

# KAZAN, McCLAIN, LYONS, GREENWOOD & HARLEY

*A Professional Law Corporation*

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April 14, 2010

## Via UPS Overnight

Dr. John Howard, Director  
NIOSH  
Mail Stop C-34  
4676 Columbia Parkway  
Cincinnati, Ohio 45226

04-19-10A08:16 RCVD

Re: **Asbestos Fibers & Other Elongate Mineral Particles:  
State of the Science & Roadmap for Research, Version IV  
Revised Draft Document for Public Review and Comment**

Dear Dr. Howard:

Thank you for the opportunity to submit comments regarding the Draft NIOSH Bulletin: *Asbestos Fibers and Other Elongate Mineral Particles: State of the Science and Roadmap for Research*. We are attorneys representing mesothelioma victims in personal injury and wrongful death lawsuits. Our office has represented numerous clients with mesothelioma over the last 35 years. Over the last few years, we have been investigating the role of talc in causing mesothelioma. We endorse and applaud the call for further research and study of other elongated mineral particles, particularly industrial talc mined from St. Lawrence County. Although NIOSH has reported that these minerals have been well-studied, most if not all of the science has been sponsored by, funded, and—in some cases—directed by R.T. Vanderbilt (hereinafter “RTV”), the owner and distributor of industrial talc from these Gouverneur area mines. There is an urgent need for independent scientific cell and animal studies of the carcinogenicity of talc mined from these areas. There is also an urgent need for a full, independent, epidemiological study of the entire population of RTV miners and millers and their families, as well as a more global study of workers and their families exposed to products containing talc from these mines. We strongly believe these studies will show that the pure talcs, along with tremolite- and anthophyllite-contaminated talcs, from these mines all cause lung cancer and mesothelioma and should be regulated as asbestos.

RTV has been at the forefront of lobbying OSHA and NIOSH to exempt its talc from asbestos regulations, a campaign that began in 1972 and continues to the present. The hidden and insidious truth, however, would be revealed through a study of the wide arc of death caused by

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RTV talc, beginning with the miners and millers of St. Lawrence County and expanding throughout the United States with workers dying of mesothelioma from the use of products containing RTV's talc as a constituent component, including paints, plasters and a myriad of other industrial products. We do not believe that any study has determined the actual of mesothelioma deaths of miners, millers and area residents from exposure to talc from RTV mines. The Honda study cited by NIOSH was funded by RTV. (See Attached Deposition of John Kelse, described below). Relying on Honda, NIOSH at page 26 reports, "Only two cases of pleural mesothelioma have been reported in the cohort studies of RTV miners and millers [Honda et al. 2002]." In fact prior to his 2002 study, through investigation and litigation discovery we know of at least 8 RTV workers, possibly 9, with documented cases of mesothelioma including:

- Winston McHeffey died of mesothelioma on May 28, 1981 (See McHeffey death certificate, Exhibit 1). His death certificate states that he worked in talc mining for International Talc Co. (predecessor to RTV).
- LeRoy Irving Smith died of mesothelioma on December 30, 1985 (See Smith death certificate, Exhibit 2). His death certificate states that he worked for RTV.
- Lynn D. Hall died of mesothelioma in 1985. He worked at Loomis and International Talc (predecessors to RTV). Mrs. Hall testified at the MSHA hearing in Canton, NY in 2002 regarding her husband's death. (see Hall testimony, Exhibit 3) Mr. Kelse from RTV attended the hearing.
- George Serviss, who died of mesothelioma in 1988. (See pathology report, Exhibit 4)
- Bernard Bickford died of mesothelioma on June 4, 1994 (in Jefferson County). He filed a worker's compensation claim for his exposure to talc from Gouverneur Talc Company, which was owned by RTV (See death certificate, Exhibit 5).
- George Evans died of mesothelioma on June 10, 1995. He worked in talc mining for Gouverneur Talc Co. (See Evans death certificate, Ex. 6).
- Lawrence Malbeuf died of mesothelioma September 6, 1995. He worked in mining for Gouverneur Talc Co. (See Malbeuf death certificate, Exhibit 7).
- Robert Allen Rice died in 2001 of respiratory failure secondary to pleural effusion, due to "pleural tumor." His death certificate states that he worked in talc mining at Gouverneur Talc Co. The death certificate expressly lists "Talcum exposure" as significant and contributing to his death (See Rice death certificate, Exhibit 8).

An additional possible pre-2002 mesothelioma death includes:

- A worker who died on May 10, 1994 of "cancer of the lung and pleura" due to or as a consequence of "occupational lung disease," worked in mining for Gouverneur Talc Co. (See death certificate, Ex. 9, produced in litigation and

redacted as to the worker's identity by RTV ).

Further, since the 2002 Honda study, at least 5 additional mesotheliomas have been documented, including:

- Ray Labow died of mesothelioma on November 10, 2005. He worked in the talc mines for Gouverneur Talc Co. He died in St. Lawrence County. (see Labow death certificate, Exhibit 10)
- Donald Lozo died of mesothelioma in August of 2005. He was exposed to talc dust from his own work with talc at the Carbola Talc Mine, predecessor to RTV, and from his father's clothes. His father Alfred Lozo worked at the mine beginning in the 1930s (See news article, Exhibit 11).
- Catherine Lozo, sister of Donald Lozo, also died of mesothelioma from exposure to talc dust on her father's clothing (See news article, Exhibit 11) .
- Mary Lozo, wife of Alfred Lozo and mother of Donald Lozo, also died of mesothelioma from exposure to talc dust on her husband's clothing (See news article, Exhibit 11).
- Brent Gale died of mesothelioma on January 6, 2007. He worked for International Talc and Gouverneur Talc Co. His worker's compensation claim is being handled by the office of Oot & Associates in Syracuse, New York.

In his 2002 paper, Honda also questioned whether the two mesotheliomas he did report were caused by exposure to RTV talc, resulting in NIOSH's statement that "It is unclear whether these cases are attributable to exposure to talc at the RTV mine and mills" (Report, page 26). Honda's first case "had only worked for a short time in a job with minimal talc exposure, had previously worked for many years in the construction of a talc mine, and had subsequently worked on repairing oil heating systems" (Report, page 26). Honda does not explain, however, why "many years in the construction of a talc mine" would not result in substantial talc exposure, does not confirm whether that talc mine was an RTV mine, or provide any evidence of actual alternative exposures for any later "repair work on oil heating systems" or if that work was within the latency period. The second case reported by Honda "developed only 15 years after first exposed to RTV talc." Honda failed to report whether that worker had previously worked for RTV's predecessor International Talc for an extended period of time in the same mines, which would thus put the earliest exposure well before 15 years. Many RTV miners had worked in the same mines previously owned by International Talc, but these workers were fired in 1974 when RTV purchased the mines, and re-hired by RTV as new workers after being screened for lung abnormalities. Workers showing disease were not rehired. Honda's reported 15 year latency case may have had prior International Talc exposure that went unreported in Honda's study.

The scientific literature does not at all address deaths from exposure to RTV industrial talc included in industrial products and marketed throughout the United States. RTV has been



named in hundreds, if not thousands of lawsuits, many alleging mesothelioma and lung cancer. None of these mesotheliomas or lung cancers have been the subject of epidemiological analysis. NIOSH should add a study of these workers to fully assess the scope of the epidemic of mesotheliomas and lung cancers caused by talc from the RTV mines. For example, at least three mesotheliomas have been reported from exposure to Vanderbilt's talc used in industrial plasters at foundries in Wisconsin and California. (see, Exhibit 12, complaints filed against RTV or International Talc's alias St. Lawrence Liquidating Trust). While mesotheliomas have been attributed in foundry work to exposure to asbestos, many foundry workers used industrial plasters that only industrial talc from the Vanderbilt mines. These workers should be studied for their talc exposure.

New independently funded studies of St. Lawrence County miners and millers are needed. Many of the existing studies reporting equivocal findings regarding the carcinogenicity of talc fibers were funded by, and in some cases directly supervised by RTV. RTV's involvement and sponsorship of these studies has not always been disclosed by the researchers.

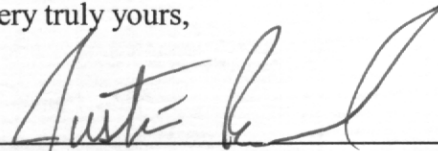
- ◆ **Wylie, Skinner et al. (1997):** Dr. Anne Wylie (listed as peer reviewer for this NIOSH report) began working as a consultant for RTV in the 1970s and testifies for RTV in litigation against asbestos victims. We submit for the panel's review Dr. Wylie's deposition in a recent mesothelioma case, with attached emails showing correspondence between Dr. Wylie and John Kelse of RTV during the course of this study (Exhibit 13).
- ◆ We submit for the panel's review as Exhibit 14 a copy of RTV Environmental Affairs Director Al Harvey's 1987 deposition, wherein he describes RTV's commissioning or involvement in the following studies: **Smith, et al. (1979); Still and Tabershaw (1982); Lamm, et al. (1988); Lamm and Starr (1988).**
- ◆ NIOSH cites to a White Paper written by **John Kelse**, RTV's in-house risk manager. Mr. Kelse is an advocate for RTV, not an objective scientist. He has no scientific credentials. He holds a B.A. in psychology. As RTV's risk manager, he has made a career out of promoting RTV's talc as a safe product, and has denied and ignored and attempted to explain away the epidemic of mesotheliomas from the R T Vanderbilt mines and mills. A copy of his recent depositions in a mesothelioma case is included as Exhibit 15.
- ◆ **John Gamble:** Dr. Gamble worked for NIOSH at the time of his research, and was admonished and demoted by NIOSH because he did not follow proper NIOSH protocol to maintain scientific objectivity while studying RTV's facility.

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- ◆ **John Gamble, Arthur Langer, Anne Wylie, and C.S. Thompson** are all RTV paid litigation expert witnesses (See Exhibit 16, RTV litigation expert disclosure).
- ◆ **Oestenstad, et al. (2002):** RTV provided the information regarding workers that are the subject of the study, including personal medical information that it did not obtain authorization from the worker to release. RTV corresponded routinely with the researchers about the papers while the studies were being conducted and the papers written. RTV also gave at least one donation to Dr. Oestenstad and the University of Alabama upon his study's completion.

The findings in the studies and papers described above are therefore not reliable and merely underscore the urgent need for further research. All of the exhibits mentioned above are included on a disc enclosed with this letter. We urge NIOSH to conduct further, independent research on these matters.

Very truly yours,



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Denise Abrams  
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Enclosure

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April 15, 2010

## Via UPS Overnight and Electronic Mail

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Mail Stop C-34  
4676 Columbia Parkway  
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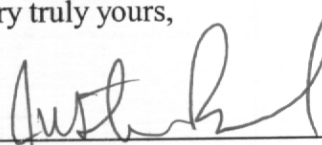
Re: **Asbestos Fibers & Other Elongate Mineral Particles:  
State of the Science & Roadmap for Research, Version IV  
Revised Draft Document for Public Review and Comment**

Dear Dr. Howard:

Enclosed, please find the disc that was inadvertently left out of the envelope that was sent overnight to you yesterday.

I apologize for any inconvenience this may have caused.

Very truly yours,



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Justin Bosl

JAB:rew  
Enclosure