says. So I would
16 more talk about his truth telling than I would that he
17 hadn't brought a lawsuit, and I will be willing to give a
18 curative instruction along those lines.

19 MS. MCVEY: And I appreciate that, Your Honor. I
20 really do think the only way to cure this is telling him
21 he's not suing it, because he's -- what -- that is so crazy
22 that he did that.

23 THE COURT: It's very egregious.

24 MS. MCVEY: It's what we have -- we didn't tell
25 anybody he has mesothelioma, which we could have done,

1 because that would be unduly prejudicial to them, right?

2 THE COURT: Exactly.

3 MS. MCVEY: So what they did is something that I'm
4 not sure it can be cured.

5 THE COURT: He was a Covil worker --

6 MS. MCVEY: Yes.

7 THE COURT: -- who has mesothelioma.

8 MS. MCVEY: Yes.

9 THE COURT: And you could have harped on that to
10 indicate that they should be sympathetic with someone who
11 also -- and that they should presume that Covil did it,
12 because they did it to that guy. You didn't do that, and
13 that's why it's very egregious for him to pull the leaf the
14 other way and try to suggest he's not telling the truth
15 because he has a claim. I agree with all of that. I think
16 it's an egregious violation. I am prepared to try to cure
17 it with a curative instruction. I know what you don't want
18 to do is move for a mistrial --

19 MS. MCVEY: No.

20 THE COURT: -- because you tried a good case, and,
21 you know, that's where we are.

22 MS. MCVEY: What about --

23 THE COURT: But I tell you that if you move for a
24 mistrial, I would deny it on the basis that I can cure this
25 matter. So you can protect your interests as you see fit

1 and I'm not trying to suggest it one way or another, but
2 what I am saying -- and I can understand that you think that
3 just further rewards Covil for doing something that's very,
4 very wrong to even make such a motion, but I will say -- I
5 will say on the record now that I do not think that very
6 egregious error that was made is so egregious as to
7 undermine the fundamental fairness of the trial, given the
8 instruction that I will give the jury. And if you want to,
9 you know, preserve your position by saying it does undermine
10 it, then you may do that.

11 MS. MCVEY: Okay.

12 THE COURT: Now, let's go back to the lost
13 charter.

14 I am inclined to instruct the jury that the lost
15 charter, again not proper, was withdrawn, may not be
16 considered by the jury, and that the jury can assume that
17 Covil can pay and that collectability is not within their --
18 if I do that, I'm telling them two different things.

19 MS. MCVEY: I would like you to leave out
20 collectability. I would just like you to tell them that
21 they can pay.

22 THE COURT: All right.

23 Mr. Wall, let's go back.

24 What do you think they should be told?

25 MR. WALL: Well, my position is nothing. I

1 withdrew it and I don't see any difference between defunct,
2 out of business, and loss of charter. They are all the same
3 thing. The law in South Carolina when you don't file your
4 tax returns and things such as that, estate, they pull your
5 charter.

6 THE COURT: Right.

7 MR. WALL: And so I don't see any difference.

8 MS. MCVEY: Your Honor?

9 THE COURT: I understand. What I'm being done is
10 being hung by the ruling I didn't make to begin with. And I
11 will say that given what has occurred now I regret the
12 initial ruling. I should have indicated to the jury that
13 that was not proper argument and should be disregarded by
14 the jury, because it could not be there for any other reason
15 than to suggest that Covil cannot respond to damages that
16 are awarded, and I don't want them to have that in their kin
17 whatsoever. So I am frankly inclined to say disregard that
18 and that it is -- that none of this argument affects
19 collectability of this matter and that they are not to be
20 concerned about that, and I think that's all I'm going to
21 say.

22 I know you would want more and your position is
23 preserved on that, but I believe the thing to do is do it as
24 I have suggested.

25 Now, that may change if we end up in a punitive

1 stage of this matter, because although you don't have to
2 introduce evidence of net worth a sin that's been committed
3 here, that I think would have more impact on the punitive
4 damage than it does on the liability.

5 I think with respect to liability and actual
6 damages I can tell that collectability is not to be
7 considered by them; that putting in this material is not
8 appropriate, and leave it at that.

9 And I think I can tell them on Mr. Waters that his
10 truth-telling ability and his credibility cannot in any way
11 be affected by the attempt to put in information that's not
12 in the record and would not be appropriate to be considered
13 by them worded.

14 So that's how I'm going to handle it. Mr. Wall
15 thinks I ought not to say anything. Ms. McVey thinks I
16 should say that Covil can pay and that Mr. Waters is
17 presumed not to have sued Covil, but I have chosen to do it
18 in the way I have explained it to you.

19 MS. MCVEY: Yes, ma'am. Thank you.

20 THE COURT: And I will do that.

21 And my question is where to do that.

22 MS. MCVEY: I would like to do it at the very
23 beginning.

24 THE COURT: All right. I'll do it at the
25 beginning.

1 I'm going to begin here with these two issues and
2 then I will go forward with the rest of the charge.

3 All right. Anything further?

4 MS. MCVEY: No, ma'am.

5 MR. WALL: Nothing further, Your Honor.

6 THE COURT: Bring in the jury.

7 (The following takes place in the presence of the
8 jury panel).

9 (Whereupon, at 11:18 a.m. the jury panel was given
10 jury instructions by the court)

11 THE COURT: Ladies and gentlemen of the jury, it
12 now becomes my duty to charge you on the law, but before I
13 charge you on the law, as a result of some things that
14 occurred in arguments made to you, I am going to make two
15 other charges to you.

16 First deals with the discussions by Mr. Wall in
17 opening statement about the status of Covil Corporation,
18 defunct, not in business, things of that nature, and Mr.
19 Wall's mention to you in the closing argument that Covil had
20 lost its charter.

21 The first thing is those matters are not before
22 you, not properly before you.

23 The next thing is that those matters should not
24 affect your consideration of Covil's status in this case.

25 The third thing is you should not have any concern

1 about collectability of the verdict you render, if, in fact,
2 you render an actual damage or any other kind of damage
3 verdict in this case. That's not your concern. That's not
4 your burden. Your concern and your duties is to render a
5 verdict as you see fit based on the facts that only you can
6 find and the law as I give it to you. So that is the first
7 charge I want to give you on what has occurred in arguments.

8 The second charge that I want you to give you
9 concerns the mention in argument, in closing argument by Mr.
10 Wall, that Mr. Dwaine Waters, a Covil employee who testified
11 by videotaped deposition in the case, is suing Covil. That
12 was a very improper remark, for which Mr. Wall has
13 apologized. That is not pertinent in any way to Mr. Waters
14 testimony. It cannot be used by you to evaluate his
15 credibility, and so you should put that out of your mind
16 completely and evaluate Mr. Waters testimony as you heard it
17 and as you received it.

18 Now, having discussed those two matters with you,
19 I'm going to charge you on the law that applies to the case
20 and the law that applies to the facts in this case, and it
21 is your duty to find the facts from the evidence. And to
22 those facts you must apply the law as I give it to you and
23 you must decide this case based on the evidence and the law.
24 You should not be concerned with what the law should be, but
25 what it is. And you must not be influenced in this case by

1 personal likes or dislikes or by any undue sympathy or
2 prejudice. And that means you must decide this case solely
3 on the evidence before you according to the law. And you
4 will remember that you took an oath to do just that when we
5 began this trial.

6 So follow my instructions. You must follow all of
7 them and not just single out some and ignore the others,
8 because they are all equally important. Please don't read
9 into these instructions or into anything that I might have
10 said or done during this trial any indication as to what I
11 think the facts are or what I think your verdict ought to
12 be, because under our system of justice you, the jury, are
13 the sole and exclusive judges of the facts and I'm not going
14 to intrude on your constitutionally-guaranteed
15 responsibility to determine and right to determine the
16 facts, just as I know you are not going to intrude on my
17 responsibility under the Constitution to charge you as to
18 what the law is.

19 Now, ladies and gentlemen, how do you decide what
20 the facts are? You do this by evaluating or weighing the
21 evidence you have heard during this trial. Now, there is no
22 way for you to weigh the evidence in the literal sense. I'm
23 not going to send you back with a set of scales and ask you
24 to conduct experiments. That's not what I'm talking about.
25 You weigh and evaluate the evidence simply by using your own

1 good common sense and your sense of logic and your lifetime
2 experiences. And when you bring those things to bear on
3 this evidence that you have heard during this case, you will
4 be able to determine the true facts of this case. And once
5 you do that, you will be able to take the law as I'm about
6 to give it to you, apply it to those facts and you will be
7 able to reach a decision and a verdict in this case.

8 In deciding the facts of the case, of course, you
9 should not be swayed by bias or prejudice or favor as to any
10 party. Our system of justice does not permit jurors to be
11 governed by prejudice or sympathy or public opinion.

12 This case should be considered and decided by you
13 as an action between persons or entities of equal standing
14 in the community and equal worth, holding the same or
15 similar stations in life. A corporation is entitled to this
16 same fair trial at your hand as a private individual. All
17 persons, including corporations, stand equal before the law
18 and are to be dealt with as equals in a court of justice.

19 You must not consider as evidence any statement of
20 counsel made during the trial. Statements of counsel do not
21 constitute evidence. Rather counsel is articulating the
22 position and contentions of his or her client, and this rule
23 applies to the opening statements, as well as the closing
24 statement.

25 Attorneys are officers of the court and they have

1 the absolute right and duty to bring matters to the
2 attention of the court by way of objection. Do not
3 inferentially or otherwise become upset or disturbed by what
4 counsel says because of an objection. Our trial procedure
5 includes the objection process as a means of controlling
6 evidence, letting in proper evidence, keeping out improper
7 evidence, and counsel, by objecting, are simply performing
8 their role in the trial of the case.

9 Now, once the court makes a ruling on an objection
10 the jury is bound by that ruling. If the objection has been
11 sustained, the question is improper. If the objection is
12 overruled, the question is proper. In that regard a jury
13 must not under circumstances derive any inference from any
14 ruling made by the court on objections as to any opinion the
15 court may have about the case. The judge does not have an
16 opinion on the evidence and is not entitled to an opinion
17 under the law. The judge is performing her role in the
18 trial of the case.

19 As to any question as to which objection was
20 sustained, you may not speculate as to what the answer might
21 have been or as to any reason for the objection. You must
22 never speculate to be true any insinuation by the question
23 that is asked to a witness. A question is not evidence. It
24 can only be considered as it supplies meaning to the answer
25 that is given and that is evidence.

1 Now, burden of proof. The plaintiffs have the
2 burden of proof in this case, and the burden of proof in a
3 civil case is by the greater weight of the evidence, and
4 that means that the plaintiff, in order to obtain a verdict,
5 must produce evidence, which considered in the light of all
6 the facts, leads you to believe that what the plaintiff is
7 claiming is more likely true than not true, and the better
8 way to visualize that is perhaps by envisioning that set of
9 scales. And if you were to put the plaintiff and
10 defendant's evidence on opposite sides of the scales, the
11 plaintiff would have to tip that scale ever so slightly in
12 its favor, even by the most minute portion. And if it
13 tipped the scale by even that minute portion, then the
14 plaintiff would be entitled to a verdict, because then the
15 greater weight of the evidence would be on the plaintiffs'
16 side. However, if, after your review of the evidence, the
17 scales remain evenly balanced, then there is not a greater
18 weight of evidence on either side and, therefore, defendant
19 is the winner and the verdict would be a verdict for the
20 defendant. So you must mentally weigh this evidence, place
21 it on the scale and see which side evidence has greater
22 weight in your mind.

23 Now, some of you are certainly familiar with the
24 burden of proof in a criminal case. In a criminal case
25 before the State can convict someone of a crime they must

1 prove each element of that crime beyond a reasonable doubt,
2 which is one of the highest burdens of proof the law knows.
3 That burden has no place in this case. This is a civil case
4 and the standard of proof that you must use and the yard
5 stick you must apply in this civil case is the greater
6 weight of the evidence, and that's the sole standard of
7 proof in this case as to the plaintiffs' claim for actual
8 damages.

9 Evidence.

10 As I told you, you must decide what the facts are
11 from the evidence. The evidence consists of sworn witness
12 statements from the podium, sworn statements played for you,
13 sworn statement read to you and exhibits. And we have also
14 had something called stipulations or instructions by me in
15 this case, and a stipulation is simply an agreement by the
16 parties that certain facts exists without the necessity of
17 further proof and you must take the stipulation as
18 conclusive evidence of fact. So the only things that you
19 can use in determining what the facts are are witness
20 statements, exhibits, stipulations, and nothing else. We
21 have excellent lawyers in this case and they have zealously
22 advocated for their client's position, but remember, they
23 are not witnesses, so what they say is not evidence. If you
24 remember something differently yourself, your memory
25 controls rather than what the lawyers may have said the

1 evidence is, because you are the finders of the facts. It's
2 very important for you to listen, because, as I said at the
3 outset, they are trying to help you understand the evidence,
4 but keep in mind that what the lawyers say is not evidence.

5 Direct and circumstantial evidence.

6 Now, ladies and gentlemen, in any type of case
7 there are distinct types of evidence, so what I'm discussing
8 now is direct and circumstantial evidence. Direct evidence
9 is the statement of a witness who claims to have an actual
10 direct knowledge of a fact, such as an eyewitness. It's
11 evidence that, if believed, immediately establishes the
12 fact.

13 Another type of evidence is circumstantial
14 evidence, and I'm sure that you have heard that term.
15 Circumstantial evidence is indirect evidence. Put another
16 way, circumstantial evidence is proof of a chain of facts
17 and circumstances from which you could find that another
18 fact exists, even though it hasn't been proven to you
19 directly. In modern parlance, the young people call this
20 connecting the dots. And the law makes no distinction
21 between the weight or value to be given direct or
22 circumstantial evidence. You may consider both kind of
23 evidence in this case.

24 Let me give you an example of circumstantial
25 evidence. If a witness testified that the witness saw it

1 was raining outside, that would be direct evidence that it
2 is raining outside, or was raining outside at a particular
3 time. But if a witness testified that the witness saw
4 someone enter a room wearing a raincoat covered with drops
5 of water and carrying a wet umbrella, that would be
6 circumstantial evidence from which you could conclude that
7 it was raining outside.

8 Where circumstantial evidence is relied upon, it's
9 incumbent upon the party presenting the evidence to show the
10 existence of such circumstances as would justify the
11 inference that a particular event occurred and not leave the
12 question to speculation or conjecture. If the circumstances
13 are proved to your satisfaction, you may infer a fact from
14 those circumstances, but the circumstances must lead to the
15 conclusion with reasonable certainty. If the circumstances
16 are not proven to your satisfaction, then you should not
17 infer the fact.

18 Evaluating a witness' testimony.

19 Now, ladies and gentlemen, you must consider all
20 the evidence in deciding what the facts are. And if there
21 has been evidence that's been stricken from the record or
22 evidence I have told you to disregard, then that material is
23 no longer a part of the record or the evidence in this case
24 and you can't consider it in your deliberations. But you
25 must, as judges of the facts, determine the credibility of

1 all the evidence. As I told you in the beginning, for every
2 witness who testifies and every exhibit that's admitted, you
3 will have to determine whether those things are worthy of
4 belief. And how do you do that? In the case of a witness
5 that testifies, I can give you some general guidelines.

6 First of all, you may consider whether the witness
7 has some interest in the outcome of this case, whether they
8 have some bias or prejudice toward someone or some issue in
9 the case, whether they have something to gain by their
10 testimony. Second, you must consider what opportunity the
11 witness had to observe the things that they were here to
12 tell you about. And, third, you may consider how the
13 witness' evidence or testimony stacks up against the other
14 evidence in the case. Is it consistent or inconsistent?
15 Fourth, you may consider the witness' demeanor on the stand.
16 Was the witness hesitant or forthright in their testimony?
17 Fifth, you may certainly use what you use in your day-to-day
18 life to determine whether someone is telling you the truth,
19 because you didn't surrender your common sense when you
20 walked into this courtroom at the beginning of this week.

21 I will also tell you this. You may believe
22 everything a witness says, or you may believe nothing a
23 witness said. You may believe parts of a witness' testimony
24 and disbelieve other parts. You may believe one witness
25 over the many, or you may believe the many over the one, but

1 you certainly don't decide this matter of credibility simply
2 by counting up the witnesses on one side or another, because
3 your sole object, ladies and gentlemen, is to determine the
4 truth in this case and it doesn't matter to you whether that
5 truth comes from a witness for the plaintiff or defendant.
6 It's all evidence for you to evaluate.

7 Expert testimony.

8 I have told you that -- you have heard expert
9 testimony from people who have been qualified as experts,
10 because by reason of their education, training and
11 experience they have achieved some expertise in a particular
12 field. And they can, therefore, state their opinions on the
13 matter in their field and they may state the reasons for
14 those opinions, but expert testimony, as I told you when we
15 qualified the first expert, must be judged by you, just as
16 any other testimony in this important respect, and that is
17 that you, the jury, are the sole judge of the credibility of
18 a witness. So you may believe a witness' testimony and
19 accept it. You may reject it. You may give it whatever
20 weight you think it deserves.

21 Now, expert witnesses and causation.

22 When someone relies on expert testimony to show a
23 causal connection between an injury and the subsequent
24 condition, the testimony must meet the most probably rule.
25 It is not sufficient that the condition in question was

1 possibly, you might could have, or might have resulted from
2 the injury. The expert must go further and testify that
3 taking into consideration all the facts it is his or her
4 professional opinion that the result in question most
5 probably came from the cause alleged.

6 Deposition testimony.

7 You have also heard testimony presented through
8 depositions. I just want to remind you that that deposition
9 testimony is entitled to the same weight and consideration
10 as if that witness sat in this witness stand and testified
11 direct to you in that regard.

12 Taking notes.

13 Some of you have been taking notes in the trial
14 and I gave you an instruction on that to begin with. I just
15 want to remind you that the notes are for your own personal
16 use and certainly don't overcome another's independent
17 recollection and are not to be used in place of your memory,
18 even if you didn't write it down.

19 Summary of the plaintiffs' claims.

20 Now, this is a claim for damages stemming from a
21 personal injury that has been alleged and I want to go over
22 with you various claims that are being made in this case.
23 The plaintiff, Jerry Crawford, is seeking to recover damages
24 for personal injury arising out of his alleged exposure to
25 asbestos from the defendant's product, and the estate of

1 Evelyn Crawford is seeking to recover for the loss of
2 consortium occasioned by her husband's alleged exposure to
3 asbestos from defendant's product. The mere fact an injury
4 occurred or an accident happened, standing alone, does not
5 permit you to draw any conclusion or inference that such
6 injury or accident has been caused by anyone's negligence or
7 fault.

8 The plaintiffs' claims in this case are based on
9 three theories. The first theory is negligence. The second
10 is strict liability, and the third is called breach of
11 implied warranty. The plaintiffs are not required to prove
12 all of those three theories. Proof of a claim under any of
13 these theories would enable the plaintiff to be entitled to
14 a verdict, but the plaintiff must meet their burden of proof
15 as to at least one of these theories in order to recover.
16 If you find they have not on any of those theories, then
17 defendant would be entitled to a verdict.

18 Negligence.

19 The first theory of the plaintiffs is one of
20 negligence. The focus under negligence is on the conduct of
21 defendant. In order to prevail under this claim the
22 plaintiff must prove by the greater weight of the evidence
23 that the defendant failed to exercise due care in some
24 respect. If you were having a hard time with the phrase
25 negligence, you can substitute the word careless, because it

1 means the same thing. It means that a failure to act as a
2 reasonably prudent person would do under the same or similar
3 circumstances, or doing something that a reasonable person
4 would not do under same or similar circumstances. So
5 failure to act or doing something a reasonable person would
6 not do.

7 But you must first determine if the defendant owed
8 the plaintiffs a duty of care. A defendant will owe a
9 plaintiff a duty of care when the defendant knows of the
10 risks of harm. This may be met by showing the defendant was
11 aware of the danger and failed to take reasonable steps to
12 correct it. Where a product is actually designed and
13 manufactured by another company, the seller assumes the duty
14 of the manufacturer and labeled and sells the product as its
15 own. A manufacturer is held to the skill of an expert in
16 the field and is charged with an expert's knowledge of
17 materials and processes used in the industry. A
18 manufacturer has the duty to stay aware of current
19 standards, current scientific knowledge in the industry.
20 And, therefore, since the seller assumes the duties of the
21 manufacturer, a seller is held to the skill of an expert in
22 the field as well and has a duty to stay aware of the
23 current standards and scientific knowledge in its industry.

24 Now, although evidence of industry standards may
25 be considered as evidence of the standard of care, an

1 industry can't set its own unreasonable standards. An
2 entire industry may lag behind in the adoption of new and
3 available products or safety features and the failure to use
4 due care, even if no one in the industry uses due care, does
5 not excuse negligence. It is for you to decide whether the
6 standard of care was proper, considering what a reasonable
7 person would have done in similar circumstances.

8 Now, strict liability.

9 The second theory I want to go over with you is
10 strict liability. Plaintiffs' claims are that defendant
11 should be held strictly liable for plaintiffs' injuries.
12 Strict liability means liability without fault. Under the
13 law the theory of strict liability says that even if a
14 defendant used due care, the defendant may still be
15 responsible for the plaintiffs' injury. In other words, it
16 does not matter whether the defendant was negligent or not
17 negligent. If the products were defective and unreasonably
18 dangerous when they left the defendant's hand, the defendant
19 is liable, even if all reasonable care was used in making
20 and selling the product. And even if plaintiff did not buy
21 the product from defendant or enter into any contract with
22 the defendant, because the plaintiffs do not have to show
23 negligence under the theory of strict liability. The
24 plaintiffs must only prove the products was defective and
25 unreasonably dangerous when it was placed in the stream of

1 commerce.

2 Your focus should be on the product itself and not
3 the conduct of the defendant. The defect must exist at the
4 time it leaves the defendant's control when liability is
5 sought to be imposed. The existence of a defect is crucial,
6 because a manufacturer is not an insurer against all risks
7 or injuries associated with the product. In a products
8 liability case against a manufacturer the plaintiffs had the
9 burden of proving that the produce in question was defective
10 at the time when the defendant had possession or control of
11 it, when the product was delivered or purchased. There is
12 no duty on the manufacturer to furnish a product that will
13 not wear out. A party who sells a product in a defective
14 condition unreasonably dangerous is subject to liability for
15 physical harm caused to the user if the manufacturer is
16 engaged in the business of producing or selling a product
17 and if it's expected to reach and reaches the consumer
18 without substantial change in its condition.

19 To recover under strict liability, plaintiffs must
20 prove three things by the greater weight of the evidence.
21 One, the product was in a defective condition, unreasonably
22 dangerous to the plaintiff. Two, at the time of the injury
23 the product was essentially in the same condition as when it
24 left the defendant's hands. And three, the plaintiffs were
25 injured by the product.

1 Reasonable alternative design.

2 In a products liability case, whether for
3 negligence or strict liability under design defect, the
4 plaintiff must prove the existence of a reasonable
5 alternative design. If plaintiff does not show that the
6 defendant could have designed the product in an alternative
7 manner that would have eliminated the defect, the plaintiff
8 cannot recover for a claim for design defect.

9 In this state we balance the utility of the risk
10 inherent in the design of a product with the magnitude of
11 the risk to determine the reasonableness of the
12 manufacturer's actions in designing the product. This
13 balancing act is also relevant to the determination that the
14 product as designed is unreasonably dangerous in its failure
15 to conform to the ordinary user's expectations in the
16 overall balance of risk and utility of the product.

17 Strict liability.

18 Now, to prove a defective design defect, to prove
19 a defective condition, the plaintiff must first prove that
20 the defendant sold the product and at the time of sale it
21 was unreasonably dangerous to the user. A defect does not
22 have to be a manufacturing error. With a design defect
23 there is nothing wrong with the manufacturing process and
24 the product is made according to its design. However, there
25 is a flaw in the product design. The plaintiffs must prove

1 that the product as designed was in a defective condition,
2 unreasonably dangerous. The test is not whether the product
3 could be made safer, but whether its design was unreasonably
4 dangerous.

5 Failure to warn, strict liability.

6 The product may have also be defective if the
7 defendant failed to warn or failed to provide adequate
8 instructions to the user. A product is not defective for
9 failure to warn of the obvious. A seller is not required to
10 warn with respect to products when the danger or potential
11 danger is generally known or recognized. A product cannot
12 be deemed either defective or unreasonably dangerous if the
13 danger associated with the product is one users generally
14 recognize.

15 A product may, by reason of its nature and use, be
16 unreasonably dangerous unless proper instructions and
17 warnings are supplied for its intended use. In those cases
18 the seller or manufacturer must give an appropriate warning
19 of any dangerous condition likely to be encountered. And
20 the warning must be one that would cause a reasonable person
21 to use caution proportionate to the potential danger.

22 In deciding whether the warning was adequate you
23 should consider the likelihood of an accident taking place
24 and the seriousness of the consequence. There is a
25 particular need for sufficient warnings when there is a

1 representation that the product in question is not
2 dangerous. A product may be found defective if the product
3 is unreasonably dangerous in the hands of a user without a
4 suitable warning. A manufacturer or seller is not required
5 to warn about defects in a product unless the manufacturer
6 knew or should have known about the danger when the product
7 was sold. Where a warning is given, the defendant may
8 reasonably assume it will be read and followed. A product
9 that bears a warning that makes the product safe for use if
10 followed is not defective or unreasonably dangerous.

11 A manufacturer has no duty to warn -- to notify
12 previous purchasers of its products about later developed
13 safety devices or to retrofit those products if the products
14 were non-defective under the standards existing at the time
15 of manufacture or sale.

16 Strict liability, defective and unreasonably
17 dangerous products.

18 If you find it is probable that a user would be
19 injured by the product and the injury was not reasonably
20 perceivable by the user, the product is defective. You
21 cannot find the product defective if it was only possible
22 that such injury would occur. In deciding whether a product
23 is unreasonably dangerous and defective you should consider
24 the dangers that would reasonably be anticipated by a
25 typical user of a product of this kind. Then you should

1 decide whether the particular product involved in this case
2 had a tendency for causing danger beyond that that an
3 ordinary user with common knowledge of the product's
4 characteristics would anticipate. You should also consider
5 whether the dangers associated with the use of the product
6 outweigh the usefulness of the product, the costs involved
7 for adding safety, the likelihood of serious injury, and the
8 obviousness of the danger.

9 Now, many products cannot be made completely safe
10 for their use. If the products are useful and desirable and
11 properly prepared and manufactured, packaged and accompanied
12 with adequate warnings and instructions, they cannot be said
13 to be defective. The fact that a product can be made safer
14 alone does not make that product unreasonably dangerous. In
15 order for the defendant to be held responsible, the product
16 must have been in a condition not contemplated by the
17 ultimate user, which would have been unreasonably dangerous
18 to the user when the product was used in a foreseeable
19 manner, including any use of the product at the time it left
20 defendant's hands.

21 Implied breach of warranty.

22 The next thing I want to talk to you about is
23 plaintiffs' claim for implied warranty of merchantability.
24 In order to recover under this theory, the plaintiffs must
25 prove by the greater weight of the evidence the same factors

1 I have explained to you for strict liability; that the
2 defendant manufactured or sold a product at the time of sale
3 was defective, unreasonably dangerous to the user, that the
4 product was expected to and did reach the ultimate user
5 without substantial change in condition in which the
6 defendant sold it, and that the plaintiffs' injuries were
7 proximately caused by the defective product.

8 A warranty is a pledge by the seller that the
9 product is as represented to be. An implied warranty is one
10 that the law presumes to have been made by every seller of
11 goods, whether it was actually stated by the seller or not.
12 The sale of a product always carries with it the implied
13 warranty that that product is fit for the original purpose
14 for which the product is normally used. And this is called
15 an implied warranty of merchantability. This warranty is
16 based on a buyer's reasonable expectation that goods
17 purchased from a merchant who sells goods of that kind will
18 be free of significant defect and will perform in the way
19 that goods of that kind ought to perform.

20 In deciding whether a product is safe for its
21 intended use, the person who makes the warranty must foresee
22 the conditions under which that product will be used and is
23 presumed to know about the normal environment the product
24 will be used in and the reasonably foreseeable risks that
25 accompanies such use. A warranty that goods should be

1 merchantable is implied under the contract of their sale if
2 a seller is a merchant with respect to goods of that kind.
3 To be merchantable, goods must at least pass without
4 objection in trade or in the contract description. In order
5 to recover for a breach of implied warranty of
6 merchantability the plaintiff must prove that the merchant
7 who sold the goods, the goods were not merchantable at the
8 time of the sale and the injuries were proximately caused by
9 that defective nature of the goods.

10 Now, duty of manufacturers and sellers.

11 A manufacturer owes a duty of care in the
12 manufacture of its product proportionate to the dangers
13 involved in the product's use. A manufacturer of a product
14 may under a plan or design that makes it dangerous to the
15 user for which it is made, owe a duty to use reasonable care
16 in adopting a safe plan or design to those users you would
17 expect to use the product. A seller owes a duty to conduct
18 adequate tests and inspections of its product to discover
19 latent defects or defects that aren't visible or apparent on
20 a reasonable inspection.

21 So if a seller had a reason to know that a product
22 was likely to be dangerous or defective, a seller owes the
23 duty to exercise and use reasonable care in inspecting and
24 testing that product before selling it. If a reasonable
25 inspection or test would disclose a defect, the manufacturer

1 who incorporates a defective component part into its
2 finished product and places the product in the stream of
3 commerce is liable for the injuries caused by the defects in
4 that component part.

5 Now, a defendant cannot, however, be liable for an
6 alleged defective product it didn't design, recommend,
7 specify, require, manufacture, sell, or place in the stream
8 of commerce. In deciding whether a defendant had a duty to
9 test the product, you should consider the defendant's
10 ability to conduct the test at the time the product was
11 sold.

12 A seller of a defective product has a duty to warn
13 users of the product and any dangers created by its product
14 with which the manufacturer should be or is aware at the
15 time the product was sold. A supplier of a product who knew
16 or should have known the product might be dangerous during
17 its perceivable use and had reason to believe that the
18 ultimate user would not appreciate the danger has a duty to
19 clearly and understandably warn that ultimate user of the
20 danger.

21 A seller is only required to warn about dangers
22 that are unreasonable or which are dangerous beyond the
23 expectation or general knowledge of an ordinary person who
24 uses the product with the ordinary common knowledge about
25 the product's characteristics. In other words, there is a

1 duty to warn not when scientific certainty is established,
2 but when a reasonable person would want to be informed of
3 the risks. In deciding whether the directions or
4 instructions or warranties are adequate, you should consider
5 their location, language and size.

6 Now, state of the art.

7 Something you must consider in assessing a
8 defendant's product and conduct is the state of the art at
9 the time the products left the defendant's hand. The issue
10 of due care as well as the breach of any warranty must be
11 assessed in the light of circumstances existing at the time
12 of sale. In order for plaintiffs to prove their case in a
13 products liability action they must show the products were
14 in a defective condition at the time they left the hands of
15 the particular seller. The product must be measured against
16 the standards existing at that time of sale. State of the
17 art includes all the reasonably available scientific
18 knowledge on the subject at the given time. This includes
19 scientific, medical, engineering, or other knowledge that
20 may be available. State of the art includes the element of
21 time, what is known, when this knowledge was available. If
22 a product was non-defective under the standards existing at
23 the time of manufacture, the manufacturer does not have a
24 post-sale duty to warn. You should return a verdict in
25 favor of the plaintiffs only if considering the state of the

1 art existing at the time that the defendant's products were
2 sold in a defective condition.

3 Products liability, design defects and negligence.

4 In an action based on negligence the plaintiff
5 must prove the product as designed was in a defective
6 condition unreasonably dangerous to the user when it left
7 the control of the defendant and the defect caused his
8 injuries. In addition, liability for negligence requires
9 proof that the manufacturer breached its duty to exercise
10 reasonable care to adopt a safe design. This burden may be
11 met by showing that the manufacturer was aware of the danger
12 and failed to take reasonable steps to correct it.

13 A manufacturer of a product made under a plan or
14 design which makes it dangerous for the uses for which it is
15 manufactured is subject to liability to others whom he
16 should expect to use that product or be endangered by its
17 probable use for physical harm caused by his failure to
18 exercise reasonable care in adopting a safe plan or design.

19 Breach of duty.

20 I have talked to you about the product
21 manufacturer's duty of care. If you find that the defendant
22 owed a duty to the plaintiffs, owed the plaintiffs a duty of
23 care, the next thing the plaintiffs must prove by the
24 greater weight of the evidence is that the defendant
25 breached that duty by a negligent act or omission. In

1 deciding whether the defendant breached the duty of care you
2 should decide whether or not the defendant has followed the
3 normal customary practices and procedures in the industry in
4 the light of the defendant's expertise and ability to see
5 and appreciate the problem and its cause. If the defendant
6 failed to exercise reasonable care in fulfilling any of its
7 duties, the defendant would be responsible for the injuries
8 to any person the defendant should expect to use its
9 product, assuming those injuries have been proximately
10 caused by that breach.

11 Causation.

12 The plaintiffs must prove the plaintiff's exposure
13 to that defendant's asbestos product was of such a frequency
14 and regularity and duration that it was a substantial factor
15 in bringing about the disease or injury. The mere fact that
16 an injury or an accident occurred, standing alone, does not
17 permit you to draw a conclusion that the injury or accident
18 was caused by anyone's negligence or by breach of warranty
19 or strict liability.

20 In a negligence claim, the plaintiffs must prove
21 by the greater weight of the evidence that the defendant's
22 negligence proximately caused the injury to plaintiff and
23 that the damages suffered were proximately caused by the
24 defendant's breach of its duty of due care. Proximate cause
25 is conduct that produces a natural chain of events that in

1 the end brings about injury. It's a direct cause of the
2 injury.

3 To prove defendant's negligence proximately caused
4 the plaintiffs' injury, the plaintiffs must first proof
5 something called causation in fact, and that is proven by
6 showing defendant's negligence was a substantial factor in
7 causing the injury. Plaintiffs must also prove something
8 called legal cause, and that is proven by showing the injury
9 was foreseeable and that means that the injury occurred as a
10 natural and probable consequence of defendant's negligence.
11 The plaintiffs must prove that some injury from defendant's
12 negligence was foreseeable, but they don't have to prove
13 that the particular injury that did occur was foreseeable.
14 However, a defendant can't be held responsible for something
15 it could not expect to happen.

16 There can be more than one cause.

17 Proximate cause does not mean the only cause. The
18 defendant's actions can be a proximate case of the
19 plaintiffs' injury if defendant's conduct was at least one
20 of the direct causes of the plaintiffs' injuries. Now,
21 where two or more causes combine to produce an injury a
22 defendant is not relieved of liability for negligence,
23 because it is responsible for only one of the causes. It is
24 sufficient that its negligence is a proximate cause without
25 which the injury would not have resulted to a greater

1 extent. Consequently, if the defendant's negligence is a
2 proximate cause of the injury to another, the fact that the
3 negligence of a third party occurred or concurred with its
4 own negligence to produce the harm does not relieve the
5 defendant of liability. In such cases, each wrongdoer is in
6 breach of the duty of care over the plaintiffs and because
7 the negligence of each concurred to produce the injury, they
8 can all be liable.

9 Fault of others.

10 A defendant is entitled to assert that other
11 persons or entities contributed to the alleged injury or
12 damage and are liable for any or all the damage, and it is
13 proper for you to consider the action of others in
14 determining fault and causation.

15 Spoliation of evidence.

16 Spoliation is the loss or destruction of evidence
17 and when it is established, the jury may draw the inference
18 that the evidence lost or destroyed was unfavorable to the
19 party responsible for its loss or destruction.

20 Actual damages.

21 If you find the plaintiffs have met their burden
22 of proving at least one of these theories, that is strict
23 liability, implied warranty of merchantability, or
24 negligence by the greater weight of the evidence, and if
25 their damages were proximately caused by defendant's conduct

1 or products, then you would move on to assess any damages,
2 and that is how much money the defendant should be required
3 to pay. Actual damages are designed to compensate the party
4 for their loss and to make that party as nearly whole as
5 money could do, or to put them in the same position as they
6 were before the incident or accident occurred.

7 Personal injury actual damages.

8 Actual damages would include all the actual losses
9 and expenses that the plaintiffs have suffered because of
10 defendant's actions. Actual damages include several areas
11 recognized by the law. In personal injury actions, the
12 plaintiffs may recover for the necessary and reasonable
13 expenses caused by the injury, such as amounts necessarily
14 incurred for medical treatment. A person who suffers
15 personal injuries because of the misconduct of another is
16 entitled to recover the reasonable value of medical care and
17 expenses incurred for the treatment of the injuries to the
18 time of trial, as well as those reasonably certain to be
19 incurred in the future. Accordingly, a plaintiff may
20 recover amounts incurred for past and future medical care,
21 hospital, physician and nursing care, medicines, and other
22 out-of-pocket and anticipated expenses, such as vocational,
23 physical, or other rehabilitation. Pain and suffering is
24 also recognized as an element of damage properly to be
25 considered under the law. Pain and suffering compensates

1 the plaintiff for physical discomfort and emotional response
2 to the sensation of pain caused by the injury. There is no
3 definite standard I can give you to determine the amount of
4 damages. You, the jury, will have to use your calm and
5 reasonable judgment to determine the damages in light of
6 your own experiences and in light of the testimony and
7 evidence presented in this case.

8 Another form of damages is loss of enjoyment of
9 life. This compensates for the limitations on the ability
10 to participate in and derive pleasure from normal activities
11 of daily life. Another category is mental suffering, which
12 is compensation for shock, fright, anxiety, emotional
13 upsets. Mental anguish is more than mere disappointment or
14 anger or worry or embarrassment or resentment. Although it
15 may include all of those things, it also includes mental
16 sensation of pain resulting from the painful emotion, such
17 as grief, wounded pride, shame, disparagement and
18 humiliation. It may be composed of fright, nervousness,
19 grief, anxiety and worry about an ordeal. Damages for loss
20 of enjoyment of life compensate for the limitation on the
21 injured person's ability to participate in and derive
22 pleasure from the normal activities of daily life or for the
23 individual's inability to pursue his talents, recreational
24 interests, hobbies, or avocations.

25 Plaintiffs may also recover for amounts of past

1 medical care, including hospital, physicians, nursing care
2 costs, medicine, other out-of-pocket expenses, such as
3 vocational, physical, or other rehabilitation.

4 Actual damages for the future.

5 Now, in determining the amount of compensation for
6 someone personally injured by another's misconduct it's
7 proper to consider past, present, and future aspects of the
8 injury. The injured party may recover those future damages
9 that are reasonably certain to result. The principle under
10 the underlying compensation is that only one action can be
11 brought and only one recovery had, so it may be, depending
12 on your view of the evidence, proper to include the estimate
13 of future damages, future medical expenses, pain and
14 suffering that will with reasonable certainty result. The
15 plaintiff is never entitled to recover speculative damages.
16 The damages -- that is damages are just guesswork. The
17 plaintiff has the burden of proving the existence and the
18 causation and the amount of damages, which he doesn't have
19 to prove to a mathematical certainty. Instead, the
20 plaintiffs must present evidence that is sufficient to allow
21 you to make a reasonable approximation of the damages and
22 that is the plaintiff must prove the damages to a reasonable
23 degree of certainty. And any future damages you may award
24 must be reasonably calculated to result from the alleged
25 injury or damage sustained and they must be reduced to their

1 present cash value. I will charge you that in this case Mr.
2 Crawford is a 73 year old male with a life expectancy,
3 according to the South Carolina Code, of 11.39 years. This
4 is a factor you may consider, along with other factors and
5 circumstances that may bear on his health and longevity,
6 including his occupation and habits and health.

7 Now, loss of consortium damages.

8 The plaintiff, Evelyn Kay Crawford, has passed
9 away. However, her estate claims on her behalf loss of
10 consortium because of injuries received by her husband Jerry
11 Howard Crawford. The companionship for society of a spouse
12 is not an article of commerce that can be weighed or
13 measured or brought in or sold. No expert is competent to
14 testify to their value and there is no way we can determine
15 the market price, of course. The consideration upon which
16 this is based is not monetary, but the estate of Evelyn Kay
17 Crawford is entitled to compensation and money for her loss.
18 Loss of consortium includes the afforded services provided
19 by the spouse, their love, companionship, affection,
20 society, sexual relations, comfort, support, solace,
21 guidance. The estate of Evelyn Kay Crawford is entitled to
22 recover the value of those services of her spouse which were
23 lost, including the loss of her spouse, the society and
24 companionship in her home and for any expenses of the care
25 and treatment of her spouse and any medical expenses

1 reasonably incurred.

2 Jury deliberations.

3 Now, I am through with my instruction on the law
4 and I just want to give you some final instructions on your
5 deliberations. Before we do that, I want to remind you that
6 you were chosen in this case not to be partisans or
7 advocates for either the Crawfords or for Covil Corporation.
8 You were chosen because all of them believed that you could
9 be fair and reasonable, that you could be a juror who
10 decides this case without any bias or prejudice or
11 partisanship. So you are the judges of the facts and your
12 sole interest is to determine the true facts of the evidence
13 in this case and the law I just gave you and apply it to
14 those facts, which you will ultimately do to be able to
15 reach a verdict.

16 You should know that the record is now closed.
17 There are not going to be any more witnesses. There's not
18 going to be any more exhibits. So if something was referred
19 to during this trial, such as a document, or whatever it
20 might have been and you don't have it back there in the
21 exhibits I'm going to give you when you go back to your jury
22 room, then I can't give it to you. So keep in mind that the
23 record is closed. You have to make a decision based on the
24 exhibits that you have and your memory of the evidence. A
25 jury, if you look up that word in the dictionary, it would

1 be defined as a company of people sworn to render a true
2 verdict, and that is what you have been called upon to do,
3 determine the true facts of this case. And, ladies and
4 gentlemen, you each have a vote in this case and your vote
5 is exactly that. It is your vote and no one else's. Don't
6 be afraid to change your mind if the discussion that you are
7 going to have persuades you that you should, because that's
8 what deliberations are all about. Don't surrender an
9 honestly and conscientiously held belief simply to get this
10 case over with or reach a unanimous verdict, because these
11 parties have waited a long time and this is their day in
12 court. I know that you recognize the importance of this and
13 we appreciate the seriousness and respect you have given
14 everyone involved in this case and your patience.

15 Now, the verdict form.

16 I'm going to give this verdict form to your
17 foreperson. Under the Constitution of this state a jury
18 verdict must be unanimous. You must all agree, each and
19 every one of you, on the verdict. Unanimity is mandated.
20 Every single juror must agree on the jury verdict. There
21 can't be any split or divided vote in any form or fashion,
22 such as 11 to 1, or 10 to 2, or 9 to 3. Every single juror
23 must agree on the verdict. And when the foreperson signs
24 her name to this verdict as the foreperson, this assures
25 that that verdict has been unanimously reached by all of

1 you.

2 Question one on this verdict form asks you about
3 claims against Covil Corporation, asks you whether you find
4 defendant Covil Corporation was negligent and if its
5 negligence was the proximate cause of Jerry Crawford's
6 injury and damages.

7 Question two on this form asks if Covil
8 Corporation is strictly liable for selling products that
9 were the proximate cause of Jerry Crawford's injury or
10 damages.

11 And, again, just as with one, you have a yes and a
12 no, so that's how you fill it out.

13 And then question three asks if the defendant
14 Covil Corporation breached an implied warranty in selling
15 its products and if its breach was the proximate cause of
16 Jerry Crawford's injury or damage.

17 Now, if you answer yes to questions one, two,
18 and/or three, you must then answer question four.

19 And question four asks you to set forth the amount
20 of damages for Jerry Crawford's personal injury and the
21 amount of damages for Ms. Crawford's loss of consortium, if
22 you decide that has been proved by the greater weight of the
23 evidence.

24 Personal injury damages for Jerry Crawford
25 includes such things as medical, surgical and hospital

1 bills, conscious pain and suffering, mental distress, if it
2 has been proved by the greater weight of the evidence.

3 Loss of consortium damages are the damages Mrs.
4 Evelyn Kay Crawford suffered due to the injury of Jerry
5 Howard Crawford.

6 Finally, the fifth question on this verdict form
7 simply asks whether you find Covil Corporation's conduct to
8 be willful, wanton, or reckless by clear and convincing
9 evidence.

10 Now, on that question the evidence must clearly
11 and convincingly establish that the defendant was actually
12 reckless, or willful and wanton, meaning there was a
13 conscious failure to exercise due care or conscious
14 indifference to the rights and safety of others, or a
15 reckless disregard of the rights and safety of other.

16 Clear and convincing is something more than simply
17 greater weight of the evidence and it's something less than
18 beyond a reasonable doubt. Clear and convincing proof is
19 proof that leaves you firmly convinced. Clear and
20 convincing proof establishes in your mind not only that a
21 fact is probable, but that it is highly probable.

22 Now, the only time that you answer that fifth
23 question is if you actually awarded some actual damages
24 under question four.

25 So that's the verdict form.

1 Now, ladies and gentlemen, I thank you more than I
2 could tell for your attention, this very faithful attention
3 to me. Please don't start deliberating about the case until
4 you receive the exhibits and that would be your signal that
5 you can begin to talk about the case. Right now, believe
6 this or not, as long as I have been talking I may have left
7 something out. And if I do, I'm sure the lawyers will quick
8 to point it out. So if you will go back to the jury room
9 and when you get the exhibits and the jury form and the
10 charge form, that will be your signal to begin.

11 Now, at this point I will have you go to your jury
12 room. And when the exhibits come back, the bailiff will
13 take you two alternates to another location, but you will
14 remain with us until a verdict has been reached.

15 All right. You may now retire to your jury room.

16 (Whereupon, at 12:13 p.m., the jury panel went to
17 the jury room, awaiting instructions to begin deliberations)

18 THE COURT: All right. Ladies and gentlemen,
19 before I ask you to tell me whether there are any
20 corrections or exceptions, I am going to make one. If you
21 will turn to page 24 on the jury charge. This is actual
22 damages personal injury, and it's right down at the bottom
23 of the page where it says "another form of damages is the
24 loss of enjoyment of life. This compensates for," and it
25 says "the decedents," and I am going to say "the plaintiffs"

1 and strike out that.

2 MR. WALL: We did that the other day too.

3 THE COURT: What's that?

4 MR. WALL: I thought you did that -- caught that
5 the other day.

6 THE COURT: I did that and caught it when I
7 verbally charged them, but I am looking at the one that I'm
8 going to send back to them and I am going to strike out
9 "decedent" and put "plaintiff".

10 MS. MCVEY: Yes, ma'am. We can print a clean
11 copy.

12 THE COURT: All right. If you can print a clean
13 copy, I think that would be well. That would be even better
14 than me scribbling on this, but that is page 24. It is the
15 last line and it's "the decedents", and if you could put
16 "the plaintiffs".

17 Now, any other -- before you go. Hold the phone.
18 Let's be sure we are all on the same page.

19 Are there other considerations?

20 MS. MCVEY: Your Honor, no other -- no problem
21 with what you read to the jury. Our only objection, which
22 was already made, was that we wished you had given different
23 instructions about the closing argument that Mr. Wall made.

24 THE COURT: Of course.

25 MS. MCVEY: I think we have preserved that

1 already.

2 THE COURT: Yes, you have.

3 Mr. Wall? Mr. Boger?

4 MR. BOGER: No corrections or objections from the
5 defense.

6 THE COURT: Excellent.

7 Well, if you will go and thank you, sir, very much
8 and make those changes.

9 I want both sides, and I am guessing that good
10 lawyers as y'all are, you probably have already done this,
11 but just be sure to check the exhibits and be sure that they
12 are properly in the status that you have got them and I'm
13 just going to hang here for a minute until the exhibits can
14 go back and then we will retire as well.

15 Now, one thing that I want you all to do as we
16 retire is to give some cell phone contact information to
17 Maribell, so that if we have any reason by reason of a
18 question or a verdict, or anything in between, to ask you to
19 come back, we can get you pretty quickly.

20 MS. MCVEY: Yes, ma'am.

21 (Off the record)

22 (Back on the record)

23 THE COURT: Okay. What this means is the jury
24 charge, the jury form, and -- the verdict form, the jury
25 charge and the exhibits are ready to go.

1 Now, ladies and gentlemen, I'm sending the
2 exhibits back. The alternates are being taken away and the
3 jury will begin to deliberate at 12:20.

4 MS. MCVEY: Yes, ma'am. Thank you.

5 MR. WALL: Thank you, Your Honor.

6 MR. BOGER: Thank you, Your Honor.

7 (Whereupon, at 12:20 p.m., the jury panel was
8 instructed to begin deliberations)

9 MR. BOGER: Your Honor, we filed a motion for
10 reconsideration on Monday regarding your order on the
11 sanctions for discovery abuse and the instruction to the
12 jury. We don't need to argue it or anything. I'll just
13 request that you rule on it.

14 THE COURT: Is this the attempt to get a written
15 ruling from me?

16 MR. WALL: No, Your Honor. We are relying on what
17 you dictated. We had to file under 59(e) regardless.

18 THE COURT: Oh, yes, certainly. Absolutely.

19 MR. BOGER: It's just as a reminder.

20 THE COURT: Certainly. Certainly. Yes. No
21 problems there. No problems there.

22 MR. WALL: We would acknowledge --

23 THE COURT: And I would rule on it promptly.

24 MR. WALL: Thank you, Your Honor.

25 THE COURT: I know y'all are just covering your

1 skirt and going to get it in an appealable posture. I
2 figured that.

3 MR. WALL: Yes, Your Honor.

4 MR. BOGER: Yes.

5 THE COURT: Okay.

6 (Whereupon, proceedings were recessed, pending the
7 verdict of the jury panel).

8 (Whereupon, at 1:53 p.m., proceedings were
9 reconvened)

10 THE COURT: Ladies and gentlemen, we have a
11 verdict. I have no idea what it is. We are bringing in our
12 alternates and seating them in the back. Please do not
13 approach them or discuss the case. They will be here and
14 remain here, depending on when they are needed, if they are
15 needed, so please be seated.

16 MS. MCVEY: Your Honor, I don't think we need to
17 wait for the other court reporter. I think we can go
18 forward.

19 THE COURT: That's kind of what I think too. So
20 if you all are comfortable with that, then I will bring the
21 jury in.

22 MS. MCVEY: Yes, ma'am.

23 THE COURT: Very good. Very good. Have a seat
24 and just give me one second here, Ben.

25 (Off the record).

1 (Back on the record).

2 THE COURT: Maribell, the jury has a verdict, I'm
3 advised. Of course, I know nothing about what it is, but --
4 all right.

5 Where is Ben?

6 THE BAILIFF: I have got the evidence here.

7 THE COURT: Very good.

8 You may bring in the jury.

9 (Whereupon, at 1:55 p.m., the jury panel returned
10 to open court to report its verdict)

11 THE COURT: Ladies and gentlemen of the jury, I
12 understand that you have a verdict. Am I correct?

13 JURY FOREPERSON: Yes.

14 THE COURT: Madam Forelady, if you will give the
15 verdict to Mr. James.

16 Very good.

17 Madam Clerk, you may read the verdict.

18 THE CLERK: In the State of South Carolina, in the
19 Court of Common Pleas for the Seventh Judicial Court, County
20 of Spartanburg, Civil Action No. 2017-CP-42-04429, in the
21 matter of Jerry Howard Crawford and the Estate of Evelyn Kay
22 Crawford, plaintiffs, versus Covil Corporation, defendant.

23 "Negligence. We, the jury, find that Covil
24 Corporation was negligent and its negligence was a proximate
25 cause of Jerry Crawford's injury and damages?

1 "No.

2 "Strict liability. We, the jury, find Covil
3 Corporation is strictly liable for selling products that
4 were a proximate cause of Jerry Crawford's injury and
5 damages?

6 "No.

7 "Implied warranty. We, the jury, find Covil
8 Corporation breached the implied warranty in selling this
9 product and its breach was a proximate cause of Jerry
10 Crawford's injury and damages?

11 "No."

12 Signed by the foreperson on July 19th, 2018.

13 THE COURT: Thank you, Madam Clerk.

14 All right. Plaintiff, do you wish to poll the
15 jury?

16 MS. MCVEY: Yes, Your Honor.

17 THE COURT: Very good.

18 All right. Maribell, you may poll the jury.

19 THE CLERK: Ladies and gentlemen of the jury, I'm
20 about to ask you a question and that question being is this
21 your verdict and still your verdict. As I call your name
22 and juror number, please answer by saying yes or no.

23 Juror number 34, Sarah M. Burdick?

24 JUROR NUMBER 34: Yes.

25 THE COURT: Juror number 92, Stacy A. Gillen?

1 JUROR NUMBER 92: Yes.

2 THE COURT: Juror number 118, Michael S. Hayes?

3 JUROR NUMBER 118: Yes.

4 THE COURT: Juror number 100, Tammy R. Graham?

5 JUROR NUMBER 100: Yes.

6 THE COURT: Juror number 132, Zachary R. Hunter?

7 JUROR NUMBER 132: Yes.

8 THE COURT: Juror number 202, Hannah Napoli?

9 JUROR NUMBER 202: Yes.

10 THE COURT: Juror number 32, Christina Buckner?

11 JUROR NUMBER 32: Yes.

12 THE COURT: Juror number 55, Anthony T. Cox?

13 JUROR NUMBER 55: Yes.

14 THE COURT: Juror number 117, Johanna Harvey?

15 JUROR NUMBER 117: Yes.

16 THE COURT: Juror number 232, Geneva D. Robinson?

17 JUROR NUMBER 232: Yes.

18 THE COURT: Juror number 108, Sandra K. Grizzle?

19 JUROR NUMBER 108: Yes.

20 THE COURT: And juror number 62, Casey L.

21 McKinney?

22 JUROR NUMBER 62: Yes.

23 THE CLERK: The jury has been polled.

24 THE COURT: Very good.

25 Ladies and gentlemen of the jury and alternates,

1 that completes your service in this matter. Again, I very
2 much appreciate your service. The clerk will give you other
3 instructions. I think -- am I right?

4 THE CLERK: They can go. If they need a jury
5 verification for work, they may go into the office and see
6 Carrie Shaw and she will give you a form.

7 THE COURT: Very good.

8 Again, I appreciate very much your service. It's
9 a complicated case, and you are now discharged and you got
10 the solace of nothing that it would be sometime before you
11 will be called again for jury service, having served on this
12 jury, so you may go to your jury room.

13 (Whereupon, at 2:00 p.m., the jury panel was
14 discharged)

15 THE COURT: All right. All right, Maribell, this
16 is the verdict form.

17 Ms. McVey?

18 MS. MCVEY: Your Honor, we obviously will have
19 post-trial motions. We would like to make a motion for
20 JNOV, as well as other grounds, and we would like at least
21 ten days to brief that and file it.

22 MR. WALL: No objection.

23 THE COURT: Very good.

24 And, of course, I have no flexibility about the
25 initial making of the motions. That has to be done within

1 ten days, as you know, but the fuller briefing of that and
2 then a schedule for an actual hearing on that can be
3 mutually arrived at. So what needs to be done is to go on
4 and file something within the parameters of the rule's time
5 period and then we will go from there.

6 MS. MCVEY: Yes, ma'am.

7 THE COURT: Very good.

8 MS. MCVEY: Your Honor, I did want to say when the
9 jury was still here, but if they are willing, we might like
10 to speak with them, if they are able to do that.

11 THE COURT: I should have told them they can, but
12 it's not required.

13 MS. MCVEY: Sure.

14 THE COURT: But you may tell them, if you approach
15 them, that they can, but it's not required.

16 MS. MCVEY: Okay.

17 MR. WALL: Thank you, Your Honor.

18 THE COURT: Very good. All right.

19 Thank you very much and good luck.

20 MS. MCVEY: Thank you.

21 MR. WALL: Thank you, Your Honor.

22 (END OF REQUESTED TRANSCRIPT OF RECORD)

23

24

25

CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case in the Court of Common Pleas for Spartanburg County, South Carolina, on the dates of July 16, 2018; July 17th, 2018; July 18, 2018; and July 19, 2018.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

November 22, 2018

Michael R. Watts

Michael R. Watts
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
2 COUNTY OF SPARTANBURG

3 JERRY HOWARD CRAWFORD,
Individually and as Personal
4 Representative of the Estate of
EVELYN KAY CRAWFORD,

5
Plaintiffs,

6
vs. C/A NO. 2017-CP-42-04429

7
AURORA PUMP COMPANY, et al.,

8
Defendants.

9
10 H E A R I N G
BEFORE THE HONORABLE JEAN TOAL

11
DATE: October 10, 2018

12
TIME: 2:00 p.m.

13
LOCATION: Richland County Courthouse
14 1701 Main Street
Courtroom 3-B
15 Columbia, South Carolina

16 REPORTED BY: YVONNE R. THURSTON-BOHANNON
Registered Merit Reporter,
17 Certified Realtime Reporter

18 -----

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16 (INDEX AT REAR OF TRANSCRIPT)

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

2 THE COURT: All right. Ms. McVey, I guess
3 we are at Crawford?

4 MS. McVEY: Yes, ma'am.

5 THE COURT: All right. You may proceed.

6 MS. McVEY: Good afternoon, Your Honor.

7 THE COURT: Good afternoon. And my
8 apologies to all for being a little bit delayed.

9 MS. McVEY: No worries.

10 For the record I'm Theile McVey and I
11 represent the Crawford family in this lawsuit.

12 Your Honor, this is our -- the plaintiffs'
13 motion for JNOV and new trial pursuant to
14 Rule 50 and 59(e) or for a new trial pursuant to
15 the Thirteenth Juror Doctrine.

16 Why are we asking you for those things? As
17 you know, we're sitting through this trial
18 hearing all the evidence. The evidence
19 presented to the jury supported only one
20 conclusion, and that is that the insulation
21 supplied by Covil caused Mr. Crawford's
22 mesothelioma. The evidence of Covil's liability
23 was overwhelming, and Covil failed to introduce
24 any evidence to conflict with the elements of
25 plaintiffs' -- plaintiffs' claims.

1 If you will permit me briefly, let me give
2 you just a little bit of background of this case
3 so we can all get refamiliarized.

4 The evidence at trial that was undisputed
5 was that Mr. Crawford was exposed to a
6 substantial amount of asbestos insulation cut or
7 disturbed at the Spartanburg Celanese plant from
8 1970 to 1974. Mr. Crawford, as you'll recall,
9 worked at three different locations within the
10 Celanese Spartanburg plant. He worked in the
11 poly building, the continuous line building, and
12 the warehouse.

13 Daniel installed the insulation on the new
14 lines in this area. And while the insulation
15 was being cut and installed, Mr. Crawford was
16 close enough to see dust, and that was the
17 testimony. Harvey Neelands who was a coworker
18 confirmed that it was extremely dusty work. So
19 Mr. Crawford was exposed by others disturbing
20 the insulation and installing it and cutting it.

21 He was also exposed because he testified
22 that several times a day he was sweeping up the
23 work after the insulation with the contractors.
24 So he had bystander liability watching folks
25 install it, and he had direct by cleaning up the

1 asbestos insulation. And you will recall, Your
2 Honor, that all of the experts in this case
3 testified that that was a substantial
4 contributing factor, overwhelming exposure.

5 Your Honor, the standard for JNOV in this
6 case is that you have to view the evidence and
7 all reasonable inferences in the light most
8 favorable to the nonmoving party, and that
9 requires you of course to determine sufficiency
10 of evidence. And you have to look at the
11 evidence to determine if the evidence yields
12 more than one reasonable inference. Not rock
13 solid, but more than one reasonable inference.
14 If no reasonable jury could have reached the
15 challenged verdict, the Court must grant the
16 JNOV.

17 So let me go over the evidence that was
18 presented, if you'll let me.

19 Covil submitted no evidence to dispute any
20 of the plaintiffs' negligence claims. One, that
21 the defendant Covil had a duty of care to
22 Mr. Crawford and that they breached that duty.
23 It was undisputed in this case that Covil knew
24 of the risk of harm of using asbestos insulation
25 and failed to take reasonable steps to warn or

1 prevent the harm.

2 How do we know that? The evidence in this
3 case that was undisputed was that by 1965, five
4 years before Mr. Crawford was exposed to
5 insulation supplied by Covil, that Covil knew
6 that asbestos exposure could cause a fatal
7 disease, and they received that information from
8 numerous sources, from trade organizations, from
9 unions that Mr. Covil was president of, and the
10 Selikoff conference of course.

11 Despite that knowledge, Covil -- this is
12 the testimony. Covil made a business
13 decision -- business decision to never warn end
14 users like Mr. Crawford. And there was some
15 testimony that Covil decided to protect their
16 own employees in the warehouse by asking them to
17 wear respirators, implementing dust control
18 measures, but they constantly chose not to warn
19 others. And Covil introduced no evidence to the
20 contrary of that.

21 It was undisputed that the defendant's
22 breach was the proximate cause of the
23 plaintiff's injuries. As we went over, he
24 worked in close proximity to the asbestos
25 insulation crew, the Daniel employees, and

1 Harvey Neelands confirmed that that work, the
2 work that Mr. Crawford could see, created
3 substantial dust. And, again, Mr. Crawford
4 swept up that insulation dust often several
5 times a day.

6 It was undisputed that this exposure at the
7 Celanese plant for the asbestos insulation was
8 the proximate cause, substantial contributing
9 factor of Mr. Crawford's injury. Covil offered
10 no evidence to the contrary.

11 The big issue in this case was, Did Covil
12 supply the insulation to this project? So what
13 was the evidence that was presented? Again,
14 Harvey Neelands, he was doing the asbestos
15 insulation work at the Spartanburg Celanese
16 plant during the relevant time period and was an
17 employee of Daniel. And what Mr. Neelands
18 testified to is that he was working for Daniel,
19 but Covil was the supplier to Daniel of this
20 insulation.

21 How do you know that? Well, for one he saw
22 the Covil truck, called it the box truck with
23 Covil's name on it back up to the Spartanburg
24 plant where he got the insulation from. He saw
25 them delivering. And Covil admitted and several

1 other witnesses confirmed that Covil
2 consistently supplied insulation for Daniel.

3 Now, Covil did dispute that they supplied
4 this insulation to the Celanese plant. And the
5 way they're disputing it is saying, "You know
6 what, we have no records. We looked. We have
7 no records. We couldn't have done it."

8 Well, that's disingenuous because you will
9 recall that Covil's perspective was, you know,
10 "In 1973 we had a big fire. We wouldn't have
11 had any documents anyway."

12 But there was more testimony. There was
13 testimony by a Covil employee called Machen
14 Carpenter that you'll remember, and he said, "It
15 wasn't the fire that destroyed them; they must
16 have been destroyed later." They were destroyed
17 later because the documents were behind a
18 firewall and Covil destroyed them not because of
19 the fire but for some other reason.

20 Covil wouldn't have had any documents that
21 would exceed that. So the absence of sales
22 records in no way constitutes affirmative
23 evidence that no sales occurred, especially when
24 such records are incomplete and eyewitness
25 testimony establishes such sales.

1 Covil's own corporate representative --
2 you'll remember this, Your Honor. There was a
3 vendor list for the Celanese plant and it had
4 all the different vendors on there, and it had
5 listed Covil as a vendor. And Covil's own
6 corporate representative Mr. Glenn recognized
7 the document listing Covil as a vendor to the
8 Spartanburg Celanese plant, that they were there
9 during the relevant time period.

10 Now, the other thing that Covil says is
11 that Celanese Spartanburg didn't have any
12 records showing them there, and you recall
13 Celanese -- the Celanese plants were sold by the
14 '70s and they didn't maintain any individual
15 records. They failed to produce their records,
16 and they didn't show Covil there. Well, Daniel
17 records do show Covil there, not doing the work
18 that Mr. Neelands describes but doing work at
19 the Celanese plant.

20 It's undisputed that Daniel was doing this
21 insulation there. Harvey Neelands, the guy who
22 was working for Daniel that was actually there,
23 says that Covil was the one. That has truly not
24 been disputed.

25 That's the negligence claim. The strict

1 liability claim is much the same factually. Of
2 course 15-73-10 says, "One who sells any product
3 in a defective condition, unreasonably dangerous
4 to the user or consumer is subject to liability
5 for physical harm caused to the ultimate user or
6 consumer."

7 The evidence in this case was overwhelming
8 that Covil's products were defective and
9 unreasonably dangerous. Covil insulation did
10 that. And they knew that by '65 it could be
11 deadly, yet Covil continued to sell asbestos
12 products until 1977. There was evidence they
13 sold asbestos insulation until 1975.

14 There was testimony that Covil insulation
15 was in substantially the same condition when it
16 was sold as when Mr. Crawford was exposed and
17 the exposure to asbestos insulation caused his
18 mesothelioma.

19 There is also evidence that Crawford --
20 that Covil put in asbestos-free boxes asbestos
21 insulation. You heard that from several places.

22 I would say -- I'm happy to do the breach
23 of warranty, but it's the same factors as strict
24 liability and negligence. We believe that Covil
25 offered no evidence to dispute plaintiffs'

1 evidence and it's -- only one reasonable
2 inference can be inferred.

3 Your Honor, plaintiffs should get a new
4 trial because of the prejudicial misconduct of
5 Covil's counsel. We talked about this at length
6 during the trial, but you have the broad
7 inherent authority to grant a new trial for any
8 prejudicial errors committed during the trial as
9 a matter of fundamental fairness, and it's abuse
10 of discretion standard.

11 Your Honor, this case demands a new trial
12 even if not JNOV. The statements as far as
13 Covil's counsel during arguments were improper,
14 irrevocable, prejudicial. And we can talk about
15 what those were in a moment.

16 They first started -- well, let me back up.

17 You remember that we had the Whitmire and
18 the Crawford motions hearings the Friday -- or
19 Wednesday before trial. We heard motions in
20 limine at that time, and the Court's rulings
21 were clear that you can't talk about other
22 lawsuits involving the plaintiff or the
23 defendant, and the reason for that is the
24 prejudice.

25 So we couldn't talk about Covil being sued

1 by Dwaine Waters. We couldn't tell the jury
2 that Mr. Waters was a Covil employee with the
3 Covil products and was suffering from
4 mesothelioma. Those were the rulings.

5 We also talked about the ability to pay not
6 coming in at this stage. And that was clear.
7 Covil in their opening statements made a lot of
8 objectionable statements. They said, "Covil is
9 defunct, out of business. It was an out of
10 business corporation with no employees, no
11 business and no earnings." That's what they
12 said.

13 And you remember after that opening
14 statement, we all raised concerns about that
15 because what they were alluding to is, "No
16 matter how bad we are, we can't pay for a
17 verdict." And you instructed Mr. Wall not to go
18 near that again. We had multiple conversations
19 about it on and off the record that is clear on
20 the record.

21 And talk about what crossed the line again
22 during different -- examinations of different
23 witnesses. But during closing despite being
24 ordered not to, he said that Covil was no longer
25 in business, had lost their charter. A direct

1 violation of your order and essentially telling
2 the jury they can't pay. Now, the only reason
3 to do that was to insinuate to a jury that they
4 couldn't pay. But it was -- we objected. You
5 took us up to sidebar and you agreed with us and
6 you instructed the jury to disregard it.

7 The very next thing that Mr. Wall comes out
8 to do is saying, "Covil is no longer in
9 business," but then it gets worse because then
10 what Mr. Wall did is he says, "Mr. Waters is
11 suing Covil. You can't believe that Mr. Waters
12 is suing Covil." We objected.

13 That statement alone, Your Honor, entitles
14 plaintiffs to a new trial. You saw it. I saw
15 it. The jury immediately started writing that
16 down. That was extraordinarily problematic.
17 Regarding a motion in limine order, it was not
18 even in evidence in this case. Of course it
19 wouldn't be. We did not mention that Mr. Waters
20 had meso. And as I argued with you during the
21 trial, I didn't believe -- and you gave a
22 curative instruction. I didn't believe that was
23 enough, and so we believe that in and of itself
24 entitles us to a new trial.

25 And, finally, Your Honor, even if you

1 believe that we're not entitled to a JNOV,
2 meaning you institute a verdict for the
3 plaintiff and award damages, we believe that we
4 are entitled to a new trial under the Thirteenth
5 Juror Doctrine. Under the Thirteenth Juror
6 Doctrine the trial judge may grant a new trial
7 absolute when he finds the evidence does not
8 justify the verdict.

9 Your Honor, it's clear in this case and we
10 discussed it during directed verdict, and you
11 said on the record you were ready to grant
12 directed verdict but didn't want to do us any
13 harm. This case if any case is entitled to a
14 new trial under the Thirteenth Juror Doctrine,
15 and essentially what that will mean is that you
16 would hang the jury and it would mean the
17 plaintiffs would get a new trial under the facts
18 and the circumstances; one, because all the
19 evidence clearly shows that Covil was a supplier
20 of this insulation and that it caused
21 Mr. Crawford mesothelioma, and, two, because the
22 prejudicial comments for -- from Covil's counsel
23 could not be repaired.

24 I'm happy to talk about the damages that
25 Mr. Crawford suffered, if you want to hear that,

1 or I can sit down and let you deal with the
2 Thirteenth Juror and JNOV issues.

3 THE COURT: No, I -- go right ahead.

4 MS. McVEY: Okay.

5 THE COURT: Let's talk about the damages as
6 well.

7 MS. McVEY: Your Honor, the damages in this
8 case were really uncontested. Mr. Crawford had
9 a half million dollars in past medical bills.
10 He had had fluid drained from his lungs at least
11 four times initially and then every two weeks.
12 And the fluid kept coming back, and you remember
13 his daughter Patty testified that a catheter was
14 placed to drain the fluid.

15 He underwent major surgery. He underwent
16 chemotherapy through a port put in place and
17 made him terribly sick. You have heard about
18 his tremendous pain and suffering. And you
19 remember he testified via his video deposition
20 and he said -- I remember it because he kind of
21 smiled and he said, "I'm happy that I have a 20
22 percent chance of survival. At least that means
23 there's a shot."

24 His pain was evident by the testimony of
25 his two daughters, chest wall pain, fluid in the

1 lungs. Dr. Maddox testified that will only
2 increase, that he will go through something
3 called air hunger that feels like he is
4 smothering. He won't be able to catch his
5 breath. He will be treated with morphine that
6 will reduce the impulse to breathe. He will
7 lose over ten years of his life from this
8 disease.

9 Your Honor, Mr. Crawford's wife passed away
10 during the pendency of this lawsuit, and you
11 heard testimony from Patty Giles, the daughter,
12 that his parent -- her parents were married for
13 48 years. They were devoted to each other.
14 They worked in their yard together and that
15 Jerry drove Evelyn around everywhere because
16 Evelyn never learned how to drive.

17 You heard testimony that Mr. Crawford was
18 such a hard worker that even when his car broke
19 down he would walk nine miles to work and back
20 to do a day's work.

21 Evelyn, you heard testimony, stopped caring
22 for herself when she was trying to take care of
23 Mr. Crawford, and she let a cough get really bad
24 and as a result she passed away, and
25 Mr. Crawford -- Mr. and Mrs. Crawford's daughter

1 talked about the last thing Mr. -- Mrs. Crawford
2 said. And what she said is, "I'm scared. I'm
3 scared not because I'm dying, but I'm scared to
4 leave Jerry Crawford alone while he is suffering
5 from mesothelioma."

6 The damages were significant. We asked for
7 at trial \$8,000,000 for both the -- to be
8 divided between the loss of consortium claim and
9 Mr. Crawford's damages.

10 THE COURT: All right.

11 MR. BOGER: Good afternoon, Your Honor.
12 Tommy Boger on behalf Covil Corporation.

13 In responding to plaintiffs' counsel, I
14 want to start on the posture of some of the
15 filings that have occurred in this matter
16 subject to trial. When -- we received a copy of
17 plaintiffs' motion for JNOV for a new trial
18 within the ten days that are afforded a party
19 subsequent to the verdict, and in that motion
20 which set forth everything that Ms. McVey stated
21 here today, they reserved their right to
22 supplement that subsequent -- after receiving
23 the trial transcript. I think it was a point on
24 that.

25 Our -- our position on that is that the

1 supplemental memo is -- should not be considered
2 by the Court, and I -- I think they've done
3 enough to argue their points in the original
4 motion.

5 Additionally, we would object to the filing
6 of the supplemental supplemental memo this week
7 fostering that the -- a trial in North
8 Carolina -- a verdict in North Carolina that was
9 reached last week should be considered by the
10 Court in this case that was decided in
11 Spartanburg.

12 On -- on that I'm going to address their
13 motion --

14 THE COURT: What -- for what reason do you
15 say that the supplemental memos should not be
16 considered by the Court?

17 MR. BOGER: Well, I think it's untimely,
18 Your Honor. You know, you've got ten days
19 and -- and -- in their filing that.

20 THE COURT: You've got ten days to make the
21 motion. Is there any limitation on
22 supplementing?

23 MR. BOGER: I -- I wasn't aware if there
24 was a -- maybe I'm in the wrong, but there's an
25 order that -- order issued allowing for

1 supplemental memorandums later. I mean, I think
2 they have -- we have daily copies of the tran --
3 trial transcript that could have been used --

4 THE COURT: I'm trying to figure out
5 whether you're saying there are new things that
6 apply -- new grounds or -- is that --

7 MR. BOGER: I'm sorry, Your Honor, no.
8 There -- there are not -- the grounds are the
9 same. It's a supplemental memo, you know --
10 I --

11 THE COURT: Just deciding a different
12 authority and so forth.

13 MR. BOGER: Exactly. Expanded on
14 everything that they have -- they have already
15 confined to their -- to their memo.

16 THE COURT: All right.

17 MR. BOGER: I don't -- I don't think that
18 the memo regarding the verdict that they
19 obtained in North Carolina is -- is relevant
20 to -- to this matter, but, you know, I'm sure
21 we'll disagree on that point.

22 In response I guess I could have submitted
23 that every defense verdict that's going to
24 change in South Carolina as being what should be
25 considered by the Court as well. I just -- I'm

1 saying I don't know -- that's -- we didn't do
2 that.

3 THE COURT: What did you submit?

4 MR. BOGER: We -- we submitted two
5 memorandums, one in response to the initial
6 motion and one in response to a supplemental
7 memorandum. Do you not have a copy of those --
8 those memorandums, Your Honor?

9 THE COURT: I think I've got the first. I
10 don't know about the second.

11 MR. BOGER: And that's fine. Essentially
12 it is a repeat in response to what they filed.
13 We did not go into details, the citation of
14 everything that happened at the trial.

15 THE COURT: How did -- we can get them.
16 This is an electronic county, so we --

17 MR. BOGER: Our -- our points are made on
18 the record, Your Honor. That original memo
19 takes -- takes care of it.

20 THE COURT: Okay.

21 MR. BOGER: In -- in addressing their
22 motion for a new trial, what our position is on
23 that -- and I'm going to address that first and
24 then go to the JNOV and Thirteenth Juror -- is
25 that we don't believe that motion for a new

1 trial is properly before the Court. We have
2 cited State versus Pendleton in our -- our memo
3 as the plaintiff had an opportunity at trial to
4 move for a mistrial. It did not do so. I'm
5 sure the Court remembers that exchange.

6 And so what it appears now is that they're
7 moving for a mistrial as part of their JNOV
8 motion after the fact and -- and they decided --
9 a moment at the trial that they weren't going to
10 move for a mistrial and then now "We're asking
11 for the Court essentially to rule that there was
12 a mistrial and that we -- we're entitled to a
13 new trial because of statements that were made
14 by counsel being prejudicial."

15 THE COURT: If you'll help me remember this
16 because I may be misremembering, and you can
17 correct me if I am.

18 I -- I recall a time when we argued about
19 what to do about the mention of being defunct
20 and out of business and so forth which Mr. Wall
21 did in the closing argument, and those were
22 clearly outside of the bounds of what I directed
23 and Mr. Wall apologized for that, and I then was
24 faced with what to do about it. And I -- I
25 thought that mistrial was one of the options

1 presented to me at that time.

2 MR. BOGER: And -- and they did not move
3 for mistrial. You said -- you asked
4 point-blank, "Are you moving for a mistrial?"

5 And counsel said, "No, we're -- we're" --
6 they thought for a second and looked at me and
7 said, "No, we're not moving for a mistrial."

8 THE COURT: Okay.

9 MR. BOGER: And the other part of that
10 going back to the prejudicial thing was is that
11 there was -- you also issued a curative
12 instruction to the jury and Mr. Wall withdrew
13 those -- those comments.

14 THE COURT: Right.

15 MR. BOGER: And so our position is is that
16 there -- that whatever prejudice, if any --
17 which we don't believe there was any. Anyway
18 I'll get to that, but at that point that was
19 cured, and if it wasn't, then that was the
20 opportunity for them to move for a mistrial.
21 And they did not do that, and so, you know, the
22 question is are they able to now essentially
23 move for a mistrial as part of this JNOV, and I
24 don't think that's proper. And that's based on
25 that State versus Pendleton case. You got to do

1 it -- you got do it at that moment, not after
2 you received the verdict. You know, good reason
3 for that.

4 Now, I don't disagree that they've got an
5 opportunity for a new trial under the Thirteenth
6 Juror, or if that was -- perhaps the -- under
7 Rule 50, what we want to do in terms of issuing
8 their JNOV motion, which I'll get to, I don't
9 think there's that -- I don't think there's
10 grounds for that. But solely on, "We want a new
11 trial," absolutely. I think they missed that
12 shot is my point, Your Honor.

13 In going -- and just to lay this out for
14 the record, we don't believe the -- the
15 statements were prejudicial, and, in fact, the
16 plaintiff had every opportunity in the trial to
17 convince the jury that Covil was liable for --
18 for the injuries to Mr. Crawford, and they --
19 they've outlined and counsel just argued it.
20 You know, they've said the evidence is
21 overwhelming, uncontroverted, undisputed that --
22 that Covil did all these things and was liable
23 for that.

24 The issue on the lost charter, I think -- I
25 don't -- we still disagree on that goes towards

1 ability to pay. You know, it --

2 THE COURT: Well, what possible other
3 reasons would there have been to talk about
4 that? I had not allowed any evidence to the
5 jury about the loss of a charter. I had not
6 allowed any evidence to -- in front of the jury
7 that they were, quote/unquote, defunct, and when
8 it was said one time, I directly instructed the
9 jury that that was something that they needed to
10 disabuse themselves of because it wasn't proper.

11 MR. BOGER: In -- in closing --

12 THE COURT: And -- and so what possible
13 reasons would there have been to justify talking
14 about the lost charter?

15 MR. BOGER: Well, it's -- Your Honor, it's
16 a relevant fact in the case because --

17 THE COURT: It is a relevant fact under
18 what issue? Ability to pay, right?

19 MR. BOGER: On the ability to -- to defend
20 the --

21 THE COURT: The ability to pay and the
22 ability to defend are both out of the same
23 cloth, but that -- neither of those things are
24 pertinent for liability.

25 MR. BOGER: It is when --

1 THE COURT: Your -- your ability to pay has
2 nothing to do with whether you are liable.

3 MR. BOGER: It is when the -- when the
4 testimony and -- and evidence that they put up
5 was centered on Covil was a bad actor, bad
6 actor, bad actor. That was a --

7 THE COURT: Mr. Boger, I don't understand
8 this argument at all. What does their bad
9 faith -- what relevance to the fact that they
10 are now out of business does this have to their
11 bad conduct when they were in business?

12 MR. BOGER: Not from that perspective.
13 What -- what I'm saying is --

14 THE COURT: Under what perspective is it
15 you deem that tells -- tells me why it would
16 ever be proper to introduce information that
17 they were out of business, lost their charter or
18 anything like that? What issue --

19 MR. BOGER: They -- they --

20 THE COURT: -- in this trial --

21 MR. BOGER: -- they raised it -- they
22 raised it with our 30(b)(6) witness in -- in his
23 ability to -- to adequately testify as a
24 30(b)(6) witness --

25 THE COURT: How did they --

1 MR. BOGER: -- so --

2 THE COURT: -- how did they raise that with
3 your 30(b)(6) witness?

4 MR. BOGER: They cross-examined him on the
5 fact that he was not a -- not a Covil employee,
6 that, you know, he did not work for Covil back
7 in a time frame, and that he was essentially
8 having -- the only thing he had done is review
9 documents --

10 THE COURT: Well, what does the lost
11 charter have to do with that? That simply goes
12 to his credibility and his knowledge. It has
13 nothing to do with whether the company -- about
14 whether the company is still in business. In
15 fact, that's a question that's often asked of
16 the company's rep, testing rep -- the company
17 rep's knowledge about the pertinent period of
18 time. That doesn't have anything to do with
19 whether they've lost their charter or not.

20 Tell me one more time in plain English what
21 the loss of a charter has to do with any issue
22 the jury was going to have to decide.

23 MR. BOGER: Again, Your Honor, I --

24 THE COURT: I don't want generalities. I
25 want you to tell me specifically what issue that

1 the jury has to decide is impacted by
2 information about being defunct or having a lost
3 charter.

4 MR. BOGER: It has to go to the credibility
5 of the -- of the company.

6 THE COURT: I don't understand that
7 argument one bit. I -- I think in plain English
8 the only thing it could possibly go to is the
9 ability to pay. And I have in pretrial, on
10 motions in limine at the request of the defense,
11 as well as the plaintiff said there won't be any
12 discussion of ability to pay unless we go to a
13 punitive damages phase of the trial, just as I
14 also ruled that you could not -- aimed the
15 request of the defense that you could not go
16 into other lawsuits of any kind, and yet your
17 lead counsel did both of those things in this
18 case.

19 And I want to understand what possible
20 reason can be given in the light of my rulings
21 and what the jury is going to ask to determine
22 in the case for -- for raising those two issues.

23 MR. BOGER: And, again, I -- my response to
24 your question is I think it goes to the
25 credibility of our company which was on trial

1 the entire week.

2 THE COURT: Well, how does their lost
3 charter go to their credibility? Credibility is
4 a truth-telling issue. How does whether you
5 lost your charter or not lost your charter
6 impact your credibility?

7 MR. BOGER: Because we don't have
8 representatives of the company that were engaged
9 in --

10 THE COURT: Mr. Boger, Mr. Boger, that
11 makes no sense.

12 MR. BOGER: Okay. I -- nonetheless, there
13 was a jury instruction given at -- at the time
14 and the statement was wrong at the time that we
15 don't believe prejudiced their ability for a
16 fair trial.

17 THE COURT: Well, here -- here was the big
18 issue as I saw it in this case and the only real
19 dispute in this case. It was product
20 identification. It was whether or not Covil
21 products were used at Celanese when Mr. Crawford
22 worked there.

23 The -- it was proved without any dispute on
24 your part that Covil products manufactured and
25 sold at the time he was working at Celanese had

1 asbestos in them. It was undisputed that by
2 1965 Covil knew that products having asbestos
3 could cause disease. It was undisputed that
4 Covil had given some protection to its own
5 workers from the danger of inhaling asbestos
6 products from about 1965 forward.

7 So in terms of what it knew about the
8 product, that was established. It was
9 established that they gave no warnings. The
10 only issue was, Were Covil products used at
11 Celanese? You offered no proof about any of
12 this, and they offered two witnesses who
13 established without any dispute from opposing
14 information by you that during the time he
15 worked Cel -- that Crawford worked at Celanese,
16 Covil had delivered products in their box on a
17 trailer to Celanese and all Covil sold was
18 insulation. That was their product. And that
19 insulation was at the time it was brought there
20 asbestos-containing in whole or in part.

21 Now, what did you all present that in any
22 way gives at least a scintilla of evidence to
23 dispute that?

24 MR. BOGER: Well, I think it's more than a
25 scintilla, Your Honor, and I'll --

1 THE COURT: What did you present?

2 MR. BOGER: What did we present? First of
3 all, our 30(b)(6) witness testified that he had
4 gone through the records and there weren't any
5 evidence of any sales to the Celanese plant --

6 THE COURT: All right.

7 MR. BOGER: -- and as you point out, our
8 defense was very simple and it was a rifle shot.
9 They --

10 THE COURT: They said there was no evidence
11 of sale and --

12 MR. BOGER: No --

13 THE COURT: -- and why did he say that? He
14 said, "Because all the records had been burned."
15 Wasn't that his testimony?

16 MR. BOGER: And what he had gone through
17 that -- of the records that weren't burned, that
18 was the other piece of it. There's -- and it's
19 in the trial record. There's 25,000 pages of
20 records that we do have that didn't evidence any
21 sales to the Celanese plant or for Daniel during
22 that time period --

23 THE COURT: So all -- so he couldn't say
24 whether or not a sale had been made to a
25 supplier or a subcontractor of Celanese; all he

1 could say is he had no record of the sales,
2 right?

3 MR. BOGER: Yes. And that's just --
4 that's --

5 THE COURT: That's one.

6 MR. BOGER: I got a couple more.

7 Additionally, we -- our -- our case was --
8 largely relied on the Celanese 30(b)(6) witness
9 and the Daniel 30(b)(6) witness who -- who both
10 confirmed that they have gone through all of
11 their records. The 30 -- Celanese 30(b)(6)
12 witness said they have no record of Covil being
13 on site or selling them any products in the
14 relevant time frame.

15 The Daniel 30(b)(6) witness said, "No, we
16 did the installation job."

17 There was records that were presented as
18 exhibits by the plaintiff that went to the jury
19 that showed monthly lists of the number of
20 Daniel employees that were on site installing
21 insulation at the project in 1972 to '73.

22 There was the Daniel 30(b)(6) witness that
23 said the only evidence that they had that Covil
24 was at the Celanese plant was that there were
25 three employees that installed a fire retardant

1 material on some structural steel stairs and
2 that they had searched the records and have not
3 had any results for the sales that Covil made to
4 Daniel as Daniel admitted they installed the
5 insulation. That all was presented --

6 THE COURT: All right.

7 MR. BOGER: -- at trial.

8 THE COURT: So, again, this is just like
9 the -- the Covil plant. "We find no records of
10 sales," right?

11 MR. BOGER: That and --

12 THE COURT: There's nothing -- there's
13 nothing any more positive than that. They
14 simply said, "We don't have any sales records,"
15 right?

16 MR. BOGER: The Daniel 30(b)(6) witness
17 said that they were -- that they did the
18 installation of the asbestos, that they did the
19 job.

20 THE COURT: Yes.

21 MR. BOGER: Well, hey --

22 THE COURT: But they -- they said, "We --
23 we have no records about the ins -- who supplied
24 the insulation."

25 MR. BOGER: And the inference would have

1 been that Daniel being a large company --

2 THE COURT: They did the insulation job,
3 but they don't have any records of who supplied
4 the insulation, right? That's the most they
5 could say.

6 MR. BOGER: And that's -- put in the
7 opposite way, it's also --

8 THE COURT: Well, they had to get the
9 insulation from somewhere, and their response
10 was, "We don't have any records about who
11 supplied the insulation," correct?

12 MR. BOGER: There's no evidence that the --
13 Covil supplied the insulation to Daniel.

14 THE COURT: All right. So then what we've
15 got left after we get through the 30(b)(6)s of
16 your company, Celanese and Daniel, is some
17 insulation was used when Daniel did insulating
18 work in the plant. Two, many employees who said
19 there are miles and miles and miles of piping in
20 there that's insulated. So insulation clearly
21 was used at that plant.

22 These three companies said, "We don't have
23 any record of who's the insulation supplier,"
24 but there were two witnesses offered by the
25 plaintiff who said, "We saw Covil products and

1 we saw boxes labelled Covil asbestos-free that
2 actually contained asbestos-containing
3 insulation."

4 MR. BOGER: And --

5 THE COURT: That -- that's the sum and
6 substance of what we have as evidence in this
7 case on who supplied it, correct?

8 MR. BOGER: The only thing --

9 THE COURT: We don't know from --

10 MR. BOGER: They have one --

11 THE COURT: -- company --

12 MR. BOGER: They have one fact witness --

13 THE COURT: And --

14 MR. BOGER: -- that said, "I worked with
15 insulation and I think it came from -- from
16 Covil."

17 THE COURT: And, "I saw the Covil trucks
18 there"?

19 MR. BOGER: Right.

20 THE COURT: All right. Well, then what
21 you've got, Mr. Boger, simply and solely is
22 there is at least some evidence that Covil
23 supplied, and from the other side there's no
24 information about who supplied it, right?

25 MR. BOGER: I disagree, Your Honor. I

1 think that a reasonable juror could take the
2 testimony of those 30(b)(6) witnesses who are
3 sitting here today looking at records from 50
4 years ago that are showing no evidence of sales
5 from Covil to Celanese or to Daniel for that
6 plant versus a gentleman that has gone off from
7 his memory 40 years ago that says, "I think I
8 saw a Covil truck at the plant."

9 There was --

10 THE COURT: But there -- the other thing
11 that was, you know, said was they don't know who
12 supplied it. They know insulation was used. It
13 was used extensively in the Celanese operation.
14 They have miles and miles of piping that
15 transmits very high temperature from materials,
16 and they insulated those pipes.

17 MR. BOGER: And Daniel did the work and
18 Daniel had other sources that it got insulation
19 from, including manufacturers.

20 THE COURT: That's what I'm trying to ask
21 you is, What was there in the evidence about any
22 other supplier that supplied insulation during
23 this time? Did y'all put up anything about
24 that?

25 MR. BOGER: No, it -- we --

1 THE COURT: Did the plaintiffs put up any
2 information about the names of other suppliers
3 of insulation?

4 MR. BOGER: Not to my recollection.

5 THE COURT: So then all you've got by way
6 of who sub -- we know that there was plenty of
7 insulation used at that plant. We know that. I
8 don't think either of you would dispute that.
9 But we have from your side no information about
10 the name of any supplier and from their side
11 some information about Covil. That's undisputed
12 evidence, is it not?

13 MR. BOGER: Not when at least three
14 witnesses testified that they don't have any
15 records showing any sales from Covil to Daniel
16 or Celanese --

17 THE COURT: Right.

18 MR. BOGER: -- or the plant in that
19 particular time frame.

20 THE COURT: Right.

21 MR. BOGER: The -- so in my mind --

22 THE COURT: "We have" -- so "We have no
23 records" is some evidence of who supplied the
24 insulation?

25 MR. BOGER: It's evident that Covil did not

1 supply the insulation. If there -- if there are
2 documents out there showing sales receipts,
3 whatever it was that Daniel had --

4 THE COURT: My trouble with that,
5 Mr. Boger, is there was nothing put in about any
6 sales receipts from anybody that supplied
7 insulation, yet we know that there was a lot of
8 insulation in this plant.

9 MR. BOGER: I understand. And, you know,
10 my focus is on Covil, and so I've got --

11 THE COURT: I understand.

12 MR. BOGER: -- three witnesses that say,
13 "Covil -- we don't have receipts of sales from
14 Covil."

15 THE COURT: All right.

16 MR. BOGER: And so if -- Daniel wasn't on
17 trial that day, and perhaps in hindsight I'd go
18 back and ask Daniel to give me all their sales
19 receipts for -- for that period of time, but
20 when their witness says on a video deposition
21 that "I went through all of our 40 boxes of
22 records and didn't find anything, no sales
23 receipts" -- or, excuse me.

24 It wasn't that he couldn't find anything.
25 That's another crucial fact here. He found

1 evidence that we were there -- that we were
2 there installing a fire retardant on some steel
3 stairs. So it wasn't that "I didn't find
4 anything." It was that "I found this, but I
5 didn't find -- I found something on fire
6 retardant. I didn't find anything on asbestos."

7 And that -- and these were multiple
8 witnesses and they're credible people,
9 professional 30(b)(6) witnesses for these
10 companies that, again, went back and looked at
11 documents from 40 years ago and couldn't find
12 anything versus a gentleman who was not a
13 distributor, was not involved in purchasing
14 insulation. He was an insulation worker that
15 says, "I think Covil supplied the insulation. I
16 think I saw a truck."

17 You know, I -- it -- from the way the
18 standard goes I think that's way -- way beyond
19 more than one reasonable inference, and I think
20 the JNOV -- that should be denied. And I also
21 think from the Thirteenth Juror standard, you
22 know, it's not contrary to the fair
23 preponderance of the evidence. I mean, we're --
24 we're weighing this evidence right now.

25 THE COURT: You don't have any evidence on

1 your side. You're weighing some evidence on
2 your side --

3 MR. BOGER: I'm weighing -- I'm weighing
4 testimony.

5 THE COURT: And -- and -- well, that's not
6 the same thing as weighing evidence.

7 MR. BOGER: I'm weighing testimony. I
8 guess, Your Honor, what I come to is that is it
9 not reasonable for a juror sitting in that seat
10 to conclude that these witnesses for -- for
11 Daniel and Celanese are more believable than
12 Mr. Neelands is, and that's what it comes down
13 to.

14 THE COURT: Okay.

15 MR. BOGER: And that -- that standard is a
16 fair preponderance, and -- and I don't think
17 they meet it.

18 And -- and to -- to go back and cover a
19 couple more things from the -- because there's
20 two motions. There's JNOV and there's the
21 Thirteenth Juror, and the Thirteenth Juror
22 standard is a more rigorous standard. And so
23 my -- my position is that it is not contrary to
24 the fair preponderance of the evidence and that
25 what the evidence shows is that a reasonable

1 person could fairly come to the conclusion that
2 Covil didn't supply the insulation to the
3 Celanese plant from 1970 to 1974.

4 And if you meet that, then certainly the
5 evidence is susceptible to more than one
6 reasonable inference. It -- in my mind it is
7 without -- I keep hearing "overwhelming, clear,
8 uncontroverted," and it's not taking into
9 account the -- what we've presented. And
10 I'll -- I'll allow Ms. --

11 THE COURT: Thank you, sir.

12 MR. BOGER: -- McVey respond to that.

13 THE COURT: Ms. McVey.

14 MS. McVEY: Your Honor, if I could just
15 briefly address his -- what he's describing as
16 evidence from Celanese and Daniel.

17 First, as to the Covil records or lack
18 thereof, they acknowledge anything pre-'70 --
19 '73 and backwards was destroyed. But I would
20 also argue to you that Mr. Glenn, their 30(b)(6)
21 representative or their corporate representative
22 who testified at trial, didn't review the 24,000
23 pages of documents. He reviewed a hundred of
24 those pages. That was his testimony. He didn't
25 even review all hundred.

1 Let's talk a little bit about the dangerous
2 relationship with Daniel and Covil. Our whole
3 case has been not that Covil was doing the
4 insulation at Celanese. No one argued that.
5 Everybody knew that Daniel was the insulation
6 contractor at Celanese. In fact, Harvey
7 Neelands was an insulator for Daniel at the
8 Celanese plant. That's why his testimony is so
9 important. He was doing the work and getting
10 the information.

11 But it's not just that Harvey Neelands
12 who's a Daniel employee at this plant at the
13 right time sees Covil dropping off this
14 insulation, it's that Covil and Daniel had a
15 really close relationship. Right? So what you
16 heard is that Covil agreed that Daniel was its
17 largest customer, that Daniel agreed that it did
18 business with Covil as an insulation supplier
19 and sometimes as an insulation contractor, that
20 the relationship with Daniel began in the early
21 1960s.

22 Machen Carpenter testified that Daniel and
23 Covil were like this (indicating), meaning they
24 were as close as they could be. And Mr. Waters
25 testified that if Daniel had the maintenance

1 contract, Covil either supplied the insulation
2 or did the insulation work. And it's undisputed
3 that Daniel had that maintenance contract at
4 Celanese Spartanburg from 1970 to 1974.

5 Crawford and Neelands identified Daniel as
6 the insulation subcontractor. The issue is who
7 supplied it.

8 Celanese admitted the insulation out
9 there -- everybody agrees Daniel was there doing
10 insulation work. Harvey Neelands says, "We got
11 it from there."

12 Covil doesn't have documents because they
13 destroyed them.

14 Celanese Spartanburg doesn't have records
15 specific to this plant. They're not there
16 anymore. So it's not like by looking at their
17 records they could find records like that.

18 Daniel didn't find records of who was the
19 insulator for this -- or insulation supplier for
20 this contract, whether it was Star Davis or
21 Covil or anybody else. They were just given
22 records. I will tell you that's an absence of
23 evidence. The only evidence in this case was
24 that Covil was the insulation supplier.

25 I'm happy to answer any other questions.

1 THE COURT: What -- remind me of what
2 was -- we had a big dust up before this case
3 started, and the -- as a result of some of the
4 things that Covil did and did not do, I ordered
5 that a stipulation be read to the jury. What
6 was that stipulation?

7 MR. BOGER: Your Honor, I was going to
8 point that out as well, because what Ms. McVey
9 says that they -- there wasn't a dispute that
10 Daniel installed the insulation, but the
11 instruction that was given to the jury was that
12 Covil insulation supplied and installed
13 insulation at the Celanese plant from 1970 to
14 1974.

15 And we sit here and -- and argue the
16 sanction because of the records dispute of Covil
17 that, you know, obviously we didn't agree with
18 that instruction and that we supplied or
19 installed those products, but that was something
20 that they fought for on that day and got, and so
21 now we're saying, "No. Daniel installed the
22 products." We don't dispute that. You know, I
23 don't --

24 THE COURT: I don't want to -- you are
25 confused about her argument. She is -- quite to

1 the contrary. She is saying that Daniel was
2 a -- was a contractor at Celanese and that one
3 of the things it did was to install insulation
4 and that Covil was its main -- that Covil was
5 one of its main insulation suppliers. That's
6 what she's saying. That only reinforces the
7 stipulation that was read to the jury that Covil
8 supplied insulation to Celanese at the
9 appropriate times.

10 MR. BOGER: But the instruction was that we
11 supplied and installed.

12 MS. McVEY: I can't remember. I don't have
13 it sitting in front of me. I haven't argued
14 that either on -- I didn't argue it at the
15 directed verdict stage, Your Honor, that you
16 should take into account the stipulations. I
17 didn't argue it today, and so I can't remember
18 off the top of my head what it said. I -- my
19 recollection is of what it said was that Covil
20 was the -- the installer, but I'm not disputing
21 what Mr. Boger is saying if he's got it sitting
22 in front of him.

23 But for purposes of today I'm not even
24 arguing that presumption, but you're right.
25 There was a presumption read at the beginning of

1 the case saying that Covil was the supplier of
2 insulation for the Spartanburg Celanese plant
3 and that was a discovery -- major dust off that
4 we had prior to about records and insurance and
5 30(b)(6) witnesses and that kind of stuff.

6 THE COURT: Anything further?

7 MS. McVEY: He -- one other thing. He
8 mentioned that Daniel also got insulation from
9 manufacturers. He just said that, and that's a
10 big point of contention. What the testimony was
11 is that Daniel bought asbestos-free insulation
12 from manufacturers, and we went through the
13 whole documentary thing. So I want to make sure
14 that is clear. They were not buying, at least
15 according to the testimony, asbestos insulation
16 from the manufacturers, only from suppliers like
17 Covil.

18 MR. BOGER: Your Honor, I don't have
19 anything more. Just to show you, I don't think
20 I said in my remarks earlier, but of course we
21 think that these -- these motions should be
22 denied and that the verdict should hold on
23 behalf of the defendant.

24 THE COURT: All right.

25 MR. BOGER: Thank you.

1 THE COURT: Although Mr. Boger argued that
2 the standard for the Thirteenth Juror is a
3 higher standard than the standard for the
4 granting of a judgment non obstante veredicto, I
5 don't agree with that. I think that the JNOV
6 has the highest standard, which is that all
7 inferences are in favor of the nonmoving party,
8 and in that act of failure even a scintilla of
9 evidence supporting the position of the
10 nonmoving party is enough to stave off the
11 granting of a -- of the opposite side's motion,
12 in this case, a motion for judgment of JNOV.

13 With respect to the Thirteenth Juror, it is
14 a balancing act by the judge to decide whether
15 or not the verdict is contrary to the clear
16 preponderance of the evidence, and in that
17 regard, unlike the JNOV where the judge does not
18 weigh evidence but look at whether there is the
19 existence of evidence, in the Thirteenth Juror
20 the judge weighs the evidence and -- and in the
21 end the judge weighs the evidence and concludes
22 that the verdict that was rendered is not -- is
23 contrary to the clear preponderance of the
24 evidence. The judge does not then issue a
25 verdict herself. The judge simply acts as the

1 Thirteenth Juror to say nay and hang the jury,
2 and then the case must be retried. Now, that's
3 the atmosphere legally that I think we're
4 dealing with.

5 I am still second-guessing myself
6 tremendously in this case with respect to some
7 of what was done in the trial of the case by
8 defense that I did not strike the pleadings of
9 defense and render a verdict of liability
10 submitting to the jury only the question of
11 damages, but like a lot of trial judges, I
12 thought I'd let the jury take me out of the
13 hole. But here we stand now with a verdict that
14 I do not think can stand, and the question is
15 what is to be done about it.

16 The defendant's so-called evidence is we
17 have no evidence. It's not an evidence to the
18 contrary. "Our suppliers were all other people.
19 Covil did not supply this job." No witness for
20 Covil said that. What the witnesses said is,
21 "We have no records of sales," or, "We have a
22 record with regard to a particular application
23 but not anything else."

24 The plaintiffs' evidence was not robust,
25 but it was the only direct evidence that there

1 was about who supplied. And there's evidence
2 from a worker from Daniel who was on the job for
3 a considerable period of time when Mr. Crawford
4 was there and was an insulator and recalls
5 seeing Covil trucks come to the plant and
6 from -- also evidence from another worker that
7 there were boxes -- Covil boxes that were
8 labelled asbestos-free, but that he and his
9 coworker discovered that the asbestos material
10 contained in those boxes was actually
11 asbestos-containing Covil products and that they
12 concluded that there was leftover asbestos
13 product that they were needing to go on and sell
14 before they could start transferring over to the
15 new program where you sold asbestos-free
16 insulation.

17 That is the sum and substance of the
18 information as I best recall it about Covil's
19 connection. But there is evidence that Covil's
20 lack of records is not completely explained by
21 the fire because there is another employee who
22 says that the records were not burned -- the
23 records of sales and the other pertinent records
24 were not burned in the Covil fire of 1973
25 because they were stored in vaults and they were

1 stored behind a firewall and that the records
2 were still -- still in existence after the fire.
3 There's also some information that other clients
4 other than Covil plant in Spartanburg that
5 burned in nearby access in North Carolina and
6 other places to this -- to Celanese supplied
7 Celanese with material.

8 So that -- those are the things that
9 trouble me greatly about this matter and the
10 fact -- I don't say that the plaintiffs'
11 evidence is robust on this point, but the
12 evidence from -- from Celanese and Daniels is
13 not at all dispositive and the evidence from
14 Covil is nothing but a positive nature, only
15 that they had no records. So that is the
16 dilemma I face.

17 In addition to that, the Covil
18 representative, Mr. Glenn reviewed a miniscule
19 portion of the records of Covil that are still
20 in existence and available, less than a hundred
21 pages is my recollection, out of thousands and
22 thousands of pages of material that are
23 available, and that was by his own admission.
24 So his disclaimer -- or information about the
25 sales is based on a very small microfiber of

1 materials in the Covil file, and that is also
2 something that is very worrisome to me.

3 The atmosphere at this trial was a repeated
4 violation of the orders that I had given
5 pretrial about what could be said and what could
6 not be said, and the most egregious was the
7 continued attempt to inject into this trial
8 Covil's lack of ability to pay. I do not think
9 that the information about being a defunct
10 corporation and the information about being out
11 of business was pertinent to any issue before
12 the jury.

13 The issue had only -- the issue -- the jury
14 had before it no issue impacted by ability to
15 pay. They only had before it issues regarding
16 Covil's -- the question of Covil's supply of its
17 materials and the question of what those
18 materials -- what impact those materials had on
19 the health of the plaintiff. So the continued
20 mention of those issues was a very prejudicial
21 thing for the trial of this case in my -- in my
22 view.

23 I hate to have this thing repeat itself,
24 and if I have to try it again, I can tell you
25 that any variance from the pretrial orders I

1 make is going to result in a striking of the
2 pleadings of the defendant and the imposition of
3 liability as a sanction for repeated failure to
4 obey the orders of the Court. I think that
5 would have been justified in this case, but I
6 did not do that.

7 So I think the only reasonable choice I
8 have is to exercise my authority to hang the
9 jury and grant the motion to -- per the outline
10 of directives in Folkings versus Hunt and any
11 other number of cases, but that's kind of the
12 leading case on the Thirteenth Juror. I am
13 going to grant the motion to act as the
14 thirteenth juror, hang the jury and direct that
15 the case be retried.

16 Now, is there anything else to come before
17 me by way of any issues of sanction or
18 otherwise? I think we resolved those in the way
19 that we did by the directives that went to the
20 jury.

21 MS. McVEY: I agree, Your Honor.

22 THE COURT: I would caution all of you that
23 what this means is that the case will be retried
24 just as if the jury had hung and been unable to
25 reach a verdict. I think the verdict that was

1 reached was contrary to the clear preponderance
2 of the evidence. I frankly think the evidence
3 is sufficient to have justified my granting a
4 judgment non obstante veredicto, but I choose to
5 not go that route because of any possible
6 inference that the evidence might have that --
7 of an affirmative nature with respect to whether
8 Covil ever supplied any materials to Celanese.

9 So that -- that's the ruling, and I caution
10 you all that this is a retrial based on the case
11 that's already been presented. The rulings that
12 I have made with respect to stipulations that
13 will go before -- the stipulation that would go
14 before the jury, as well as my other rulings
15 about motions in limine, my other determinations
16 about sanctions that were previously rendered
17 against this defendant stand. They are -- they
18 don't go away.

19 My general approach to retrial is that I do
20 not reopen discovery or expect to have the
21 matters revisited that have already been
22 decided. But we can take that up at a later
23 time when we decide when to reschedule this
24 case, but that is -- that's what I would do.

25 Ms. McVey, what I would like you to do is

1 prepare an order to that effect, send it to
2 Mr. Boger and Mr. Wall and let them respond to
3 me with whatever requests they may have, and
4 then I will decide what to do.

5 MS. McVEY: Yes, ma'am. Thank you.

6 MR. BOGER: And, Your Honor, just to be
7 clear, you are denying the JNOV motion and the
8 new trial motion but granting the Thirteenth
9 Juror motion?

10 THE COURT: That's correct.

11 MS. McVEY: Thank you, Your Honor.

12 (The hearing was concluded at 3:01 p.m.)

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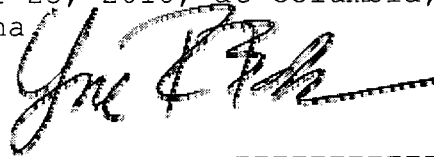
1 CERTIFICATE OF REPORTER

2 I, Yvonne R. Thurston-Bohannon, Registered
3 Merit Reporter, Certified Realtime Reporter, and Notary
4 Public for the State of South Carolina at Large, do
5 hereby certify:

6 That the foregoing transcript was taken
7 before me on the date and at the time and location
8 stated on page 1 of this transcript; that all statements
9 made on the record at the time of the proceeding were
10 recorded stenographically by me and were thereafter
11 transcribed; that the foregoing proceeding as typed is a
12 true, accurate and complete record of the proceeding to
13 the best of my ability.

14 I further certify that I am neither related
15 to nor counsel for any party to the cause pending or
16 interested in the events thereof.

17 Witness my hand, I have hereunto set my
18 official seal October 23, 2018, at Columbia, Richland
19 County, South Carolina

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25




Yvonne R. Thurston-Bohannon
Registered Merit
Reporter, CRR
My Commission expires
May 6, 2025

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E X H I B I T S

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(None marked.)

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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH CAROLINA

GREENVILLE DIVISION

EVELYN WHITE, Execurtix of the	)	
Estate of Walter F. White,	:	
	)	
Plaintiff,	:	C/A NO. 77-1369
	)	(Wrongful Death)
-VS-	:	
	)	C/A No. 77-1384
COMBUSTION ENGINEERING COMPANY,	:	(Survival Action)
INC., et al,	)	
	:	
Defendants.	)	

DEPOSITION OF MR. PALMER COVIL

VOLUME II - PAGES 136-337

The continuation of the deposition of Mr. Palmer Covil, called by the Defendants, was commenced at the hour of 10:00 O'Clock A. M., on Thursday, July 14, 1977, in the offices of the Haynsworth Law Firm, 409 East North Street, Greenville, South Carolina.

SUE G. ASHLEY, REPORTER

G.W. Coleman Associates



Court and Deposition Reporters

P. O. Box 10114 / Greenville, South Carolina 29603

ATTORNEY'S NOTES

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DIRECT EXAMINATION

2 ~~By Mr. Cole:~~

3 Q You told us yesterday that you did some
4 insulation work yourself , I think, before and after you
5 started your own business. How long did you actually do
6 insulation work yourself?

7 A How long did I actually do insulation work
8 myself? From about 1930 till about 1944.

9 Q Since that time, what have you done? Have you
10 been around jobs?

11 A Yes, sir. I've worked as a mechanic for awhile,
12 was a foreman, run jobs, and I was around jobs. I worked in
13 the insulation business for somebody else up till 1948, and
14 then I went in business for myself.

15 Q Did you ever work in the field after you went
16 in business for yourself?

17 A Yes, I worked some.

18 Q Until about when?

19 A When I first got started, probably the first
20 year after I got started.

21 ~~Q~~ You have cross complained against a number of
22 the defendants in these cases, and you have not cross complained
23 against Unarco . Is that because you did not ever buy any
24 products from Unarco?

25 ~~A~~ We didn't have any record of ever having bought

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1 any.

2 Q And you did have records of most of the products
3 that you'd purchased, did you not?

4 A Right. Well, see, a lot of our records were
5 destroyed in the '73 fire, and we didn't have any records.

6 Q At this time that you worked in insulation, did
7 you ever use any products manufactured by Unarco.

8 A Yes, sir.

9 Q What products did you use?

10 A The unibestos.

11 Q How many times do you remember using that
12 product?

13 A I only remember one good-sized job that I worked
14 on that we used unibestos.

15 Q When was that?

16 A That was about 1941, the power plant at Paris
17 Island Marine Barracks.

18 Q And you don't remember any other good-sized job
19 where you used it?

20 A I remember using a small amount of it on some
21 different jobs, but I couldn't name a job.

22 Q Can you characterize it as to whether it's a
23 major or minor type of product used in this area as far as you
24 know?

25 A I don't believe there's been a whole lot of

1 unibestos used in this area. Now, since this was sold to
2 Pittsburg Corning, I think there's been more used in this area
3 than was prior to that time.

4 Q How about prior to that time?

5 A I don't think there was a whole lot used in
6 this area.

7
8 MR. COLE: I have no other
9 questions.

10 (OFF THE RECORD DISCUSSION WAS HELD.)

11 MR. HOOD: May I inquire
12 why Mr. Moore's going out to Covil and what records he's going
13 to look at so that if the defendants would like to do the same
14 thing, they can have that opportunity?

15 MR. McKAY: For the record,
16 if Mr. Hood would consult with Mr. Davies, he can find the
17 answer.

18 MR. DAVIES: The only
19 thing I know was there was a list of records that Mr. McKay
20 and Mr. Motley mentioned earlier, and Mr. McKay indicated they
21 would be made available in a room with the secretary at Covil,
22 and anybody could go out and look at them that wanted to if
23 they wanted to leave the deposition.

24 MR. McKAY: These, Bobby,
25 are job files that Terry Richardson asked last night after the
depositions if they were in such a form that people could just

1 look through the files. Mr. Covil had gone home at that time,
2 and I mentioned it to him this morning, and he said that they
3 were and that we would get these together, such of them as
4 we could, and put them in a room with the secretary. I told
5 Bill Davies along with Ron Motley just a few minutes ago that
6 they'd be there all day. Of course, we'll bring anything over
7 that you want, but I assume this is a room full of stuff.
8 There are about ten jobs. If you want to add any to it,
9 you're welcome to do so.

10 MR. HOOD: The job files
11 that you're going to make available to the plaintiffs are
12 listed on this list; is that correct, and anyone else that
13 wants to inspect them?

14 MR. McKAY: That's the
15 list that's been requested by the attorneys for the plaintiff.
16 If you or one of the other attorneys for the defendant would
17 like to request additional files, we'll be most happy to try
18 to get those together, too.

19 -----
20 DIRECT EXAMINATION

21 By Mr. Hood:

22 Q Would you tell us what's on the list, please,
23 Mr. Covil?

24 A On the list is Milliken Barnwell, I assume that's
25 Deering-Milliken plant in Barnwell; American Optical, Barnwell;

1 Brevard Daniel job. I haven't the least idea what that is. I
2 asked my secretary to see if she could find a Daniel job in
3 Brevard. University of Georgia jobs. Canal Insurance building,
4 Greenville; Firestone, 1953 to '57. I told her I assumed that
5 was Firestone Steel in Spartanburg. We've done a lot of
6 Firestone jobs, but most of them have been since that time
7 except for that one. Dunn, North Carolina, meat packing job.
8 We did a cold storage job for a meat packing company up there
9 several years ago, and she's going to try to look that up.
10 American Enka, Asheville, and that will probably be a pretty
11 good stack because we do work in there just about all the time.
12 Furman University, Greenville, 1959 to '60, and Fiber Industries,
13 Salisbury, North Carolina.

14 Q As I understand it, you records were burned in
15 May of 1973?

16 A Yes, sir.

17 Q So, the only records you can produce are records
18 after that date?

19 A Yes, sir.

20 Q Where did that fire occur?

21 MR. McKAY: Mr. Hood, would
22 you identify yourself and say who you represent, please.

23 MR. HOOD: I've given the
24 court reporter that information.

25 MR. McKAY: Would you give

1 it to Mr. Covil, please.

2 Q Mr. Covil, I represent Keene Corporation, Forty
3 Eight Insulation, Raybestos-Manhattan. My name is Robert
4 H. Hood, and I practice law in Charleston. Would you answer
5 my question.

6 A What was that question, please?

7 Q Your records were destroyed in May of 1973; is
8 that correct?

9 A Yes, sir.

10 Q What location burned?

11 A Our warehouse burned, and part of our office
12 burned. These records were located in the office that was in
13 the warehouse. To explain to you, we have a prefab metal
14 building warehouse, and we have a brick and block office down
15 on the front, and we had built other offices back in the ware-
16 house area, and all of those burned right up to the brick and
17 block wall.

18 Q Did you ever determine the cause of that fire?

19 A Yes, sir.

20 Q What was the cause?

21 A A man was burning paper in an incinerator, and
22 left the door open and blew out and set some more stuff on
23 fire in our shop area.

24 MR. MOTLEY: The sorry
25 insulation they had sprayed up there let it propagate through-

1 out.

2 MR. HOOD: I want to keep
3 the record going today. If anyone says anything, just write
4 it down.

5 Q Was anyone ever charged with any crime because
6 of that fire?

7 A No, sir.

8 Q Do you have any relatives by blood or marriage
9 in the state of South Carolina?

10 A Yes, sir.

11 Q Would you be nice enough to tell us who they
12 are.

13 A I have four sisters.

14 Q And their married names and their occupations
15 and their husband's occupations and addresses.

16 A I don't see where that's relevant, but I'll
17 give it to you.

18 Q I appreciate it.

19 A I have one sister, Thelma Jones, that runs
20 T J's fashions dress shop in Greer Plaza. Her husband's name
21 is Gettys L. Jones, and I believe he works for Steel Heddle.
22 I have another sister, Easter Bailey. Her husband is Woodrow
23 Bailey, and I believe he works for Judson Mills. I have
24 another sister, Geneva Black, and her husband is retired.
25 I have another one, Alma Sloan. Her and her husband run a day

1 care center here in Greenville. I have another sister that
2 lives in Tennessee. She works for the school district.

3 Q What's the name of the day care center in
4 Greenville?

5 A Sans Souci Day Care Center I believe is what
6 they call it.

7 Q Any other relatives by blood or marriage in the
8 state of South Carolina?

9 A I have several by marriage. I have Bryant -
10 Elbert Bryant - lives in Easley; he's retired. His wife works
11 for one of the manufacturers in Easley, and I'm not sure which
12 one it is. I have another -

13 Q What are their names?

14 A His name is Elbert Bryant, and her name is
15 Sophia. I have a sister-in-law, McCauley runs the McCauley
16 Flower Shop in Easley. I have another, James Bryant, lives
17 in Easley and works for Virginia Life Insurance Company.
18 Basically, that's the close relatives by marriage.

19 Q Did your insurance pay off on that fire loss?

20 A Yes, sir.

21 Q Was there any question? Did they voluntarily
22 pay off or did they question the loss?

23 A You know insurance companies question everything,
24 but there was no serious questions I don't think.

25 Q Who are the officers of Covil Insulation Company?

1 I'm president and treasurer, Curtis Cash is
2 vice president and secretary, and Janice Perry is assistant
3 secretary.

4 Q During World War II, you were an insulator
5 yourself?

6 A Yes, sir.

7 Q Was that a deferment to service in the armed
8 forces?

9 A I was superintendent of insulation in the ship-
10 yard in Wilmington, North Carolina, for the navy department.
11 I was deferred on account of that.

12 Q Did the United States Navy consider the insula-
13 tion trade to be of enough importance for the security of the
14 country in war efforts to grant deferments to insulators and
15 persons in the capacity you were in?

16 A I wouldn't think blanket insulators, but I was
17 in a responsible position on this particular job, and the
18 officer in charge of construction handled that, and I believe
19 one time they was about to draft me in service, and he said
20 "give me all the information." I gave it to him, and I got a
21 wire the next day not to report. That's all I can tell you
22 about it. What he done and how it was handled, I don't know.

23 Q What was asbestos insulating material being used
24 for with regard to the navy and its use in warships?

25 A Well, what was it being used for?

1 Q Yes, sir.

2 A Some asbestos board products were used for bulk-
3 head insulation. Asbestos cloth has been always used in the
4 navy work for over pipe cover and other types of insulation.
5 That's about the extent, asbestos paper, asbestos cloth and
6 asbestos board.

7 Q What is the reason that the navy specifies and
8 calls for the use of these asbestos products in warships?

9 A I'm told that the first occurrence, they had a
10 fire on a destroyer, I believe it was, in the Coral Sea, and
11 the bulkheads were insulated with cork, and some three hundred
12 men lost their lives from the fumes and the smoke caused by
13 the cork.

14 Q Did that cork contain asbestos?

15 A No, sir.

16 Q Did that fire have an effect upon the navy's
17 decision to start using asbestos insulating materials?

18 A Yes, sir, immediately after that they changed
19 their specifications on all bulkhead insulation, all types of
20 insulation.

21 Q What was the reason for going to asbestos
22 materials?

23 A To prevent fire and smoke and in case of fire,
24 to prevent it from burning insulation.

25 Q Did the use of asbestos insulating materials, to

1 your knowledge, result in the saving of lives in warships during
2 World War II?

3 A I'm sure it did. I couldn't have any specific
4 instance, but -

5 Q Since that time, in many vessels, for example
6 merchant fleet of the United States, which is a considerably
7 large number of ships, has asbestos insulating material been
8 used?

9 A Yes, asbestos and fiberglass together.

10 Q Has, in cases of fires in the merchant fleet
11 of the United States of America, asbestos resulted in the
12 saving of lives?

13 A I don't know of any instance where any lives
14 were lost from burning insulation on any vessel or fires or
15 anything like that.

16 Q In fact, would asbestos materials in the ships
17 except in, I guess, extreme heat not burn nor cause smoke?

18 A It would not burn nor cause smoke.

19 Q Do you have any personal knowledge, or are you
20 aware of any fires which have occurred in the State of South
21 Carolina where lives have been saved because of the use of
22 asbestos insulating or asbestos containing materials in
23 buildings or homes?

24 A I don't know that I recall any or have any
25 knowledge of any.

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1 Q Is one of the reasons for specifying asbestos
2 materials in institutions, for example colleges, hospitals,
3 mental hospitals, children's homes, institutions for the
4 mentally retarded or mentally deranged people, sick people,
5 schools, to cut down on the possibility of loss of life in the
6 case of fire?

7 A I don't know of any specific instances where
8 it's been done. I know that in these type buildings recently
9 it's been more of the fiberglass with asbestos cloth in certain
10 instances as protective covering over the insulation has been
11 specified in these type buildings.

12 Q In these buildings where asbestos materials have
13 been specified, was the purpose, based on your knowledge and
14 expertise in this business for years, one of the main purposes
15 being to protect human life in case of fire?

16 A I'm sure it is. Let me clarify one thing. -

17 Q Go ahead and answer my question and then you
18 can.

19 A Yeah, I'm sure that's what basically.

20 Q You may explain.

21 A When we're talking about asbestos insulation
22 material, there seems to be a misconception in a lot of people's
23 mind about asbestos being used as an insulator. Basically,
24 asbestos per se has not been used much in the insulation
25 business. Now, asbestos containing materials have been used

1 for this purpose, but a hundred per cent asbestos, no, not
2 much of it.

3 Q In other words, the materials actually used for
4 insulation work in some instances contain asbestos in percentages,
5 but very rarely a hundred per cent.

6 A Right. About the only thing I know of that is
7 a hundred per cent has been some asbestos cements and things
8 that have been used on fittings and on regular surfaces.

9 Q I guess the reason for that is to allow the
10 versatility in applying and using the products.

11 A Yes, sir.

12 Q Since you had a fire and Covil has lost all of
13 its records, can you tell us if you have any records of having
14 ever purchased any asbestos containing materials from Forty
15 Eighty Insulation Company.

16 A We have no record.

17 Q Do you have any record of ever purchasing any
18 asbestos containing materials from Keene Corporation, Keene
19 Building Products or Baldwin Ehrt Hill?

20 A No.

21 Q Do you have any records of ever purchasing any
22 asbestos containing materials from Raybestos-Manhattan?

23 A Yes, sir.

24 Q Garco, predecessor of Raybestos-Manhattan in
25 the early 20's?

1 A Not from Garco, but from Raybestos-Manhattan.

2 Q What do your records reflect with regard to
3 purchases from Raybestos-Manhattan?

4 A We have purchases asbestos cloth and asbestos
5 tapes from Raybestos.

6 Q What do your records reflect with regard to
7 when and the quantities of those materials that have been
8 purchased?

9 A I believe I have copies of the invoices here.
10 I'm not sure this is all of them, but that's what I have. See,
11 but that doesn't contain asbestos.

12 Q Are you referring to some record here that does
13 not contain asbestos?

14 A Keene Corporation.

15 Q You bought a product called thermasil from
16 Keene Corporation -

17 A That's an asbestos free material.

18 Q And that was in 1974, is that correct, November
19 21st?

20 A Yes.

21 Q I assume for the purposes of this litigation
22 you have reviewed or had someone else review at your direction
23 all records of purchases by Covil Insulation Company or any
24 subsidiary at any time from the various manufacturers of
25 asbestos containing materials; is that correct?

1 A Yes, sir.

2 Q As a result of that search, you have located
3 two invoices of purchases of materials containing asbestos
4 from Raybestos-Manhattan of Charleston; is that correct?

5 A Yes, sir.

6 Q You've handed me those two invoices?

7 A Yes, sir.

8 MR. HOOD: I would ask the
9 court reporter to mark these as Raybestos-Manhattan exhibits
10 for identification only numbers 1 and 2.

11 MR. MOTLEY: Off the
12 record a second. I wasn't here yesterday. Does he have
13 records going back to when with regard to invoices?

14 A 1973.

15 MR. MOTLEY: So these two
16 are from '73, on you've been able to find.

17 MR. HOOD: Are you taking
18 down his comments?

19 MR. MOTLEY: I said off the
20 record.

21 MR. HOOD: I want every-
22 thing on the record.

23 Q Apparently, you do have some records that pre-
24 date the fire; is that correct?

25 A No purchase records. I have no invoices.

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1 Q In your search for records, if there were any
2 records that pre-dated the fire of purchases of asbestos
3 containing materials from the defendants in these cases, you
4 have made an attempt to locate those?

5 A Yes, sir.

6 Q What records does your company maintain with
7 regard to products used on given jobs?

8 A We maintain a job file and with invoices, ware-
9 house delivery tickets and all that stuff.

10 Q So, for a given job, you should be able, if
11 those records are available, to tell us who was working on that
12 job and what products, if any, were used on that job?

13 A Yes, sir, anything after May of 1973. Before
14 that would be rather difficult. There might be some instances.

15 Q Have you, at the request of your attorneys or
16 the plaintiff's attorneys or anyone else, made any or any person
17 at your direction made any effort to determine this kind of
18 information with regard to any plaintiff that has an action
19 pending or proposed in the state of South Carolina?

20 A Not to my knowledge.

21 MR. HOOD: I would state
22 for the record, that I think, Mr. McKay, the best thing to do
23 instead of spending this witness' time and energy is to ask
24 you to produce to the defendants any and all such records
25 which I have just referred to which this witness may have which

1 would be used at any trial or furnished to any party whether
2 plaintiff or defendant in anticipation or preparation for trial,
3 whether by order of court or by agreement.

4 MR. McKAY: Mr. Hood, you
5 can ask what questions you want, and if you have a motion to
6 produce, you can write it.

7 MR. ALFORD: What happened
8 to the subpoena that was served on the witness?

9 MR. HOOD: I'm trying to
10 save time.

11 MR. ALFORD: Why should we
12 have to do a Motion to Produce if the subpoena was served?

13 MR. McKAY: Mr. Alford,
14 we have offered to produce just about anything that was asked
15 for that's relevant and not privileged. As I read the
16 subpoena, it says produce Covil's plant. Obviously, that is
17 impossible. We have even offered to take the deposition out
18 at Covil where all you have to do is walk out the door and
19 get something. That has not been, apparently, agreeable to
20 the lawyers, so we are down here. With that, we are endeavoring
21 to make a complete room out at Covil available for anybody that
22 wants to go out there and look, which you may or may not want
23 to do. We are also having a courier service bring documents
24 down here that someone particularly wants.

25 MR. ALFORD: I understand.

1 that, but why do you keep saying we need to serve a Motion to
2 Produce if you're making this all voluntarily? I don't under-
3 stand.

4 MR. McKAY: As I under-
5 stood the request of Mr. Hood, it was to adjourn this deposi-
6 tion or some such thing, I'm not sure what he's talking about,
7 for us to go back through our files and dig out all information
8 on every job about every plaintiff. I don't read that as being
9 in any subpoena I've ever seen, and all I'm saying is if he
10 wants something like that, I'd like to see it in writing. I'm
11 not saying we won't do it, but I would ask the attorneys,
12 please, if everybody is going to have something different if
13 you would get together and have a meeting and write it down
14 and give us something that we can produce.

15 MR. DAVIES: I'd like to
16 go on the record on that point that was just raised concerning
17 the offer to let us go and look at things. Of course, these
18 depositions are important or we wouldn't be having twenty law-
19 yers sit around for two or three days taking them. As far as
20 my client is concerned, I would certainly not want to go out
21 to Covil and review records while questioning was going on
22 especially since, of course, the plaintiff's attorneys are
23 coming up shortly. I would like to look at the records, and
24 it may be that they could be made available later on this
25 evening or tomorrow sometime or maybe sometime when this

1 deposition was not being conducted formally where we would have
2 an opportunity to look at them but wouldn't have to miss part
3 of these proceedings. We don't have the facilities of the
4 plaintiffs who have three representatives present.

5 MR. McKAY: We have no
6 objection to that, Mr. Davies. I will be happy to make them
7 available. We would've been happy to make them available
8 prior to the deposition, but just on a blanket subpoena, there
9 is no way that you can -

10 MR. DAVIES: I'm not
11 into that argument. All I was saying was that it was incon-
12 venient, at least, to be two places at once.

13 MR. McKAY: Well, we
14 certainly have no objection if you want to set up a day that
15 would be convenient for Covil when something else is not
16 being done there to later on send somebody up to spend as much
17 time as you want to. There's certainly no objection to that
18 that I know of. But if you will, if there's anything that is
19 not brought up immediately in these depositions, if you'll just
20 give me a list of something that we can physically do, we'll
21 be happy to make available at whatever time, if you want to
22 come back, whatever time you want to go out there and look at
23 it, or if you want to send somebody, one or more of you. The
24 only thing that we do feel is fair is if one side requests
25 something, it should be made available to both sides. Yesterday

1 the plaintiffs requested some files to be produced which we've
2 endeavored to get up and informed you first thing this morning
3 of the request. I think both sides should have the opportunity
4 equally to look at things, that's all. With that, I'm
5 terminated.

6 MR. DAVIES: That'll be
7 fine. I just wanted to be sure I was covered by not running
8 out there this morning, not having the facilities of the
9 plaintiffs.

10 MR. HOOD: I think what
11 we've determined is if Mr. Covil or his company has any job
12 records, and there may not be any, but if you have any of jobs
13 where any plaintiff or proposed plaintiff who has a claim in
14 South Carolina or Georgia, then if those records are produced
15 at any time to any party, I would like to have copies of what-
16 ever is produced either for inspection by a party or for
17 copying by a party. I'm just putting you on notice to that
18 so that my client and myself will not be surprised by some
19 records that we are unaware of at this time.

20 MR. McKAY: Let me respond
21 to that just a minute on the legal sense, Mr. Hood. Any
22 opportunity for inspecting the records will be given to both
23 sides equally. I don't know what you mean by yourself. I
24 assume there is some counsel for the defendants. I mean
25 physically I don't think Covil can be in a position of notifying

1 thirty or forty or fifty lawyers, but if you want to assume
2 the responsibility with the permission of all the other
3 defense as attorney for the other defendants for inspection
4 of files, we'll be happy to notify you. If Mr. Davies is
5 going to do it, we'll notify him, or make an effort to notify
6 everybody, but I just don't see - you know, there are
7 attorneys that come and go, and Covil has already gone through
8 its files from the testimony yesterday as to the individuals
9 and any information on those. You may have been out of the
10 room since you came in and out of the room during yesterday's
11 deposition. Those are exhibits now, those lists and those
12 people and what we have on those people. As I understand,
13 you're asking us to go through every job file we have to find
14 out somehow if some one of those persons might've been present
15 on the job. I don't that physically that's a possibility.
16 Seriously, on or off the record, it makes no difference, we'll
17 try to produce anything you want, Bobby. Just tell us some way
18 we can do it, and we'll give you whatever anybody else is
19 given, or if we give you something, we give it to the other
20 side.

21
22 MR. DAVIES: It's fine
23 with me. If you want to notify me, I'll notify the other
24 attorneys when you're going to produce something for the other
25 side.

MR. MCKAY: That's fine.

1 MR. DAVIES: I'll volunteer
2 to notify defendants. I assume we can contact one of these
3 attorney's groups.

4 CONTINUED EXAMINATION BY MR. HOOD:

5 Q Mr. Covil, your company instituted in the
6 mid-1950's a safety program. That safety program apparently
7 has been updated and approved as safety methods have been
8 approved with regard to the use of respirators, exhaust systems,
9 fans, vacuum cleaners, mixing of materials, etc., is that
10 correct?

11 A Yes, sir.

12 Q And the dangers inherent in the use of asbestos
13 materials that you were first aware of in '60 - what did you
14 say yesterday?

15 A Around '66 was the first one.

16 Q - were ultimately embodied in standards and
17 regulations adopted by OSHA in 1972; is that correct?

18 A Yes, sir.

19 Q You advised us yesterday that the manufacturers
20 started warning in different language on their products in
21 '68, '69 and by '72 OSHA had a required warning that had to
22 be placed on asbestos containing materials; is that correct?

23 A Yes, sir.

24 Q What month in '72 did OSHA come out with these
25 regulations?

1 A I believe it was February; I'm not sure.

2 Q It was early in '72?

3 A Yeah, I believe it was February; I'm not
4 positive.

5 Q By that time, at any rate, all products that
6 your company would have purchased containing asbestos materials
7 would've had the OSHA approved and required warning label?

8 A Yes.

9 Q So that any employee of yours using asbestos
10 materials supplied to your company by the manufacturer would've
11 had an OSHA warning on it.

12 A Yes.

13 Q I assume that from 1966, when the knowledge of
14 the major inhalation of asbestos dust or fiber became known
15 to yourself, that this was related in safety meetings to
16 employees by your subordinates of your company; is that correct?

17 A Yes.

18 Q Employees were instructed with regard to the
19 use and the necessity of wearing respirators, the requirement
20 and necessity of having exhaust facilities, and to avoid dusty
21 atmospheres; is that correct?

22 A Yes.

23 Q And this would encompass the employees that
24 you named yesterday that have pending or proposed claims in
25 the state of South Carolina on the list that we went over and

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1 attached as Exhibit Number 2 to this deposition.

2 A If they worked during that time, yes, sir.

3 Q When the materials, then, that were purchased
4 from Raybestos-Manhattan by your company according to the
5 invoice date of 11-17-72 for Exhibit 1, and 11-29-72 for
6 Exhibit 2, these materials, if they contained asbestos, would
7 have had OSHA warnings on them; is that true?

8 A I'm sure they would have.

9 Q By this time you had known for at least eight
10 years of the danger or the possible dangers of exposure of
11 insulated asbestos materials?

12 MR. MOTLEY: I believe your
13 math is incorrect. I believe eight from '72 is '64. Perhaps
14 you meant to say six years.

15 MR. HOOD: He's correct;
16 my math was wrong.

17 Q For about six years, you had prior to the time
18 of purchasing these materials from Raybestos, you were aware
19 and your employees were aware of the possible dangers or hazards
20 in using asbestos materials?

21 A I'm sure they were.

22 Q These particular materials, I'm referring to
23 Exhibits 1 and 2 of Raybestos for identification, some are
24 tapes and some are cloth; is that correct?

25 A Yes.

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1 Q And the cloth material was a sealed material
2 so that when it was applied, it would not give off any dust
3 or fiber; is that correct?

4 A I'm pretty sure it was. By the invoice, it
5 doesn't indicate that.

6 Q Hadn't that been this history of Raybestos
7 products?

8 A Yes, sir.

9 Q These products are not dusty or dust-creating
10 type of products, are they?

11 A I don't think so.

12 Q And whether or not any one of the plaintiffs
13 in South Carolina pending cases or proposed cases, whose
14 names you went over with Exhibit Number 2 to your deposition
15 yesterday of the defendant Atlas ever used any of these
16 particular products purchased in '72 from Raybestos, you have
17 no personal knowledge?

18 A No.

19 Q Do you have any records to substantiate any
20 such usage?

21 A I don't think we would have it.

22 Q And you have no other records or information
23 of any other proof of purchases of any materials from Raybestos-
24 Manhattan?

25 A I don't believe so.

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1 Q And you've made an effort to look?

2 A Yes, sir, we've looked through the files.

3 Q Not only yourself, but subordinates under you?

4 A Yes, sir, well, they looked them up for me.

5 Q How many people on your staff would you have
6 doing this?

7 A We've had basically two girls that have looked
8 through this; they are more familiar with the files than
9 anybody else.

10 Q And your attorneys, have they been through the
11 files?

12 A I don't believe so.

13 Q Do you have some records here with you today?
14 Are those the records you brought pursuant to subpoena?

15 A Yes.

16 Q Would you tell us what you've brought with you.

17 A This wasn't requested, but I brought that.

18 Q As you go through, by handing me this and saying
19 that, identify each item you've brought with you.

20 A I brought a label - somebody questioned this
21 Covilite, and I brought a Covilite label. I brought files on
22 workmen's comp, asbestosis claims on Willie Webb and Willie
23 L. Cooper. I brought them this morning.

24 Q The record on Willie Webb reflects that he
25 died on 7-6-72 and collected workmen's compensation.

1 MR. MOTLEY: I didn't
2 hear that. What did you say? Who died when and where?

3 MR. McKAY: Could I make
4 one request, Mr. Hood. Rather than read something like that,
5 just make it an exhibit to the deposition.

6 MR. HOOD: I thank you for
7 your suggestion.

8 MR. MOTLEY: Could I hear
9 the name again? There's people walking in and out the door.

10 MR. HORGER: Willie Webb
11 died in '76.

12 Q How long did Mr. Webb work for Covil?

13 A A very sort while.. I'm not sure, something
14 like four months I believe.

15 Q Was his compensation claim an asbestosis claim?
16 Did his estate claim that he died from asbestosis?

17 A Yes.

18 Q Was it your understanding of the South Carolina
19 Workmen's Compensation Act that the last employer was responsible
20 for providing compensation to a person containing an occupation-
21 al disease such as asbestosis?

22 A This was North Carolina. That's my understanding.
23 He was from North Carolina.

24 Q Did you have any employees that were working for
25 Covil that were terminated, laid off or fired because of any

1 problem, concern, or information you or any of your employees
2 of Covil or any of its subsidiaries may have had with regard
3 to that employee or those employees having questionable X-rays
4 of their chest, possible asbestosis or lung or pulmonary
5 problems?

6 A We have in North Carolina, I'm sure, because
7 the Industrial Commission in North Carolina - a man working
8 in our trade in North Carolina has to have a work permit from
9 the Industrial Commission of North Carolina, and they have to
10 have yearly chest X-rays. When they diagnose as having
11 asbestosis, they say you can't work in the trade, and I believe
12 we've had maybe one or two, I'm not sure how many.

13 Q When you've had those, have you, because they
14 could not obtain a dusty trades card, refused to employ those
15 persons?

16 A We will refuse to employ them in the application
17 of insulation, and I don't know - maybe we could've employed
18 them in some other place, and if we could, we did. But I'm not
19 sure we could always do that.

20 Q Were there any set procedures by yourself or
21 anyone in your organization with regard to avoiding the employ-
22 ment or the continued employment of any person who had a
23 questionable physical problem known as asbestosis or possible
24 asbestosis?

25 A I don't think as far as Covil was concerned we

1 did. Now, this Willie Cooper was diagnosed one time as having
2 asbestosis, and he's still working with the company.

3 Q Explain to me the procedure in the state of
4 North Carolina; first, how long has the requirement of chest
5 X-rays and a dusty trade card been in existence?

6 A I'm going to say about four years. I may be
7 off a little bit on that.

8 Q Prior to that time, was there any requirement
9 in the state of North Carolina that persons working in the
10 insulation field would obtain annual X-rays of their chest?

11 A No, sir.

12 Q What state agency was responsible for obtaining
13 the chest X-rays once this program was instituted, and where
14 did they keep their X-rays?

15 A We were responsible for having the employee -
16 the chest X-ray made of the employee - and this chest X-ray
17 forwarded to the Industrial Commission.

18 Q So that at least a copy of the X-ray would be
19 housed at the North Carolina Industrial Commission?

20 A Yes, sir.

21 Q And any employee put to work in the insulation
22 industry in North Carolina from 1970-what?

23 A '72.

24 Q From '72 forward, there would be X-rays on
25 file at the North Carolina Industrial Commission?

1 A Now, I'm only saying as far as Covil is con-
2 cerned. I don't know what the other employers do. I'm not
3 sure whether they are required to do this or not. All I know
4 is we were notified by the Industrial Commission that these
5 people had to have a yearly X-ray, and the X-ray had to be
6 submitted to them for their doctors to examine, and we abided
7 by their rules.

8 Q Let's go back to the days when you were the
9 business agent in Savannah. Was there any requirement in
10 those days by the Union, or any employers of an annual chest
11 X-ray or annual physical of any kind?

12 A No, sir.

13 Q Any requirement at all for any type of medical
14 examination?

15 A I don't remember any.

16 Q When did that first start, to your knowledge,
17 in the industry?

18 A When - I'm going to say about 1970 was the first
19 I knew of it in this area, maybe in some other areas it was
20 started, but I'm going to say about 1970.

21 Q Explain to us exactly what started in 1970 as
22 far as your company, your knowledge of it. What was the
23 procedure, who were the doctors, where was it done and what
24 was done?

25 A Outside of North Carolina, which I've already

1 explained, we notified all of our employees that they should
2 have a chest X-ray, and we told them where they should go to
3 have that chest X-ray made, and the company would pick up the
4 expense of having that done. In all the areas where we worked,
5 we asked them - we couldn't require them because some of them
6 refused to do it and some of them did - but now, we've
7 instituted in about the last year and a half, two years, when
8 we hire a person to work in the insulation trade, he had to
9 sign a form that he will consent to have a yearly chest X-ray.

10 Q Or you won't hire them?

11 A We won't hire them.

12 Q So, it was voluntary from '70 until '75. From
13 '75 forward, approximately, it's been mandatory by agreement.

14 A Right.

15 Q What would the reason be for an employee to
16 refuse to undergo a free physical or a free chest X-ray from
17 1970 to '75?

18 A The International Association of Asbestos Workers
19 sent out letters to all of their members advising them to
20 refuse to have a physical or have a chest X-ray.

21 Q Did you retain a copy of that letter?

22 A I have seen a copy. I don't believe I have a
23 copy.

24 Q Did it come from the International in Washington
25 or from each local?

1 A From International in Washington.

2 Q Was it signed by the president of the Interna-
3 tional at that time?

4 A I believe it was.

5 Q What year and approximate month was that letter?

6 A I don't - somewhere in the neighborhood of
7 1970.

8 Q Sometime in that range?

9 A Right.

10 Q Could be '69, could be '71.

11 A Right.

12 Q The International instructed its membership
13 not to undergo X-ray examination of their chest.

14 A Yes, sir.

15 Q What possible validity was that instruction?

16 A I have no earthly idea.

17 Q What was their rationale for instructing their
18 membership?

19 A I have no idea except I've heard some of the
20 members say they were afraid some of them would have bad X-rays
21 show up and would be put out of work. I don't know that for
22 a fact.

23 Q It was your view of the Union instruction to
24 its membership apparently that the Union was trying to protect
25 its membership from losing employment by undergoing chest X-

1 rays?

2 A That was my opinion.

3 Q So, I guess we can go further and assume that
4 the union must've known the chest X-rays could've shown
5 problems of the pulmonary system of its membership and par-
6 ticularly asbestosis?

7 A Yes, sir.

8 Q Did you ever have any similar correspondence
9 from the union at any other time since you've been in business?

10 A I don't believe so.

11 Q Instructing its membership with regard to not
12 undergoing any medical examination or chest X-rays.

13 A I don't remember.

14 Q Did any brochure go to the union membership
15 with regard to this 1970 mandate not to undergo chest X-rays?

16 A I don't really know. The only thing I saw was
17 a copy of a letter that somebody - it didn't come to me, but
18 other contractor had gotten from some of their employees -
19 that where they wrote them advising their membership not to
20 have physicals or chest X-rays.

21 Q We would, and I'm sure you would, like to get
22 a copy of that letter if it's possible. Can you help us by
23 telling us where we should go to look for that letter?

24 A I think the best source would be to go to the
25 National Insulation Contractors Association office.

1 Q National Insulation Contractors Association
2 office located -

3 A In Washington, D. C. I don't have the exact
4 address with me.

5 Q Who is the administrator or the person in that
6 office that we should contact?

7 A Joe Coach is the vice-president and manager of
8 the company.

9 Q And Mr. Coach probably would have retained a
10 copy of that letter?

11 A I'm sure they probably have copies.

12 Q What kind of information does this National
13 association compile with regard to the hazards of using
14 asbestos materials and the precautions to be taken in working
15 around such materials?

16 A What?

17 Q What kind of materials does this organization
18 compile?

19 A I'm not sure. I know they gather a wealth of
20 material, and they - we have a magazine that comes out to all
21 the membership monthly, and we also have what they call the
22 NICA Insulator, which is a letter. It comes out under no
23 regular schedule, and they keep us informed of anything pertain-
24 ing to our trade, and that's both legislative and health-wise
25 and all.

1 Q Have you written that organization for any
2 information in connection with these lawsuits in South Carolina?

3 A No, sir.

4 Q Has anyone at your request or suggestion, to
5 your knowledge?

6 A No, sir, not to my knowledge.

7 Q Does that organization have information available
8 which could be used for of assistance in the defense of these
9 alleged claims in South Carolina?

10 A I'm not sure.

11 Q Does that organization provide funds or facilities
12 for defending such claims as those that have been brought in
13 South Carolina?

14 A No, sir.

15 Q Is that organization supported by dues of its
16 membership?

17 A Yes, sir.

18 Q Any other source of support?

19 A Well, they have - we pay dues and a per hour
20 industry fund.

21 Q Was that organization, to your knowledge, a
22 member of the Asbestos Textile Institute?

23 A I don't know.

24 Q Was that organization, to your knowledge, a
25 member of the National -

1 MR. MOTLEY: NIMA?

2 MR. HOOD: What is NIMA?

3 MR. MOTLEY: National
4 Insulation Manufacturer's Association.

5 A I don't think they're members of NIMA. They
6 work closely with NIMA.

7 Q Would this organization that you've referred
8 to of the insulation contractors have received minutes or
9 reports or summaries of minutes or reports from either of those
10 two organizations or associations?

11 A I'm not positive.

12 Q Have you ever received or reviewed minutes or
13 summaries of either of those two organizations?

14 A I've never reviewed any minutes.

15 Q Have you ever received them?

16 A No, sir.

17 Q Has anyone in your organization?

18 A Not that I know of.

19 Q Have you, in preparation of the defense or
20 prosecution of any of the pending cases in South Carolina,
21 compiled any records for each specific or for all of the cases
22 pending in South Carolina?

23 A Specific records?

24 Q Right, or any records from your company.

25 A No, sir, no more than what is here today.

1 Q What you've pulled together, for example, is
2 what you've shown me as to Raybestos-Manhattan, invoices of
3 materials purchased?

4 A Yes, sir.

5 Q If you will, march on through what you've brought
6 with you.

7 A The next thing I have here is with reference to
8 Covilite labels and stuff.

9 Q It's a non-asbestos-containing product.

10 A Yes, sir,

11 Q What else do you have?

12 A I have information on telephone conversations.

13 Q Who was that telephone conversation with?

14 A Balfor Manufacturing Company, Johns-Manville
15 and Owings Corning.

16 MR. McKAY: Let's go off
17 the record a minute.

18 Q Apparently you've had conversations with some
19 parties in this litigation. Have you ever had any conversations
20 regarding the litigation in South Carolina with any official
21 or employee of Raybestos-Manhattan?

22 A No.

23 Q Keene Corporation, Keene Building Products
24 or Baldwin Ehrt Hill?

25 A No, sir.

1 Q Forty-Eighty Insulation Company?

2 A No, sir.

3 Q Could you go through what other records you
4 have.

5 A This is a copy of the Complaint.

6 Q I think that is the cover page. Is that the
7 whole Complaint?

8 A I think it's the full Complaint.

9 Q And this is in the Evelyn White case; is that
10 correct?

11 A That's right.

12 Q You have a copy of each of the two actions.

13 A Right. This is a copy of the subpoena.

14 Q The next is the letterhead of your attorneys.
15 Let's let them look at it and see if that letter is privileged.
16 What else do you have?

17 A This is a copy of which has already been made.

18 Q So the record is clear, that was Exhibit 2 to
19 the deposition, which was a list of plaintiffs.

20 MR. McKAY: The papers
21 which Mr. Covil has handed me are a letter with enclosures
22 from our firm to him, and think it is privileged. I don't say
23 there's anything in the letters, but I don't want to waive any
24 attorney-client privileged documents.

25 Q I would ask if the attachment to those letters

1 are also privileged?

2 MR. McKAY: It's something
3 we sent him. It's a copy of a Notice to Produce.

4 A This is another of this.

5 Q That's Exhibit 3 to the deposition.

6 A This is not the one that was marked; it's one
7 that I had.

8 MR. McKAY: This is a
9 penciled copy.

10 A I had a copy of that.

11 Q Of Exhibit 2?

12 A Yes, the typewritten copy here is the same as
13 this.

14 Q That's Exhibit 2 of Atlas from yesterday.

15 A This is a copy of notices to the different
16 attorneys, I think.

17 Q What else have you got? This is a notice of
18 your deposition.

19 A This is a copy of the number 4 form on Walter
20 F. White.

21 Q Did you personally know Mr. White yourself?

22 A Yes, sir.

23 Q Tell me about him. What kind of person was he,
24 how reliable was he, that sort of thing?

25 A He was a very reliable person and, in my opinion,

1 a very reliable person. I can't say about all these plaintiffs,
2 but I can about him.

3 Q Was he a reliable employee?

4 A Yes, sir

5 Q Did you know anything about his family life?

6 A I knew his wife, and I'd met his wife and
7 daughter.

8 Q Before or after his demise?

9 A Before.

10 Q Did you ever socially do anything with that
11 family?

12 A No, sir, I visited in their home a time or two
13 when I went by to see him.

14 Q What were the reasons for those visits?

15 A That was when he was working for us, when he
16 was employed by us, and I would imagine it would pertain to
17 some job or something that he was on. He was a foreman for us
18 for several years.

19 Q Attached to this W-2 form is a list of purchases
20 made by Covil. Can you tell me the source of that information?

21 A This came from our files. I had our people go
22 back and determine how much we purchased from each of these
23 people during this period of time.

24 Q And in a brief review, it appears that an
25 enormous quantity of materials from '71 to '76, in fact,

X
1 \$264,348.33 of materials was purchased from Southern Asbestos
2 Company; is that correct?

3 A Yes, sir.

4 Q Thank you. What else.

5 MR. McKAY: Do you want
6 to make that an exhibit?

7 MR. HOOD: No, sir, because
8 I think it was prepared by his attorneys and not by him,
9 according to the caption of it.

10 MR. McKAY: You're probably
11 right.

12 MR. MOTLEY: What is all
13 that?

14 MR. DAVIES: Whatever it
15 is, there are a lot of people looking at it.

16 Q What else do you have with you?

17 A This is a report on research and development
18 from Southern Asbestos Company.

19 MR. HOOD: I would ask the
20 court reporter to mark as Raybestos exhibit Number 3 W-4 of
21 Walter White.

22 Q May I see the information you referred to from
23 Southern.

24 MR. McKAY: Southern is
25 gone as a part of this. I'm a little afraid I have not looked

1 at all this stuff Mr. Covil's brought.

2 MR. HOOD: Well, he has
3 had it with him for two days.

4 MR. McKAY: No, he hasn't.
5 We are not sure with the defendants whether this constitutes
6 work product, and I'm not sure. If you want to demand that
7 we turn over that, I think it would be to your interest not
8 to do so.

9 MR. CARPENTER: What are
10 you referring to?

11 MR. McKAY: I'm trying to
12 look through - see, what Mr. Hood is in now, Mr. Carpenter,
13 and the problem is he's going into matters that have occurred
14 since the suit was brought, and he's trying to get into documents
15 and so forth that have been obtained during the course of the
16 litigation.

17 MR. CARPENTER: You
18 referred to work product, though. What type of document are
19 you referring to as work product? You lost me because I'm not
20 over there to see what you have in your hands, and, of course,
21 if it's work product, I have no business seeing it. But I'm
22 just trying to identify for the record what you are saying when
23 you say "this is work product."

24 MR. McKAY: Basically, as
25 I'm looking at it, these are documents that - at least, I'm

1 looking at a document that is from another defendant to us
2 after the suit was brought. I mean, if the defendants want
3 to demand us to give all these things out, I suppose they can
4 waive whatever rights they have there, but some of these things
5 have come and gone. They've not been given to anybody. This
6 is some of the problems of what might be privileged for one
7 party or another.

8 MR. CARPENTER: I understand
9 that; I'm not arguing the privilege.

10 MR. MCKAY: As long as
11 you're talking about things before the suit was brought, there
12 is no problem whatsoever, but we're into now with what
13 conversations, what things were obtained while Covil was a
14 defendant in the suit along with co-defendants, and I'm having
15 some difficulty -

16 MR. CARPENTER: Well, I'm
17 not arguing the point as to whether or not it's work product.
18 My problem was a late bloomer in this case and picking up
19 depositions and reading them and trying to figure out what
20 you're talking about, and I'm trying to eliminate that problem
21 now as to what sort of documents you're talking about. Just
22 for the record, so that when I read it, I'll understand what
23 we're talking about.

24 MR. MCKAY: Basically, Mr.
25 Covil has brought his file over here, and Mr. Hood has said,

1 "Mr. Covil, let's start at page one and you show me what's on
2 page one, page two, page three of the file."

3 MR. CARPENTER: I don't
4 know that that's of much help to me, but thanks.

5 MR. ALFORD: Let me make
6 this observation. I don't know whether I was supposed to see
7 it or not, but I did see it. One thing you're talking about
8 is a confirmation made by somebody of the various products
9 bought by Covil from the various defendants. That's most
10 relevant to the case.

11 MR. McKAY: I have no
12 objection to making that -

13 MR. ALFORD: That's the
14 document we're talking about, isn't it?

15 MR. CARPENTER: I thought
16 it was. That's when we got into the work product discussion,
17 and that's why I wanted it clear for the record.

18 MR. ALFORD: I'll either
19 settle for his compilation or your compilation, or I want his
20 on record to show me where the compilation came from. It
21 doesn't matter.

22 MR. McKAY: Well, Jim, I
23 have no objection to that. What we are specifically referring
24 to now is a response to a request by Southern Asbestos Company
25 concerning this lawsuit to Mr. Covil, and -

1 MR. ARNOLD: Why don't
2 you pass it on and let the thing go.

3 MR. MOTLEY: Don't worry
4 about it, it'll be revived come our turn, Mr. Bevo. If he's
5 got some stuff in there, we're going to want to see it.
6 I'll promise you that. We'll go through it now or later.

7 MR. HOOD: My question
8 was -

9 MR. MOTLEY: Mr. Hood has
10 uncovered the rock.

11 -----
12 CONTINUED EXAMINATION

13 By Mr. Hood:

14 Q My question was: What was the next document?
15 I believe the next document was a letter from Southern Asbestos;
16 is that correct?

17 MR. McKAY: Let's hold that
18 just a minute. Let me object for Covil on that for the
19 moment, and let's go on to the next thing.

20 MR. HOOD: Would you state
21 what the document is and the basis for your objection.

22 MR. McKAY: Alright, you
23 can have it. Mr. Hood has requested the document from Southern
24 Asbestos, and it's been given to him for good or bad. We can
25 go right on through. It doesn't matter to us.

1 Q What is the next document you have, sir?

2 MR. McKAY: I really think
3 if we're going to go through these, we ought to mark them
4 because - well, I guess if nobody wants to mark them. Go on,
5 Mr. Covil, let's just go through what you've got in the file.

6 A The next document is two pages here on informa-
7 tion on Bumgardner.

8 Q May I see that?

9 MR. MOTLEY: That's a what,
10 now?

11 A Bumgardner.

12 Q Who prepared the information you've just given
13 to me?

14 A I believe this came from our attorneys, and the
15 other we prepared from our records.

16 Q What's the next document you have?

17 A This is the one we had a while ago with my
18 conversations with some of the manufacturers.

19 Q Yes, sir, we've been through that.

20 MR. MOTLEY: Wait a minute,
21 I haven't seen that.

22 MR. HOOD: You'll have a
23 chance to examine the witness.

24 MR. MOTLEY: Beg your pardon?

25 MR. HOOD: You'll have a

1 chance to examine the witness. All I want to know right now -
2 my question is: What does he have in his file? If I have a
3 specific question, I'll ask him.

4 A This is a communication from Marshall Johnson
5 to me pertaining to some of the people that he knew, more or
6 less.

7 Q The next document you have, sir.

8 A This is a copy of invoices to Guy M. Beattie,
9 Bumgardner's employer.

10 Q Materials you sold to Guy M. Beattie?

11 A Right, yes, sir.

12 Q The next document.

13 A Interrogatories.

14 Q This is a response to a request for admissions.
15 The next document.

16 A The next document is a list of the defendants
17 in the case and some copies of invoices.

18 Q The next document.

19 A This would be a part of that.

20 Q The next document.

21 A This is a memo from Joe Malone to me on informa-
22 tion they gathered from some of these employees.

23 Q From whom did you get the information upon which
24 this check was made?

25 A That came from our files.

1 Q What was the reason for running this check?

2 A I don't really know, but some information we
3 were asked by either - probably by our attorneys or somebody
4 on it.

5 Q Apparently, according to this document you've
6 just handed me, you have instituted a search of the records of
7 your company as to the employment of the plaintiffs who have
8 brought suits in the State of South Carolina.

9 A Yes, sir.

10 Q Have those records been compiled in separate
11 folders for each of these plaintiffs?

12 A I'm not sure if they have. They're altogether
13 there.

14 Q What information have you compiled as to each
15 of the plaintiffs?

16 A No more than what's listed there.

17 Q What else have you brought with you?

18 A This is a list of the plaintiffs that I think
19 the girl used that in compiling that.

20 Q What else have you brought with you?

21 A This is an insurance survey from the National
22 Insulation Contractors Association.

23 Q May I see that, please. (Witness hands document
24 to attorney).

25 A This is another part of that. (Witness hands a

1 second document to attorney).

2 Q What else have you brought with you?

3 A This is another copy of the purchases by some
4 of the - you already have this - this is just notes that we
5 made about what was requested.

6 Q This list of locating by your secretary of
7 W-2 forms was later embodied in Exhibit Number 2, I think it
8 was, of Atlas; is that correct?

9 A I think that's right.

10 Q Is this your handwriting on the plaintiff's first
11 set of request for admissions of facts and genuiness of
12 documents in the Furman Gardner case?

13 A Yes, sir.

14 Q Would you read to me what your response would've
15 been to number eight?

16 A I wrote that down here: "The term of asbestos
17 worker is used by the union and union men. Should be insulation
18 applicators or worker. The use of asbestos in the trade is
19 almost nil today. In the last 25 years, asbestos has not been
20 more than about five or six per cent of the total insulation
21 materials."

22 Q Did that request for admissions ultimately be
23 answered with that language?

24 A Yes, sir.

25

MR. MOTLEY: Do y'all want

1 to take about a ten-minute break, and I'll try to call Tennessee?

2 MR. DAVIES: Let's do.

3 (10-minute recess)

4 MR. MOTLEY: I have a copy
5 of the letter from the International Association of Heat and
6 Frost Insulators. It was a news letter he was referring to
7 that's dated April 15, 1973. It will be provided to you with
8 regard to declining to take the X-ray tests.

9 MR. HOOD: April 15, what
10 year?

11 MR. MOTLEY: '73.

12 MR. HOOD: That's your
13 interpretation of what he was referring to. He said in 1970.

14 MR. MOTLEY: The letter will
15 speak for itself.

16 MR. HOOD: So does his
17 testimony. He's the witness.

18 Q Do you smoke cigarettes?

19 A No, sir.

20 Q And you were an insulation worker yourself
21 for how many years?

22 A I would guess about 15 years.

23 Q And you have no asbestosis according to your
24 doctors?

25 A No, sir.

1 Q You have none of the symptoms of asbestos your-
2 self?

3 A According to my doctors.

4 Q Refer to the request for admissions which were
5 in your file, question number 148. What was your answer to
6 that request for admissions?

7 A 148?

8 Q 148. I believe the answer's written in long-
9 hand, and that's your handwriting, isn't it?

10 A Yes, sir.

11 Q Read the question, and then read us what your
12 answer to that question was.

13 A The question is: Does this defendant admit
14 that there is no demonstrative medical relationship between
15 smoking cigarettes and the development of asbestosis? I wrote,
16 my answer to that "all the cases of asbestosis that I know of,
17 the victims have also been heavy smokers."

18 Q Would you read question 149 and your answer to
19 that question.

20 A 149: Does this defendant admit that there is
21 no demonstrative medical relationship between smoking cigarettes
22 and mesopetama?

23 Q Mesothelioma.

24 A Whatever you call it.

25 Q I have trouble with that one, too.

1 A "Heard Dr. Silocoff say something to the effect

2 Q You're reading now from your answer?

3 A This is from my answer, yeah. "Heard Dr.

4 Silocoff say" -

5 Q Just so the record's clear, start with what
6 your answer to that question was.

7 A My answer to that question was: "heard Dr.
8 Silocoff say something to the effect that if you smoke, don't
9 work with asbestos."

10 Q When did you hear him say that?

11 A That was one of the NICA meetings, and I
12 couldn't tell you what year.

13 Q Did you relate that information to your safety
14 director?

15 A Yes.

16 Q Did he relate that information to your employees?

17 A I'm not sure about that.

18 Q This meeting was probably in the mid-60's?

19 A Somewhere in there.

20 Q You have checked or had your office check the
21 job files which you've listed before, and you have ascertained
22 that you have no files for which jobs that the plaintiff has
23 asked you for job files on?

24 A For Milliken at Barnwell, we have no file on
25 that. American Optical at Barnwell, no file. Brevard Daniel

1 job, I wasn't sure exactly what job that was, but I understand
2 it's the Dupont at Cedar Mountain, and they've checked and
3 we didn't have a job file on it, but they're checking for
4 material sales to Daniel at Cedar Mountain now to see what
5 they've got on that. University of Georgia job, no file. See,
6 all these jobs had been done prior to the fire, and all those
7 records are burned. Canal Insurance Building, Greenville, no
8 file. Firestone Steel, no file. Dunn Meat Packing, no file.
9 American Enka at Asheville - I think our people got a little
10 bit confused on that because we show American Enka at Enka,
11 North Carolina, which is just outside of Asheville. I told
12 the girl I thought she ought to go back and see if we had
13 anything on American Enka at Enka, North Carolina. Furman
14 University '59-60, no file. Fiber Industries at Salisbury,
15 we didn't find a job file. They're checking with our Greens-
16 boro office to see if they have a job file on it, and they're
17 also going to check their sales for Daniel at Salisbury to
18 see what we've got on that.

19 Q You testified yesterday on the subject of your
20 understanding of the agreement between your attorneys and your-
21 self Covil and the plaintiff's attorneys in the South Carolina
22 cases; is that correct?

23 A One case.

24 Q You testified yesterday - you didn't answer
25 my question. Do you understand my question?

X
1 A Yes, sir, I think I do.

2 MR. McKAY: I object to
3 the form of the question.

4 Q Yesterday you testified as to your understanding
5 of the agreement between your attorneys and the plaintiff's
6 attorneys; is that correct? Yes or no?

7 A I testified -

8 Q First, if you'll answer my question, yes or
9 no, you can explain your answer.

10 A No.

11 Q You didn't testify about that yesterday?

12 A I testified about it, but -

13 Q Was your testimony under oath truthful?

14 A Yes, sir.

15 Q And it was your best recollection of your
16 knowledge of the subject matter, correct?

17 A Yes, sir.

18 Q Your company has purchased another company called
19 Industrial Associates, Inc., a South Carolina corporation; is
20 that correct?

21 A No, sir.

22 Q Which was owned by Keene Corporation.

23 A We purchased two Keene branches, and set them
24 up and operate them as Industrial Associates, which is a corpor-
25 ation that we already - a wholly owned corporation we already

1 had.

2 Q Would you look at these two documents which
3 your attorney or your office has furnished and advise me if
4 these are the correct copies and complete copies of the
5 agreements for each of these purchases.

6 A They are.

7 Q I would ask that you, since that is an extra
8 copy that's been furnished to me, merely sign your name and
9 the date at the bottom of the last page of each of those
10 two agreements for me, please.

11 A Name and date?

12 Q Yes, sir.

13 A You're talking about this date?

14 Q Yes, sir. 7-14-77.

15 A You want that on the purchase agreement and
16 not on the sublease agreement, I don't guess.

17 Q Where you signed the agreement, that page.

18 MR. GILREATH: There are
19 several different agreements in here, like the sublease.

20 Q Then just do it on the front page, the top of
21 the first page.

22 MR. HOOD: Can we agree
23 that this is the true and correct copy without a request for
24 admissions of these documents based on his testimony today and
25 the submission of these documents to me?

MR. McKAY: Is that correct?

A Yes.

MR. GILREATH: I don't

believe there were any others.

MR. McKAY: Do you intend

to make those exhibits?

MR. HOOD: No, sir, they

are too voluminous, and they don't apply to anyone but my client, so I just -

MR. McKAY: Well, if they

are not made exhibits, Mr. Hood, what do you intend to do with them? They're our documents. Do you intend to keep them?

MR. HOOD: These are extra

copies they made for us, as I understood.

MR. McKAY: There is no

way, Mr. Hood, that you can say I have agreed that something is a true and correct copy that is not identified in the record as anything and you keep the copies.

MR. HOOD: Attach it as

the next numbered exhibit.

MR. MCKAY: If you want to

make it an exhibit, that's fine, then we know what we're talking about. Otherwise -

MR. HOOD: We've attached

as the next numbered exhibit the Birmingham agreement. There's no need to make copies. Just attach one to the original.

MR. MCKAY: Maybe the attorneys can agree that you can keep the exhibit and not put it -

MR. HOOD: That's alright. It'll be filed with the original transcript. I don't want any question about it. The next file is the next numbered exhibit, the Jacksonville agreement.

Q Mr. Covil, would you ask your office to furnish to us the W-4 forms or any other tax forms that you have for any of the persons that you have checked on in accordance with that list of persons that have been employed by Covil?

A Yes, sir. I believe you have them already.

Q We do have them already?

A Yes.

Q They've already been furnished to us?

MR. PARLER: Yes.

MR. HOOD: I'd ask the court reporter to next mark these as separate exhibits and as she marks them to designate by the number of W-4 form for and whoever the person is.

MR. PARLER: Let's go off the record just a minute, please.

MR. MCKAY: These are on the sheet, if you want to go through.

MR. HOOD: Go ahead and

1 mark them. Mark each one of those as a separate exhibit, and
2 as you mark it, to identify the next numbered exhibit, whichever
3 number it is, W-4 for, and just go through the list.

4 MR. McKAY: Wouldn't it
5 be a lot simpler just to make a folder an exhibit?

6 MR. HOOD: No, I want a
7 separate one on each one.

8 MR. ARNOLD: Have we got
9 to take the time for all that?

10 MR. McKAY: Bobby, it's
11 a physical thing. Let's just make the folder and seal it as
12 an exhibit instead of going through a hundred exhibits.

13 MR. HOOD: We're going to
14 have to pull it out and use it in all different cases, and
15 it's easier to do it this way.

16 COURT REPORTER: Exhibit
17 Number 6, for Dewey W. Adams. Exhibit Number 7, for C. D.
18 Brown. Exhibit Number 8, William Judson Bumgardner. Number
19 9, Oliver Kenneth Caine; Number 10, Leon Eugene Davis; Number
20 11, Wayne Broughton Duncan, Jr.; Number 12, Furman Dearon
21 Gause; Number 13, Thomas A. Heath; Number 14, Osie Huggins;
22 Number 15, Floyd Lee Kountz; Number 16, John Harold Pendley;
23 Number 17, Robert Wideman Quattlebaum; Eighteen, John Sigmund
24 Rough; Nineteen, Janie Scott; Twenty, Gary Lee Smith; 21,
25 Bobby-Ray Taylor; 22, Earl Dean Tuck; 23, Charles Donald Turner;

1 24, Robert Linwood Turner; 25, John Edwin White; 26, Walter
2 Franklin White.

3 MR. HOOD: The court
4 reporter has marked the documents.

5 Q We were talking earlier about the requirement
6 of physical examination. Who was the doctor or where was
7 the hospital that your employees went to obtain chest X-rays?
8 Was there one designated place or person?

9 A There were several different places.

10 Q As you are going through your records on the
11 work history of each of these plaintiffs and, for example,
12 have obtained W-2 forms for them, can you ascertain when and
13 where X-rays were taken or physical examinations given of each
14 of those persons?

15 A These were not X-rayed because they were employed
16 prior to the time we started that.

17 Q That's true of all of them?

18 A I don't think any of them would have been
19 employed since we started that program.

20 Q What about employers or companies for whom you
21 were being employed that required such physical examinations?

22 A I was never employed by any company that
23 required that.

24 Q Your company, in sending insulators to job
25 sites, Dupont, Daniel, Savannah, wherever, did they require

1 chest X-rays and physicals?

2 A I don't believe so, not in this date, no, sir.
3 Now, they are requiring - a lot of them are, but not all of
4 them.

5 Q Who was the earliest company to start X-rays
6 that you know of in South Carolina requiring X-rays?

7 A I have no information on that.

8 Q Who are the companies that, like yourself, for
9 the last four years, at least, have been requiring them?

10 A I don't know whether any of the other companies
11 require them or not.

12 Q Do any of the companies in South Carolina that
13 your company does work for require that your employees have
14 annual, semi-annual or prior to employment chest X-rays?

15 A I don't believe so.

16 Q When you were working in the 30's as the super-
17 visor of insulation in the navy yards, did they require you to
18 obtain annual physicals?

19 A No, sir.

20 Q Who is the company doctor for Covil?

21 A I couldn't tell you that right off-hand. We
22 have a designated doctor at each of our locations. I'd have
23 to get that - I could get that information.

24 Q Where are your locations?

25 A Greensboro, North Carolina, Wilson, North

1 Carolina, Greenville, Columbia and Albany, Georgia.

2 Q Who are the doctors in Greenville and Columbia?

3 A I don't know myself.

4 Q You don't know who the doctor is in Greenville
5 where you live?

6 A No, sir, I sure don't. I know who one was, and
7 they've changed. I'm not sure who -

8 Q Who is he, the one that was your doctor?

9 A He was - I don't remember that right now. I'd
10 have to look it up. I don't remember. I don't really get
11 involved in that personally.

12 Q What I am trying to find out and asking you for
13 help on - maybe I'm not asking the question properly to get the
14 information, but what I'm trying to find out is any and all
15 the exhibitors of any and all medical records on these men that
16 have worked for Covil whenever, whether they had a cold and went
17 to the company doctors, whether they had a complete physical
18 or chest X-ray or any medical problem, I want to know the source
19 of obtaining that information.

20 A On these particular employees, I doubt if we
21 have any records, any medical records.

22 Q I understand you would not. What I'm interested
23 in is a doctor or a hospital that may have.

24 A I don't think any of our doctors would have that
25 information.

X

1 Q In other words, your company doctors - just if
2 someone gets hurt on the job, they're used.

3 A Well, yes. In the early stages of our company,
4 we didn't even have a company doctor. We let people go to the
5 doctor of their choice, and this got to be right much of a
6 problem, so we enlisted a doctor that would act as a company
7 doctor. We'd tell them if they got hurt or anything, you
8 go to this doctor. That's been for the last seven or eight
9 years.

10 Q For example, from 1960 until you instituted
11 requiring annual chest X-rays, four years ago, do y'all have
12 records to reflect payments of medical expenses for your
13 employees?

14 A I would assume we do.

15 Q So that we could determine from those records
16 if one of the employees who you have W-4 forms or actually
17 was treated by a physician and who that physician was.

18 A I believe we could.

19 Q I would like that information, and if it's not
20 too volumonous, from 1960 until you started the annual chest
21 X-ray requirement, or until that employee terminated.

22 MR. McKAY: On what employee?

23 Q I'm going to change what I just said. On the
24 W-2's, what I want to know is for each of the people that have
25 a claim in South Carolina, what records you have with regard to

each person of payment to a doctor of medical expenses or to a hospital for medical expenses for whatever reason.

A I'd have to get somebody to search the files and see what they could find.

Q If that's a voluminous search, I'll be happy to pay for it. I don't want to impose on your company; if it's not something they can do in the next fifteen or twenty minutes, an hour, then fine.

A I don't think they could do it in fifteen or twenty minutes. It would probably take two or three hours.

Q Would you go ahead and call if it's convenient with your office so they can start that search.

MR. HOOD: Mr. McKay, what I'm interested in is a doctor that we don't know about, that may have treated these people and may have diagnosed asbestosis more than six years ago.

MR. MCKAY: I'm trying to get down to the framework of your question, and I was asking Mr. Covil if that information, if that has already been searched for on the books.

A No, it has not.

MR. MCKAY: Do you want to stop and let him call?

MR. HOOD: Let him call his office.

(MR. COVIL'S TELEPHONE CONFERENCE WITH OFFICE)
A North Hills Medical Center is our company

doctor. Dr. Batson for a short while in Berea.

MR. DAVIES: I would like
to have someone check the records of the Industrial Associates
in Jacksonville for Herbert William Davis, Jr.

MR. McKAY: Is that a
relative or a claimant:

MR. DAVIES: No, that's
a claimant.

A What's the name?

MR. DAVIES: Herbert
William Davis, Jr. The Jacksonville workers is the ones I'm
interested in.

Q Mr. Covil, you've checked with your office, and
you've advised us of two doctors that you are aware of, and
when you have the information you're going to go ahead and
fully answer my question; is that correct?

A Right.

Q I notice when you were referring to the informa-
tion you were requesting of your secretary, you said of the
24 men that have worked for us in this case; is that correct?

A Right, 26, I believe.

Q Anyway you referred to a number of people, and
you said in this case; is that correct?

A Right.

1 Q Apparently, you view this as one big case
2 against Covil.

3 A Yes, sir.

4 MR. HOOD: Thank you, I
5 have no further questions.

6 -----
7 DIRECT EXAMINATION

8 By Mr. Parler:

9 Q Mr. Covil, I'm Rembert Parler, and I represent
10 Armstrong Cork Company. I believe yesterday you testified as
11 to the fire which your company experienced sometime back and
12 destroyed a lot of your permanent records including personnel
13 files?

14 A Yes, sir.

15 Q Yesterday, though, I believe you did bring some
16 records, and among those was a folder which is captioned
17 Employee Information?

18 A Yes, sir.

19 Q Just for your information to refresh, the W-4
20 forms were also in here. Those were listed as Exhibits 6
21 through 26. Did it also contain some personnel files?

22 A Right.

23 Q And they are four in number, is that correct?

24 A I believe that's right.

25 Q Would you just read off the names, please, of

1 each one of them?

2 A Leon Eugene Davis is one; John E. White is two;
3 Roy E. King is three; Harold Lee Taylor is four.

4 Q Let me just go right down the line just a
5 second.

6 MR. PARLER: I want these
7 marked as exhibits. This is the Leon Eugene Davis -

8 Q You were asked yesterday about how well you
9 knew or under what circumstances you knew some of your employees.
10 Let me refer you to Defendant's Exhibit 28, which is the
11 personnel file on Roy E. King. Do you have an independent
12 recollection of Mr. King?

13 A I remember him.

14 Q From his personnel file, can you tell me when
15 he was first employed by you or by Covil?

16 A December 16th, 1968.

17 Q Can you tell from that exhibit when he was
18 terminated?

19 A 3-1-69.

20 Q He shows his age, this personnel record shows
21 his age as 21, but shows a date of birth of September 11 '68,
22 which is clearly an error.

23 A No, this is not the Roy King referred to in
24 the plaintiffs here.

25 Q That's what I wanted to find out. This personnel

1 file which is Exhibit 28 appears to be a man named Roy Elmer
2 King who was born 9-11-47?

3 A Right.

4 Q Would he be the same Roy King who is a claimant?

5 A I don't think so. The Roy King, I think that's
6 the claimant, is from Charleston, and this wouldn't be him.
7 He's an older man than this.

8 Q Referring to Exhibit 27, which is personnel
9 file of John White, would you tell me, please, what his date
10 of employment was, or dates of employment if more than one,
11 and when he was terminated.

12 A He was employed - this shows 10-24-73 and
13 termination of 3-7-74. I believe that's right.

14 Q In his application part, I believe he shows
15 that he resides at Lyman, South Carolina.

16 A Right.

17 Q And he shows that he has taken a physical
18 examination recently, he marked that yes.

19 A Yes.

20 Q What date does he indicate for that?

21 A For the physical?

22 Q Yes.

23 A 7-72.

24 Q What purpose?

25 A Insurance.

1 Q And the doctor's name is given as -

2 A Is that Heath or Health?

3 Q It's either Heath or Health, I think it's
4 Health Clinic.

5 A Looks like Health Clinic.

6 Q Does Health Clinic ring a bell with you? Do
7 you have any idea what that would be?

8 A No, sir.

9 Q In his application, I'm referring you right now
10 to what looks like to me as page two of the application.

11 A The back page.

12 Q Do you, in your application form, request the
13 names of current and prior employers of the applicant?

14 A Yes, sir.

15 Q Is there any limitation in the form on that,
16 that is, does it restrict it to the last two years or five
17 years, or is there any restriction at all?

18 A No restrictions.

19 Q In his application, what did he respond as to
20 prior employment?

21 A As to prior employment, he responded he was
22 employed by Covil Insulation from '62 to '64, and also Porter
23 Haden in Charlotte from '66 to '72, Daniel Construction,
24 Greenville, from '72 to '73.

25 Q He reported he was an insulator on those three
employments?

1 A Yes, sir.

2 Q Do you have any independent knowledge as to
3 why there is a gap in his employment record as he reports it
4 from it looks like '64 to '66?

5 A No, I don't really.

6 Q Let's see if he was in the service and maybe
7 he was in service. No. You have no independent -

8 A No, sir. This record was from the last time
9 he was employed by us. Here is when he was employed earlier,
10 which we didn't have a record.

11 Q That's correct. I understand that. This is
12 his last employment application.

13 A Right.

14 Q Let me refer you, please, sir, to Exhibit 29,
15 which is the file of Harold Lee Taylor, and refer you to the
16 first page of the application. First, tell me, if you will,
17 when he was employed by you and when terminated.

18 A He was employed 8-2-69 and terminated 8-31-69.
19 It looks like he was employed again 9-24-69.

20 Q Still referring to Exhibit 29, on the first
21 page of the application, tell me, if you will, what type of
22 work he was applying for.

23 A Temporary work as an insulator, week-ends only.

24 Q On that particular form, I believe he has
25 checked the box that says "have you taken a physical examination

1 recently?" Is that correct?

2 A Right.

3 Q It says, "If so, when?" is the next question.
4 Then "for what purpose?" is the following question, and then
5 "The doctor's name" is the last question on that line. Is
6 that correct?

7 A That's right.

8 Q Can you see whether any of these last three
9 questions have been answered?

10 A Don't seem to have been.

11 Q Are you aware of any other documents in your
12 company that might reveal the results of where the prior
13 physical mentioned here was taken?

14 A I doubt if we would have that information.

15 Q This particular application is dated 8-2-69;
16 is that correct?

17 A Right.

18 Q On the back page of the application, just
19 referred to, I believe in giving his past employment record,
20 he gives one, the name of Daniel Company, Greenville, South
21 Carolina, number two is North Brothers, and then aside from
22 that is Covil, and then on line three Brook Fisher, and then
23 to the right of that Johns-Manville, and then number four,
24 box four, is Phillip Carey, and to the right of that is Reid

25

1 Hayden, is that what he showed on there?

2 A Yes, sir.

3 Q Who is Brooks Fisher? What is that? Is that
4 an insulation company?

5 A They were. They're out of business now.

6 Q When did they go out of business, to the best
7 you recall?

8 A I would guess about '66-'67.

9 Q Now, he doesn't give any dates on this applica-
10 tion. Another thing is if you can tell me - I believe that on
11 the application you have a certificate right above the place
12 where the applicant is to sign which says, "I hereby certify
13 that the entries on this form and the statements made by me
14 are true and correct, etc." Also it has a line that says, "I
15 also authorize my former employers and other individuals to
16 give any information concerning me whether or not it is on
17 their records, and I hereby release them and their companies
18 from any liability whatsoever." Is that part of your certificate?

19 A That's part of our employment form.

20 Q In this one, though, I believe the exhibit shows
21 that the word "void" has been written through the certificate,
22 and that the sentence starting with "I also authorize my former
23 employers and other individuals to give any information con-
24 cerning me" has been stricken through; is that correct?

25 A Yes, sir.

1 Q Under that contains a signature which appears
2 to be H. L. Taylor and the date of 8-2-1969.

3 A Right.

4 Q Do you have any idea as to why the word "void"
5 was put on there, and the sentence stricken?

6 A I would guess that he didn't want to authorize
7 the search of his records, authorize us to get information
8 from a former employer, and he wrote void on that and scratched
9 through it.

10 Q He was employed nevertheless?

11 A Yes. Let me explain one thing. Apparently
12 this fellow was employed on a temporary basis. He was working
13 for somebody else and only worked on the week-ends. This was
14 probably on a rush job, and we were in a tight situation, and
15 they needed somebody. They were working week-ends and needed
16 somebody to help out, and a lot of times a foreman will hire
17 somebody like this.

18 Q He was moonlighting.

19 A And he would waive a lot of these things in
20 order to get somebody to work.

21 Q Referring you to Exhibit 30, which is the
22 personnel file on Leon Eugene Davis, he gives here that he was
23 born on 3-11-40?

24 A Yes, sir.

25 Q When was he employed by you?

1 A 6-24-70.

2 Q So, take a look at the application and see if
3 that is also dated 1970.

4 A Yeah.

5 Q The application appears to bear the date 23
6 June '70?

7 A Right.

8 Q At that time, he was 30 years of age?

9 A Right.

10 Q Do you have an independent recollection of Mr.
11 Davis?

12 A No, sir, I do not.

13 Q He gives in his application a Raleigh, North
14 Carolina, address; is that correct?

15 A Yes.

16 Q And shows that he was in the United States Army
17 from 4 September '59 to 5 September '62?

18 A Right.

19 Q In response to the question concerning his
20 prior employment, what did he report?

21 A He reported Waco Insulation, Richmond, Virginia,
22 July of '68 -

23 Q '67, '68, '69.

24 A - to February, 1970.

25 Q Prior to that?

1 A Prior to that, Asbestos Covering Company,
2 Washington, D. C. '68, from November '68 to July '69.

3 Q And the last one he listed?

4 A Arcadia Asbestos, Brooklyn, New York, January
5 '69 to November '68.

6 Q I believe that would be January '68 to November
7 '68?

8 A Right.

9 Q You say that you have no independent recollec-
10 tion of this man. Does it show when he was terminated? Does
11 this file show that?

12 A No, sir.

13 Q Is there any way that you could find out from
14 within your company where he was employed, physically where
15 he was employed as a Covil employee?

16 A I'm sure we can. He was employed by our Wilson
17 branch, and we would have to call them.

18 Q Would you, please, sir. Particularly, I think
19 we'd be interested in knowing whether or not he was ever
20 employed physically within the State of South Carolina.

21 (MR. COVIL TELEPHONED HIS OFFICE AND REQUESTED
22 THIS INFORMATION)

23 Q Mr. Covil, am I correct in saying that although
24 Covil had used or has dealt in or with Armstrong Cork Company
25 products, that you have never used any Armstrong Cork Company

1 product that contained asbestos?

2 A To my knowledge, we have never.

3 -----

4 DIRECT EXAMINATION

5 By Mr. Arnold:

6 Q Mr. Covil, my name is W. H. Arnold, and I
7 represent Owens Corning Fiberglass Corporation. I believe
8 that you testified yesterday that you were at one time a
9 distributor for Owens Corning and had a formal agreement with
10 them.

11 A Yes, sir.

12 Q Do you have a copy of that agreement with you?

13 A I don't have it with me, no, sir. I believe
14 we've got a copy. I'm not sure if we still do, but I know we
15 did have one.

16 Q Do you know whether or not it may have been
17 consumed in the fire?

18 A It may have been, but I wouldn't think it was.

19 Q Can you give me the approximate date that it
20 began?

21 A I believe it was 1954.

22 Q And it ended when?

23 A Whatever - I'm sure it had an expiration date
24 on it, and whatever date it expired. It was never renewed.

25 Q Can you recall the name of the individual for

1 Owens Corning that signed it?

2 A I believe it was signed by Calvin O'Brient.

3 Q Calvin who?

4 A O'Brient - O-B-r-i-e-n-t. I'm not sure, but
5 I believe that's who signed it.

6 Q Was he an official from the home office, or was
7 he a salesman?

8 A He was a local sales representative.

9 Q Do you know where he lived?

10 A Lived on East Faris Road and still lives there.
11 He's retired now.

12 Q Here in Greenville?

13 A Yes, sir.

14 Q Is he still with Owens Corning?

15 A No, sir, he's retired.

16 Q Under that agreement, were you required to buy
17 any specific quantity each month or year?

18 A No, sir, I don't believe so.

19 Q Were you given any specific discount, five or
20 ten per cent, or any economic advantage?

21 A No, sir, I don't believe so.

22 Q What was the purpose of that agreement?

23 A Up till that time, we kind of - we bought
24 materials more or less from anybody that had the best price
25 so to speak. We weren't allied as distributor for any par-

1 ticular manufacturer, and we were buying materials from any-
2 body, and I think O'Brient wanted to set us up as a distributor
3 so we'd buy more materials from them.

4 Q Were you required to buy any specific quantity
5 during any specific period?

6 A No, sir, I don't believe so.

7 Q What I'm trying to get at is: What would be
8 the advantage to you or to Owens Corning for such an agreement?

9 A I don't think there would be any advantage.

10 Q Do you know whether or not Owens Corning home
11 office of headquarters knew of the existence of any such agree-
12 ment?

13 A I'm sure their regional manager did.

14 Q Who was the regional manager, if you recall?

15 A I can't remember his name right now. I know
16 what he looked like, but I can't remember his name.

17 Q Do you remember where he lived?

18 A He lived in Atlanta.

19 Q You had from this folder here a list of materials
20 bought from various companies.

21 A Yes, sir.

22 Q I think it's been put back in there. Could I
23 see that, please.

24 A I think I have a copy back here at the back.

25 Q You prepared this list at the request of your

1 attorney, Mr. McKay?

2 A Yes, I think they asked me to get that informa-
3 tion together.

4 Q I see that you have here that during the year
5 '71 to '73 you purchased from Johns-Manville various quantities
6 and Raybestos from '71 to '74 and from Southern Asbestos from
7 '71 to '76. I'm not asking about the quantities or amounts.
8 That's true?

9 A Yes, sir. There's one thing I'm not sure on
10 this, I think this only included calsil insulation and not
11 fiberglass.

12 Q This included only what?

13 A Only calsil, calsius sodiate, kaylo and not
14 fiberglass.

15 Q I notice here Item No. 5 on this list that's
16 dated April 15, '77 under Owens Corning that you purchased in
17 1971, you have a record on kaylo p.c . What is that, pipe
18 covering?

19 A Pipe covering.

20 Q And block, total footage 228,765 feet I assume?

21 A Yes.

22 Q Total value \$169,813.22.

23 A Yes, sir.

24 Q You believe that this supply is only to kaylo
25 and block?

1 A Yes, sir.

2 Q And not fiberglass.

3 A Not fiberglass.

4 Q You testified yesterday that Owens Corning was
5 one of your principal or main suppliers.

6 A Yes, a principal supplier.

7 Q Are they still today?

8 A Yes, sir.

9 Q But isn't most of your purchases from Owens
10 Corning for fiberglass material?

11 A Yes, sir, the majority.

12 Q Is that true even back in '71?

13 A Yes, sir.

14 Q You testified yesterday that you first saw
15 warnings on materials you purchased from Johns-Manville and
16 Owens Corning in 1969, I believe.

17 A Yeah.

18 Q Or '68.

19 A '66, '68, I believe.

20 Q Didn't Owens Corning start putting a warning on
21 theirs in 1967 or about February?

22 A I'm not sure.

23 Q You're not positive whether it was '67 or '68?

24 A No, sir. It's in the general area of '68.

25 Q I believe in your answers to request for admissions,

1 your answer, you circled 1967; could that be correct?

2 A That could be. If you'll give me just a minute,
3 I think I can give you a little bit better information. I
4 can't remember all these dates. I have some notes here that
5 might help me remember some of them. According to my informa-
6 tion, January 1, 1967, was when they started using warning
7 labels.

8 Q You are reading from some written memo that
9 you have in your file?

10 A Yes, sir.

11 Q Mr. Covil, you testified yesterday that for the
12 last two years your gross sales were some fifteen million
13 dollars.

14 A Yes, sir.

15 Q And before that, you went down to thirteen,
16 twelve and ten..

17 A Yes, sir.

18 Q Would it be fair to say that starting in 1960
19 that your gross sales have increased from three to four million
20 dollars up to fifteen million dollars?

21 A Yes, sir.

22 Q You are a married man?

23 A No, sir.

24 Q Have a family?

25 A Have a family, and my wife and I were divorced

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1 I have two children.

2 Q I assume you still pay some alimony?

3 A Yes, sir.

4 Q How many children do you have?

5 A Two.

6 Q What are their ages?

7 A 22 and 24.

8 Q Boy or girl?

9 A A boy and a girl.

10 Q Does the boy work with you?

11 A Yes, sir.

12 Q Has he been with you for several years?

13 A Since he finished school.

14 Q When was that?

15 A That was about four years ago, two years ago.

16 Q During your entire career from 1930 when you
17 worked as an insulator until from 1948 when you went in business
18 for yourself up until 1972 or '73 when the company stopped
19 using asbestos, you bought, sold and used a world of asbestos
20 products, so to speak.

21 A Yes, sir.

22 Q You made your living from that source.

23 A Yes, sir.

24 Q You raised your family from that source.

25 A Yes, sir.

1 Q Mr. Covil, you testified yesterday that you felt
2 that these suits was the manufacturer's responsibility and
3 not ours, or not yours?

4 A Yes, sir, to a great extent.

5 Q Sir?

6 A Yes, sir.

7 Q You knew from 1930 up to the present that you
8 were using and engaged in the sale and marketing of asbestos
9 products.

10 A Yes, sir.

11 Q And you said that you began to learn in 1966
12 when the unions made some noise about some hazards connected
13 with asbestos.

14 A Yes, sir.

15 Q But even then from 1966 until the companies
16 stopped making asbestos you still used it from '66 up until
17 '72 or '73.

18 A Yes, sir.

19 Q Your men used it in the field, and you sold it
20 to other purchasers.

21 A Yes, sir.

22 Q Even with that, Mr. Covil, I believe you testified
23 yesterday or indicated that there has been really no good
24 substitute found for asbestos.

25 A That's my opinion, yes, sir.

1 Q That's your opinion.

2 MR. McKAY: Wait a minute,
3 Mr. Arnold, he has something else to say.

4 A I just want to say that the materials where
5 they use a substitute binder lack a lot of the qualities
6 that you have using the asbestos.

7 Q But it's your opinion that asbestos over the
8 long run from the general standpoint is the superb material
9 to use for insulation purposes and fire prevention purposes.

10 A Yes, sir.

11 Q I believe you testified that asbestos, people
12 thought it was generally used primarily for insulation
13 purposes, that is to retain heat and keep out cold, but it's
14 also a product that is used in connection with fire prevention.

15 A Yes, sir.

16 Q It has various purposes.

17 A Yes, sir.

18 Q And the purposes that it has and is used for
19 is for the protection and safety of the public in general;
20 isn't it?

21 A Yes, sir.

22 Q We recognize that in anything that we use
23 today such as automobiles that there is some harm or detriment
24 in the use of motor vehicles; that's true, isn't it?

25 A Yes, sir.

1 Q Automobiles kill and lame a lot of people each
2 year.

3 A Yes, sir.

4 Q And asbestos has caused some injury or some
5 damage to people, also.

6 A That's right.

7 Q But won't you honestly say, Mr. Covil, that
8 in your experience from 1930 to '77 which is forty-seven years
9 in this specialty business that the good that asbestos has
10 done to the population in general or the people in general would
11 out-weigh the harm?

12 A In my opinion, the lives saved and the good
13 it's done, far out-weighs the harm.

14 Q You also testified yesterday in regard to this
15 agreement that you had entered into through your attorneys
16 in the Bumgardner case that the purpose of that agreement was
17 to save you or your company having to pay a verdict in any
18 of these cases.

19 A Yes, sir.

20 Q That's true, isn't it?

21 A Yes, sir.

22 Q And you also testified that you assumed at the
23 time that that agreement was going to run through all the cases.

24 A Yes, sir.

25 Q That was your thought?

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1 A That was my assumption, yes, sir.

2 Q That was your assumption. And you later found
3 out, as I believe you say, that it is your understanding now
4 that it applied only -

5 MR. HOOD: Mr. Arnold, can
6 we talk to you for a moment?

7 MR. MOTLEY: No, I want
8 on the record Mr. Hood has interrupted Mr. Arnold while he
9 was asking a question and asked Mr. Arnold if he couldn't con-
10 sult with him before he got through.

11 MR. HORGER: Let the
12 record so reflect, and let's go ahead and have the conference.

13 MR. MOTLEY: Let the
14 record also reflect that the defense attorneys are meeting
15 - and you're going to leave the room because I'm not leaving -
16 somewhere other than in here.

17 MR. DAVIES: Let the
18 record reflect that we are leaving the room because Mr. Motley
19 won't take his out of the room.

20 MR. HORGER: I want the
21 record to reflect that such persons who want to walk out in
22 the hall for a moment walked out in the hall, and such as
23 don't want to walk out in the hall stayed right here.

24 MR. CARPENTER: For the
25 record, I'll keep Mr. Motley company.

X

1 MR. HOOD: So the record's
2 clear, the reason I interrupted Mr. Arnold was because we
3 discussed this subject with Mr. Covil's attorney yesterday
4 and Mr. Arnold was not here when we discussed it with him.

5 MR. MOTLEY: You did what?

6 MR. McKAY: Wait a minute.

7 MR. HOOD: I want to tell
8 him about our discussion. He was not here yesterday.

9 MR. McKAY: Wait a minute,
10 now. Why don't you tell everybody about our discussion? We
11 had no discussion in secret, Mr. Hood. I dislike the implica-
12 tion. This is absurd. If y'all want to have a conference,
13 have a conference. It's not a conference because of any
14 discussion.

15 MR. HORGER: While we're
16 in the hall, you go ahead and put whatever you want on the
17 record, Mr. McKay.

18 MR. MOTLEY: Judge Chapman
19 would like to see that, I'm sure. What'd y'all have a discus-
20 ion about, I'd like to know?

21 MR. DAVIES: Do y'all want
22 the record to reflect I've got one foot in and one foot out?

23 MR. McKAY: You can listen
24 from both sides. It don't matter to me.

25 MR. CARPENTER: Put this on

1 the record.

2 MR. McKAY: No, hell, leave
3 it off the record. This is crazy.

4 (THE FOLLOWING WAS A PRIVATE DISCUSSION BETWEEN
5 MR. McKAY AND MR. MOTLEY. COURT REPORTER WAS
6 INSTRUCTED BY MR. McKAY NOT TO INCLUDE IN
7 TRANSCRIPT)

8 MR. McKAY: ... I told
9 them that I was in on part ... that the part that I was in,
10 I was under the impression that our agreement went...that I
11 was not in on subsequent discussions, and that's what we
12 discussed over in Herman Cox's office. After that, I don't
13 know what was discussed, because I was not privy to any further
14 discussions with you and Heyward, but the discussion over in
15 your office was for all cases.

16 MR. MOTLEY: You're not
17 suggesting that you all are eviscerating the affidavit that
18 Heyward filed with what the real agreement was, did you?

19 MR. McKAY: I've never
20 understood what the word meant.

21 MR. GILREATH: His
22 affidavit doesn't say whether it was all or one.

23 MR. McKAY: That is the
24 substance of the discussions, and that's my recollection of it.
25 Heyward's got to speak for himself. He was here after -

MR. MOTLEY: You're not

X
1 taking the position that you consummated the agreement with
2 me, are you?

3 MR. McKAY: I'm not taking
4 any position. I mean, you know. But am I not correct in the
5 discussions we had?

6 MR. MOTLEY: We discussed
7 it pleadingly, yes.

8 MR. McKAY: That was the
9 extent of the discussions I had in your office, I mean in
10 Herman's office, was that we would make the agreement would
11 apply to the blanket thing.

12 MR. MOTLEY: No, sir.

13 MR. McKAY: That was the
14 discussion I had.

15 MR. MOTLEY: We discussed
16 it. We never agreed.

17 MR. McKAY: I said that
18 was the discussion. I'm not getting down to the legal implica-
19 tions of it. Is it not correct that I was not present at any
20 further discussions between you and Heyward?

21 MR. MOTLEY: Well, I'll
22 make my remarks in the form of an affidavit.

23 MR. McKAY: We're not put-
24 ting it down in the record, but I'm just asking. I'm not trying
25 to talk behind anybody's back one way or the other. The whole

1 thing - Ron.

2

MR. MOTLEY: What?

3

MR. McKAY: I also told

4

him -

5

MR. MOTLEY: John, I don't

6

want to talk to you, okay?

7

(REMAINING ATTORNEYS RETURN TO THE ROOM AND
QUESTIONING IS RESUMED BY MR. ARNOLD)

8

9

Q Mr. Covil, in the Evelyn White case, Executrix
of the Estate of Walter White, you have filed a cross -

11

MR. MOTLEY: Excuse me,

12

Mr. Arnold. Let the record reflect that Mr. Arnold's previous
interrogation with regard to the agreement, after consultation
with Mr. Hood, Mr. Horger and others, has been withdrawn

14

15

apparently. You're not going to ask him any more questions
about that?

16

17

MR. ARNOLD: Mr. Motley,

18

I'm old and senile, but I'm going to run this thing the way
I want to.

19

20

MR. MOTLEY: But you are

21

not asking him a question, is that correct?

22

MR. ARNOLD: I'll ask him

23

what I want to, sir.

24

MR. MOTLEY: As long as

25

that's in the record.

1 MR. COVIL: (While on the
2 telephone) Who was it that wanted information on Davis in
3 Jacksonville? He is currently employed by us there. I can
4 get information on what time he's worked for Industrial
5 Associates since we acquired, and this will take a little
6 research and a little time to get it together.

7 MR. DAVIES: Would you
8 just see that that gets to me sometime in the future?

9 MR. McKAY: Go ahead and
10 ask her to do that, Mr. Covil.

11 MR. COVIL: (Still on the
12 telephone) On these company doctors, she's traced this back
13 to 1966. We have Dr. Gaynor, Jett and Stepp. That was the
14 first one. Dr. D. Keppler, February of '69. Dr. George
15 Bailey, Pleasantburg Drive. Then Dr. Batson, Harold Batson,
16 September '76 to present, North Hills Medical Center. None of
17 the branches have a regular doctor. The medical records on
18 the 20 people we asked for, we started keeping medical records
19 from '65, but they burned in the fire.

20 On the American Enka, you've found several job files,
21 and they are in the large conference room. On Fiber Industries
22 at Salisbury, four or five job files. You have found purchases
23 by Daniel, and they're in the conference room. No records from
24 Brevard.

25 Q Mr. Covil, I was asking you about ^{this} ~~the~~ Walter

1 White suit and the cross-complaint that you've filed in that
2 against certain of the defendants, and I'm directing your
3 attention of those defendants primarily Owens Corning Fiber-
4 glass, ~~who we represent~~. Have you read the cross-complaint
5 that you filed?

6 A Yes, sir.

7 Q You say in that that the above defendant express-
8 ly or impliedly warranted to Covil - I'm using the Owens
9 Corning - that the asbestos material they sold was of good
10 and merchantable quality and fit for its intended use. Now,
11 you sold and used that material to other persons, firms or
12 corporations, didn't you?

13 A Yes, sir.

14 Q Didn't you believe when you did that that it was
15 of good and merchantable quality and fit for its intended use?

16 A Yes, sir, I did.

17 Q You wouldn't have sold it if you hand't believed
18 that, would you?

19 A No.

20 Q You're not that kind of a person, are you?

21 A No, sir, I hope not.

22 Q Owens Corning expressly or impliedly warranted
23 it to you; you did the same thing to your customers, didn't
24 you?

25 A I passed the same thing right on to them.

1 Q And you say that any liability of Covil to the
2 plaintiff would result by reason of common and statutory law
3 of strict liability in this state irrespective of fault, where-
4 as the conduct of the above-named defendants, Owens Corning
5 in manufacturing the asbestos would create an active and
6 primary responsibility. You considered yourself of the same
7 responsibility as Owens Corning did when you were selling it
8 to other people and having employees using it, weren't you?

9 A I don't know if I considered it the same. I
10 considered we were passing on the implied warranty from them.

11 Q You were standing back of what you were selling
12 and doing, weren't you?

13 A Yes, sir.

14 Q As a matter of fact, Mr. Covil, honestly you
15 don't think either you or any of these other defendants did
16 anything wrong, do you?

17 A I don't really think so, no, sir.

18 Q And you say that any fault of Covil to discover
19 the latest dangerous nature of the asbestos material and warn
20 the plaintiff of this nature was only passive or secondary in
21 nature. I don't know exactly what you mean, but you knew about
22 this in 1966, you testified, when the unions started raising
23 a noise, and you continued to sell and put on insulation that
24 contained asbestos up until the manufacturers stopped manufac-
25 turing it.

1 A Yes, sir.

2 Q And you knew something about the danger, you
3 said you'd heard it at some of your meetings, and you passed
4 it on to Mr. Russell.

5 A Johnson.

6 Q Johnson, so what others knew and learned and
7 what you had learned and knew, you tried to do the same thing
8 that the other defendants were doing, weren't you?

9 A I would think so.

10 Q Your intentions were absolutely honest and
11 honorable, weren't they?

12 A Yes, sir.

13 ~~Q~~ In this agreement that you had in the Bumgardner
14 case, it never was your intention, Mr. Covil, was it that you
15 were going to prosecute so to speak in one case and try to
16 defend in the other cases. You were going to be consistent
17 throughout, weren't you?

18 ~~A~~ Yes, sir.

19 ~~Q~~ And you intended to, and you thought it was
20 and assumed under the agreement that you would do the same
21 thing in the other cases that you were going to do in the
22 Bumgardner case.

23 ~~A~~ I assume that, yes, sir.

24 ~~Q~~ The Bumgardner case was not an isolated case
25 insofar as your understanding under agreement is concerned, was

1 it?

2 A No, sir.

3 MR. ARNOLD: I think that's
4 all.

5 -----

6 DIRECT EXAMINATION

7 By Mr. Pressley:

8 Q Mr. Covil, I'm Jim Pressly, and I'm going to
9 be asking some questions about Pittsburg Corning, and if it's
10 agreeable with these people, I'll also try to cover a few
11 questions for some others that I'll identify as I go down.

12 MR. McKAY: Well, tell
13 him who you represent all the way through.

14 MR. PRESSLEY: I am. I'm
15 asking questions for Pittsburg, and as I change to ask on
16 anybody else, I will inform him who I am representing.

17 MR. McKAY: Who do you
18 represent, Jim? Who are the companies basically, the defendants
19 you represent?

20 MR. PRESSLEY: Combustion,
21 Certain Teed, Rockwool, Pittsburg and Eagle Picher.

22 Q These are general questions. You were with the
23 union for some fifteen years, and at one point you were
24 business manager. To your knowledge, during that period of
25 time, were there requirements of union members for attendance

1 at a certain number of meetings or certain things that you had
2 to do to maintain your status as an active member?

3 A I don't believe there was any requirement as
4 far as meetings or anything like that. The only requirement
5 was that they pay their dues.

6 Q During the period that you worked with the
7 union, or during the period that you ran a union shop, were
8 you aware of any committee within the union that might've been
9 captioned "health hazard committee" or something to that
10 general effect?

11 A I was not aware of it, no.

12 Q Was one purpose of the union, to your knowledge,
13 involved with working conditions?

14 A Yes, sir.

15 Q What would that cover within the scope of
16 working conditions?

17 A Working conditions would include a multitude
18 of things like high work, working over a certain height, and
19 work under certain conditions of heat or things like this.
20 They had a number of things that they would cover.

21 Q Yesterday, you said something about when fiber-
22 glass began to be used they raised a ruckus about that.

23 A There was quite a bit about that.

24 Q Would that fall within the same situation?

25 A Yes, sir.

1 Q Did they classify that as working conditions?

2 A I would assume it was working conditions. Most
3 of the local unions tried to negotiate in their contracts as
4 they came up additional pay for working with fiberglass,
5 additional per hour pay. Like they do, like working high,
6 you pay so much more an hour for working over a certain
7 height, like that. It's all part of working conditions.

8 Q I'm going to make a statement, and I don't know
9 if it's accurate or not. It's something that we've heard in
10 certain other depositions, and since you were working with
11 asbestos back in the 30's and 40's, maybe you can shed some
12 light on it. There have been statements made that at some
13 point in time, back in the earlier days, a lot more asbestos
14 was used, and then there was a gradual shift to more fiberglass
15 products, at some point in time. About when did that point in
16 time occur?

17 A That began in the early stages of World War
18 II when fiberglass began to come to the front as an insulation
19 product, and it continued to move in this area. What year it
20 was, I'm not sure exactly what year it was.

21 Q And they began to use the fiberglass on the
22 chilled water type situation.

23 A Cold water and hot water and low pressure steam.

24 Q During that period of time, also, there was
25 testimony that asbestos was used in certain fashion such as

1 blankets. In essence the workers themselves would make a
2 blanket for a boiler, and that was a fairly common practice
3 as I understood it.

4 A I think that was mostly for turbines. They
5 would use an asbestos pad covered with asbestos cloth.

6 Q And the would make that themselves.

7 A Yes, sir.

8 Q In essence, just sewing up asbestos fiber and
9 asbestos cloth, and that would be replaced periodically.

10 A Right. This would go on areas that had to be
11 removed and put back.fairly frequently.

12 Q And this was also done in the 40's.

13 A Yes.

14 Q And sometimes, as a matter of fact, up into
15 the 50's.

16 A It's still done, but they use different materials.

17 Q As I understood it, there was somewhat of a
18 shift away from that to block around some of these things.

19 A There's been some companies that shifted to
20 block, but for the most part they still, I guess they still
21 use the blanket.

22 Q Still use the blanket?

23 A Yes, they use a ceramic fiber and asbestos
24 cloth that's been treated.

25 Q In your fabricating shop, did y'all ever make

1 any of those types of blankets?

2 A Yes, sir.

3 Q When would that have been about?

4 A The earliest I recall would be around 1968 or
5 somewhere, '67 or '68.

6 Q And you would actually make those in your
7 fabricating shop?

8 A Yes, sir.

9 Q During the production of those types of
10 blankets, were respirators worn?

11 A They were furnished. I'm not sure they wore
12 them all the time. They were furnished, and they were in-
13 structed to wear them.

14 Q To your knowledge, in the past, had that been
15 the practice in making blankets?

16 A I'm not sure about in the past. I would say
17 back when I was first working in the trade, we didn't know what
18 a respirator was.

19 Q Also, there's been discussion of what has been
20 known as finishing cement which apparently is a hundred per
21 cent asbestos fiber that's mixed with water and used as a
22 plaster.

23 A Yes, sir.

24 Q Now, I assume that the purpose of that would
25 have nothing to do with insulation but rather would be as a

1 fire retardant?

2 A Well, it would have to do with insulation for
3 the most part on regular fittings and regular surfaces, it
4 would be used as insulation cement, and this could be wool or
5 something like that. They'd use asbestos cement as a finishing
6 cement over that to get a smooth surface.

7 Q To get a smooth surface?

8 A Yes.

9 Q Were these, then, in essence written into the
10 specifications for what purpose?

11 A To get a smooth finish, and most - in this
12 period of time, most of these fittings would have a canvas
13 cover put over them, and they leave, the cements that were used
14 for insulation purposes leave a rough finish, and in order to
15 get a better appearance, they would finish that with asbestos
16 cement, finishing cement, and put the canvas over that.

17 Q Did that practice continue for a good while?

18 A Yes, sir.

19 Q When was the last time you recall them requiring
20 a finish?

21 A There's still some jobs require a finish today,
22 but not much. We use more prefabricated fittings today.

23 Q Earlier, and I frankly missed some of this,
24 but you apparently were - you've been with NICA for a good
25 while.

1 A Yes.

2 Q Was it NICA or the Southeastern Insulation
3 Contractors that you had been on the Board?

4 A I've been on the Board of Directors of NICA,
5 and I'm presently on the Board of Directors for Southeast,
6 and I've been on the Board several times and been president
7 and treasurer and about every officer.

8 Q During the period of '65-'66 when we've had
9 repeated references to the noise coming from the union at that
10 point in time which called your attention to it. What was
11 the general impression at NICA of the noises that were being
12 made by the unions? In other words, what did they think about
13 this hue and cry coming up about asbestos insulation products?

14 A I think that individual contractors had a
15 different concept with what it was. Some had one thing, and
16 some had another. This could cover a whole range of outfits.

17 Q This may be an unfair analogy, but would it be
18 similar to something like the saccharin situation we've run
19 into. Some people saying "Oh, Lord" and some people saying
20 "That's a bunch of bull"?

21 A Yes, that's about what it amounted to.

22 Q So, therefore, there was disagreement at the
23 time that this hue and cry was raised as to whether or not
24 there was any validity to it; is that correct?

25 A That's right.

1 Q Did NICA itself do anything after that by way
2 of further examination of it?

3 A I think NICA itself, they have no position
4 either way except to supply its members with information, and
5 they have no position pro or con.

6 Q Were there, to your knowledge, any conferences
7 with NICA from representatives of the union or anyone else
8 regarding what this noise was?

9 A I'm sure there were some individual members had
10 conferences with them concerning that, but I don't know who -
11 maybe it had been a committee, I don't know.

12 ~~Q~~ After you became an open shop, you said you
13 had some discussions with Dan Fowler. In those discussions,
14 was the topic of these particular lawsuits ever raised?

15 ~~A~~ No, sir.

16 ~~Q~~ Earlier, you also testified that to your knowledge
17 certain other contractors like yourself had been named in
18 certain suits, one being I think you said Star Davis, and
19 another being North Brothers.

20 ~~A~~ I don't know if North Brothers has ever been
21 named. Star Davis and Breeding in Tennessee, and C. Thurston
22 in Virginia, I know.

23 ~~Q~~ Were those suits workmen's compensation suits,
24 or are they suits similar to what we're involved?

25 A Similar to what we're involved in, I think.

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1 Q Have you ever discussed with them why certain
2 contractors apparently were named and why others were not?

3 A Yes, sir.

4 Q What seems to be the general information you
5 received on that point?

6 A That also varies from one extreme to the other.
7 It all depends on who you talk to. I would say the majority
8 of the consensus you got from that was that the contractors
9 and sub-contractors do work hand in glove with the union.
10 And those have been more or less laid off of, and the ones
11 that the unions had a vendetta against were the ones they
12 really went after.

13 Q Have you ever discussed it with any representa-
14 tives of the ones that you have classified as being hand in
15 glove with the union?

16 A Yes, sir.

17 Q What did they tell you?

18 A Well, the only discussion I've had with some of
19 them was asking them if they had any suits - if any of these
20 suits had been filed against them, and they replied in the
21 negative. Let me clarify one thing. Around the country, and
22 this has been my experience and it's still my experience, a
23 group of insulation contractors can sit down and talk together,
24 and certain ones of those in an hour after you get out of
25 that meeting was on the phone talking to the union and telling

1 them what transpired in that meeting. They were trying to
2 clear favors with them, I guess. I don't believe that's
3 possible.

4 Q With regard to Pittsburgh Corning in particular,
5 I believe you said you did sell some of their products?

6 A We used some of their products.

7 Q They make both fiberglass and asbestos product
8 - you've already mentioned unibestos.

9 A Yes, sir.

10 Q Was unibestos stocked on a basis, a special-
11 job basis, or did you carry it regularly?

12 A It was a special-job basis.

13 Q Now, I'm going to jump shift here, and I'm now
14 asking a question about Combustion Engineering. Do you ever
15 recall stocking or selling any Combustion Engineering products
16 that contained asbestos?

17 A No, sir.

18 Q Have you ever heard of anybody called Refractory
19 or R and I, Ramtite or something of that nature?

20 A Yes, sir, R and I.

21 Q What did you have of theirs, if anything?

22 A Nothing that I know of.

23 Q Now, I'm going to jump again and ask you about
24 Certain Teed. Do you ever recall having any products that
25 contained asbestos that were manufactured by Certain Teed?

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1 A No, sir.

2 Q Do you know of any?

3 A No, sir, I don't.

4 Q Now I'm going to jump to Eagle Picher. Have
5 you sold any Eagle Picher asbestos-containing product?

6 A We have used and some some cement that I assume
7 may have contained some asbestos.

8 Q Do you know when that was, about?

9 A That would be prior to 1970.

10 Q What was the brand name, if you recall?

11 A I don't remember. If you'd name it, I could
12 tell you whether that's it or not.

13 Q Apparently there wasn't much of it.

14 A No, not a great deal. They've since discontinued
15 it altogether, I believe.

16 Q Now, I'm going to ask you questions regarding
17 Rockwell Manufacturing. You did at some point begin supplying
18 or having shipped in to you, Rockwell blankets and bats as
19 well as a product called one-shot cement.

20 A That's correct.

21 Q About when was that, sir?

22 A I would guess around '65, '66 was when we first
23 got into it.

24 Q Rockwell's one-shot cement was one of the
25 products that you had re-labeled under the Covilite name.

1 A Yes, sir.

2 Q I believe yesterday in the course of looking
3 through documents, the first invoice you could locate relabeling
4 it under the Covilite name was in '69; is that correct?

5 A I think that's right.

6 Q And that practice continued through '75?

7 A I think that's correct.

8 Q And then, I believe, you stopped using Rock-
9 wool's -

10 A No, we still use some of it, but we use it
11 under their brand name and not ours.

12 Q After '75?

13 A Yes, sir.

14 Q When you decided to label it - first of all,
15 why did you decide to label it Covilite?

16 A The first thing, I think one-shot is a silly
17 name, and we just thought we could improve on that calling
18 it Covilite. One-shot just don't strike me as being a brand
19 name.

20 Q When you decided to relabel it Covilite, did
21 you know what the product was composed of?

22 A Yes, sir.

23 Q What was the composition?

24 A It's certain clays and mineral wool, and it
25 did have a small amount of asbestos in it.

X
1 Q I believe you later discussed that with
2 Rockwool to find out exactly how much was in it?

3 A Yes, sir.

4 Q And I believe the information provided you was
5 it was less than one per cent?

6 A Yes, sir, about three-quarters of one per cent.

7 Q In '69, did you realize that as well?

8 A Yes, sir.

9 Q Were any warnings put on the bag?

10 A No, sir.

11 Q Did your label ask that any particular warning
12 be put on it?

13 A I don't believe so.

14 Q Did you or did anyone with your operation do
15 any testing of the product when it came out as Covilite brand?

16 A No, sir.

17 Q Did you believe there was any problem with
18 having one-half of one per cent asbestos in it?

19 A No, sir.

20 Q Did Covil in the '70's once OSHA began to come
21 in, on your job sites where you were involved, were signs
22 posted about this is an area where asbestos is being used?

23 A I don't remember any, no.

24 Q Do you recall ever seeing anything like that on
25 the job?

1 A No.

2 Q And you did say that as much as you remember
3 with ban saw work, there always was a respirator provided?

4 A Yes, sir.

5 Q And you said that has been around about
6 as long as you can remember?

7 A As long as we've been in business. We always
8 provided respirators for someone with a ban saw or a power saw.

9 Q And that was both in the fabrication shop and
10 on the job site?

11 A Yes.

12 MR. PRESSLEY: Thank you
13 very much.

14 MR. ARNOLD: I've got one
15 more question I want to ask you, please, sir. Did you ever
16 rebrand any of OWens Corning's products under the name of
17 Covilite?

18 A We rebrand fiberglass blanket under that label
19 now.

20 MR. ARNOLD: That is Owens
21 Corning's fiberglass blanket?

22 A Yes, sir.

23 MR. HOOD: I've got the
24 same question about products of Raybestos. Did you rebrand
25 any of those?

1 A No, sir.

2 -----
3 DIRECT EXAMINATION

4 By Mr. Carpenter:

5 Q Mr. Covil, my name is Robert H. Carpenter, and
6 I represent the Celotex Corporation. I believe yesterday
7 during the course of the deposition you mentioned Celotex.
8 You also mentioned Jim Walter. Did I understand you to say,
9 sir, that you were a distributor for Celotex?

10 A No, sir.

11 Q What did -

12 A We buy from them on a distributor basis.

13 Q What did you say with regard to Celotex and
14 Jim Walters yesterday, if you recall?

15 A I don't recall what I said yesterday, but if
16 that is what we was to talk about, I would say that we were
17 recognized as a distributor, or we bought from them as a
18 distributor.

19 Q Do you recall what products you bought from
20 Celotex, and approximately when you bought them?

21 A Most of the products we bought from them would
22 have been fiberglass, but we also bought some careytemp.

23 Q Do you recall when that was, sir?

24 A I can't recall all of it. I know we bought
25 probably in '76, either '75 or '76, we bought a pretty good

1 quantity of this for one particular job.

2 Q That would be in '75 or '76?

3 A Yes, sir.

4 Q Did you deal in any careytemp products before
5 '75?

6 A We have - I'm sure that we have bought careytemp
7 products before that time because being specified - sometimes
8 the job specifications will specify that this will be a
9 particular product or approved equal, and sometimes rather
10 than go through the process of getting something approved,
11 we'll buy whatever brand they specify.

12 Q Would these careytemp products be asbestos
13 containing?

14 A No, sir - well, they may have been way back,
15 but I don't remember.

16 Q You don't recall using any careytemp products
17 that contained asbestos?

18 A No, sir.

19 Q Or stocking it?

20 A No, sir.

21 Q You mentioned, and I have no idea what this
22 is, the initials CSG yesterday.

23 A CSG is Certain Teed Sanga Bain.

24 Q You did not mention that in connection with
25 either Jim Walters or Celotex?

1 A No, I didn't mention it in connection with them.

2 Q I misunderstood you. So far as products
3 bearing the Celotex name themselves, I'll ask you have you ever
4 used any asbestos-containing product bearing the trade name
5 Celotex?

6 A Not that I know of.

7 Q Have you ever used any asbestos products that
8 you - that is, are you sure that you have ever used any asbestos
9 products bearing the Phillip Carey brand?

10 A I think we may have used some Phillip Carey
11 brand.

12 Q You think you may have.

13 A Yes, sir.

14 Q But you're not certain of that?

15 A I'm not certain.

16 Q Going to this agreement that has been discussed,
17 I'll ask you in the handling of the several lawsuits involving
18 Covil, have you been the primary officer in your corporation
19 that has been involved in these lawsuits?

20 A Yes, sir.

21 Q Insofar as the Covil Company is concerned, have
22 you been the decision maker within the company with regard to
23 these lawsuits?

24 A Basically, yes, sir.

25 Q And if I understood your testimony with regard

1 to the agreement, you were of the impression that the agree-
2 ment went to all the cases.

3 A I assumed that it would apply to all cases.

4 MR. CARPENTER: I don't
5 believe I have any further questions.

6 MR. ARNOLD: Let's quit
7 for lunch.

8 (LUNCH BREAK FROM 1:15 TO 2:30)

9 -----
10 DIRECT EXAMINATION

11 By Mr. Alford:

12 Q Mr. Covil, my name is Jim Alford, and I
13 represent Fibreboard, one of the defendants in this case, and
14 I've only got a few questions to ask you. My first one may
15 be a little bit repetitive of what's already been covered, but
16 when was it that the asbestos manufacturing companies quit
17 putting asbestos particles in the insulation materials?

18 A Different ones at different times, but I
19 believe around anywhere from 1971, '72, '73, in that area.

20 Q How would you personally have found out that
21 for example you had gotten one shipment in from one of the
22 defendants or any company for that matter, you got a shipment
23 in say January of '70, and you got another shipment in in June
24 of '70. What told you that shipment number one of shipment
25 number two, if you will, no longer had any asbestos material

1 in it?

2 A I believe all of them labeled their cartons
3 "contains no asbestos".

4 Q So, that's how you became aware of it?

5 A I was aware of it and knew what they were doing,
6 and that's how we identified it.

7 Q You said the union had started making some
8 noises somewhere in '65 and '66 to the effect that asbestos-
9 containing products might be a health hazard.

10 A They started making noises about asbestosis.

11 Q And this came to your attention, you heard
12 about it one way or another.

13 A Yes, sir.

14 Q In connection with your business as an insulator
15 and in connection with your business as a distributor of
16 insulation materials, tell us what, if anything, you did
17 differently after you found out that asbestos-related products
18 were a possible health hazard. Did you change anything? Did
19 you do anything different?

20 A We changed some of our procedures, like some of
21 the cements we were mixing - we'd mix them in a plastic bag,
22 put water in them, and we advised our people about opening
23 cartons to be sure that when they opened the carton they opened
24 it, got the material out and got away from it because it would
25 create more dust when you opened the carton than at any other

1 time. We started putting dust collectors on all of our power
2 saw equipment and required people to wear respirators.

3 Q How did you enforce all of that? Did you
4 simply recommend it to your people, or did you require it of
5 your people?

6 A You don't enforce much with these people. You
7 provide them respirators and tell them we want you to wear
8 respirators and tell them you're supposed to do this and we
9 want you to do this. They do about what they want to.

10 Q But you feel that you did your duty to them.
11 You passed the information on. You gave them respirators,
12 you bought whatever they needed to use in the way of safety
13 features, such as the mixing in the bags and that sort of
14 thing. You felt like you had done your duty, and if they
15 didn't want to do what you said, that was their business, is
16 that it?

17 A Not really in that method, but we'd give them
18 respirators, we'd say wear them, and if we'd catch them not
19 wearing respirators, get onto them about it and say put that
20 respirator on. They'd put it on, and we might walk around and
21 come back, and they'd have it off again. We'd stay on their
22 backs trying to get them to do that.

23 Q So, what you're telling me then is between -
24 let's just use the year 1965 when you first heard there was a
25 problem - between 1965 and the late '60's or early '70's when

1 all the material was then asbestos-free, you provided the
2 warnings and the safeguards to your people, but you can't tell
3 us under oath that some of your people didn't disregard the
4 safeguards and inhale asbestos particles anyway?

5 A That's right.

6 Q What about this, Mr. Covil: After you found
7 out there was a problem, did you thereafter sell or distribute
8 any asbestos-containing materials at all which were not marked
9 with a warning label?

10 A If the manufacturer marked them with a warning
11 label, we sold it at that. If the manufacturer didn't mark
12 it with a warning label, we didn't put an additional marker.

13 Q If one of the defendants or any manufacturer
14 then, say in 1968, had sent you an asbestos-containing product
15 which was not marked with a warning label, you didn't take it
16 upon your self to put a warning label on their package. You
17 just sold it as is?

18 A Yes, sir.

19 Q Do I understand you?

20 A Yes, sir, I don't think any of them sent us
21 anything after they started labeling it - I'm sure none of them
22 sent us any without the label on it. We would've looked at
23 it and sent it back to them probably.

24 Q So you think they started labeling it about the
25 same time you found out about it.

1 A Right.

2 Q I hope you haven't put it away. I know you're
3 tired of taking it out of your file. That list you had this
4 morning showing your purchases from the various defendants
5 in these cases, do you have that back with you?

6 A Yes, sir, I think so. (Witness hands document
7 to attorney.)

8 Q As I understand it, I don't know who actually
9 prepared or typed this document, but to the best of your
10 knowledge, does this document document your purchases of
11 asbestos-related materials from the defendants insofar as
12 your records show?

13 A I'm not sure that all of that was asbestos-
14 containing materials, but it was materials we had purchased
15 that might have contained asbestos.

16 Q But you don't have any other records showing
17 purchases from any of these people that's not on this compila-
18 tion?

19 A I don't think so.

20 Q I call your attention specifically to Item
21 No. 2 which relates your purchases of Fibreboard Corporation
22 products, and you show that apparently - I'm going to tell
23 you what I think it means. It shows one purchase of some
24 Caltemp block by way of an invoice in June of 1972 to the tune
25 of \$3492. Is that it, sir?

50 10 22

1 A Yes, sir.

2 Q Mr. Covil, do you have any idea what jobs that
3 Fibreboard product was used on?

4 A Right off-hand, I wouldn't.

5 Q This does tell you it was caltemp block?

6 A Yes, sir.

7 Q Do you have any records that would tell you
8 what job this caltemp block was used on?

9 A I doubt it unless it was shipped directly to
10 the job. The invoice says shipped to a certain job or a
11 certain location, it might tell us.

12 Q Do you think you might have such an invoice?

13 A I would think so, yes.

14 Q Would you see if you can find that and provide
15 it for us?

16 A I may have -

17 Q What I'm looking for is your back-up material
18 from which this item was developed.

19 A Let me see if I've got it - I have some
20 invoices here.

21 MR. BRITTON: What was the
22 date of that?

23 MR. ALFORD: 6-7-72. It
24 may have gotten eaten up by the fire.

25 A If I don't have it in this, it did.

1 Q What I'm saying, Mr. Covil, it may not be
2 an invoice I'm looking for, but obviously this document had to
3 be prepared with some kind of back-up material or information
4 in your files, and that's what I want to see, where this came
5 from. You've got an invoice number on it.

6 A I don't believe I have it here, but I'm sure
7 we have an invoice on it.

8 Q Would you and your counsel make a note to provide
9 to me to provide through your attorneys the back-up informa-
10 tion, whatever it may be, invoice or otherwise, from which
11 the Fibreboard purchase is documented on your records.

12 MR. BRITTON: We'll make
13 a note.

14 Q Mr. Covil, since you can't find your invoice
15 then, I assume you don't know if this caltemp block purchased
16 from Fibreboard was sent direct to some job or sent to your
17 warehouse.

18 A I don't know.

19 Q Is it possible that this entire shipment of
20 caltemp block could've been burned up in the warehouse before
21 it ever got sold to anybody?

22 A It's possible.

23 Q So, from what you have with you here today,
24 you can't tell me what happened to this shipment of caltemp
25 block.

1 A No, sir.

2 Q But you'll try to find out.

3 A Yes, sir.

4 Q What about this: I assume you'll have to rely
5 on your memory unless you've got some records. This shipment
6 of caltemp block from Fibreboard, was it asbestos-free, or was
7 it in the old days, or do you know?

8 A I really don't know at this point.

9 Q If I told you that by September of 1971 there
10 was no longer any asbestos whatsoever in any products manufac-
11 tured by Fibreboard, would that tell you whether or not this
12 June '72 shipment, which is about some nine months after
13 Fibreboard took all the asbestos out of its product, would that
14 tell you anything as to whether or not this caltemp block was
15 asbestos free or not?

16 A It wouldn't tell me that. They may have had
17 some in stock they shipped that contained asbestos, and I
18 wouldn't know that for sure.

19 Q You wouldn't be able to tell.

20 A Not at this point.

21 Q Mr. Covil, your document that's called "Attach-
22 ment April 15th, 1977" which is your compilation of the
23 purchases, it only uses the Fibreboard Corporation. Do you
24 have any recollection of ever having purchased anything from
25 some entity called the Paraffine Corporation?

1 A No, sir, I don't have any record of that I'm
2 sure.

3 Q Do you recall ever having purchased anything
4 from Fibreboard Paper Products Corporation as opposed to the
5 Fibreboard Corporation?

6 A I don't know. I don't believe we do.

7 Q Don't make that distinction. How about anything
8 manufactured by a company known as Pabco Products, Inc.?

9 A We purchase from them now.

10 Q How long have you been purchasing from them?

11 A I wouldn't know right off-hand.

12 Q Has it been a year or ten years, or give me
13 a ballpark.

14 A It's been five or six years, something like
15 that, I think.

16 Q Pabco?

17 A Pabco.

18 Q Where do you purchase from them from? Out of
19 what location?

20 A They ship out of Rushton, Louisiana now. We
21 have had stuff from Emeryville, California. We purchase it
22 through their local representative.

23 Q But you get it out of Louisiana now?

24 A Yes, sir.

25 Q But you think you have actually gotten some from

1 California?

2 A I'm sure we have.

3 Q Do you have any specifics on that of what it
4 was or when it was or where you used it?

5 A Not right off-hand.

6 Q Do you have any records that would show that?

7 A We have records - I'm assuming that all this
8 was asbestos-free, so we didn't - all the purchases from Pabco
9 from this day on, we didn't make a record of that, but we
10 have it, and we can get copies of all the invoices.

11 Q It probably was, but I'm not quite sure when
12 you bought it, so again would you, through your counsel,
13 furnish me any information you have involving purchases from
14 Pabco?

15 A Yes, sir.

16 MR. BRITTON: What dates
17 are those?

18 MR. ALFORD: We quit with
19 any asbestos products in '71. We were phasing it out even
20 before that, but we've flat had none in it since '71. So, I
21 guess you'd better go through '72 or '73 because they could've
22 had some on hand in the warehouse possibly. I don't know.

23 A If we had any in the warehouse in May of '73,
24 it was burned up.

25 Q You said that you have seen, I believe, a copy

1 of the cross action which Covil has asserted against some of
2 the defendants in this case?

3 A Yes, sir.

4 Q Mr. Covil, I'm not trying to put you on the
5 spot because I know your lawyer drew this and not you, but
6 lawyers are supposed to put in their pleadings what their
7 clients tell them, so I'm going to have to assume this informa-
8 tion came from you. In your cross action against Fibreboard,
9 you charge that we sold - that is Fibreboard - sold to you
10 asbestos related insulation materials between the years 1954
11 and '74. Now, that's a 20-year stretch, and you have only
12 been able to document just one sale in June of 1972. So,
13 my question to you is: On what basis do you, through your
14 lawyers, state that you've bought from us for 20 years, and
15 that you bought asbestos-related materials from us for 20 years?

16 A I don't think it intended to state that we
17 bought from you for 20 years, but during this period of time,
18 we did buy some materials.

19 Q During this period of time?

20 A Right.

21 Q But the only actual purchase you can document
22 is this one that's shown on the April 15 document?

23 A Yes, sir. This was probably the only invoice
24 that we had prior to the fire that didn't get burned in the
25 fire, and I'm sure that we had bought from you before that time,

1 but we didn't have that record.

2 Q I can understand you say you're sure you did,
3 but can you specifically say under oath that Covil ever bought
4 from Fibreboard Corporation any asbestos-related materials
5 other than this one purchase in June of '72?

6 A I don't know if I could furnish the proof of
7 it, but I'm sure we did.

8 Q Tell me what you got and where you got it from,
9 what you use it for.

10 A That's what I say, I don't know if I can furnish
11 proof of what we got, but I'm sure we bought some materials
12 during this period of time that contained asbestos.

13 Q Do you have any idea what it was, what materials?

14 A It would be the calcium silicate materials.

15 Q Can you tell me how much?

16 A No, sir, I can't.

17 Q Can you tell me what you used it for?

18 A We used it for insulation purposes. We either
19 used it on our jobs or sold it. I would assume that we used
20 it on our jobs because that's normally what we buy materials
21 from Pabco for. We don't buy materials to stock from Fibreboard.

22 Q Where would you have gotten it from? Do you
23 know which one of Fibreboard's plants would you have bought it
24 from?

25 A I think this would've come from Emeryville.

1 Q California?

2 A Yes.

3 Q Are you talking about buying from Emeryville,
4 California, a product to be used or sold somewhere in the
5 southeast?

6 A Yes, sir.

7 Q Don't you have right stiff shipping charges
8 when you buy from a west coast manufacturer as opposed to find-
9 ing somebody on the east coast to buy from?

10 A Well, Fibreboard assumed these shipping charges;
11 we didn't. For some time before they opened the Rushton
12 Plant, they were actively pursuing business with us and other
13 contractors in this area and were actually shipping into this
14 area from Emeryville.

15 Q From California?

16 A Yes, sir.

17 Q Even though the seller - even though Fibreboard
18 was paying the shipping costs, didn't they have to charge you
19 more for it? Net, couldn't you buy it cheaper over here than
20 over yonder?

21 A No, sir, they sold it at regular price.

22 Q Forgive me for skipping around a good bit, but
23 all I'm doing is tieing up a few loose ends, and that's why I'm
24 jumping from one area to another. You mentioned, I believe
25 yesterday, or it might've been this morning, something about

1 respirators. Can you tell me when you first started providing
2 respirstors for your people? Was it after you found out there
3 was a problem with the union when the union made the 1965
4 noises, or did you purchase respirators prior to that?

5 A I would say it was after we began to hear of
6 this problem about asbestosis, asbestos products, that we
7 started using them.

8 Q And the Covil Corporation actually bought the
9 respirators?

10 A Yes, sir.

11 Q And furnished them to all your people.

12 A Yes, sir.

13 Q And then they may or may not have used them?

14 A Yes, sir.

15 Q You don't think you had respirators prior to
16 the union noises in '65?

17 A I doubt if we did. I wouldn't think so.

18 Q You mentioned your own company's training
19 procedures, and I do believe you told us that the other
20 gentleman would know a little more about that, but I do have
21 this question to ask you: In connection with Covil's in-house
22 training procedures, did you have any manuals, notebooks,
23 documents, do you have anything in writing which is given to
24 your people or which is an outline of the training which they
25 received?

50 to 765

X
1 A We have a folder here that contains some of that
2 material.that was brought in this morning.

3 Q Has anybody looked at this? Mr. Covil, you've
4 handed me one document that is entitled Policy for Safety
5 for Covil Corporation, and it says policy adopted January 1st
6 of 1977. What did you have that would correspond to this
7 prior to that?

8 A I'm not sure. They pulled this together this
9 morning for me rather fast, and we did some revising about
10 this time and revised it. I'm sure that we have copies of the
11 old policies before that. It would just take a little while
12 to dig them out.

13 Q This document mentions the annual chest X-ray.
14 Did you tell us earlier how long you've had the chest X-ray
15 policy in effect?

16 A I did, I'm sure.

17 Q About when was it?

18 A In the last three or four years.

19 MR. MOTLEY: Last several
20 years?

21 A Last three or four years.

22 Q This document, the big document we're looking
23 at, the Policy for Safety for Covil Corporation, and you said
24 you feel sure that prior to January of '77 you had something
25 similar. This looks like a right thorough safety manual. It's

1 got a lot of real good suggestions in it, a lot of good places
2 where you're supposed to check off whether or not corrective
3 action is needed. What sort of person prepared this manual
4 for your company?

5 A My secretary pulled that together and prepared
6 that. She got a lot of this information from other people
7 in the company, what they were doing.

8 Q From other companies?

9 A No, from other people within our company. She
10 had no responsibility for safety, she was just - we were
11 preparing a manual, and she pulled all this together, and
12 we brought it up-to-date.

13 Q My point is it looks like this manual was
14 prepared by somebody who is or was right knowledgeable about
15 industrial accidents and industrial exposure, including environ-
16 mental exposure. What sort of person in your company would
17 have the knowledge to prepare such a manual as this?

18 A I believe Russell Johnson and Jack Caine
19 corroborated on the thing, and they gave her this information.

20 Q Who is Jack Caine?

21 A He is not employed with us any longer. He was
22 a man that worked for us.

23 Q Sir?

24 A He worked for us, but he's not with us any
25 longer.

1 Q Is that C-a-i-n?

2 A C-a-i-n.

3 Q What was his job when he was with you?

4 A He has been employed in several different
5 capacities, sales manager and a division manager. At one time,
6 he assumed some safety responsibilities.

7 Q Mr. Cain was with you for how many years?

8 A About eleven years.

9 Q He came with you about the mid '60's?

10 A Right.

11 Q And Mr. Johnson has been with you how many
12 years?

13 A Twenty-two or three years.

14 Q So, it would be a safe assumption for me to
15 say, then, that in the person of Mr. Cain and Mr. Johnson, you
16 have for many years had right knowledgeable industrial
17 hazard people on your payroll?

18 A Yes, sir.

19 Q Is there anybody else other than Mr. Johnson
20 and Mr. Cain that would possess the kind of knowledge that
21 went into this safety manual, or are they your main two?

22 A They would be the main two. Some other people
23 may have contributed something to it, but they would be the
24 main ones.

25 Q Has Covil ever gone outside of the company for

1 expert advise on the kinds of things that's in that safety
2 manual?

3 A I don't believe so, no.

4 Q You haven't called any outside industrial
5 safety or health experts or doctors to consult with you in
6 setting up any of these programs?

7 A I don't believe so.

8 Q Mr. Covil, this was talked about a little bit
9 yesterday, but I'm not sure I got it all down. You mentioned
10 Mr. Quattlebaum and somebody else, Mr. Fowler, I believe. Both
11 of them have from time to time worked on you to get you to come
12 back in the union, right?

13 A Right.

14 Q When Mr. Quattlebaum and Mr. Fowler have been
15 coming to you over the years with their pleas to you to rejoin
16 the union, to become a union shop again, what have they said
17 to you about the kinds of benefits the union could provide as
18 it relates to the safety of the workers, disease of the
19 workers and that kind of thing? Has this been a pitch they
20 made to you?

21 A I don't believe they even mentioned it.

22 Q They haven't said anything to you about we've
23 got the green sheets and they're grand, and they'll tell you
24 all about your problems. They haven't made that pitch to you?

25 A No, sir.

1 Q What's been the most compelling reason that you
2 should rejoin the union according to Mr. Quattlebaum and Mr.
3 Fowler?

4 A Well, the basic pitch they made is that we can
5 furnish you qualified people to do your work.

6 Q That's about it?

7 A That's about it.

8 Q I know you're tired of going over names, but
9 I've got a name that I don't believe was on Exhibit 2 that we
10 looked at yesterday. If it was, forgive me. Do you know or
11 have you ever heard of or read about or hear the name of
12 Edward Crooks?

13 A Edward Crooks, I'm not sure.

14 Q Let me tell you a little bit about Mr. Crooks,
15 and maybe it'll refresh your memory about his situation if not
16 him personally. Mr. Crooks resided in Columbia, and he died
17 of lung cancer, I believe, in 1969 or thereabouts. The lung
18 cancer allegedly, according to his lawyers or his estate and
19 his lawyers, having been caused by asbestos exposure. It may
20 have been one of the first known - suspected known - asbestos-
21 related deaths in South Carolina. Did you ever hear of that
22 particular case or incident, Mr. Covil?

23 A No, sir, I don't think I've ever heard of him.

24 Q You don't recall reading about it in any of the
25 manuals or publications that come out?

50 to 271

1 A No, sir, I don't.

2 Q I'm still curious about these cross actions.
3 I'm going to use the case of Evelyn White as an example, the
4 survival action, making reference to the survival action
5 asserted by the Estate of Walter White against Fibreboard and
6 others, and making reference to your cross action. On what
7 basis in your cross action do you assert that Walter White
8 inhaled asbestos particles by using a product which had been
9 sold to you by Fibreboard? Do you have anything to show me
10 that Walter White breathed a Fibreboard product sold to you
11 and then used by him?

12 A I doubt if I have any kind of evidence.

13 Q Would that be true of all the claimants in the
14 case in which Covil has asserted a cross action?

15 A No, sir, I don't think it would be true of all
16 of them.

17 Q Well, could you tell me of any of the claimants
18 referring you to Defendants' Exhibit 2, can you tell me any of
19 these claimants that you know of your own knowledge or can
20 document used any product supplied by the Fibreboard Corporation?

21 A That would probably take a good deal of research.
22 We would have to go back and find out where these people worked
23 and determine from our files whether any of your products were
24 used on the jobs that they were on or not. It would take a
25 good bit of research.

1 Q But, I thought you told us that you don't have
2 any of those records prior to the fire.

3 A No, sire. We have people that are knowledgeable
4 that we could probably determine from them whether this person
5 worked on such and such a job. It would be awful hard for us
6 to come up with anything prior to the fire.

7 Q What I think you're telling me is any informa-
8 tion would simply be by word of mouth.

9 A Yes.

10 Q Tell me what people we would go to to get this
11 word of mouth information other than yourself.

12 A I would guess that Russell Johnson is probably
13 the most knowledgeable person in our company about where people
14 have worked and the materials they've worked with.

15 Q Whatever he tells us is going to have to come
16 out of his head, because he doesn't have any more records
17 than you've got.

18 A Right.

19 Q Anybody else with your company that might be
20 able to tie any particular product down with any particular
21 job and any particular claimant?

22 A I think he would be the most knowledgeable
23 person.

24 Q You don't know of anybody else out there that
25 would know any more than he knows?

1 A No, sir.

2 Q I'll ask you the same question that one of the
3 other lawyers asked you. In connection with these claims
4 either before or after the suits were started, have you or to
5 your knowledge anybody with your corporation, communicated
6 verbally or in writing with any officer, agent, director,
7 employee or salesman or anybody else with the Fibreboard
8 Corporation about these claims?

9 A About these claims? I don't believe we have.

10 Q Do you have - have you ever had any representa-
11 tion made to you by any employee or agent of Fibreboard as
12 to the safety or non-safety of the Fibreboard products?

13 A The only thing that I would know is that when
14 Fibreboard changed over to completely asbestos-free that their
15 sales personnel would tell us "all of our products now are
16 asbestos free." I'm sure they did this. I don't know if I
17 could say when they did it or what time they did it or any-
18 thing like this.

19 Q So, they told you when they got the asbestos
20 out of it.

21 A Yes.

22 Q Can you call any representations or warranties
23 made by anybody with Fibreboard either in writing or verbally
24 prior to that such as - I'm talking about something that con-
25 cerned the product before they took the asbestos out of it,

1 telling you it was safe or it wasn't safe?

2 A No, sir.

3 MR. HOOD: I'd like the
4 record to reflect that Mr. Motley has the file that Mr. Covil
5 brought with him which, when I examined Mr. Covil, he identified,
6 and apparently some of the items in that file that Mr. Motley
7 apparently has in toto, were considered work product by Mr.
8 Covil's attorney. If Mr. Motley's going to review -

9 MR. MOTLEY: He's made
10 the entire file available, Mr. Hood, and you went through it.-

11 MR. HOOD: No, sir.

12 MR. MOTLEY:- Page by
13 page.

14 MR. HOOD: No, sir, I
15 did not. He took out some of the items in there as being
16 work product, and apparently you have all of it. If Mr. Motley's
17 going to go through the file, I think the attorneys for the
18 defendants should have the same right.

19 MR. BRITTON: Insofar as
20 we're concerned with Mr. Covil, we certainly would ask that
21 any privileged matter, attorney-client.

22 MR. MOTLEY: If I see any-
23 thing, I'll close my eyes.

24 MR. HOOD: Well, I don't
25 think that's enough. I think that -

1 MR. MOTLEY: You wouldn't
2 close your eyes if you saw something, Mr. Hood?

3 MR. HOOD: Mr. Motley,
4 I wasn't through speaking. I think that if Mr. Covil's
5 attorneys are going to allow you to look at something they've
6 told us is their work product and we can't see, then I'd like
7 to be able to see it, also.

8 MR. MOTLEY: If I come
9 across something you didn't see -

10 MR. BRITTON: I'm not
11 aware of anything in there that y'all didn't see.

12 MR. GILREATH: I think he
13 saw the whole file. The only thing that was in there was a
14 letter with -

15 MR. BRITTON: From John
16 McKay.

17 MR. HOOD: I thought there
18 were several letters from your law firm to Covil.

19 MR. GILREATH: I think he
20 showed those to you.

21 MR. BRITTON: There was
22 only one letter, and it had a motion or something with it, and
23 I think he showed you what that was. If I recall, y'all went
24 through each item in the file already once.

25 MR. HOOD: And identified

1 them. We haven't read them in detail. All I want to do, for
2 the record, is if he's going to read the whole file, I'd like
3 to read the whole file.

4 MR. BRITTON: Okay, it's
5 available except for the privileged information.

6 MR. HOOD: He's got the
7 privileged information, and if he's going to look at it, I'd
8 like to look at it. That's what I'm saying.

9 MR. GILREATH: Ron, bring
10 the file back over here and let me look at it.

11 MR. MOTLEY: I haven't
12 seen the first thing in here, any notes from a lawyer or a
13 letter from a lawyer or anything..

14 MR. BRITTON: I don't think
15 the letter's in there. There wasn't but one letter.

16 MR. MOTLEY: Kind of stick
17 those out, because I'm going to ask him about those.

18 MR. BRITTON: The only thing
19 I recall is one letter in there from John. Go ahead, Jim,
20 and finish your questions.

21 QUESTIONING BY MR. ALFORD RESUMED:

22 Q Making reference again to the list of plaintiffs
23 that we all went over at some length yesterday, your files were
24 pretty sketchy, of course, and most of these people worked for
25 you sometime in the past, and your records really don't show

1 when they left you or why they left you. But I really haven't
2 seen any indication in your testimony or on the exhibits which
3 were used yesterday, that is the list of claimants, that any
4 of these people were working for you in June of '72 when you
5 bought the caltemp block. Am I wrong about that?

6 A From memory, I don't believe any of them were
7 working for me.

8 Q So, to the best of your knowledge, then, none
9 of these plaintiffs in these pending cases could've been
10 exposed to the caltemp block which you bought in '72 if you
11 used it on one of your own jobs.

12 A No, sir.

13 Q And you're going to try to find out what job
14 they went to if you can?

15 A Yes, sir.

16 Q I know what I was asking you before I got
17 interrupted. I had asked you about any representations or
18 warranties made by any Fibreboard people prior to the time they
19 took the asbestos materials out of their products, and I asked
20 you if you'd ever received any warranties or promises or
21 guarantees or anything else from the Fibreboard people prior
22 to the time they took the asbestos out of the product?

23 MR. BRITTON: Are you talk-
24 ing about express warranties, Jim?

25 MR. ALFORD: Anything,

1 express or implied. It couldn't be implied, any promises made
2 to you in writing or verbally.

3 MR. BRITTON: You're
4 not talking about implied warranties?

5 MR. ALFORD: No, it
6 couldn't. It would be a matter of law.

7 A Unless you had something on your sales document
8 or invoices or something like that, some people do, you have
9 some kind of a warranty.

10 Q But you don't have any personal recollection
11 of any such thing.

12 A No, sir.

13 Q You mentioned in your cross complaint, again
14 that your lawyer prepared for you, that Fibreboard expressly
15 or impliedly warranted to Covil Corporation that the asbestos
16 material was this and that and the other. I take it, even
17 though your pleading says an express warranty, meaning something
18 flat out told you or given to you in writing, you don't have
19 any recollection of any such thing?

20 A No.

21 Q You said you felt like even prior to Fibreboard
22 opening up its Louisiana plant that you had bought something
23 from Fibreboard over the years.

24 A I'm sure we have, but I don't know if I can
25 identify it.

X
1 Q Could you categorize that for me? It may be
2 hard since you don't remember. Would it have been a substantial
3 amount or just a token amount, or would it have been something
4 called for on a specific job because of some owner's specifica-
5 tions? Could you give me any idea about the volume you're
6 talking about? You may not be able to since you can't recall it.

7 A I feel sure it would've been because of the
8 owner's specifications or somebody called for it and we bought
9 it for a particular job. I feel sure, there are some instances
10 of that, but I don't think I can provide proof of it.

11 Q You wouldn't call the Fibreboard product while
12 they were still on the west coast, you wouldn't call it some-
13 thing that you used extensively.

14 A No, sir, we've only used Fibreboard products
15 extensively in the last three or four years.

16 Q Getting them from Louisiana.

17 A Yes.

18 Q How would that work, Mr. Covil? If an owner
19 of a project or a contractor for whom you have a subcontract
20 specified say Fibreboard caltemp block, you would place the
21 order?

22 A I wouldn't, not personally.

23 Q I mean your company.

24 A Yeah, our company would.

25 Q And it would be shipped to Covil, not to the -

1 A It would be shipped to us either at our ware-
2 house or to the job site.

3 Q But even if it went to a job site, it would
4 be invoiced to you?

5 A Yes.

6 Q So, any shipments to you, then, should be
7 reflected in the Fibreboard's records since yours have been
8 burned up?

9 A Yes, sir.

10 MR. ALFORD: Thank you.

11 MR. BRITTON: Who's next?
12 Ed, is that you?

13 MR. BUCKLEY: Yes.

14 MR. BRITTON: Did you get
15 your call a few minutes ago? They were looking for you. The
16 receptionist paged you for a phone call earlier.

17 MR. MOTLEY: Jim's back in
18 here, just call and ask them to bring that thing back over
19 here. He obviously inadvertently picked that thing up. Did
20 anybody pick up the request for admissions that were in this
21 file that we looked at?

22 MR. GILREATH: I think
23 John must've got that stuck in his file by mistake.

24 MR. BRITTON: I'll call
25 right now.

1
2 down there next to his file.

MR. GILREATH: I laid it

3
4 don't have that, do you?

MR. MOTLEY: Bevo, you

5
6 MR. ARNOLD: What?

7
8 request for admissions that he had scribbled hand notes on
9 that Mr. Hood asked him about.

10
11 MR. ARNOLD: His answers
12 to the request for admissions?

13
14 MR. MOTLEY: Yeah.

15
16 MR. ARNOLD: No, I don't
17 have it.

18
19 MR. GILREATH: They were
20 laying down here on this end of the table.

21
22 MR. MOTLEY: Y'all pardon
23 me for disturbing you. I don't want to look through your
24 notes or anything, but we're looking for those request for
25 admissions.

26
27 MR. GILREATH: I think
28 John's got them.

29
30 MR. ARNOLD: Bobby Hood's
31 the one that was questioning him about it.

32
33 MR. MOTLEY: Bobby, would
34 you look through your stuff and see if you inadvertently picked

1 up the request for admissions.

2 MR. BRITTON: (Talking to
3 John McKay on the telephone) John, do you happen to have the
4 request for admissions with your materials there? There were
5 some handwritten notes on there by Mr. Covil that was identified
6 earlier.

7 MR. ARNOLD: They're not
8 in some of these files?

9 MR. GILREATH: I think
10 John's got them.

11 MR. MOTLEY: (Talking to
12 John McKay on the telephone) John, I apologize for getting mad.
13 That's alright, I'll talk to you later.

14 MR. DAVIES: Are we
15 going to put it on the record that you're going to talk to
16 McKay?

17 MR. CARPENTER: Let the
18 record reflect Mr. Motley apologized for getting mad.

19 MR. DAVIES: Let it reflect
20 Mr. Motley said he'd talk to him later.

21 MR. MOTLEY: I'm sure I
22 will see him later.

23 MR. BRITTON: They're
24 running it over here right now, Ron.

25 MR. MOTLEY: Great. Thanks

1 a lot.

2 MR. ARNOLD: Did John have
3 it?

4 MR. GILREATH: Yeah.

5 MR. BRITTON: Bobby, did
6 you see that file? You're certainly welcome to look through
7 it.

8 MR. HOOD: I'm going to.
9 Apparently Ron's got it over there now. When they get through
10 with it, I'll look at it.

11

12 DIRECT EXAMINATION

13 By Mr. Buckley:

14 Q Mr. Covil, I'm Edward D. Buckley of the firm
15 of Bailey and Buckley, and we represent Nicolet
16 Industries. On this attachment of yours dated April 15, 1977,
17 I see that your records show no purchases of materials from
18 Nicolet that contained asbestos; is that correct?

19 A That's right.

20 Q Do you have any recollection of ever having,
21 aside from your records, bought anything from Nicolet
22 Industries?

23 A I don't recall ever having bought anything from
24 Nicolet.

25 Q I think you said there was a Mr. Cain who for-

merly had worked for you in a rather responsible position.

What were the circumstances under which he left your employ?

A He was terminated. I terminated him.

Q Did you fire him?

A I fired him, yes.

Q Is he still in the Greenville area?

A He was. I understand that he's moving to Texas.

MR. MOTLEY: Who was this?

MR. BUCKLEY: Mr. Cain.

MR. MOTLEY: I thought they were talking about one of my good people.

Q Who are the shareholders of Covil, the corporation?

A I'm the principal shareholder. There's about ten or eleven people that hold stock in the company. Most of them are a rather small amount. Travis Cash has the largest.

Q How do you spell that?

A Travis Cash.

Q C-a-s-h?

A Yes. He has more stock than any of the others. The others are rather small.

Q Who are the others?

A They're all employees - I couldn't.

Q They're all employees of your company?

1 A Yes.

2 Q Where does Travis Cash live, and what does he
3 do?

4 A He's vice president of Covil Corporation.

5 Q And his last name is Covil?

6 A No, Cash.

7 Q He's the vice president of the company?

8 A Yes, sir.

9 Q And he lives in Greenville?

10 A Mmm hmm.

11 Q Do you own a majority of the stock yourself
12 personally?

13 A Yes, sir.

14 MR. BUCKLEY: I think
15 that's all I have. Thank you, sir.

16 MR. BRITTON: Anybody else?
17 Mr. Davies?

18 MR. DAVIES: As I say, I
19 think I'm going to wait until after the cross-examination. I
20 just had a few questions, and there's no reason to rush.

21 MR. BRITTON: Are there
22 any other defendants?

23 MR. PRESSLEY: I think
24 that's all.

25 MR. BRITTON: You don't

1 have anything, Bill?

2 MR. DAVIES: Not right now.

3 I may have after Ron gets through.

4 MR. ARNOLD: Let Ron get

5 started.

6 MR. BRITTON: They're bring-
7 ing that over; it'll be here in just a second.

8 -----
9 CROSS-EXAMINATION

10 By Mr. Motley:

11 Q Before I get started, I asked the lawyers for
12 Covil and several of the defense lawyers because of personal
13 problems - I've got my little boy's birthday tomorrow at
14 five o'clock, that I was going to question Mr. Covil until
15 about five or five thirty when I have to leave, and that Terry,
16 if we didn't get through, which I know we won't, will question
17 him in the morning.

18 MR. PARLER: I have no
19 objection.

20 MR. CARPENTER: I don't
21 believe any of the defendants have any objection.

22 MR. ARNOLD: Ron, you
23 have my permission to go now if you want to.

24 -----
25 CROSS-EXAMINATION

1 By Mr. Motley:

2 Q Mr. Covil, my name is Ron Motley and I represent
3 Mrs. White, and I don't believe we had met until earlier
4 today.

5 A Yes, sir.

6 Q Have you ever met me before?

7 A Not that I know of.

8 Q Have I ever talked to you on the telephone
9 before that you know of?

10 A No, sir, I don't believe so.

11 Q Have you ever talked to anybody in my law firm
12 before, Mr. Terry Richardson? Before yesterday, you saw him
13 yesterday.

14 A I don't think so.

15 Q Mr. Dan Moore, that tall fellow that's not
16 sitting in the corner but was in here earlier today. You just
17 don't ever recall having talked to anyone in my law office.

18 A No, sir.

19 Q A little while ago, Mr. Covil, you in response
20 to a question stated that you had had the X-ray program in
21 existence for the last three or four years; is that correct?

22 A Yes, sir.

23 Q And earlier in the day you were discussing a
24 letter that was shown you by a third party from the union
25 advising the workers not to have X-rays taken.

1 A Yes, sir.

2 Q You were interested in that, I believe, you said
3 because at the time you had an X-ray program.

4 A Yes, sir.

5 Q So, that's within the last three or four years;
6 is that correct?

7 A Yes, sir.

8 Q There's a letter that I have dated April 15th,
9 1973. It's from the International Association of Heat and
10 Frost Insulators, I don't have it with me, but this is a
11 verbatim transcript, I believe, unless the secretary mistyped
12 it of what was contained in that particular letter, and I'm
13 going to ask if that's the letter you have reference to?

14 MR. BRITTON: Are you going
15 to furnish him with a copy of that?

16 MR. MOTLEY: Yes, I said
17 I would. This is not the letter. It just was in our files.

18 Q "Regarding medical examinations under OSHA, the
19 Board reiterated our policy that members of our union should
20 decline to take the medical examination that employers must
21 provide under OSHA until our members are guaranteed of
22 confidentiality of results. This is a vital issue that could
23 affect the ability to collect workmen's compensation claims.
24 The best solution is for our local union to negotiate into
25 their agreements medical maintenance protection clauses with

1 the costs underwritten by the employer.' That's the end of
2 the letter. Would that be the letter that you have reference
3 to?

4 A That's not the letter that I had reference to.

5 MR. HOOD: Would you
6 attach what you've just read into the record?

7 MR. MOTLEY: No, sir, I
8 won't because I've got my notes on it. I told you I'd provide
9 you with a copy of the letter. If you want to look at it, sure.

10 MR. ARNOLD: Just let her
11 mark it for identification.

12 MR. MOTLEY: I've got notes
13 on it, Mr. Bevo.

14 MR. ARNOLD: Well, she can
15 mark it for identification and give it back to you, and have
16 her signature and initials on it.

17 MR. HOOD: As I understand
18 it, you're going to furnish the court reporter the letter to
19 be marked as an exhibit.

20 MR. MOTLEY: Yes.

21 Q But, at any rate, it was during this period of
22 time when you had this X-ray program under way that you saw
23 this letter?

24 A Yes, sir.

25 Q Earlier, Mr. Hood was going over the plaintiff's
first set of request for admission of facts, and I believe he

X
1 read you one that had your writing on it. I'll ask you to
2 identify those if you don't mind, Mr. Covil.

3 A Are you talking about number eight?

4 Q Yes, sir.

5 A Yes, sir. Do you want me to read it?

6 Q Yes. I'm going to ask you some things about it.
7 You gave it a number. I don't believe it's been marked.

8 MR. CARPENTER: I think
9 he's referring to question number eight.

10 Q I'm sorry, yes, sir. You've got a better
11 memory than I do.

12 MR. MOTLEY: Would you
13 mark that as Plaintiff's Exhibit 1, please.

14 COURT REPORTER: It will
15 be number two.

16 Q Mr. Covil, as I understand it, this document
17 and the writing thereon is your responses to these requests
18 for admissions which you intended to submit under oath to the
19 court in response to requests?

20 A Yes, sir.

21 MR. BRITTON: Have these
22 responses been formally filed with the Court?

23 MR. MOTLEY: No, they have
24 not.

25 MR. BRITTON: Whose requests

1 were they?

2 MR. MOTLEY: They were
3 plaintiff's requests.

4 Q Mr. Covil, do these responses contained here
5 contain your best response to the request for admissions?

6 A Yes, sir.

7 Q Did you at any time manufacture any asbestos
8 products?

9 A No, sir.

10 Q Did you at any time take two products and per-
11 haps blend them together and mark it as a different product
12 other than the Covilite which you've described that you labeled?

13 A Not blend together, no.

14 Q In the 1950's, I believe you were selling a
15 product - an asbestos insulation product. Would you please
16 describe to me what this particular product was.

17 A In 1950?

18 Q In the 1950's or early '60's, other than the
19 Covilite which you've described.

20 A The only thing we would've sold some asbestos
21 finishing cement. We would've sold calcium silicate that
22 contained asbestos as a binder.

23 Q How would you have done this, sir, processed
24 this yourself?

25 A How would we have processed it?

1 Q Yes, sir. *Mott*

2 A We would, the calcium silicate came in cartons.
3 We would've sold it in the carton it came in unless it was a
4 broken carton which we might take two or three cartons, the
5 material out of two or three and make a broken carton, sell a
6 broken carton.

7 Q No, what I had in mind was I understood that
8 in the 1950's or '60's, you might've been taking several
9 products and blending them or mixing them together or fabricat-
10 ing a particular type of asbestos product itself.

11 A No, sir.

12 Q You have no recollection of that?

13 A No, sir.

14 Q Have you altered the form of any asbestos
15 products at any time other than the Covilite which you've
16 described earlier?

17 A Any asbestos product?

18 Q Yes, sir, any insulation product containing
19 asbestos.

20 A No, sir.

21 *Mott* Q I believe you responded in your request for
22 admissions with regard to whether or not you had a duty to
23 test the asbestos products before either selling them or
24 installing them on a particular job that you wrote, "I expected
25 the manufacturers to conduct the necessary tests." Since you

1 weren't a manufacturer, you assumed the manufacturers had
2 conducted tests.

3 A Yes, sir, most of them give you test data with
4 it.

5 Q Since 1972, has any OSHA official, we're talking
6 about the Occupational Safety Hazard, or any manufacturer or
7 yourself conducted any what's known as air-sampling studies -
8 that is go on the job site with some equipment and catch the
9 fiber and measure it and that sort of thing?

10 A They've done this on one particular job I know
11 of.

12 Q Approximately when was that?

13 A I'm not sure of the exact time. It was some-
14 where between '68 and '72.

15 Q Who would that have been?

16 A It was on the Oconee Nuclear Facility.

17 Q Sir?

18 A Oconee Nuclear Facility, somebody come in, and
19 I'm not sure whether they were OSHA or state or what, but
20 somebody came in and made some tests.

21 Q A government official did?

22 A Yes.

23 Q Prior to that time, had any manufacturer asked
24 your permission to go on the job site and conduct any such
25 test?

1 A No, sir.

2 Q Would you have refused them the right to go on
3 and conduct any such test?

4 A No, sir, I would not.

5 Q Mr. Covil, you were an active insulator your-
6 self for what period of time? I wasn't here yesterday, and
7 I apologize if I ask you questions you've answered before.

8 A From about 1930 to about 1944 or '45.

9 Q And then I believe you testified that from '44-
10 '45 on, from time to time you'd go on the job site.

11 A Yes, sir.

12 Q Between the years when you first started and
13 the year 1968 - excuse me, 1966, I believe you testified earlier
14 when you first became aware of the problem - did you ever
15 receive any letter from any manufacturer of asbestos telling
16 you that asbestos caused asbestosis among insulation workers,
17 or that it might cause various forms of lung cancer?

18 A I don't recall receiving any.

19 Q Have you ever seen any such letter than any of
20 your workers might've received?

21 A No, sir, I don't believe so.

22 Q Do you know the difference between amosite and
23 chrysotile and crocidolite asbestos?

24 A No, sir.

25 Q You've answered that some of the insulation

1 materials that you've worked with or used or sold contained
2 diatomaceous earth; is that correct?

3 A I would think very little - there may have been
4 some materials, but it would be a very minute amount of
5 materials that we've handled that contained diatomaceous earth.

6 Q Did any of the products - of what period of
7 time are you talking about?

8 A I'm talking about from -

9 Q Day one?

10 A Day one, yes.

11 Q Have you ever seen, let's say prior to 1966,
12 did you ever see any diatomaceous earth products which contained
13 a caution label advising you that it contained diatomaceous
14 earth and that inhalation of diatomaceous earth could be harm-
15 ful to your health?

16 A I don't recall. There may have been. I know
17 I remember some discussions in this area about diatomaceous
18 earth and this silicate that it contains.

19 Q What period of time are we talking about now,
20 recently?

21 A I'd say that was back in the '50's.

22 Q And, as a result of that, you don't recall seeing
23 any caution labels on it?

24 A No, sir, I don't.

25 ~~Q~~ Were you ever the author of a letter to the

editor or an article that might've appeared in The Greenville News relative to asbestos and any health hazard associated with it?

A I don't recall any such letter.

Q In your request for admission, number forty-eight, the question was: Does the defendant admit that at no time prior to - and there's a series of dates, '64, '65, '66, '67, etc. - did it warn asbestos insulation applicators that exposure to asbestos dust and fibers over a period of time constituted a serious health hazard? You circled, I assume all this is your writing and your circling throughout; is it not?

A Yes, sir.

Q You circled what year, sir?

A 1967.

Q Is that because you didn't know before 1967?

A I didn't know very much about it before then.

Q Question Number eighty-three was: Does this defendant admit that apart from any labeling on no occasion or at no time did it ever warn applicators of asbestos-contained insulation material by any other means, that adequate ventilation was necessary while working with asbestos products? Would you read your answer, please.

A What number was that?

Q I'm sorry, eighty-three.

X
1 A I answered, "Probably yes", and I would say we
2 probably did.

3 Q Of course, the answer was whether you admit
4 the fact that was stated, and the fact that was stated was in
5 the negative - that you had not, and you answered "probably
6 yes". In other words, you had not; is that correct?

7 A Yes.

8 MR. HOOD: Ron, can we
9 have a continuing objection to the form of the question, or do
10 we have to object to each question as a leading question?

11 MR. MOTLEY: Mr. Hood, this
12 is cross-examination of the president of one of the defendant
13 corporations. I thought I could cross-examine him. I wasn't
14 aware that he was my witness.

15 MR. HOOD: If you did in-
16 tend to use him as your witness, I'd like to have, for the
17 record, either an agreement to a continuing objection to the
18 form of the question, or I'll object to the form of the question
19 each time you ask a leading question.

20 MR. MOTLEY: Object all
21 you want.

22 MR. BRITTON: Why don't you
23 just put it in the record?

24 MR. HOOD: Otherwise, I'll
25 be interrupting you each time you ask a question.

X

1 MR. MOTLEY: I don't know
2 what he means by what he said. I plan and fully intend, as I'm
3 sure most of you do, using Mr. Covil's deposition pursuant to
4 Rule 87 in the direct proof of my case as a witness who's an
5 officer of the corporation, and the Rule permits me to call
6 him as if he were an adverse witness.

7 MR. HOOD: Madam Court
8 Reporter, would you note my objection to the form of every
9 question Mr. Motley asks. That way I won't have to interrupt.

10 MR. MOTLEY: I don't
11 agree that that's retroactive in the event that this version
12 of the Rule that prevails.

13 MR. HORGER: We have at
14 least one case where Judge Chapman has indicated that there is
15 no adversity, so to speak, between the two of you and you
16 would not be in a position to cross-examine in that case, at
17 least. So, the cross-examination would prevail. I would like
18 to make an objection in general to the form of the question
19 if you're willing to go along with that rather than stop each
20 particular time. Is that agreeable?

21 MR. CARPENTER: Celotex
22 joins in that.

23 MR. MOTLEY: I don't want
24 to prolong this, fellows, but if you think there's some chance
25 of your prevailing on this, then I'd like to know what your

1 objection is so that I can rephrase it if I think it's something
2 that's -

3 MR. HORGER: Most of your
4 questions, I believe, perhaps are leading, and you indicate
5 you're on cross-examination. Under cross-examination, of
6 course, it would be proper. If you're not entitled to cross-
7 examine him, they're not proper, and that's why - not trying
8 to waste your time and waste ours either, we would like to
9 have a general objection to the form, and that can be decided
10 later whether or not that you are permitted under the Rule to
11 cross-examine or not to cross-examine. But, if you want to do
12 it the other way.

13 MR. MOTLEY: Mr. Horger,
14 this deposition was noticed in Walter White; not noticed in
15 Bumgardner, which is the case you described. This case is
16 pending in State Court, and the State Circuit Court rules apply,
17 and I think I'm entitled to cross-examine him.

18 MR. CARPENTER: Mr. Motley,
19 if the objections are not valid, they don't harm you in any
20 way, and if they are valid, then we're correct. There's no
21 point in interrupting you.

22 MR. HORGER: Your previous
23 position has been that even though a deposition was not for a
24 particular case, that it could be used in another case. So,
25 we just need to protect ourselves in general.

1 MR. MOTLEY: Well, y'all
2 haven't shared that position.

3 MR. HORGER: No, and
4 neither am I saying that you're absolutely wrong at this
5 point, but we want to reserve our rights.

6 MR. MOTLEY: Let me talk
7 with my lawyer and see what he wants to do.

8 MR. CARPENTER: Mr. Motley,
9 one thing we want to be clear on is that none of the defendants,
10 and I believe I speak for all of them, are waiving the require-
11 ment under the Rules that the witness, if he is available,
12 the de bene esse deposition cannot be used.

13 MR. MOTLEY: I didn't
14 suggest that.

15 MR. CARPENTER: I just
16 don't want any misunderstandings.

17 MR. RICHARDSON: I think
18 what we would like to do is go ahead and allow Mr. Motley to
19 ask the questions, and if you object to the form, just say
20 "object". She can note it, and then he'll have an opportunity
21 to rephrase the question.

22 MR. CARPENTER: Would you
23 prefer a Greek chorus, or would you prefer that we do it one
24 at a time.

25 MR. RICHARDSON: One would

1 speak for the group.

2 MR. HORGER: Mr. Hood, would
3 you wake up. You're the one that usually does that.

4 MR. MOTLEY: Let him
5 sleep.

6 QUESTIONING RESUMED BY MR. MOTLEY:

7 Q Mr. Covil, do you recall seeing any posters,
8 signs, or plaquards distributed by any of the manufacturers
9 of insulation products containing asbestos on job sites prior
10 to OSHA regulations in 1972?

11 A No, sir.

12 Q I assume that you didn't place any at job sites
13 prior to OSHA regulations?

14 A No, sir.

15 Q I believe you had earlier identified this as the
16 document which reflects purchases, Mr. Covil?

17 A Yes, sir.

18 MR. MOTLEY: I'd like that
19 marked as Plaintiff's 3, please.

20 MR. HOOD: I object to the
21 form of that last question.

22 Q This is obviously a xerox copy of something
23 else, Mr. Covil, but have you ever seen a manual, something that
24 looked like that?

25 MR. DAVIES: Mr. Motley, was

1 all that material part of this file?

2 MR. MOTLEY: No, that
3 last thing - no, no.

4 MR. DAVIES: Has that been
5 marked for identification?

6 MR. MOTLEY: No, sir, he
7 hasn't identified it.

8 A No, sir, I've never seen that.

9 Q You've never seen that before?

10 A No, sir.

11 MR. HOOD: May we see what
12 he was shown?

13 MR. MOTLEY: Yes, sir.
14 This will be Plaintiff's 4. If y'all don't mind, we're going
15 to copy this, and I'm going to put the original back in my
16 file.

17 Q Mr. Covil, you've never seen what's known as
18 Plaintiff's Exhibit 4 which I just handed you which purports
19 to be something entitled "Recommended Health Safety Practices
20 for Handling and Applying Thermal Insulation Products Contain-
21 ing Asbestos" published by the National Insulation Manufacturers
22 Association, dated - I believe, I don't see the date in here
23 - but this was purportedly distributed in 1968. Do you -
24 you don't recall ever having seen this?

25 A I don't recall ever having seen it.

1 MR. HOOD: Object to the
2 form.

3 Q Doyou know a fellow by the name of Clifford
4 Sheckler?

5 A Clifford Sheckler?

6 Q Yes, sir, with Johns-Manville Corporation.

7 A Yes, sir, I've met him.

8 Q When did you meet Mr. Sheckler?

9 A I wouldn't know right off-hand.

10 Q Has he ever been to your place of business?

11 A I don't believe he has.

12 Q Do you know a gentleman by the name of Hugh
13 Jackson?

14 A I don't recall him.

15 Q How about Ben Jobe - J-o-b-e?

16 A I don't recall him.

17 MR. PARLER: Isn't Ben
18 Jobe a lawyer?

19 MR. MOTLEY: He might be,
20 but this is not the fellow I'm talking about.

21 Q The latter two, Jackson and Jobe, were Johns-
22 Manville employees. You don't recall ever having met them?

23 A No.

24 Q Did anyone from Johns-Manville Corporation between
25 the years 1964 and 1970 personally visit you and advise you of

1 any health hazards associated personally advise you with a
2 personal visit, of any health hazards associated with the
3 inhalation of asbestos products?

4 MR. HORGER: Object to the
5 form of the question.

6 MR. MOTLEY: You can
7 answer, sir.

8 A I don't remember.

9 Q You don't remember anybody visiting you?

10 A No, sir.

11 MR. HOOD: Object to the
12 form of the question.

13 MR. HORGER: I made that
14 objection, and it was agreed between the parties that one
15 objection would go throughout the defendants.

16 MR. DAVIES: Why don't we
17 just let her, if it's alright with the plaintiff, enter
18 defendants object instead of trying to identify what defendant.

19 MR. BRITTON: Don't y'all
20 want to occasionally disassociate yourselves from some of
21 these objections?

22 Q Mr. Covil, has any representative of any of the
23 manufacturers from whom you purchased products visited you
24 personally and advised you between the years 1964 and 1970 of
25 any health hazards associated with the inhalation of asbestos

1 fibers?

2 MR. HORGER: Object to the
3 form of the question.

4 A I don't recall anybody specifically making that
5 kind of presentation.

6 MR. BRITTON: How about
7 noting unless there's an objection rendered on our behalf,
8 these objections don't run on behalf of Mr. Covil.

9 MR. PARLER: On the
10 defendant Covil.

11 MR. BRITTON: On the
12 defendant Covil, the objections rendered by the other defendants
13 don't affect me unless I render my own specific objection.

14 Q I believe you have a very beautiful hospital
15 in Greenville called the St. Francis Community Hospital?

16 A Yes, sir.

17 Q Do you recall a telephone book in 1972 which
18 bore the picture of the facade or face of the St. Francis
19 Community Hospital?

20 A Yes, sir.

21 Q I hand you a very poor photostatic copy of the
22 cover, and page 149 of that telephone book, and ask you if
23 that is an advertisement that you placed in the yellow pages
24 of the Greenville phone book?

25 A Yes, sir.

20 to 309

1 Q That's your ad?

2 A Yes, sir.

3 MR. MOTLEY: I'd like a
4 copy of that marked as Exhibit 5.

5 MR. PARLER: Is the front
6 page of the exhibit simply for identification, or is there some-
7 thing -

8 MR. MOTLEY: Oh, it's just
9 for identification.

10 MR. PARLER: I thought
11 maybe the facade had something to do with it.

12 MR. MOTLEY: You thought
13 one of my clients was looking out the window or something?

14 MR. BRITTON: Did we
15 identify what year that was?

16 MR. MOTLEY: '72.

17 Q Do you recall whether this same ad ran in 1975?

18 A I don't recall how long that ad run.

19 Q Mr. Covil, I hand you a document which was in
20 your file, and it says "notes from Mr. Covil's conversation."
21 Are those notes your notes or something you told someone else?

22 A My secretary made these from telephone conversa-
23 tions I had, and I asked her to -

24 Q To transcribe them?

25 A - to transcribe them.

1 Q Is this information that's contained herein
2 something that you gathered from your own experience and mind,
3 or is this something that somebody else told you?

4 A Something somebody else told me.

5 Q Who told you this?

6 A Representatives for each of these companies.

7 Q So, in that regard, you have had conversations
8 with representatives of some of these companies?

9 A Yes, sir.

10 MR. MOTLEY: Let's mark
11 this, I believe it's Number 6.

12 MR. BRITTON: Let me
13 protect us right here at this point. This, again, any conversa-
14 tions or notes pertaining to conversations that arose subsequent
15 to the suit, because of the insistence during the cross-
16 examination of Mr. Covil that they be revealed, any work product
17 objection, I think, at that time -

18 MR. MOTLEY: Oh, it would
19 run through. He said this didn't have anything to do with an
20 attorney.

21 MR. BRITTON: I didn't
22 want any other attorney here to criticize us for -

23 MR. MOTLEY: They saw this.

24 MR. BRITTON: But since
25 it's been into and examined thoroughly, I feel like it's subject

1 to open review.

2 Q So, with regard to each of these particular
3 manufacturers, you had conversations with some representative
4 of that company, and this is a transcription of your notes in
5 that conversation?

6 A Yes, sir.

7 Q And I assume OCF is Owens Corning Fiberglass.

8 A Right.

9 MR. ARNOLD: Let me see
10 that.

11 Q Here's a memo that was also in your file, Mr.
12 Covil.

13 MR. BRITTON: This would
14 contain a letter and attachment from our firm, and I would
15 appreciate it if you wouldn't get into that.

16 Q You've reviewed this, and that's an accurate
17 transcription of your conversations with these various agents?

18 MR. HOOD: Object to the
19 form of the question.

20 Q That's Exhibit Number 6. This is another some-
21 thing that I found in there. What is that?

22 A This is a form that the National Insulation
23 Contractors Association sent out making an insurance survey,
24 and the - what they're trying to do, I mean, it's gotten to
25 where it's rather difficult for insulator contractors to get

1 liability or workmen's comp insurance, and there is a committee
2 working on this to see if they can't get some insurance writing
3 to cover the whole insulation industry, and that's what that
4 is.

5 Q I believe you said you were on the Board of
6 NICA.

7 A I was at one time.

8 Q Were those difficulties because of insulation
9 workers coming down with diseases associated with asbestos?

10 A It's that and product liability suits.

11 Q Would you read number 6 for the record. By the
12 way, who filled those responses out that are typed behind the
13 question? Did you?

14 A Yeah. "Have you had any difficulty of any
15 nature with any particular union local or the union in general?"

16 Q What was your answer?

17 A "No."

18 MR. MOTLEY: Let's mark
19 that number 7.

20 Q Mr. Covil, here's another memo from Joe Malone.
21 Is he one of your employees?

22 A Yes, sir.

23 Q To you, I'll ask you to identify that. I
24 believe this document is a reflection of sales you've made
25 since you were able - for the years shown '73 through '77, of

1 products to Guy M. Beattie Company.

2 A Right.

3 MR. MOTLEY: Let's mark
4 this number 8.

5 Q Mr. Covil, that's page one of what looks like
6 some compilation on William Bumgardner. Did you do that, or
7 that was just sent to you?

8 A I believe this was sent to me.

9 MR. MOTLEY: Jimmy, is
10 this that thing y'all did up in Charlotte, and you wouldn't
11 let me have a copy of it? Isn't that something you worked up?

12 MR. PRESSLEY: Negative.

13 MR. MOTLEY: You didn't
14 work that up?

15 MR. PRESSLEY: No, that's
16 not even my secretary's bad typewriter. I deny all knowledge.

17 Q Subject to being something, I don't think - do
18 you know who made it up?

19 A I don't recall where that came up.

20 Q It really isn't anything to hurt y'all, but it
21 might be something to help us with Bumgardner. I don't know
22 where it came from.

23 MR. ARNOLD: If it helps
24 you, it hurts us.

25 MR. MOTLEY: Mark that,
please.

1 MR. BRITTON: I don't see
2 any notes on there that would go to the attorney-client privilege.
3 I don't know where it came from. I don't have any idea.

4 Q Mr. Covil, have you ever had any conversations
5 with any of the attorneys representing any of the manufacturers?

6 A Representing any of the manufacturers?

7 Q Yes.

8 A Not before this..

9 Q Did you have any conversations with any of them
10 before your deposition?

11 A I don't believe so.

12 Q Mr. Covil, did you have any negotiations to
13 your knowledge between yourself or attorneys representing you
14 and any of these manufacturers with regard to your cross action
15 before it was brought?

16 A I consulted with my attorneys.

17 Q And it was with your approval that they drafted
18 the cross action.

19 A Yes.

20 Q Were you ever approached, or was it ever
21 suggested to you that you might soft-pedal the cross action, or
22 not pursue it vigorously?

23 A Not really, I don't think.

24 Q There seemed to be some hesitancy in your mind.
25 Did you have any conversations about it?

1 A I'm just trying to remember.

2 Q Just take your time.

3 A The only thing I think is, in my conversations
4 with them, we said we wouldn't vigorously pursue this.

5 Q You would not?

6 A But we would try to make any information avail-
7 able.

8 MR. HOOD: Note my objection
9 to the form of the last question.

10 MR. MOTLEY: I didn't really
11 ask a question.

12 Q Mr. Covil, between the years 1948, I believe you
13 said is when you started your business -

14 A Yes.

15 Q - and 1970, did anyone associated with any of
16 the manufacturing companies with whom you did business ever
17 tell you what a TLV was?

18 A A TLV?

19 Q Yes. Do you know what a TLV is?

20 A I don't ever remember hearing that expression
21 before.

22 Q How about a threshold limit value?

23 A I've heard that.

24 Q I'm sure you've heard that recently since the
25 OSHA regulations have gone into force?

1 MR. PARLER: I object to
2 the form.

3 A Yes, sir.

4 Q But I'm talking now particularly of the years
5 before the OSHA regulations came into force.

6 MR. DAVIES: Object to the
7 form of the question.

8 MR. MOTLEY: I haven't
9 asked a question.

10 Q Did anybody from any of the manufacturers with
11 whom you did business between 1948 and 1970 ever discuss with
12 you what the TLV was?

13 MR. DAVIES: Objection.

14 A I don't recall ever having discussed it.

15 Q Is Mr. Johnson, isn't he a former insulator
16 himself?

17 A Yes, sir.

18 Q Has he had any formal training in industrial
19 hygiene?

20 A No, sir, I don't think so.

21 Q Has he had any formal training in safety
22 education?

23 A He has taken a safety course at Greenville Tec.

24 Q That was after the OSHA regulatinn came into
25 effect?

~~A~~ I'm not sure whether it was after or before,
probably after.

Q So, as far as the training program was concerned before the OSHA regulations were enacted, you had no one who had had any safety education courses or was an industrial hygienist giving these safety talks to your employees.

MR. DAVIES: Object to the form of the question.

A No.

Q Did any industrial hygienist employed by any of the manufacturers with whom you did business ever periodically visit you and assist you in educating your workers?

MR. HOOD: Object to the form of the question.

A I don't recall any.

Q Did you ever get any letter from any of the manufacturers with whom you did business suggesting that they had someone available who might conduct safety classes for your employees?

MR. HOOD: Object to the form of the question.

A I don't recall any.

Q Tell me about a respirator.

MR. HOOD: Object to the form of the question.

1 Q Tell me about a respirator, please.

2 MR. HOOD: Object to the
3 form of the question.

4 A What about a respirator do you want me to tell
5 you?

6 Q Tell me all you know about it.

7 A There's several different types of respirators.
8 There's a common dust type respirator that is a little
9 aluminum thing that you put an insert in and you just put it
10 around your head with a rubber band. It caused difficulty
11 in breathing, the person working with it. Then, there's
12 another type respirator that's approved by the Bureau of
13 Mines that has a kind of a snout on it, and you unscrew that
14 and put this filter in that. It's much easier for people to
15 breathe with it, and you can remove it and change the filter
16 as you need to.

17 Q This first kind of respirator that you're
18 describing, when did you first see it?

19 A I don't know really. It was one of the first
20 ones I ever saw.

21 Q You indicated that you had gotten, purchased
22 some respirators in 19-what, '68, '67?

23 A Somewhere in there.

24 Q Do you have any records to reflect that you
25 purchased these respirators?

1 A I doubt if we do.

2 Q Who did you buy them from?

3 A I'm not sure, some local company that sells
4 safety equipment.

5 Q Who were some of those safety companies that
6 you generally deal with?

7 A There's Safety Equipment Company, and I'm not
8 sure what the name of it is here, and there's two or three
9 companies that sells constructions supplies and safety equip-
10 ment along with other things. One of these is Construction
11 Equipment Company.

12 Q Approximately how much did these respirators
13 cost per unit?

14 A Which ones are you talking about?

15 Q The ones you bought in '68.

16 A The first ones? I don't know, they were very
17 inexpensive.

18 Q And those are the respirators that didn't work?
19 The ones that you said were uncomfortable?

20 A Right.

21 ~~MR. HOOD:~~ Object to the
22 form.

23 Q The ones that were bureau approved, you really
24 didn't purchase until after the OSHA regulations, did you, Mr.
25 Covil?

1 MR. HOOD: Object to the
2 form of the question.

3 A I'm not sure - about the time OSHA regulations
4 come out. We had a rather difficult time finding some of those.

5 Q Do you know how many you purchased in '68?

6 A No, sir, I wouldn't.

7 Q A dozen, few dozen?

8 A I would guess it was ten or twelve dozen.

9 Q Ten or twelve dozen?

10 A Yes, sir.

11 Q Since you were an insulator back in the '30's
12 and early '40's, do you recall the old surgical mask type thing?
13 Did you ever see any of those?

14 A I've seen some of those.

15 Q And on the ban saw machines, the respirators
16 were used because the dust was so thick it would clog a man's
17 throat and his nose, would it not?

18 MR. HOOD: Object to the
19 form of the question.

20 A Yes.

21 Q And you've testified that you didn't know that
22 asbestos was hazardous to your health until 1966, so when you
23 were using those respirators in the ban saw operation, it was
24 solely because to prevent the cloggy stuff getting in your
25 throat, the men choking and not being able to breathe; is that

1 correct?

2 MR. HOOD: Object to the
3 form of the question.

4 A Well, I think I started buying them because this
5 could be a health situation, any kind of dust.

6 Q The clog in your throat and your nose.

7 A Right.

8 MR. HOOD: Object to the
9 form of the question.

10 MR. CARPENTER: Mr. Motley,
11 as a humanitarian gesture for the court reporter, in order
12 to perhaps prevent her from having to type each time object
13 to the form of the question, when we say object, can we have
14 a common understanding that unless the grounds for the objec-
15 tion are stated, that is the ground for the objection?

16 MR. MOTLEY: I thought that
17 was approved.

18 MR. CARPENTER: Just so
19 the court reporter understands it.

20 MR. HOOD: When I say
21 object, I'm saying object to the form of the question.

22 MR. CARPENTER: What I'm
23 saying is instead of her having to type that each time -

24 MR. HOOD: When we say
25 object, I want the objection to say "object to the form of the

1 question." It's no good if you don't say that.

2 Q Mr. Covil, with regard to these Bureau of Mine
3 approved respirators, did the manufacturers assist you in
4 locating some respirators?

5 ~~MR.~~ HOOD: Object to the
6 form of the question.

7 A As well as I remember, we went to NICA - when
8 I say NICA, I'm talking about National Insulation Contractors
9 Association, and got them to get this information.

10 Q NICA?

11 A Yes, sir.

12 Q And not the manufacturer.

13 A That's the way I remember.

14 ~~MR.~~ HOOD: Object to the
15 form of the question.

16 Q Where did you finally find the Bureau of Mines
17 approved respirators?

18 A I'm not really sure. What they did, they came
19 back and gave us the manufacturer's name and address and the
20 type respirator that they made, and I would assume at this
21 point I turned that over to Russell Johnson and asked him to
22 get some prices.

23 ~~Q~~ Do you have records after the fire reflecting
24 purchases of respirators?

25 ~~A~~ I'm sure we do.

go to 222 323

1 Q Let's talk about that safety manual, that 1977
2 safety manual. I believe you said your secretary got it
3 together.

4 A Yes, sir.

5 Q Did you have a safety manual before 1977?

6 A Yes, sir.

7 Q Where is the copy of it?

8 A I haven't been able to find it yet.

9 Q When was it written?

10 A I'm not sure, but we had an old one, and I
11 asked my secretary today to try to find it, and she said she
12 was working on it, but she hadn't found it.

13 Q This was after 1972 when OSHA suggested that
14 you put together a safety manual?

15 MR. HOOD: Object to the
16 form of the question.

17 A It was about that time.

18 Q Prior to that time, you didn't have a safety
19 manual?

20 A No, sir, I don't think so.

21 MR. HOOD: Object to the
22 form of the question.

23 A This is a part of the overall manual. This is
24 a section on safety that we put in our overall manual.
25

1 MR. HOOD: Do y'all have
2 Mr. Covil's file? May I look at it please. I haven't read it.

3 Q Did the manufacturers of asbestos from time to
4 time before 1966 send you any copies of any medical articles
5 dealing with any health problems associated with asbestos?

6 MR. PRESSLEY: I object
7 on the grounds that that's an assumption of a fact that's not
8 in evidence.

9 MR. MOTLEY: Do you want
10 me to show you some of them?

11 MR. PRESSLEY: Show me who
12 you're talking about had them, when they provided them.

13 Q Mr. Covil, did any manufacturers with whom you
14 did business before 1966 ever send you any medical articles
15 or medical editorials dealing with any health problems associated
16 with asbestos?

17 A I don't remember.

18 DEFENDANTS: Object to the
19 form of the question.

20 A Asbestos is not a manufactured product.

21 Q I want to make sure you understand what I'm
22 talking about. We're talking about these defendants.

23 A Yeah, I know what you're talking about.

24 Q But you understood my question?

25 A Yeah, I understood what you're asking.

X
MR. DAVIES: The objection

runs to the question.

Q How would you like me to describe the products?
You tell me how to describe them.

A I was just pointing out that asbestos is a mine
product and not a manufactured product.

Q When it comes to you in the form of insulation,
what do you call that, a manufactured product or a process
product, or how do you describe it?

A Well, we never got asbestos except in a
manufactured product except cement, which was mined and ground
and milled.

Q You got insulation products which contained
asbestos.

A Yes, sir.

MR. DAVIES: Object to the
form of the question.

Q So, when I say these asbestos manufacturers,
you understand I'm talking about insulation products containing
asbestos.

A I'm not trying to get -

Q No, I just want to make sure that my friends
here aren't confused unduly.

MR. CARPENTER: We object
to the designation.

1 MR. MOTLEY: Friends? I
2 thought you liked me.

3 Q By the way, Mr. Covil, you've never provided
4 us with any -

5 MR. HORGER: Object to the
6 form of the question.

7 Q - of this information before you brought this
8 stuff in here before this deposition.

9 A No.

10 Q Mr. Covil, tell me something about Covil
11 Corporation's operations in North Carolina.

12 A About our operations?

13 Q Yes, sir, is it a separate corporation?

14 A No, sir, it's the same corporation.

15 Q Would you say that you do most of your business
16 in South Carolina and North Carolina?

17 MR. HORGER: Object to the
18 form of the question.

19 Q Well, you say for me.

20 A No, I wouldn't say that. The most of it. We
21 do a good amount of business in North Carolina, South
22 Carolina, Georgia, Florida and Alabama.

23 Q Is North Carolina a principal place where you
24 do business?

25 A Yes, sir, it is.

X

1 Q And the Covil Corporation is no separate
2 entity in North Carolina; it's all the Covil Corporation.

3 A It's all the corporation.

4 Q You were talking earlier about some insulation
5 companies which might be friendlier with the union than you
6 are. Would you tell me some of those that you're talking about.

7 A I'd rather not.

8 Q I'm afraid you have to. I'm not going to go
9 tell them you said that if you're worried about that.

10 MR. BRITTON: Can we stay
11 out of that? If it affects his business aspect -

12 MR. MOTLEY: I don't want
13 to do that at all.

14 Q Would you just tell me which, because I don't
15 know, which contractors are union shops. You don't have to say
16 they're close to the union.

17 MR. BRITTON: Do you have
18 any objection to answering that?

19 A Not which ones are union shops. In our immediate
20 area, Star Davis, Porter Hayden, North Brothers, Shuchem
21 Fletcher. Those are basically the main ones.

22 Q You are not aware, sir, that North Brothers is
23 a defendant in a suit pending in South Carolina?

24 A No, sir, I'm not.

25 MR. HORGER: Object to the

1 form of the question.

2 Q Mr. Covil, are you familiar with the J. R. Dean
3 Company?

4 A Yes, sir.

5 Q Tell me what you know about the J. R. Dean
6 Company.

7 A I think J. R. Dean Company only sells materials.
8 I don't believe they do any contract work.

9 Q Who do they sell materials to?

10 A Anybody they can, I guess. Mostly to Insulation
11 contractors, industrial plants, navy yard, general contractors.

12 Q They sell to the navy yard?

13 A I think they do. I'm not positive, but I believe
14 they do.

15 Q Did you ever sell to the navy yard?

16 A No, sir, I don't think we've ever sold - we may
17 have sold a small order, but we're not one of the privileged
18 people in the Charleston navy yards.

19 Q Did you sell to West Virginia Pulp and Paper
20 Company at all?

21 A I don't believe. If we did, it was a very
22 small amount and a very small order.

23 Q I believe you testified yesterday that North
24 Brothers is the only insulation company operating in North and
25 South Carolina which is larger than your operation.

1 A I believe that to be a fact.

2 Q Does Daniel Construction Company sell insulation
3 products?

4 A They sell installed products.

5 Q I don't understand what you mean.

6 A Daniel Construction Company acts as a total
7 construction firm. They do everything on a lot of their jobs,
8 install the insulation, electrical work and everything.

9 Q They don't retail insulation products?

10 A No, sir.

11 Q Did you from time to time sell insulation
12 products to Daniel Construction Company?

13 A Yes, sir.

14 Q Is that one of your bigger customers?

15 A That's one of our larger customers.

16 Q Did they purchase mostly from you?

17 A They purchase from anybody. I'd say we probably
18 get more than any other single distributor.

19 Q Have you ever heard of Bell Mines Limited?

20 A Bell Mines Limited?

21 Q Yes, sir.

22 A Yes, I have.

23 Q What do you know about Bell Mines Limited?

24 A All I know is that they are a Canadian firm and
25 have asbestos mines in Canada. That's all I know about them.

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1 Q Have you ever purchased any raw asbestos fibers
2 from Bell Mines Limited?

3 A I don't remember. I don't remember that we have.

4 Q Have you ever purchased any raw asbestos - do
5 you know what I mean by raw asbestos fibers? A bag of asbestos
6 with nothing else in it.

7 A Yes, sir.

8 Q Have you ever purchased any bags of a hundred
9 per cent asbestos fibers from anyone?

10 A Yes, sir.

11 Q From whom have you purchased it?

12 A I believe we purchased some from Johns-Manville
13 in the past. We've purchased from National Gypsum.

14 Q National Gypsum?

15 A I think so. There's one other firm we purchased
16 some from, but I don't remember the name of it.

17 Q Did you ever purchase any from Westinghouse,
18 or any asbestos products from Westinghouse?

19 A No, sir, not that I know of.

20 Q What would you do with these raw asbestos fibers
21 that you would purchase from Johns-Manville and National Gypsum
22 and others?

23 A When we did purchase this, we used it as a
24 finishing cement, and this is what I believe is termed as
25 asbestos shorts.

1 identified anything. All we've done is say have you ever done
2 such and such.

3 Q How was these asbestos shorts which you've
4 described as being a hundred per cent asbestos, you said you
5 used them for cement. How physically did you do that?

6 A Mix them up with water and made what insulators
7 call mud. We'd mix it up and make a soft material, and they
8 spread it on a surface with a trowel to smooth up insulation
9 surfaces.

10 Q I believe you testified yesterday that you
11 don't recall -

12 MR. HORGER: Object to the
13 form of the question.

14 Q - that you don't recall seeing any caution labels
15 on asbestos products before 1968; does that hold true also for
16 the asbestos shorts that we're talking about?

17 A Yes, sir.

18 MR. HORGER: Object to the
19 form of the question.

20 Q Mr. Covil, the wages that are paid in the area
21 that you operate, insulation mechanics, are you familiar with
22 how they compare with the wages paid in other parts of the
23 country?

24 A That picks up a pretty broad area.

25 Q Let's say South Carolina.

1 A South Carolina, the wages in South Carolina are
2 generally lower than they are -

3 Q And isn't it true that come bargaining time with
4 the union that they were always trying to get more money
5 naturally, weren't they?

6 A Yes, sir.

7 MR. HORGER: Object to the
8 form of the question.

9 Q While you were a business agent of the union,
10 I assume you did some contract negotiating.

11 A Yes, sir.

12 Q And you were trying to get more money for the
13 workers during that period of time, were you not?

14 MR. HORGER: Object to the
15 form of the question.

16 A I don't remember ever going into negotiations when
17 I was business agent.

18 Q But, you realize that the union is trying to
19 get higher wages for their members?

20 A Yes, sir.

21 Q Did your attorneys ever tell you that they might
22 have had a conversation with -

23 MR. BRITTON: I'm going to
24 have to object on the attorney-client.

25 MR. MOTLEY: I'm not going

1 to get into anything that hurts you, I don't think. Let me
2 ask the question, okay, and then if it's offensive to the
3 Court, then -

4 Q - that the attorneys for these various manufactu-
5 rers were asking them to either not bring the cross action
6 that you brought or soft pedal it?

7 MR. BRITTON: I'll have
8 to object to that.

9 MR. MOTLEY: I assume
10 you're instructing him not to answer that.

11 MR. BRITTON: Yes.

12 MR. MOTLEY: I note you
13 didn't object to any conversations, or did you, that you might
14 have had with Mr. Covil with regard to the agreement that we
15 allegedly had.

16 MR. BRITTON: Is there an
17 earlier question that you're asking about?

18 MR. MOTLEY: Sir.

19 MR. BRITTON: Is there an
20 earlier question? I didn't understand that they'd run between
21 us and our firm.

22 MR. MOTLEY: I haven't
23 asked anything. I'm talking about these other lawyers asking
24 about conversations. Did they not ask about conversations?

25 MR. BRITTON: My only objec-

1 tion to your question was any communication between our firm
2 and him, as I understand the question was directed in that line.

3 MR. HORGER: I don't know
4 if I was in here all the time, but I don't think any question
5 was asked in regard to what discussions the attorneys had.
6 The question was asked directly of the witness.

7 MR. MOTLEY: I wasn't here.

8 Q Have you bid on any schools since the asbestos
9 free products have been on the market?

10 A Yes, sir.

11 Q Are you using asbestos-free products on these
12 school buildings now?

13 A Yes, sir.

14 MR. HOOD: Object to the
15 form of the question.

16 Q Have you made a search of any records you might
17 have at any branch offices?

18 A Pertaining to what?

19 Q Employees, products, job files, invoices, that
20 sort of thing.

21 A We have where they've been questioned.

22 Q Sir?

23 A Any that have been questioned we have. We're
24 checking on some now.

25 Q Mr. Covil, you talked about asbestos cloth and

X
1 the fact that we sometimes call when dust comes out - we call
2 that a liberation of dust. So, when I say dust is liberated,
3 I mean that when you're working with it, dust is emitted or
4 flies out. Is dust liberated when asbestos cloth is removed?

5 MR. HOOD: Object to the
6 form of the question.

7 MR. BRITTON: Are you
8 talking about removed from a box?

9 MR. MOTLEY: No, removed
10 from a job. You know, you go and tear down old insulation, and
11 you tear down the old insulation cloth, too. When you tear
12 down the old insulation cloth, is dust liberated?

13 MR. HOOD: Object to the
14 form of the question.

15 A I believe in the current treated asbestos
16 cloth, it is not in an amount that's harmful.

17 MR. HOOD: I withdraw the
18 objection.

19 Q And the cloth that's treated came on the market
20 after 1972?

21 A Yes, sir.

22 MR. HOOD: Object to the
23 form of the question.

24 Q In removing old asbestos cloth -

25 MR. HOOD: Note my objections

1 for the record before you move on.

2 MR. MOTLEY: You were
3 objecting to the form. I understand.

4 Q In removing asbestos cloth before it was treated,
5 was dust emitted or liberated when you removed it from old
6 insulation jobs?

7 MR. HOOD: Object to the
8 form of the question.

9 A I would say so. You're aware now that anytime
10 you're removing old insulation that contains asbestos that
11 there's certain OSHA regulations in how you do this.

12 Q Why don't you describe that for me and the jury,
13 what you put on when you remove this.

14 A Well, what I'm saying is that if you remove old
15 insulation that contained asbestos, like asbestos cloth, asbestos
16 cement and stuff like that, you have to put up a warning sign
17 that asbestos was being removed and it's a dust hazard, and
18 you have to take all this material off and put it in a plastic
19 bag and haul it off to a land filled dump.

20 Q To a land filled dump.

21 A Yes, sir.

22 Q Do you wear any additional protective clothing
23 when you do that?

24 A Yes, sir, most of them wear respirators which
25 is about the only protection you have.

1
2 Q Have you been to Dupont, any Dupont jobs, and
3 watched those fellows remove any old asbestos insulations since
4 1972?

5 A I have not.

6 Q Did you ever receive any correspondence from
7 any of these manufacturers, again, the same definition that
8 you're comfortable with - manufacturers of products, insulation
9 products, which contained asbestos?

10 A No, sir.

11 Q Did they ever send you any minutes or proceedings
12 of an organization known as the Asbestos Textile Institute?

13 A No, sir.

14 Q Did they ever send you any minutes or proceedings
15 of an organization known as the National Insulation Manufacturers
16 Association or NIMA?

17 A No, sir.

18 Q How about TIMA - the Thermal Insulation Manufac-
19 turers Association?

20 A No, sir.

21 Q How about the Magnesia, 85 per cent Magnesia
22 Manufacturers Association, or something like that?

23 A I don't think so. Of course, you know 85 per
24 cent Magnesia's been discontinued since about 1950.

25 Q But you don't recall ever receiving any minutes
from any of those proceedings?

1 A No.

2 Q Particularly, Mr. Covil, did you ever receive
3 from the Raybestos-Manhattan or Johns-Manville Corporation a
4 copy of an article, of a paper delivered in 1963 written by
5 Dr. Irving Selikoff, with regard to certain cancers and other
6 hazards associated with breathing asbestos dust by insulators?

7 MR. HOOD: Object to the
8 form of the question.

9 A I don't remember.

10 MR. HOOD: What was the
11 year of the question?

12 MR. MOTLEY: I asked him
13 of the paper delivered in 1963 and published in 1964.

14 Q I believe you testified that in 1967 you attended
15 a NICA convention at which Dr. Selikoff spoke.

16 A Yes, sir.

17 Q Was his name Irving Selikoff?

18 A Yes, sir.

19 Q I hand you this article, and ask you if any
20 of the manufacturers ever sent you a copy of that particular -
21 excuse me, if Raybestos-Manhattan or Johns-Manville Corporation
22 ever sent you a copy of that article?

23 MR. HOOD: Object to the
24 form of the question.

25 A I don't believe anybody ever sent me a copy of

1 that.

2 MR. MOTLEY: For the
3 record, this is entitled "Asbestos Exposure and
4 by Drs. Selikoff, Churg and Hammond, stated the journal of
5 the medical association April 6, 1964, and it states on the
6 bottom "read before a joint meeting of the sections on radiology
7 and diseases of the chest and the American College of Chest
8 Physicians at the 112th annual meeting of the American Medical
9 Association, Atlantic City, New Jersey, June 17, 1963."

10 Q How long have you had your computer system?

11 A About three years.

12 Q Three years?

13 A Yes.

14 Q So, it wasn't damaged in the fire.

15 A Well, no, the computer was not. We didn't have
16 it until after the fire.

17 Q I'm an old computer salesman. As a matter of
18 curiosity, what kind do you have?

19 A Burroughs B-700. We didn't have it. It was on
20 order and hadn't been delivered when we had the fire.

21 MR. CARPENTER: I object
22 to that last question.

23 Q I'm just going to run through these things real
24 quick to see if there's anything I want to touch on. We won't
25 be through, of course. Terry's got a lot of things tomorrow.

1 I won't be but a second, Mr. Covil, and we can quit for the
2 day. Mr. Covil, did you ever receive any written instructions
3 or requests from any of the manufacturers with whom you did
4 business after 1964 to use the cartons which allegedly contained
5 caution or warning labels before you - in other words, not to
6 place them in the rotation - let me ask you this: Did you rotate
7 your stock; first in first out?

8 A Yes, sir.

9 Q Did that apply to insulation products containing
10 asbestos?

11 A Yes.

12 Q Did you ever receive any instructions from any
13 manufacturers who sold you insulation products containing
14 asbestos from 1964 until 1972 asking you that you do not
15 rotate your products, but place on the shelves first cartons
16 which contained caution labels?

17 MR. HOOD: Object to the
18 form of the question.

19 A No, sir.

20 Q Do you have any copies of the Outlook Magazine,
21 any old copies of it?

22 A Yes, sir.

23 Q How far back do they go?

24 A Probably a couple of years. We usually keep
25 them a year or two years back.

1 Q I'm interested - and I don't want to unduly
2 burden you, Mr. Covil - but I'd like to see any of these
3 magazines dating back before 1972, please, if you've got any.
4 If you'd just look and see. You might have some laying around
5 the house or something.

6 A I'll look and see.

7 MR. ARNOLD: What magazine
8 was that?

9 MR. MOTLEY: Outlook.

10 Q What is pneumoconiosis?

11 MR. HOOD: Object to the
12 form of the question.

13 A I don't believe I know.

14 MR. MOTLEY: Mr. Covil,
15 thank you. Mr. Richardson will have some more questions for
16 you in the morning. I appreciate the courtesy extended,
17 gentlemen, so I don't have to come back.

18 MR. HOOD: Before we leave,
19 the questions of Mr. Richardson aren't that extensive, and
20 the witness would like to go ahead and get through so he can
21 work tomorrow.

22 MR. MOTLEY: What do you
23 mean the questions aren't that extensive.

24 MR. HOOD: I said if.

25 MR. MOTLEY: I'm sorry. He

1 has got three or four hours.

2 MR. HOOD: I'm sure Mr.
3 Covil has been tied up for two days. If you could finish
4 with him now, he wants to get finished. Let's go ahead.

5 MR. RICHARDSON: Bobby,
6 I've got to go back into all the products and all the
7 plaintiffs.

8 MR. MOTLEY: Mr. Britton
9 has requested on behalf of Mr. Covil that we adjourn around
10 five o'clock, and we'd be till nine or ten or eleven o'clock
11 tonight, I can tell you that.

12 MR. HOOD: I was just
13 giving him the opportunity, whatever he wants to do.

14 MR. COVIL: I'll come back
15 in the morning.

16 ADJOURNED AT 5:00 P.M.
17 QUESTIONING TO BE RESUMED
18 JULY 15, 1977, 9:00 A.M.
19
20
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25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE)

CERTIFICATE

3 I, SUE G. ASHLEY, a Notary Public for the State of
4 South Carolina at Large, do hereby certify:

5 That on the 14th day of July, 1977, there appeared
6 before me pursuant to notice, Palmer Covil, as a witness in
7 the above-entitled cause;

8 That the said deposition was then taken at the time
9 and place mentioned, 409 E. North Street, Greenville, South
10 Carolina, beginning at the hour of 9:20 a.m. and ending at
11 5:00 p.m. of said date;

12 That the appearances were as stated in page two (2)
13 herein;

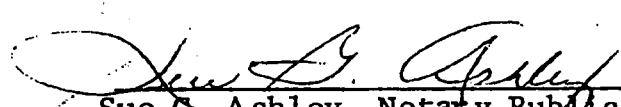
14 That the said witness was sworn by me and examined,
15 to tell the truth, and nothing but the truth in said cause;

16 That the foregoing testimony was taken by me in
17 shorthand and thereafter reduced to typewriting by me, and
18 pages one hundred thirty-six (136) through three hundred thirty-
19 seven (337) contain a full, true and correct transcription of
20 the testimony of said witness taken by me;

21 That the reading and signing of the witness to the
22 deposition was expressly waived by the witness and respective
23 counsel;

24 That I am not of kin or in anywise associated with
25 any of the parties to said cause of action, or their counsel,
and that I am not interested in the event thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and
seal this 26th day of July, 1977.


Sue G. Ashley, Notary Public
My commission expires 6/10/80.

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF SPARTANBURG SEVENTH JUDICIAL CIRCUIT
3 JERRY HOWARD CRAWFORD and EVELYN KAY CRAWFORD,
4 Plaintiffs,
5 vs. CASE NO. 2017-CP-42-04429
6 CELEANESE CORPORATION, et al.,
7 Defendants.
8

9 DEPOSITION OF: JERRY HOWARD CRAWFORD, Vol. I

10 DATE: February 6, 2018

11 TIME: 10:16 a.m.

12 LOCATION: The Sleep Inn
13 834 Windslow Avenue
Gaffney, SC

14 TAKEN BY: Counsel for the Plaintiff

15 REPORTED BY: JENNA B. PARSONS, Court Reporter
16
17
18
19
20
21
22
23
24
25

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10 ALSO PRESENT:

11 Eric Glacier, Videographer

12 (INDEX AT REAR OF TRANSCRIPT)

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1 (DFT. EXH. HW1, HW2, HW3, HW4, HW5,
2 HW6, HW7 for identification.)
3 BY MR. PHILLIPS: Deposition taken in accordance
4 with the South Carolina rules. All rights that it
5 provides are invoked -- the -- one objection by
6 defendant -- objections for all defendants unless
7 somebody disclaims it -- and what was the other --
8 yeah, and objections except to form of the question
9 as stated in the rules are reserved until time of
10 trial.

11 The video -- we have made special
12 accommodation to plaintiff's counsel to allow them
13 to shoot a direct examination de bene esse before
14 we take a cross-examination. We cannot guarantee
15 that for all cases, but for this case we were glad
16 to make that accommodation on the request.

17 MR. HENDERSON: If anybody needs to
18 make an objection, can you do it after he's
19 answered. I'm not going to argue that it wasn't
20 timely. I know sometimes it can be kind of
21 difficult; we're dealing with everyday folks, so I
22 just want to make sure that I put that on the
23 record also.

24 MR. PHILLIPS: We talk over each other
25 sometimes.

1 MR. HENDERSON: Every now and then.

2 Occupational hazard.

3 MR. PHILLIPS: That is right.

4 (Off record conversation took place.)

5 THE VIDEOGRAPHER: We are on the record
6 at 10:16 a.m. This is the videotaped deposition of
7 Jerry H. Crawford in the matter of
8 Jerry Howard Crawford and Evelyn Kay Crawford
9 versus Celeanese Corporation et al., cause number
10 2017-CP-4204429.

11 This deposition is being held at the
12 Sleep Inn at 834 Windslow Avenue in Gaffney, South
13 Carolina. Will the court reporter please swear in
14 the deponent.

15 JERRY HOWARD CRAWFORD
16 being first duly sworn, testified as follows:

17 THE WITNESS: I do.

18 THE VIDEOGRAPHER: Please proceed.

19 EXAMINATION

20 BY MR. HENDERSON:

21 Q. Good morning.

22 A. Good morning.

23 Q. Will you tell us your full name,
24 please.

25 A. Jerry Howard Crawford.

1 Q. Mr. Crawford, you ever have to answer
2 questions from lawyers before?

3 A. No, sir.

4 Q. You a little bit nervous today?

5 A. Just a little bit.

6 Q. Okay. I told you I'd start off with
7 some easy questions, all right?

8 A. Okay.

9 Q. Now, the lady who's sitting to your
10 right -- I told you she's got to write down
11 everything that gets said, okay?

12 A. Okay.

13 Q. So the one thing that will make her
14 really mad is if people talk at the same time, all
15 right?

16 A. Okay.

17 Q. And if she gets mad, she's going to
18 throw her shoe at me and not at you, okay?

19 A. Okay.

20 Q. All right. So I'm going to try to make
21 sure that -- make sure that you let me finish my
22 question before you answer. I'll let you finish
23 your answer before I ask you another question,
24 okay?

25 A. Okay.

1 Q. And every time I ask you something or
2 anybody else asks you something, you got to answer
3 out loud, all right?

4 A. Okay. I got it.

5 Q. She can't take down like nods, head
6 shakes, anything like that.

7 A. Right. I got it. I got it.

8 Q. All right. And the reason we've got
9 the video camera there at the back is because we
10 may have to show this tape in court some day, so
11 just kind of pretend that the jury is on the other
12 side of that camera lens, all right?

13 A. Okay.

14 Q. Now, Mr. Crawford, where do you live?

15 A. At 400 Pacolet Highway, Gaffney, South
16 Carolina.

17 Q. Were you born and raised in Gaffney?

18 A. Yes, I was.

19 Q. Lived any place else during your life?

20 A. Only in Blacksburg for a little while.

21 Q. That's South Carolina, also?

22 A. Yeah, South Carolina too.

23 Q. So born and bred in South Carolina?

24 A. Right. Yes, sir.

25 Q. Are you married?

1 A. Yes, sir.

2 Q. What's your wife's name?

3 A. Evelyn Kay Crawford.

4 Q. Y'all have kids?

5 A. Yes, we do.

6 Q. How many kids?

7 A. We have three.

8 Q. Okay. What are their names?

9 A. Danny Ray Crawford and Tessa Quinn.

10 Q. Yeah.

11 A. And Patty Giles.

12 Q. And I'm not going to make you name them

13 all, but you got grandkids too, don't you?

14 A. Oh, I do.

15 Q. How many grandkids?

16 A. Eight.

17 Q. Eight?

18 A. Yeah.

19 Q. I hear you got great-grandkids too?

20 A. Yeah, I got -- I got -- well, I got

21 four.

22 Q. Is that right?

23 A. Four. Yeah.

24 Q. Now, one of your grandkids just got

25 into Harvard; is that right?

1 A. Oh, that's right.

2 Q. Is that right?

3 A. She did.

4 Q. Are you going to help pay for that bill
5 for go to Harvard?

6 A. Oh, I'd like to. I really would.

7 Q. You're under oath.

8 A. I really would.

9 Q. Sitting here today, Mr. Crawford, are
10 you in good health?

11 A. No.

12 Q. Okay. Why do you say no?

13 A. Because I have lung cancer.

14 Q. Do you know what kind of lung cancer
15 you have?

16 A. All I know it's the type that is caused
17 by breathing asbestos.

18 Q. Let me ask it this way --

19 MR. PHILLIPS: Move to strike that.

20 MR. HENDERSON:

21 Q. Does the word mesothelioma mean
22 anything to you?

23 MR. PHILLIPS: Objection to the form.

24 THE WITNESS: Yes.

25 BY MR. HENDERSON:

1 Q. Why does it mean something to you?

2 A. That's the kind of cancer that is
3 caused by asbestos.

4 Q. Have you had -- I'm asking a yes or no
5 question now, okay?

6 A. Okay.

7 Q. Have you had conversations with your
8 doctors about what causes the type of cancer that
9 you have?

10 A. Yes, I have.

11 MR. PHILLIPS: Object to the form.

12 MR. HENDERSON:

13 Q. Based on the conversations you have had
14 with your doctors, what is your understanding of
15 what caused the type of cancer that you have?

16 MR. PHILLIPS: Object to the form.

17 THE WITNESS: My doctor told me that
18 asbestos is the only thing I can get it from.

19 BY MR. HENDERSON:

20 Q. Is there a time in your life when you
21 were exposed to asbestos?

22 A. Yes, sir.

23 Q. When was that?

24 A. In the year between 1970 and 1974.

25 Q. What was going on in your life between

1 1970 and 1974 that exposed you to asbestos?

2 A. That's the time I worked at Hoechst
3 fiber in Spartanburg.

4 Q. Here in Spartanburg, South Carolina?

5 A. Yes. Yes.

6 Q. Now, how were you exposed to asbestos
7 while you were working in the Spartanburg -- at
8 Hoechst in Spartanburg?

9 MS. SHOFNER: Object to the form.

10 THE WITNESS: McDaniels Construction
11 [sic] was installing new poly lines, and they had
12 to put -- it's got to have hot water pipes -- and
13 when it was putting the insulation -- cutting
14 insulation down, they put a good bit of dust in the
15 air.

16 MR. HENDERSON:

17 Q. Now, let's take a step back. You
18 mentioned something called poly lines.

19 A. Oh yeah.

20 Q. What kind of business was Hoechst in
21 Spartanburg?

22 A. It was a -- it was a fiber line.
23 They -- they had -- they made poly and it changed
24 it over to fiber.

25 Q. And what is poly?

1 A. It's a -- it's a -- that's where the --
2 the -- the whole process starts. You know, it's a
3 -- it's a -- what it looks like is a hot clear --
4 it's a hot -- white-like paste and it comes on a --
5 it comes out hot through the ceiling and it goes
6 over a drum and it goes through some -- the cooling
7 across and it goes back and it cuts it up into
8 little squares.

9 Q. What do you do with this? What do you
10 do with poly?

11 A. And then they transfer it over to
12 another department where they change it over to
13 fiber.

14 Q. So am I understanding you correctly,
15 poly is a type of fiber --

16 A. Yeah. Yeah.

17 Q. -- they made at Hoechst?

18 A. Yeah. Yeah. Okay. What it starts
19 off, it's poly, I know -- it's poly when it starts
20 off in the poly building. See, I worked in the
21 poly building -- what they call the poly building.
22 It's what they call it.

23 Q. And you answered my next question. I
24 was just fixing to ask you --

25 A. Yeah. Okay.

1 Q. -- where did you work?

2 A. Okay.

3 Q. You said the poly building?

4 A. Yeah. That's right.

5 Q. Can you describe the poly building for
6 the jury -- for folks who haven't seen it before.

7 A. Oh wow.

8 Q. How many floors did it have?

9 A. It's got -- I ain't sure exactly. I
10 know it's got at least three or four -- four I
11 think. It's at least three or four. I don't know
12 exactly.

13 Q. What floor did you work on?

14 A. Second floor.

15 Q. And what was your job on the second
16 floor in the poly building at Hoechst?

17 A. Oh, back then it was to change the
18 liquid poly -- the hot liquid -- to change it over
19 to chips and it then it goes in a big -- like a big
20 silo.

21 Q. And what exactly were you doing each
22 day when you did that job?

23 A. Just -- just -- all right. When I was
24 in on the continuous line when it completely came
25 out -- when it came out of the top -- over the top

1 -- you added -- when it was ready, you had to open
2 up a valve and let it come out on a great big
3 cooling drum.

4 It had water all over, and it was just
5 turning around. And then it would go through a
6 trough and then it goes through -- and then it goes
7 through to what they call a slicer-dicer. It cuts
8 it in little slices and then it goes in a big
9 container, but -- all right.

10 That was -- and when another line's
11 off, you -- when it got ready, you go to another
12 line. It was running. There was like several
13 lines running at one time. They take about an hour
14 a piece, and it was so many hours apart they keep
15 coming off.

16 And when I was -- I was working on the
17 other side too -- the continuous line, and they
18 just continuously -- run continuously.

19 Q. I'm going to ask you a couple of
20 follow-ups -- I'm sorry. Did I interrupt you?

21 A. No. No.

22 Q. I didn't meant to.

23 I'm going to ask you a couple of
24 follow-up questions to make sure I understand what
25 you are describing for us.

1 A. Okay.

2 Q. Let me start this way. When you worked
3 at Hoechst, did you work at the same location
4 during the entire time you were there or did you
5 work at more than one location?

6 A. Yeah, at more than one location.

7 Q. How many different locations did you
8 work at?

9 A. Oh, I know three locations.

10 Q. What were those three locations?

11 A. It was -- the poly building where they
12 run batches off, and the continuous poly building,
13 and also the warehouse.

14 MS. SHOFNER: I'm sorry. What was the
15 third one?

16 MR. HENDERSON: I believe he said
17 warehouse; is that right?

18 THE WITNESS: Warehouse. Warehouse,
19 yes.

20 MS. SHOFNER: All right.

21 MR. HENDERSON: Are you from South
22 Carolina because I didn't understand it the first
23 time; glad it wasn't just me.

24 MS. SHOFNER: I'm not from South
25 Carolina, but...

1 MR. HENDERSON: You can tell -- you can
2 who's from here can't you?

3 BY MR. HENDERSON:

4 Q. That's not your fault. We're just
5 saying that's our bad that we don't understand.

6 A. Oh, I can rephrase that.

7 MR. HENDERSON: No, it's okay.

8 MS. SHOFNER: No, no, you're good.
9 You're good.

10 MR. HENDERSON: Your answer was just
11 fine. The problem is with us; not with you. All
12 right?

13 THE WITNESS: Oh, okay.

14 BY MR. HENDERSON:

15 Q. So did you work at those three
16 locations in that order -- the poly building, then
17 the continuous line, and then the warehouse?

18 A. Oh, I'm sorry.

19 Q. You -- you told us that you worked at
20 three different places?

21 A. Oh, right. Yes. Yes.

22 Q. You said the poly building, the
23 continuous line --

24 A. Yeah.

25 Q. -- and then the warehouse?

1 A. Yeah.

2 Q. Did you work at those three different
3 places in that order? First, the poly building,
4 then the continuous line, and then the warehouse?

5 A. No, sir.

6 Q. Okay. Where did you work first when
7 you went out to Hoechst?

8 A. The poly building.

9 Q. Where did you work second?

10 A. The warehouse.

11 Q. And third?

12 A. Over there on the continuous line.

13 It's the poly building too. It's poly line too,
14 but it's continuous.

15 Q. So earlier you were describing the
16 process to us.

17 A. Uh-huh.

18 Q. What I want to ask you is: What was
19 your job when you worked in the poly building?

20 A. It's to -- I and some other guys would
21 -- when it got ready -- when the poly came out, we
22 would open it up -- the valves -- and let the poly
23 out -- actually, to change it over from the hot
24 liquid to change it over to little dices.

25 Q. You mentioned hot liquid. What's the

1 hot liquid? Is that the poly --

2 A. Yeah, it's the poly.

3 Q. -- or something else?

4 A. Yeah, it's the poly. It is the poly.

5 And it comes out up from over the
6 ceiling. That's where it came from. And then it
7 comes on the drum -- a cooling drum where there's
8 water all around it, and it's big. It continues to
9 turn it and then you pulled it off and when it
10 comes off you just roll it up with your hands. You
11 got to have gloves on. And it's wet gloves. And
12 then you rolled it up and you just lay it down.
13 And you take the end of it around up under the drum
14 on around and then you put it in the crossing
15 trough.

16 As you go by you let the flaps down --
17 little rollers -- that was made like a 45-degree
18 angle and you just set them down on the way across
19 and then you run it on through and put it in the
20 dicer back there at the back -- what they call --
21 what they call -- slicer-dicer is what they call
22 it.

23 Q. So do you believe you were exposed to
24 asbestos when you were working in the poly building
25 a Hoechst?

1 MS. SHOFNER: Object to the form.

2 THE WITNESS: Yes.

3 MR. HENDERSON:

4 Q. How?

5 A. Because when Daniel construction
6 company put in the new continuous line they was --
7 they had to have -- it's got to have steam pipes,
8 and they was cutting a lot of steam -- insulation
9 -- was cutting insulation and was creating a bit of
10 dust.

11 Q. You've mentioned a company called
12 Daniel a couple of times?

13 A. Oh yeah.

14 Q. And I want you to explain how Daniel
15 fit in with the work that was going on at Hoechst
16 when you were there.

17 MR. MAJOR: Object to the form.

18 THE WITNESS: Oh, Daniels [sic] is the
19 company that put the new lines in.

20 BY MR. HENDERSON:

21 Q. When you say the new lines, is that the
22 same as the continuous lines?

23 A. That's right. That is right. It is
24 the continuous line.

25 Q. But you've used that word lines a few

1 times. What do you mean when you say lines?

2 A. Oh, a line is the part where the poly
3 comes out and -- and it -- and it goes to --
4 through the trough and cooling and it goes in the
5 dicer -- the slicer-dicer.

6 Q. So is a line like an assembly line?

7 A. No, I wouldn't call it an assembly line
8 'cause it just -- when you get started, it just
9 keeps going. You have to keep watching it to keep
10 it going.

11 Q. I understand. If I follow you though,
12 there is more than one line out there processing
13 the poly?

14 A. Oh yes.

15 Q. How many were there total in the poly
16 building?

17 A. Okay. In the side that just runs the
18 batches off, it was -- I don't know exactly. I
19 know -- at somewhere around 12.

20 Q. If I understand you correctly -- and
21 you correct me if I'm wrong -- while you were
22 working in the poly building, construction was done
23 to create some new continuous lines?

24 A. Oh yes. Oh yes.

25 MR. MAJOR: Object to the form.

1 THE WITNESS: It was -- they made a new
2 building right beside of it -- exactly right beside
3 -- right to it.

4 BY MR. HENDERSON:

5 Q. Sometimes when we get an objection, I
6 may ask you a question a different way.

7 A. Oh.

8 Q. It's okay. You didn't do anything
9 wrong.

10 Was there any construction at Hoechst
11 while you were working there?

12 A. Yes, sir.

13 Q. What was constructed while you were
14 working at Hoechst?

15 A. The new continuous line.

16 Q. When did that construction happen while
17 you were at Hoechst?

18 A. It -- I can't remember exactly when,
19 but it was -- it was in that time range.

20 Q. Where were you working when the new
21 construction happened?

22 A. In the poly building.

23 Q. And where was this new construction in
24 relation to the poly building?

25 A. It was really -- it was right beside of

1 it because it was part of the poly building. It
2 was an addition. It was an addition to the
3 continuous -- to the -- to the side that runs the
4 batches off.

5 Q. And who did the construction?

6 A. Daniel Construction Company.

7 Q. Did that construction expose you to
8 asbestos?

9 MS. SHOFNER: Object to the form.

10 MR. MAJOR: Object to the form.

11 BY MR. HENDERSON:

12 Q. They don't like my question. It's
13 okay.

14 A. Oh.

15 Q. Did you hear my question okay?

16 A. I did.

17 Q. I can repeat it if you need me to. Do
18 you need me to? I'll say it again to be safe.

19 A. Okay.

20 Q. I'll tell you what's going to happen
21 though. I'm going to ask you my question, then
22 they are going to object. Then after they object,
23 you can answer, okay?

24 A. Okay.

25 Q. We were talking about construction of

1 the new continuous lines and my question to you
2 was: Did that construction expose you to asbestos?

3 MS. SHOFNER: Object to the form.

4 MR. MAJOR: Object to the form.

5 BY MR. HENDERSON:

6 Q. You can answer.

7 A. Oh yes, it did. It did because they
8 was cutting a lot of insulation and it was creating
9 a good bit of dust.

10 Q. Did you breathe that dust in?

11 MR. MAJOR: Object to the form.

12 THE WITNESS: Yes.

13 BY MR. HENDERSON:

14 Q. What were they cutting this insulation
15 for?

16 A. Oh, to go on steam pipes.

17 Q. And where were these steam pipes
18 located?

19 A. They was right next to the poly lines.
20 As a matter of fact, it was right -- it came down
21 and it went in where the hot water trough was
22 because the water had to be hot because it -- when
23 the poly came -- when the liquid came out of the --
24 where it came out over the top and went over the
25 drum and if it went through the water -- went

1 through water trough before it got to the
2 slicer-dicer. And then if it was too hot, it would
3 crack up and bust. It had to be a certain
4 temperature. It had to be warm.

5 Q. Right now, Mr. Crawford, are you
6 talking to us about the poly building or continuous
7 line building?

8 A. Both of them were the same.

9 Q. They were both built the same way?

10 A. Both of them had to go through a trough
11 -- a water trough.

12 Q. Did they both have steam lines?

13 A. Yes, they both had steam lines, yeah.

14 Q. And I'm calling it the continuous line
15 building. Is that the right name for that
16 building?

17 A. Yeah, that's what they called it, yeah.

18 Q. Okay. If I use a name that doesn't
19 make any sense, you correct me, okay?

20 A. Yeah. Yeah.

21 Q. Was there insulation on the pipes in
22 the poly building and the continuous line
23 building --

24 A. Oh, yeah. Oh, yes.

25 Q. No, that's okay. Make sure you let me

1 finish my question --

2 A. Oh, I'm sorry. I'm sorry.

3 Q. -- we're going to get in trouble, okay?

4 A. I'm sorry. I'm sorry.

5 Q. I don't want to get in trouble.

6 A. Okay.

7 THE VIDEOGRAPHER: Excuse me. Excuse
8 me, Mr. Crawford.

9 THE WITNESS: Yeah.

10 THE VIDEOGRAPHER: Try not to put your
11 arms over the microphone, please. Thank you.

12 BY MR. HENDERSON:

13 Q. Are you okay? He's worried about you
14 covering up your microphone.

15 A. Oh, I'm sorry. I'm sorry.

16 Q. It's all right. We got a lot of rules
17 in here, don't we?

18 A. Yeah. Yeah, I understand. That makes
19 sense. Okay.

20 Q. All right. But do you need a break?

21 A. No. No, sir.

22 Q. You going to tell me if you need a
23 break?

24 A. Yes, sir.

25 MR. HENDERSON: All right. Just so you

1 know, sometimes he covers 'cause he will have a
2 little pain in his chest.

3 THE VIDEOGRAPHER: Okay.

4 MR. HENDERSON: But if I see that
5 welling up, we'll take a break so it doesn't
6 interfere with the microphone.

7 THE VIDEOGRAPHER: Thank you.

8 MR. PHILLIPS: Objection to the
9 comment.

10 MR. HENDERSON: It does not need to be
11 on the record. Just letting him know, all right?
12 It's a comment on what?

13 MR. PHILLIPS: Just statement by
14 counsel on the record. It's not a question. Move
15 to strike.

16 MR. HENDERSON: Next time we will go
17 off of the record and I'll explain, if that makes
18 you feel better.

19 BY MR. HENDERSON:

20 Q. I was asking you about whether or not
21 there were steam lines in the poly building and in
22 the continuous line building.

23 Was there insulation on pipes on both
24 buildings or only one building?

25 A. Both buildings.

1 Q. Who repaired the insulation in the poly
2 building while you were working there?

3 A. Daniels Construction Company.

4 MR. MAJOR: Object to the form.

5 BY MR. HENDERSON:

6 Q. Do you remember how long construction
7 took place on the continuous line building?

8 A. It was several months. I can't even
9 remember exactly how long -- how many months.

10 Q. There's something I don't understand.
11 You said you were exposed to asbestos while they
12 were building the continuous building?

13 MS. SHOFNER: Object to the form.

14 THE WITNESS: Oh, yes, and after too.
15 I had to run the lines afterwards and then the dust
16 was still there.

17 BY MR. HENDERSON:

18 Q. So at the time they were building the
19 continuous line building, you were working in the
20 poly building, correct?

21 A. Yes, sir.

22 Q. So if you're working in the poly
23 building, how could you have been exposed to
24 asbestos when they were building the continuous
25 line building?

1 A. Because when they knocked the wall out,
2 they left a big -- a great big door in between. It
3 was -- it was just right next to it.

4 Q. While you were working in the poly
5 building and they were building the continuous line
6 building, would you ever have to walk near where
7 the construction was taking place?

8 MS. SHOFNER: Object to the form.

9 THE WITNESS: Yes, sir..

10 BY MR. HENDERSON:

11 Q. Okay. Why would you have to walk over
12 to where the construction was taking place?

13 A. Because the new -- the restrooms and
14 locker rooms were over there.

15 Q. Where did you go work after you
16 finished working at Hoechst?

17 A. Timken.

18 Q. What kind of business is Timken?

19 A. A roller bearing plant.

20 Q. I was going to ask you what they make,
21 but it sounds like they make roller bearings?

22 A. True.

23 Q. Where did you work when you worked
24 at --

25 (Someone sneezed.)

1 MR. HENDERSON: Bless you.

2 BY MR. HENDERSON:

3 Q. Where did you work when you worked at
4 Timken?

5 A. I worked at what they call plant
6 service.

7 Q. So what was your job there?

8 A. To keep the grease up, vacuum up around
9 the machines, and also to keep the grease mopped up
10 around where the -- all through the assembly lines
11 -- where they was putting -- where they changed --
12 where they made the bearings -- assembled them --
13 hauled them out and assembled them. And then it
14 run on through into packaging, all the way to the
15 back where it goes packs up in boxes, so I worked
16 all the way down through it.

17 Q. So did you work in the entire plant or
18 only in parts of the plant?

19 A. Yeah, I traveled through the entire
20 plant because also I had to clean up the cafeteria
21 in different parts of the plant. That was on the
22 weekends. That was the job on the weekends.

23 Q. Timken was only a weekend job?

24 A. No. During the week, I ran -- I worked
25 through the whole line. And on the weekends -- I

1 remember on the weekends I went through -- I
2 cleaned up the restrooms -- I cleaned up the
3 restrooms -- I mean the -- and the cafeterias.

4 Q. Can you remember about when you worked
5 at Timken?

6 A. Whoa. I think -- let me see.

7 Q. Let me ask it a different way.
8 Earlier, if I understood you correctly --

9 A. Yeah.

10 Q. You said you worked at Hoechst from '70
11 to '74?

12 A. Right.

13 Q. Did you go work at Timken as soon as
14 you stopped working at Hoechst?

15 A. Yes, sir, I think so 'cause it was --
16 yeah.

17 Q. So did you start working at Timken
18 around 1974?

19 A. Yeah, right around 1974, but I can't
20 exactly remember how many years, but...

21 Q. Did you work at Timken just about as
22 many years as you worked at Hoechst?

23 A. Oh, yeah, just about as many years,
24 yes.

25 Q. Where did you go work after you worked

1 at Timken?

2 A. C and A.

3 Q. What does C and A stand for; do you
4 know?

5 A. Collins and Aikman.

6 Q. And what kind of business is C and A?

7 A. Yeah, C and A?

8 Q. Yes, sir.

9 A. It's a -- they -- it was a finishing
10 plant. They finished upholstery for auto
11 upholstery.

12 Q. And what was your job when you worked
13 at C and A?

14 A. I had several jobs. I worked on the
15 line where they -- on the machine and took the
16 cloth off on the back.

17 Q. Took the cloth off the back of what?

18 A. Yeah. Yeah. Off the back of the
19 finishing machine. And one -- okay. At one time I
20 was taking the cloth off and putting it in the bag
21 and weighing it. And another time I was inspecting
22 it.

23 I was right behind where it comes down
24 -- when I was on the third shift, I was -- when the
25 cloth was -- when it run by, I had a clipboard and

1 a -- and a pen and inspected all night.

2 Q. So I see that little tag that says
3 inspected by and it gives a number -- that was you
4 at CNA?

5 A. Oh -- yeah. Yeah. I inspected to see
6 if there was any holes in it or anything -- I
7 remember that.

8 Q. I'm just teasing you. It's okay to
9 smile in here a little bit.

10 A. Yeah. Okay.

11 Q. All right. Do you remember about how
12 long you worked at C and A?

13 A. Wow. Oh, yes. I worked -- I remember
14 now. I worked until July 1980 because that's when
15 they closed down. That's when they closed down the
16 plant.

17 Q. Now, how did you remember that date so
18 well?

19 A. Because I remember they closed down,
20 and I was out of a job.

21 Q. Not the best memory, but it's a clear
22 memory?

23 A. That's right. Yes, sir.

24 Q. Mr. Crawford, have you ever done any
25 auto work?

1 A. Well, I helped my brother-in-law.

2 Q. Who is your brother-in-law? What's his
3 name?

4 A. Eddy Gene Clary. He was -- he was a
5 mechanic. He had a garage right in -- right in
6 front of his house -- one he built himself.

7 Q. So what were you doing over at
8 Eddie Gene's garage?

9 A. Well, I live right next to him. I live
10 right next to him.

11 Q. Were y'all -- we're y'all friends?

12 A. He was my brother-in-law, you know?

13 Q. And that means you could be friends and
14 could not be friends is why I ask.

15 A. Well, he was a nice guy.
16 Eddie Gene Clary -- he was a nice guy.

17 Q. Is that right?

18 A. He was.

19 Q. So when he lived next door to you, how
20 often would you be over at his garage?

21 A. All through the weekend -- through the
22 weekend.

23 Q. Pretty much every weekend or just
24 some --

25 A. Yeah -- yeah, just about every weekend.

1 Q. And what would you be doing over at
2 Eddie Gene's garage on the weekends?

3 A. Oh, Eddie had a lot of customers come
4 in and have brakes put on -- a lot of them because
5 he was so cheap. Matter of fact, he was cheap with
6 me too. Mine was a low price, you know, and he --
7 when he put them on -- oh, I would help him -- help
8 him prime up the brakes.

9 Q. Now, for folks who don't know -- what
10 does it mean to prime up brakes?

11 A. He would get up under there and -- what
12 they call bleeding. What I meant -- what I meant
13 was bleeding.

14 Somebody has to mash the -- the brakes
15 seem to be full of brake fluid first, you know, to
16 make sure it's slam full. And then you have to --
17 he'd get under it -- under the wheel -- and then it
18 would -- he'd tell you to start pumping it, pumping
19 it, pumping it -- pump it up.

20 And then he'd tell you to hold it. He
21 would take the -- the pipe that loosens the brake
22 pipe up and let the fluid come out to get the air
23 out of it. And then he'd tighten it back up and
24 then -- so yeah, I usually did that every weekend.
25 I was down there with him.

1 Q. Did you do anything else to help
2 Eddie Gene perform brake jobs at his auto shop?

3 A. It was -- okay. Yes, I'd help him blow
4 it out. Blow the dust out of it.

5 Q. What are you talking about?

6 A. I always had a lot of dust.

7 Q. Huh?

8 A. The brakes -- the brakes always had a
9 lot of dust in it --

10 Q. Okay.

11 A. I would help him blow it out.

12 Q. Now, hang on a second. What -- how do
13 go from bleeding brakes to blowing dust out? What
14 are you talking about?

15 A. Oh, no. When he first opened it up,
16 there'd be dust in there. He had to clean it out.

17 Q. Now, you got -- I warned you. I don't
18 know a lot about brake jobs, so I'm going to have
19 to ask you a bunch of basic questions, okay?

20 A. Okay. All right.

21 Q. When you say open it up, open what up?

22 A. Oh, first he would take -- the car is
23 jacked up. And then take -- you have to take the
24 lubes off to take the wheel off. And then that
25 little hub there -- you have to pull that out, and

1 that would be a -- it would be a lot of dust in
2 there that -- that's from the brakes wore out --
3 wore out brakes -- it would be a lot of dust in
4 there. And he just -- he had a air hose, and he'd
5 blow them out.

6 Q. Now, you're talking about Eddie Gene
7 blowing out the dust. Is that something that you
8 did or were you near him when he did it?

9 A. Yeah -- well, he did it mostly, mostly,
10 mostly -- most of it.

11 Q. So I want to make sure I understand.
12 Is this something you know he did or you actually
13 see him do it?

14 A. Yeah, I actually see him do it because
15 he had to -- to clean it off. Yeah.

16 Q. How close were you to Eddie Gene when
17 he did this?

18 A. I was right there in the building with
19 him, you know, right there with him.

20 Q. Like would you say in the building?

21 A. Yeah. Yeah. In the shop.

22 Q. Were you as close to him as you and I
23 are now, or further away?

24 A. Yeah, about as close as we are now.

25 Q. Okay. And we are probably about two or