

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF ALAMEDA

3
4 ERIC WESTON, :
5 Plaintiff, :

COPY

6 VS. : NO. RG 08-426405

7 ASBESTOS CORPORATION LIMITED, :
8 et al. :

9 Defendants.

10 VOLUME II

11 VIDEOTAPE DEPOSITION OF JOHN KELSE

12 DATE: Wednesday, August 26, 2009

13 HELD AT: Marriott Stanford

14 243 Tresser Boulevard

15 Stamford, Connecticut 06901

16 Reporter: Marian E. Cummings, LSR #472
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21 JEFFREY C. BROHEL, ESQ.

22

23 Litigation Counsel, R.T. Vanderbilt

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25 JACOB BRANDON, VIDEOGRAPHER

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27 Brandon Smith Reporting & Video

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(Exhibits are attached to deposition transcript.)

1 STIPULATIONS

2
3 It is stipulated by counsel for the parties
4 that all objections are reserved until the time of
5 trial, except those objections as are directed to the
6 form of the question.

7 It is stipulated and agreed between counsel
8 for the parties that the proof of the authority of the
9 Notary before whom this deposition is taken is waived.

10 It is further stipulated that any defects in
11 the Notice are waived.

12 It is further stipulated that the reading and
13 signing of the deposition transcript by the witness
14 may be signed before any Notary Public.

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P R O C E E D I N G S

1
2 THE VIDEOGRAPHER: This is the
3 videotaped deposition of John Kelse taken
4 by the plaintiff in the matter of Weston
5 versus Asbestos Corporation Limited, et al.
6 This case is filed in the Superior Court of
7 California, Docket Number RG 08-426405.

8 This deposition is being held at 243
9 Tresser Boulevard, Stamford, Connecticut on
10 August 26, 2009. My name is Jacob Brandon
11 from Brandon Smith Reporting and Video
12 with offices in Hartford, Connecticut. The
13 court reporter is Marian Cummings from
14 Brandon Smith Reporting and Video with
15 offices in Hartford, Connecticut.

16 We're now going on the record at
17 10:19 a.m. Counsel will now state their
18 appearances, for the record, please, after
19 which the court reporter will swear in the
20 witness.

21 MS. ABRAMS: Denise Abrams and Will
22 Ruiz for the plaintiff.

23 MR. RADCLIFFE: Tom Radcliffe for
24 R.T. Vanderbilt Company, Inc.

25 MR. LEE: Simon Lee from Siegel

1 McCambridge on behalf of DAP,
2 Incorporated.

3 THE VIDEOGRAPHER: Anybody on the
4 phone?

5 MR. DAVIS: Good morning. Mark Davis
6 for Kaiser Gypsum Company, Inc. with the
7 law firm of Hassard Bonnington.

8 MR. EPSTEIN: Morning. Mark T.
9 Epstein of McKenna, Long & Aldridge, LLP,
10 appearing for Certainteed Corporation.

11 MR. CHON: Richard Chon from Perkins
12 Coie for Georgia-Pacific.

13 MR. JACKSON: Warren Jackson for
14 Cyprus Amax Minerals Company.

15 MS. GILLEN: Linn Gillen, Foley &
16 Mansfield on behalf of Calavares Asbestos
17 Limited and the University of California
18 Regents.

19 MR. DONATON: Adam Donaton with
20 Walsworth, Franklin, Bevins & McCall
21 representing W.W. Henry and the Henry
22 company.

23 MR. DEANE: Jeffrey Deane of Selman
24 Breitman for RT Vanderbilt Company, Inc.

25 JOHN KELSE,

1 (after being first duly sworn or affirmed,
2 was examined and testified as follows:)

3 DIRECT EXAMINATION

4 BY MS. ABRAMS:

5 Q. Good morning, Mr. Kelse.

6 A. Good morning.

7 Q. As you know, we are here on the
8 second day of your deposition as the person
9 most qualified and custodian of records for
10 the R.T. Vanderbilt Company in this case. You
11 understand you're here in that capacity?

12 A. I understand I'm here to answer the
13 questions as best I can.

14 Q. Well, sir, let me show you again
15 the Notice of Deposition. We have a copy of
16 it here, which was attached to the first
17 volume of your deposition which is the reason
18 that you're here to talk to us today. And you
19 have been designated for bringing documents
20 and discussing 76 categories of documents.

21 MR. RADCLIFFE: That's not accurate.

22 BY MS. ABRAMS:

23 Q. Excuse me, 56 categories of person
24 most qualified information with the exception
25 of two categories of information that

1 Mr. Thompson has been designated for regarding
2 Mouldene and correspondence with Johns
3 Manville, and I think several categories of
4 information regarding sales, and other than
5 that, you have been brought here today
6 pursuant to this notice.

7 Have you in the interim between your last
8 deposition and this deposition reviewed the
9 Notice of Deposition in this case and why
10 don't you show him a copy of the notice.

11 MR. RADCLIFFE: I'm going to object
12 to that very long predicate as not being a
13 question and being a statement by counsel
14 for plaintiff as not being accurate and not
15 part of the question. The question is
16 compound. Go ahead and answer.

17 A. Whether or not I had seen this
18 document?

19 BY MS. ABRAMS:

20 Q. We can start there. Have you seen
21 that document before? We showed it to you at
22 your last deposition and asked if you had seen
23 it and you said no, so I'm asking in the
24 interim, have you reviewed that Notice of
25 Deposition for which you're being produced

1 today?

2 A. No. My understanding is I'm here
3 to respond to questions that pertain to
4 technical aspects of the case because I do
5 keep all of the technical records in my office
6 from an occupational health standpoint since
7 it's my job at the company.

8 Q. I move to strike the response and
9 ask you again, Mr. Kelse. Between the time
10 that we first met and your first deposition
11 and today, have you reviewed the notice of
12 deposition in front of you?

13 A. No.

14 Q. Have you in any other way learned
15 of the categories of information that you have
16 been designated as the person most qualified
17 here today to speak on behalf of the R.T.
18 Vanderbilt Company?

19 MR. RADCLIFFE: Objection, vague,
20 ambiguous.

21 A. The attorneys have explained to me
22 that my role is to explain as best I can what
23 I know from my technical records and my
24 experience at Vanderbilt on the issues that
25 relate to this case.

1 Q. So other than your role in the
2 technical aspects of the issues as you
3 understand them that relate to this case, did
4 you do anything or talk to anyone to become
5 educated or learn about information that is
6 being asked in the notice of deposition?

7 A. Well, I've been involved over the
8 last week with Mr. Radcliffe in the sense of
9 going through my records and files. And it
10 was explained to me that that exercise was to
11 extract information that would be pertinent to
12 the case. My role was to show the attorneys
13 where the records were kept, basically what
14 the records were, and they proceeded to copy
15 them.

16 Q. Where did you show them the records
17 were?

18 A. At my office.

19 Q. Inside your own office?

20 A. Inside my own office and adjacent
21 areas to my office.

22 Q. What adjacent areas?

23 A. There's a fax machine and a copy
24 machine area that's just 20 feet away where
25 there's a bank of file cabinets and a couple

1 of file cabinets are devoted to information
2 that pertains to New York State Talc.

3 Q. Did you show the attorneys a locked
4 room with historical files in it?

5 A. There is a room probably 40 feet or
6 so away where we had some old records, I think
7 probably a couple of file drawers, two or
8 three file drawers of records.

9 Q. Did you show that room to your
10 attorneys?

11 A. Yes, I did.

12 Q. What else is in that room besides
13 two to three file drawers?

14 A. Records that pertain to New York
15 State Talc. The others are patent files and
16 research and development on chemical products
17 and things of that nature.

18 Q. Did you look in those files?

19 A. Well, there would be no need to
20 look in those files for those are files for
21 other types, we sell over 700 products.

22 Q. So is it fair to say that you did
23 not search for files regarding Mouldene talc
24 and the patenting or any other information,
25 research information in those files for

1 Mouldene talc?

2 MR. RADCLIFFE: Objection, misstates
3 prior testimony.

4 A. Well, the files that pertain to New
5 York State Talc which would incorporate
6 information relative to Mouldene would be in
7 the files that I indicated. They wouldn't be
8 anywhere else.

9 Q. Did you find a file called Mouldene
10 talc patent information in the New York State
11 Talc files?

12 A. Patent information?

13 Q. Correct.

14 A. No, that wouldn't be in those files
15 because I'm risk, I'm not patent.

16 Q. But there are a set of files in
17 that room that contain patent information,
18 correct?

19 A. I don't know one way or another.

20 Q. Didn't you just testify that there
21 is a bank of files in there and some of the
22 information in the files includes patent
23 information?

24 A. Yes, on some 6- or 700 products.

25 Q. Understood. And is it fair to say,

1 sir, that you did not search those files for
2 any information on Mouldene?

3 MR. RADCLIFFE: Objection, vague,
4 ambiguous, misstates prior testimony.

5 A. I don't really know how to answer.
6 I keep files on risk. I don't keep files on
7 patents.

8 Q. Sir, does the R.T. Vanderbilt
9 Company keep files on patents?

10 A. Of course.

11 Q. Did you search any R.T. Vanderbilt
12 files for the patent for Mouldene?

13 A. No.

14 Q. Is it fair to say, sir, that in the
15 interim, the last period of time between your
16 last deposition and this deposition, the only
17 files you searched and the only place that you
18 directed your attorneys was to information
19 regarding your work and your files?

20 MR. RADCLIFFE:

21 Objection, misstates --

22 A. I directed them to the files that I
23 know contain information relative to New York
24 State Talc from a risk perspective.

25 Q. And that is the only information

1 that you disclosed, the files for New York
2 State Talc from a risk perspective; is that
3 correct?

4 MR. RADCLIFFE: Objection, vague and
5 ambiguous.

6 A. Those are the files that I'm
7 responsible for keeping, yes.

8 Q. And with respect to any other
9 department of the RT Vanderbilt Company or any
10 other area that might bear on this case, that
11 may be in files at the RT Vanderbilt Company,
12 but may not be in your technical files or your
13 files with respect to risk management, you
14 left that to somebody else to determine and
15 take care of; is that right?

16 MR. RADCLIFFE: Objection,
17 argumentative.

18 A. I really don't know how to answer
19 that question. I maintain information on New
20 York State Talc as part of my files as I
21 maintain risk information for any of our other
22 products that exist. And to the extent that
23 questions arise as to the mineral composition
24 of talc and the risk associated with that
25 talc, as best we have information, I am the

1 keeper of that information, that's my job,
2 that's what I keep. What other people keep in
3 their files and what they have in their file,
4 I can't imagine why that type of information
5 would be anywhere else other than with me.

6 Q. Well, you don't have patent
7 information, correct?

8 A. Nor would it apply to me, no.

9 Q. And in your opinion, it doesn't
10 apply to the case; is that right?

11 A. I don't have an opinion one way or
12 the other about it. It's just not something
13 that I'm responsible for or particularly
14 interested in.

15 Q. So if it was out of your area of
16 expertise, then is it fair to say you didn't
17 look for it or talk to anyone else with
18 respect to finding documents for this case or
19 educating yourself on information that might
20 be outside your area?

21 MR. RADCLIFFE: Objection, compound,
22 misstates prior testimony, assumes facts
23 not in evidence.

24 A. I would be interested in
25 information that pertains to my area of

1 responsibility, period.

2 Q. Let me ask you something, sir. If
3 you were told that you were going to be the
4 representative of the company in a certain
5 area and you were going to speak for the
6 company, in speaking for the company would you
7 rely solely on yourself to determine what you
8 should say and what you might have to gather
9 up in order to do that?

10 A. I would rely only on my best
11 knowledge or understanding of the issues of
12 the question that you pose to me. I would try
13 to answer it as fully and completely as I
14 could and that's all I can do.

15 Q. I'm not talking about in the
16 litigation matter. I'm talking about if you
17 were speaking on behalf of the company, for
18 example, on an corporate matter, would you
19 talk to other corporate individuals to
20 determine the range of information that you
21 would need to make that effort?

22 MR. RADCLIFFE: Same objections.

23 A. I would defer -- if I were asked
24 questions on issues that I was not responsible
25 for or knowledgeable about or if I felt there

1 were others who knew more about that subject,
2 like patents or quality or other issues, I
3 would defer to those individuals to speak
4 about their area of expertise because I think
5 you would get more complete information that
6 way than have me make assumptions and -- so in
7 other words, I would want the person who knew
8 the most about that topic to be the person you
9 speak to.

10 Q. Who would you consult to learn
11 about historical information on patents?

12 A. Patents, the employee that did most
13 of the patents unfortunately is deceased. I
14 think her name was Rasma (phonetic) Balodis,
15 B-A-L-O-D-I-S, and I believe she passed away
16 seven or eight years ago.

17 Q. Where were her files kept?

18 A. They were kept in what was known as
19 the R & D library and then they were
20 subsequently moved into these banks of files,
21 into this locked room that you mentioned
22 before, which is a room just off the old R & D
23 library.

24 Q. And who is responsible for her
25 files at this time?

1 A. At this time, I don't know for
2 certain so I'd rather not say.

3 Q. That's something you could find out
4 if you asked somebody?

5 A. Sure.

6 Q. And what else is in the room, and
7 I'm assuming this is the room you told us
8 about that has a key and you have the key; is
9 that correct?

10 A. I have the key, other people have
11 the key.

12 Q. What else is in that room besides
13 the New York State files on New York State
14 Talc and the historical files on patents,
15 what else is in there?

16 A. There's several bookcases that
17 contain some reference materials mainly
18 related to rubber chemicals, journals and
19 things of that sort that are used by the
20 rubber chemists. That's probably the biggest
21 product line of the company are rubber
22 chemicals. There's also reference and
23 journals and documents linked that are used by
24 chemists in the area of lubricants, things of
25 that nature, ceramic information because the

1 company is broken up into these various
2 product lines.

3 Q. Do you keep formulas, do you know,
4 for other customer products?

5 MR. RADCLIFFE: Objection to form,
6 vague and ambiguous.

7 A. Well, for every product, all six or
8 seven hundreds of them, for every product
9 there's a chemical structure and that's
10 available in the product literature.

11 Q. Perhaps I wasn't clear. For
12 example, if a company was making a product
13 that included a New York State Talc component
14 to it, would you -- let me finish my
15 question -- would you have any formulas or
16 batch information regarding their product and
17 how they use the talc in their product?

18 A. I can say that generally we
19 wouldn't, but I cannot swear that we might not
20 because our research and development group and
21 our sales group are technical or research and
22 development, obviously, would be and they do
23 interface with customers and they do discuss
24 the application and uses of our products and
25 their formulations and so forth. More often

1 than not, ultimate formulations are -- by
2 customers are proprietary, they keep them to
3 themselves.

4 Q. If there were files from a customer
5 that had that information, where would those
6 be kept?

7 A. If such information existed, they
8 would be kept in the R & D departments that
9 were linked to that particular product line,
10 such as the rubber lab or the lubricant lab.

11 Q. Did you search any R & D files for
12 information on customers that may have used
13 Mouldene in their products?

14 MR. RADCLIFFE: Objection, vague and
15 ambiguous.

16 BY MS. ABRAMS:

17 Q. Do you understand the question?

18 A. I do. That would not be -- that
19 would not be an area that I would have any
20 interest in.

21 Q. Well, whether you're interested in
22 it or not, did you search for any files in the
23 R & D department that may have pertained to
24 the use of Mouldene in a customer's product?

25 A. Well, my area is risk so my area is

1 not product applications.

2 Q. Move to strike as nonresponsive.
3 Could you read the question back and please
4 answer the question.

5 (Whereupon, the court reporter read
6 back the previous question.)

7 A. And the answer is no for the reason
8 I gave you.

9 Q. Who would have access to those
10 files, if they existed?

11 A. Certainly the research and
12 development personnel responsible for those
13 product lines.

14 Q. Well, who would that be, who was in
15 charge?

16 A. The company's broken up into
17 different sales group. I think I mentioned
18 that once before, so you would have -- the
19 largest department would be the rubber
20 department. So there is a sales manager that
21 heads the rubber department.

22 Q. Who is that?

23 A. I don't think it's Ken Kelly any
24 longer. I'm not sure. I would have to check.

25 Q. Is this someone who is in charge of

1 specialty products?

2 A. I'm not sure we even have a
3 specialties department anymore. It used to be
4 a fellow by the name of McCausland (phonetic)
5 and Jim McCausland also died four or five
6 years ago.

7 Q. And where are his files kept?

8 A. They would be in the sales area of
9 the company.

10 Q. Did you check at all with any of
11 the sales people in searching for documents in
12 response to our notice asking for documents?

13 MR. RADCLIFFE: Excuse me, could you
14 read back that question?

15 (Whereupon, the court reporter read back the
16 previous question.)

17 MR. RADCLIFFE: Objection. Beyond
18 the scope of the designations for this
19 witness. Go ahead.

20 A. No.

21 Q. Do you know if anyone at the R.T.
22 Vanderbilt Corporation has searched for any
23 records regarding Mouldene or any Mouldene
24 customer information or other information in
25 the sales department at the R.T. Vanderbilt

1 Corporation?

2 MR. RADCLIFFE: Same objection.

3 A. I'm not aware of any.

4 Q. You -- just going back to this
5 locked room that you have a key, you, I
6 believe, in your prior deposition you said
7 that there was a locked file that said see
8 John Kelse and you're the only one that had
9 the key to that, do you remember that
10 testimony?

11 A. Yes, I do.

12 Q. What was that file?

13 A. Those are -- there are two file
14 cabinets, five drawers in each, and old
15 records on dealing with New York State Talc
16 risk aspect of it, mineralogy aspect of it,
17 reference documents linked, you know, to that
18 subject, most of which I have working copies
19 in my own office for so these are more
20 historical, but that's what was in those two
21 file cabinets. So they -- because they were
22 not really working files, documents that I
23 refer to or really use because I have the
24 originals or because I have copies in my
25 office, so it was just the storage for those

1 types of records so that's what's in those two
2 file cabinets.

3 Q. So that's ten file drawers, sir?

4 A. Well, they're not all full with
5 that. I've put other information in some of
6 those drawers to get them out of my office and
7 make room to expand some of the talc files in
8 my own office, so it's no longer that many
9 drawers. It's maybe four, four or five, and
10 these were drawers that I directed the
11 attorneys to, I believe that they copied the
12 material in those records.

13 Q. You mentioned that -- I believe you
14 mentioned last time that you had
15 questionnaires and underlying data information
16 I believe for the Honda study, correct?

17 A. That's correct.

18 Q. Did you direct your attorneys to
19 that information?

20 A. I did.

21 Q. Was that in the locked drawers that
22 we're talking about?

23 A. No, that was in my office.

24 Q. And did that information get copied
25 and produced?

1 A. Yes, they got copied. You'll have
2 to ask the attorneys if it was produced.

3 MS. ABRAMS: Just for the record, at
4 this point we have no idea what was
5 produced because it was produced on disk
6 and we have not been able to obtain hard
7 copies here, so with respect to anything
8 that was produced yesterday on disk, we
9 reserve our right to redepose the witness
10 on any of that information and any new
11 information.

12 And I just also state for the record
13 that in meeting and conferring with
14 Mr. Chusid last week, we explained that if
15 we were to get any new documents we needed
16 them by last Friday and if we were to get
17 anything here at the deposition we needed
18 it in hard copy so that we could review it
19 and we did not get that. And I understand
20 that there's been an effort made to get us
21 information, but in terms of deposing the
22 witness, it's unavailable to us to review
23 at the moment.

24 MR. RADCLIFFE: I understand that you
25 met and conferred with Mr. Chusid last

1 week. I don't know if your description is
2 accurate or not. I'm happy to tell you for
3 the specific documents that you've just
4 requested, I'm happy to tell you where they
5 are located on the CD that I provided to
6 you so that you can look at them right now,
7 if you wish.

8 MS. ABRAMS: Are you saying you have
9 an index of the documents?

10 MR. RADCLIFFE: I do not. I just
11 happen to know the particular file number
12 for those documents. I happen to know the
13 particular file numbers for a number of
14 documents, but that's one of which I know.

15 MS. ABRAMS: As I said, I reserve the
16 right to redepose the witness after I can
17 properly review the information that's been
18 given to us and not waste a lot of time
19 sitting here trying to look on a computer
20 at probably hundreds of pages.

21 MR. RADCLIFFE: Mr. Ruiz is here,
22 you don't have to do it. We want to get
23 finished. I understand your reservation.
24 I don't agree with it.

25 MS. ABRAMS: You don't have to agree

1 with it.

2 BY MS. ABRAMS:

3 Q. How many pages are on the
4 questionnaires for the Honda study? Was it a
5 file drawer full?

6 A. No, I would say it's the backup
7 data that I had in the file which included
8 those and everything else that I had that
9 pertained to the Honda study is a stack of
10 paper from here to about here, so I'm
11 indicating of about five or six inches.

12 MS. ABRAMS: Thank you. Why don't
13 you -- we'll take you up on your offer.
14 You can let us know where those documents
15 are, if possible.

16 MR. RADCLIFFE: OKAY. Your files
17 that are named JK04DR02F001, that contains
18 the Honda study. And then there are backup
19 data. That contains -- that's
20 approximately 159 pages. That contains a
21 copy of the Honda study and various backup
22 information. And the files that follow
23 that, 002, 003 and a couple, there are
24 additional backup documents that may have
25 been used in the Honda study.

1 MS. ABRAMS: Thank you.

2 MR. RUIZ: Can you tell me which disk
3 that is?

4 MR. RADCLIFFE: Yes, that would be CD
5 two.

6 BY MS. ABRAMS:

7 Q. Mr. Kelse, anything else in the 10
8 drawers that you have the key to that we've
9 been talking about?

10 A. There's nothing that I know that
11 hasn't been copied. I pointed out the file
12 drawers and records that pertain to New York
13 State Talc and I did observe the law firm
14 copying those files.

15 Q. Do you have correspondence files
16 with -- that contain correspondence with
17 Dr. Wylie?

18 A. Those would be in several files,
19 one of which is the chronological order of all
20 the analytical reports and so that file was
21 copied completely. I know that was, from what
22 I understand, it was provided before, but you
23 asked some questions about it, if it had been
24 updated because it had been copied five years
25 prior. So it was copied just last week so

1 it's as up to date as what I have, but that's
2 where there would be some reference and some
3 correspondence with Dr. Wylie. I'm trying to
4 think where else you might find that.

5 Q. Do you have a file that just says
6 Dr. Wylie or Ann Wylie on it?

7 A. I do, yes.

8 Q. Did you produce that file?

9 A. I showed the attorneys where
10 that -- where those files were.

11 Q. How many files are there that are
12 just Dr. Wylie files?

13 A. It's just one file and the
14 correspondence has to do with the analytical
15 reports which is replicated in the
16 chronological list. There's also when they
17 copied the backup data for the Hull paper, I
18 also had in that file drawer backup data for
19 the cell study that we -- I think we discussed
20 briefly at the last deposition, that's the
21 Wylie Mossman, so it was a considerable amount
22 of correspondence linked to that study which
23 that was copied as well.

24 Q. When you say backup data, was that
25 with respect to the samples that you provided

1 for that study?

2 A. It pertained to that and it
3 pertained to data that was shared with
4 Vanderbilt relative to particle sizing and
5 characterization and other work that was done
6 that went into the preparation of the
7 published paper.

8 Q. Do you -- last time we were
9 talking, you mentioned that when you were
10 first hired to work at R.T. Vanderbilt that
11 one of the people that was actually on your
12 hiring committee was Dennis Race, do you
13 remember that?

14 A. I mentioned that I had met Dennis
15 Race at the time, whether he was on a hiring
16 committee or not, I don't know if that's how
17 he would describe it, but yes, I did meet him.

18 Q. If I mischaracterized your
19 testimony, I apologize, that's what I
20 understood. Can you tell me -- and Dennis
21 Race is an attorney with Akin Gump; is that
22 right?

23 A. He is, yes.

24 Q. And he's still an attorney for R.T.
25 Vanderbilt?

1 A. Yes.

2 Q. And he's been an attorney for R.T.
3 Vanderbilt since before you got to R.T.
4 Vanderbilt, correct?

5 A. That's correct.

6 Q. And he's -- do you know when he
7 first started working for the R.T. Vanderbilt
8 Company?

9 A. I don't.

10 Q. It's correct that Mr. Race is an
11 attorney that has -- and without giving me any
12 attorney-client information because I don't
13 want you to -- but you work with him on
14 asbestos litigation matters; is that right?

15 MR. RADCLIFFE: Objection, vague and
16 ambiguous. Beyond the scope.

17 A. I have communicated and worked with
18 Mr. Race on all issues that pertain to New
19 York State Talc and not just litigation, but
20 regulatory and legislative and scientific and
21 every avenue that we have been involved in
22 that I've been involved in.

23 Q. That includes asbestos litigation,
24 correct?

25 MR. RADCLIFFE: Same objections.

1 BY MS. ABRAMS:

2 Q. I'm not saying it's the only thing
3 you talk about, but it's one of the things you
4 do.

5 A. It's certainly not.

6 Q. He does have that role as well as
7 other roles?

8 MR. RADCLIFFE: Same objection.

9 A. To the extent that I get involved
10 in cases involving New York State Talc, he's
11 aware of it and sometimes he'll be the first
12 person to tell me that this is a case and
13 you'll be contacted by the attorneys and that
14 sort of thing.

15 Q. So far as you know, he is involved
16 in the asbestos litigation and knows about
17 this case, correct?

18 MR. RADCLIFFE: Same objections.

19 A. Well, if you remember from my last
20 deposition you know it's like waving a red
21 flag in front of a bull when you use the term
22 asbestos, right, we don't have any asbestos in
23 the talc, whatever you want to call it.

24 Q. I apologize for raising the red
25 flag. Let me ask you this question, with

1 respect to cases where the R.T. Vanderbilt
2 Corporation has been sued by people alleging
3 exposure to asbestos and asbestos-related
4 diseases, Mr. Race is someone who is involved
5 in that litigation, correct?

6 **MR. RADCLIFFE:** Same objection.

7 A. He is aware of it, exactly what his
8 involvement is, I'm not really familiar. I
9 know he's always involved as you would expect
10 he would be.

11 Q. Why would you expect that?

12 A. Because he's an attorney and he's
13 been working with the Vanderbilt company over
14 this whole span of years and I think they look
15 to Mr. Race for overviews as to what's going
16 on in the legal arena.

17 **MR. RADCLIFFE:** I'm going to object
18 and move to strike as speculative and lack
19 of foundation for that response and the
20 prior one.

21 **BY MS. ABRAMS:**

22 Q. Do you know the composition of the
23 board of directors of the R.T. Vanderbilt
24 Corporation?

25 A. No, I don't.

1 Q. Do you know if Mr. Race serves on
2 the board of directors of the R.T. Vanderbilt
3 Corporation?

4 A. He is, yes.

5 Q. So he's currently a board member?

6 A. I know that, yeah.

7 Q. And do you know any other board
8 members that come to mind?

9 A. Well, certainly Hugh Vanderbilt,
10 the CEO, certainly Paul Vanderbilt, I believe
11 the CFO chief financial officer, Joe Dinaro
12 (phonetic) and quite frankly, beyond that, I'm
13 not sure. It's changed over time.

14 Q. You are obviously a salaried
15 employee of the R.T. Vanderbilt Corporation?

16 A. Yes.

17 Q. Do you own stock in the
18 corporation?

19 A. No.

20 Q. Do you have stock options?

21 A. Yes, there is a stock option for
22 salaried employees.

23 Q. And what is the nature of that
24 option?

25 A. Well, as I understand it and I'm

1 not an expert at it, but there's a certain
2 portion or set amount of stock that's set
3 aside for and that stock stays static and as
4 employee's salary, salaried employees at
5 certain salary rankings retire or leave the
6 company, they have to sell that stock back to
7 this pool and then it's redistributed to the
8 remaining pool of individuals that are
9 eligible for that stock.

10 So it's -- and I think that's the way the
11 agreement works. So in other words, when I
12 retire, whatever I have and I don't even know
13 what it is, is then sold back to the company
14 at whatever the rate is at the time I retire
15 and then that same number of stocks are
16 distributed to others that are in the pool.

17 Q. So in other words, when you retire,
18 part of your retirement is going to be a
19 benefit from the sale of your stock option
20 that is based on the value of the stock at the
21 time you retire; is that right?

22 A. That's my understanding, yes.

23 Q. Was that stock option available and
24 a benefit when you first hired in in 1985?

25 A. Yes, I believe it was.

1 Q. So that's available to all salaried
2 R.T. Vanderbilt employees at least since 1985,
3 so far as you know?

4 MR. RADCLIFFE: Objection. Calls for
5 speculation.

6 BY MS. ABRAMS:

7 Q. Correct?

8 A. That's my understanding.

9 Q. Do you know whether the amount of
10 your stock option, the amount of stock you --
11 for your option, does that vary between
12 employees or is there a flat rate per
13 employee? Do you have any idea how that
14 works?

15 A. It's predicated on your rank, first
16 of all, it's only available for managers and
17 above and it's also linked to the number of
18 years of service, so it will vary from person
19 to person.

20 Q. Do you -- is it ever the case
21 that -- strike that. Do you receive annual
22 bonuses from the R.T. Vanderbilt Corporation?

23 A. Not as a strict rule, but
24 generally, yes.

25 Q. So it's not part of the deal, but

1 over time you have gotten a bonus, for the
2 most part, every year?

3 MR. RADCLIFFE: Objection, assumes
4 facts not in evidence, vague and
5 ambiguous.

6 A. When the company has the funds to
7 do that then they do and when they don't,
8 they don't.

9 Q. And over the last 10 years have you
10 received bonuses every year?

11 A. I have, yes.

12 Q. How about over the last 20 years,
13 do you recall any years when you did not
14 receive a bonus?

15 A. I believe there were a couple of
16 years when no one did.

17 Q. Do you remember approximately when
18 that was?

19 A. No, I don't.

20 Q. Was that in the 1980s?

21 A. I don't recall. It has a lot to do
22 with the sales, obviously.

23 Q. And during any time in your work at
24 the R.T. Vanderbilt Company from 1985 until
25 the present, other than your annual bonus did

1 you ever receive any special bonuses that
2 didn't come on an annual basis?

3 A. No, I haven't.

4 Q. Do you know if employees receive
5 other kinds of bonuses other than annual
6 bonuses?

7 MR. RADCLIFFE: Objection, calls for
8 speculation.

9 A. I'm not aware of any. I don't
10 know.

11 Q. Have you gotten any special awards
12 from your employment at R.T. Vanderbilt from
13 the company?

14 A. No.

15 Q. Now, we -- I want to turn your
16 attention to what is stamped WES 00001 to WES
17 001361 and I'll represent to you that that is
18 a set of documents that were produced to the
19 plaintiff in this case in sometime around mid
20 July. And I want to know if you have had an
21 opportunity to review that set of documents
22 and whether you can attest, sir, that these
23 are business records of the company that are
24 kept in the regular course of the company's
25 business?

1 MR. RADCLIFFE: Objection, compound,
2 vague, ambiguous.

3 BY MS. ABRAMS:

4 Q. And why don't you have an
5 opportunity to look through these documents
6 because I'm going to ask you to authenticate
7 that these are true and correct copies, every
8 single one of them, of R.T. Vanderbilt
9 Company's business records unless your counsel
10 wants to stipulate to that. You can go ahead
11 and take a look at them, one at a time.

12 A. Well, if I recognize these as
13 documents from my files, I'll tell you that.
14 If I don't recognize them, then I don't
15 recognize them.

16 Q. That's fine.

17 A. That doesn't necessarily mean they
18 may not have been in my blizzard of files.

19 Q. Well, you've been produced as the
20 custodian of these records and if there's a
21 different custodian of the records who needs
22 to come in here and authenticate them as
23 business records, then we need to see that
24 person.

25 MR. RADCLIFFE: There's no different

1 custodian of records. Mr. Kelse is the
2 custodian of records -- let me withdraw
3 that and say Mr. Kelse is the custodian of
4 the records for the categories for which he
5 has been designated. If those documents
6 fall within categories for which he has
7 been designated, he is the person to answer
8 your questions, but I also think you should
9 define what business records mean because
10 that has yet to be defined.

11 BY MS. ABRAMS:

12 Q. The question is still pending.

13 MR. RUIZ: In the letter where you
14 guys parsed out who was going to answer
15 what, you only referred to persons most
16 qualified. You didn't refer to custodians
17 of record. I think we said the
18 correspondence. The problem is we had more
19 document requests than we did categories.

20 MR. RADCLIFFE: And they didn't match
21 up.

22 MR. RUIZ: Right, because we had
23 specific documents we requested.

24 MR. RADCLIFFE: What we did say was
25 that Mr. Kelse was the custodian of records

1 for the documents, the categories --

2 MS. ABRAMS: We can notice the
3 custodian of records for every single piece
4 of paper that you've produced, if you want
5 us to do that, we'll do it, or you can
6 stipulate that these are documents that
7 were kept in the regular course of business
8 that were made at or around the time of the
9 document and that they are true and correct
10 copies of those records, if you'd like to
11 stipulate to that, we can avoid that, but
12 at one point or another, someone from the
13 R.T. Vanderbilt Corporation is going to
14 have to attest that every single piece of
15 paper that you've produced is a business
16 record and is admissible at trial. And if
17 you don't want to do that the easy way,
18 we'll just do it the hard way and you can
19 bring someone here because we'll notice the
20 deposition and you can bring them out to
21 California, it's up to you.

22 MR. RADCLIFFE: I don't think that
23 those are my only choices and we have
24 designated someone to respond to your
25 custodian of records designation and that

1 is Mr. Kelse for the categories for which
2 he is responsible. There are other
3 categories for which Mr. Vanderbilt has
4 been designated.

5 BY MS. ABRAMS:

6 Q. The sales records, so other than
7 that, the sales records which are included in
8 there, there's several page of sales records.
9 You can skip over those, if you like.

10 A. These right at the top is an
11 agreement.

12 MR. RADCLIFFE: That's already been
13 taken care of.

14 Q. Excuse me, can I have that one?

15 MR. RADCLIFFE: There's already been
16 questions and answers on that one.

17 BY MS. ABRAMS:

18 Q. Is this agreement are you
19 stipulating that the agreement which is WES
20 001 through WES 0040 -- 41 is a true and
21 correct copy of business records kept, a
22 document kept in the ordinary course of
23 business?

24 MR. RADCLIFFE: I'll stipulate that
25 the documents in your hands, including the

1 asset purchase agreement and the letter
2 were marked individually as exhibits for
3 Mr. Vanderbilt's deposition for which he is
4 the custodian of records and that you asked
5 him questions about whether or not they
6 were true and accurate and he responded on
7 the record while we were in California two
8 weeks ago, whenever it was.

9 MS. ABRAMS: I don't believe we asked
10 him if they were records kept in the
11 ordinary course of business of the R.T.
12 Vanderbilt Corporation, did we?

13 MR. RADCLIFFE: I think that -- it's
14 my recollection that you did, but I think
15 Mr. Ruiz has his transcript.

16 BY MS. ABRAMS:

17 Q. Do you know whether these -- do you
18 have these records in your file?

19 A. No, those, I do not.

20 Q. So you can't attest to anything,
21 okay?

22 A. Well, I can attest to these, these
23 are in my files.

24 MR. RADCLIFFE: What you need to do
25 instead of saying "these," what you need to

1 do is read the numbers at the bottom right-
2 hand corner and you can say 6 through 20 or
3 whatever.

4 A. So you want to sit here and go
5 through this right now?

6 MR. RADCLIFFE: That's what she wants
7 to do.

8 BY MS. ABRAMS:

9 Q. May I help you, please?

10 A. This group here is from my files.

11 Q. Let me ask the questions, okay?

12 A. Sure. You want the whole stack?

13 Q. No, you keep the stack. So
14 document number 43, 44, 45 all up through 56,
15 these are documents that these are true and
16 correct copies of documents that you've kept
17 in your own personal files?

18 A. Yes.

19 Q. At the R.T. Vanderbilt Corporation?

20 A. Yes.

21 Q. And these are records that you keep
22 in the ordinary course of your business with
23 the R.T. Vanderbilt Corporation?

24 A. Linked to my job, yes.

25 Q. And these were made at or time of

1 the date of the document, you didn't create
2 them today or yesterday?

3 A. No.

4 Q. So this first document for,
5 example, September 23rd, 1987, that's when
6 that was written; is that right?

7 A. I believe so.

8 Q. And that's true for all of these
9 documents? These aren't things that are new,
10 these were business records that were kept at
11 the time they were made, correct?

12 A. Yes.

13 MR. RADCLIFFE: Objection. Compound,
14 vague and ambiguous.

15 MS. ABRAMS: Did you get the answer?

16 THE COURT REPORTER: Yes.

17 BY MR. ABRAMS:

18 Q. You can keep the sales records, sir.

19 A. That's what these are. It looks
20 like the next group of files, the next group
21 of files are part of that analytical,
22 chronological analytical history file that I
23 mentioned a number of times.

24 Q. Can I have that, please?

25 A. Hold on. I'm not finished putting

1 these together. This is going to be a tall
2 one, should be a tall one, if it was complete.

3 Q. I'll tell you what, why don't we go
4 off the record and take a five-minute break
5 and let you go through that whole stack, okay?

6 THE VIDEOGRAPHER: Off the record at
7 11:08.

8 (A brief recess was taken.)

9 MR. ZAPALA: Hi, this is Al Zapala,
10 I'm checking in.

11 THE VIDEOGRAPHER: This is the
12 beginning of Tape Number 2. We're back on
13 the record at 12:06.

14 (Whereupon, the court reporter read
15 back the previous question.

16 BY MS. ABRAMS:

17 Q. Back on the record, Mr. Kelse, and
18 you have spent the last hour looking at every
19 single page of the first set of documents that
20 was produced by the R.T. Vanderbilt
21 Corporation to determine whether each and
22 every page of those documents was a
23 document -- a true and correct copy of a
24 document that was kept by the R.T. Vanderbilt
25 Corporation in the regular course of their

1 business made at or around the time that the
2 document was created. Can you tell
3 me, sir, can you read the first number on the
4 document there, WES --

5 A. -- 000069.

6 MR. RADCLIFFE: Let me just object.

7 MS. ABRAMS: Let me finish my
8 question, please.

9 MR. RADCLIFFE: You made a question
10 and I'm going to make an objection to it.
11 The first question was a long predicate, I
12 disagree with it, incorrect statement of
13 facts. It's compound.

14 MS. ABRAMS: can you read the
15 question back, please, because I wasn't
16 finished with my question. I would
17 appreciate it if you would let me finish
18 the question and then you can make your
19 objection. So let's get on the record that
20 question that's pending and let me finish
21 the question.

22 (Whereupon, the court reporter read
23 back the previous question.)

24 Q. Mr. Kelse, did you spend the last
25 hour looking at every single page of the

1 documents of the stack in front of you which
2 was the first production of the R.T.
3 Vanderbilt Corporation of documents?

4 A. Yes, I did.

5 MR. RADCLIFFE: Objection, incorrect
6 statement of facts. Go ahead.

7 BY MS. ABRAMS:

8 Q. Did you look at every single page
9 of that stack in front of you?

10 A. Yes.

11 Q. Can you give me the first number on
12 the top of that stack?

13 A. WES 000069.

14 Q. And can you give me the last
15 number, please?

16 A. The last number WES 001361.

17 Q. And with the exception of several
18 documents we're going to talk about, is every
19 single one of those documents in that series,
20 WES 000069 through 1361 a document, a true and
21 correct copy of a document kept by the R.T.
22 Vanderbilt Corporation in the regular course
23 of its business and a document that was made
24 at or around the time that it says on the
25 document that it was created?

1 MR. RADCLIFFE: Objection, vague,
2 ambiguous, compound, incorrect statement of
3 facts.

4 BY MS. ABRAMS:

5 Q. Do you understand the question?

6 A. I believe so.

7 Q. And is that correct, other than the
8 exceptions which we're going to talk about --

9 A. Yes, it is.

10 Q. -- every one of those documents is
11 a business record of the R.T. Vanderbilt
12 Corporation that you found in your files?

13 MR. RADCLIFFE: Same objections.

14 BY MS. ABRAMS:

15 Q. Can you answer the question?

16 A. I recognize them all, yes.

17 Q. Thank you. Now, let's talk about
18 the exceptions that you tagged. Which
19 documents did you tag, sir?

20 A. I tagged a couple of documents that
21 I didn't recognize --

22 Q. All right.

23 A. -- as being in my files.

24 Q. Why don't you give me the first
25 document that you recognize -- that you don't

1 recognize?

2 A. Okay, and I'll try to keep these in
3 order for you.

4 Q. I'll take those from you. What's
5 the Bate number on that?

6 A. This is WES 000363.

7 Q. And how many pages, what's the last
8 page of that document you don't recognize?

9 A. The last page would be WES 000372.

10 Q. Okay, can I have that. Thank you.
11 This is entitled Analytical Report on Ceiling
12 Samples Taken From Apartment Winston Towers,
13 Cliffside Park, New Jersey; is that correct?
14 That's what this says, yes? I just want to
15 identify it for the record.

16 A. I didn't recognize it.

17 Q. That's what the document is,
18 though?

19 MR. RADCLIFFE: He doesn't have it in
20 front of him.

21 A. That's what it says, yes.

22 Q. Can you read for us the first page
23 of that?

24 A. Analytic report on ceiling samples
25 taken from Apartment 25 through -19 of Winston

1 Towers, Cliffside Park, New Jersey.

2 Q. Thank you. And what's the next
3 document that you don't recognize?

4 A. Actually.

5 Q. And strike that. Do you know where
6 this document came from, WES 363?

7 A. It came from my files, I just don't
8 recognize it.

9 Q. Okay. This one?

10 A. This one appears to be linked to
11 that and this is a Report of Investigation
12 dated 1993. Do you want the number?

13 Q. Please.

14 A. WES 0000643.

15 Q. And 644, correct? The two page are
16 643 and 644?

17 A. Yes.

18 Q. And other than that, these are all
19 business records that you kept in the regular
20 course of your business as the risk manager
21 for the R.T. Vanderbilt Corporation, correct?

22 A. I recognize them as being in my
23 files, yes.

24 Q. And then, I'm sorry, I think you
25 have one more tag on there?

1 A. Yes, there was one other. This
2 is -- these look like computer printouts.

3 Q. This is WES 000972 through 990.
4 These are tox line printouts --

5 A. Yes.

6 Q. -- you don't recognize?

7 A. I don't.

8 Q. Do you know where they came from?

9 A. Again, they could be in my file, I
10 just didn't recognize them.

11 Q. These are reports of studies?

12 A. Abstracts of published papers.

13 Q. Do you know whether you have the
14 actual papers in your files for those
15 abstracts?

16 A. I would have to look through each
17 of these. I may have some, I may not have
18 others. Do you want me to do that?

19 Q. We can maybe do that later, but you
20 don't recognize the abstracts?

21 A. I don't recognize the abstracts.

22 Q. And are there any other documents
23 that you cannot attest are business records of
24 the corporation?

25 A. No, all the rest are familiar to

1 me.

2 Q. Thank you, sir. Now, this next
3 production, the second production of documents
4 was in three sections. The first section is
5 WES 001362 through 1742 and these appear to be
6 files regarding International Talc Company.

7 Can you tell me if you recognize these
8 files? And I'll represent to you that we
9 received these last Friday so they were
10 recently produced. Did they come out of your
11 file that you mentioned, International Talc
12 files that you told us about?

13 MR. RADCLIFFE: Objection to the form
14 of the question. It's compound. Predicate
15 is a statement, it's not a question. It's
16 incorrect.

17 A. So you want me to look through
18 these and tell you whether I recognize these?

19 Q. That's right, and if these are
20 records from your files that you mentioned.
21 Why don't we go off the record for a minute.

22 THE VIDEOGRAPHER: Off the record at
23 12:17.

24 (A brief recess was taken).

25 THE VIDEOGRAPHER: We're back on the

1 record at 12:35.

2 BY MS. ABRAMS:

3 Q. Mr. Kelse, you've had an
4 opportunity to look at Bates stamp number 1362
5 through 1742 which appear to be records of
6 International Talc; is that correct?

7 A. That's correct.

8 Q. And are those true and correct
9 copies of records that you have kept in your
10 file as a risk manager for the R.T. Vanderbilt
11 Company?

12 MR. RADCLIFFE: Objection, vague and
13 ambiguous.

14 A. I don't recognize them. Those are
15 not records that I keep.

16 Q. Those are not records that you can
17 recognize or can authenticate for us?

18 A. That's correct.

19 Q. Bates stamp 1743 through 1969,
20 these are mineralogical studies, do you
21 recognize these?

22 A. With the exception of one document,
23 I recognize them all.

24 MR. RADCLIFFE: You have two tabs in
25 there.

1 BY MS. ABRAMS:

2 Q. This is Bates 1824 and it's
3 entitled Asbestos Selected Cancer, is that the
4 one you don't recognize?

5 A. I don't.

6 Q. And that is 1824 through 1835. You
7 don't believe this was kept in your file, sir?

8 A. I don't recognize it. I couldn't
9 tell you whether it was there or not.

10 Q. Okay. And we also tagged Bates
11 1891 through 1894 and some blank pages and
12 I'll represent to you that the next number in
13 the series is 1905. So this would be the
14 documents 1891 through 1905.

15 This is a Bureau of Mines Report of
16 Investigation in 1979 entitled Relationship of
17 Mineral Habit to Size Characteristics for
18 Tremolite Cleavage Fragments and Fibers by
19 William Campbell, Eric Steel, Robert Virta and
20 Michael Eisner. Do you actually recognize
21 this study as one that you have in your
22 possession?

23 A. Yes, I do.

24 Q. This document here is not a
25 complete document; is that correct?

1 A. Right.

2 Q. Some of the pages are blank?

3 A. Yes.

4 Q. And I ask your attorney if you
5 would provide the complete document. You have
6 the complete document, correct?

7 MR. RADCLIFFE: It's been provided.
8 It's on the CD that I've given to
9 you.

10 THE WITNESS: Yes.

11 MS. ABRAMS: Thank you.

12 MR. RADCLIFFE: Probably several
13 times.

14 BY MS. ABRAMS:

15 Q. Other than that, you recognize all
16 the documents in that series 1743 through 1969
17 with the exception of the asbestos selected
18 cancer document?

19 A. I do.

20 Q. And these are all true and correct
21 copies of documents that you keep in your own
22 files as business records?

23 A. Yes.

24 MR. RADCLIFFE: Objection, vague and
25 ambiguous.

1 BY MS. ABRAMS:

2 Q. And they were created at the time
3 that the writings on the documents indicate;
4 is that correct?

5 A. Yes, as indicated.

6 Q. Mr. Kelse, the rest of this
7 production starting with 1970 are workers'
8 compensation files. Do you keep workers'
9 compensation files in your office?

10 A. Some.

11 Q. And do you know whether these files
12 were copied from your office, do you have any
13 idea, one way or the other?

14 A. If that stack is from last week,
15 they were, yes.

16 Q. Do you keep redacted copies of
17 workers' compensation files in your office, in
18 order words, where the names and Social
19 Security numbers and other information is
20 blocked out?

21 A. I do not.

22 Q. So the files in your office are
23 complete files that have all the information
24 in an unredacted form; is that right?

25 A. Yes.

1 MS. ABRAMS: And we have -- there's
2 been an offer made by Mr. Radcliffe that he
3 will look through the workers' compensation
4 files and let us know if he'll stipulate to
5 business records by September 11th.

6 MR. RADCLIFFE: Correct.

7 BY MR. ABRAMS:

8 Q. And we will consider that offer and
9 at least forego for this deposition your going
10 through every single one of those files,
11 okay?

12 A. Thank you.

13 MS. ABRAMS: With that, I think we'll
14 break for lunch.

15 THE VIDEOGRAPHER: Off the record at
16 12:40.

17 (A luncheon recess was taken.)

18 THE VIDEOGRAPHER: We're back on the
19 record at 1:51.

20 BY MS. ABRAMS:

21 Q. Good afternoon, Mr. Kelse.

22 A. Afternoon.

23 Q. We're back from lunch and I would
24 like now to move on to the exhibits that you
25 produced at your last deposition and ask you,

1 I've brought the exhibits with me, we got them
2 from the court reporter. I'll ask you if you
3 could just take a look at that set of
4 documents which were attached to your prior
5 deposition and let us know if those were your
6 records that you kept in the regular course of
7 your business and that they were made at or
8 around about the time indicated on the
9 document. I believe last time you did tell us
10 those were your records, you went through your
11 files and you brought them?

12 A. Yes, I did.

13 Q. So can you verify for us that those
14 are business records of the R.T. Vanderbilt
15 Company?

16 A. Three copies of the same thing.

17 Q. We marked what you brought. Can I
18 see that?

19 A. That's what it looks like. I'd
20 better take a quick look.

21 Q. Are those your business records
22 sir?

23 A. Yes.

24 Q. And all of these documents were
25 created at or around the time indicated on the

1 documents?

2 A. Yes.

3 Q. Today your counsel handed me a
4 stack of pages which I'm going to now mark for
5 this record. The first document is entitled
6 Workers Comp Mesothelioma Deaths Claimed. The
7 second page of that document is workers'
8 comp, WC Non Malignant Pulmonary claims GTC
9 and this is a four page document. Can you
10 take a look at that and let me know if that's
11 something that was produced in your file?

12 A. Yes, it is and actually, the table
13 you have is an extension of this.

14 Q. So let's add these next two pages
15 and mark that whole stack as an exhibit.

16 A. Right, they actually go like this.

17 Q. All right.

18 A. I think that's the complete
19 package.

20 Q. So this is going to be Exhibit 9 to
21 the deposition and it's a seven-page document.

22 (Exhibit Number 9 was marked for identification.)

23 BY MS. ABRAMS:

24 Q. And where did you find that
25 document, sir, Exhibit 9 in your files?

1 A. Where -- in -- the file was labeled
2 Compensation Claims.

3 Q. And is this the entirety of that
4 file?

5 A. No, no, it's not.

6 Q. What else is in that file?

7 A. There were four mesothelioma
8 compensation claims which were copied last
9 week and there are -- there was a summary list
10 which was part of that.

11 Q. Other than these pages, there's a
12 summary list?

13 A. That is the summary list.

14 Q. Okay, so this -- you have produced
15 the summary list?

16 A. You have it there.

17 Q. Yes, anything else in the file that
18 you haven't produced, other than the claims
19 themselves?

20 MR. RADCLIFFE: Objection, vague and
21 ambiguous.

22 A. No, I indicated which were the
23 compensation files that were taken out and
24 they were copied and included in that was the
25 summary table, the list that I gave you, and

1 the files of the mesothelioma claims,
2 information that I had on those, and that's
3 what was in the file.

4 Q. So it's your understanding that
5 Exhibit 9 that I'm holding right now was also
6 copied in the production?

7 A. Yes, it was in the file.

8 Q. And is there a particular reason
9 why you also brought this with you today?

10 A. Other than it's -- I like to try to
11 have summary papers rather than -- so I
12 brought it because if we did discuss any of
13 these, that would be helpful for me to
14 reference.

15 Q. Okay. Next is a Emanuel Rubin,
16 November 6, 2006 letter to you, Mr. Kelse, and
17 this is a four-page document which we'll mark
18 as Exhibit 10.

19 Would you take a look at that and we can
20 mark it in a minute. Was that also in the
21 file that you're speaking about?

22 A. Yes, it was.

23 Q. Okay, and is this a summary --
24 strike that. Did you send certain information
25 to Dr. Rubin for his review?

1 A. I sent him the files that we had on
2 the four mesothelioma workman's comp cases
3 which were the same as what was produced to
4 you.

5 Q. Did you send Dr. Rubin a version of
6 the files that were redacted or unredacted?
7 In other words, were there black marks that
8 marked out the names and the information of
9 the people or were they sent to Dr. Rubin
10 without black marks on them?

11 A. They were unredacted, without the
12 black marks.

13 (Exhibit Number 10 was marked for
14 identification.)

15 **BY MS. ABRAMS:**

16 Q. Is it correct, sir, that Dr. Rubin
17 is not a treating physician for any of those
18 individuals?

19 A. That's correct.

20 Q. And he is your consultant?

21 **MR. RADCLIFFE:** Objection, vague and
22 ambiguous.

23 **BY MS. ABRAMS:**

24 Q. Strike that. Who is Dr. Rubin and
25 why did you send him the information?

1 A. Dr. Rubin is a pathologist who we
2 consulted on for advice regarding the content
3 of the four mesothelioma claims, the files
4 that we sent to him.

5 Q. Did you send Dr. Rubin actual
6 pathology?

7 A. When it was available.

8 Q. How did you get the pathology?

9 A. I think it was only one case where
10 there was actually tissue available. I don't
11 believe he looked at the tissue unless he
12 states it in his letter. There was another
13 pathologist who did look in one case at tissue
14 and Dr. Rubin reviewed her analysis.

15 Q. What pathologist was that?

16 A. I would have to look at the file.
17 He may have mentioned her name, she was in
18 London, Ontario.

19 Q. Perhaps you can review the record.

20 A. Sure. Dr. Bertha Garcia,
21 G-A-R-C-I-A.

22 Q. And do you know why Dr. Rubin
23 selected Dr. Garcia to review the pathology?

24 A. Dr. Rubin didn't select Dr. Garcia
25 to review the pathology, that was done prior

1 to Dr. Rubin doing the report.

2 Q. Who selected Dr. Garcia to review
3 the pathology?

4 A. I sent that file to Dr. Morgan,
5 Keith Morgan, in London, Ontario Hospital and
6 Dr. Morgan selected that pathologist
7 apparently because he knew her.

8 Q. Who is Dr. Morgan?

9 A. He's a pulmonary specialist.

10 Q. What is his role? Is he a treating
11 doctor for any of these people?

12 A. No.

13 Q. What is his role?

14 A. He's a physician that we knew of.
15 He had formerly worked at NIOSH as the
16 director or their pulmonary division in
17 Morgantown, I believe.

18 Q. So you retained Dr. Morgan to
19 review information for R.T. Vanderbilt
20 Company?

21 A. To review that file, yes.

22 Q. That one particular file?

23 A. I think there were two files. I
24 think these were cases, were two cases in
25 1995. Those were the two files.

1 Q. He reviewed these cases in order to
2 render an opinion for purposes of the workers
3 compensation cases, correct?

4 A. He reviewed the files to advise me
5 as to his impressions of the files as to
6 whether or not the cases appear to have been
7 properly diagnosed to begin with and any other
8 information he saw in the file because we
9 needed assistance of someone was qualified to
10 review those files.

11 Q. Did you utilize that opinion in any
12 way in objecting to the workers' compensation
13 claim of the claimant?

14 A. I would have to look at the dates,
15 but I believe the claims had already been
16 awarded. It was not a part of that process.

17 Q. So you didn't submit Dr. Morgan's
18 report to the compensation people?

19 A. No.

20 Q. And it wasn't part of any appeal?

21 A. No, as I recall, it wasn't.

22 Q. Did you ever use Dr. Morgan to
23 render opinions for purposes of disputing
24 workers' compensation claims?

25 A. No.

1 Q. Have you reviewed the workers'
2 compensation files that were produced to my
3 office prior to your testimony today?

4 A. I've seen them, yes.

5 Q. If I told you that there were
6 reports from Dr. Morgan that were in the
7 workers' compensation files, you would
8 assume -- your testimony is that those would
9 not have been submitted to the claims board,
10 those would have been for R.T. Vanderbilt's
11 own in-house use?

12 A. That's my knowledge, yes.

13 Q. In order to -- well, strike that.
14 How did you get the pathology in one of these
15 cases in order to have someone review it?

16 A. Well, in the two cases in 1995, we
17 actually asked for releases for the medical
18 records which we obtained signed releases and
19 we used them for the medical records that
20 the -- that were pertinent to the claim.

21 Q. Who did you ask to release the
22 information?

23 A. I think -- well, in the files that
24 were copied, those release forms, a copy of
25 the release form is there and the release form

1 is a release form to Vanderbilt.

2 Q. Who did you ask to obtain release
3 information? Who released the information to
4 you?

5 A. In one case I believe it was the
6 individual while he was still alive and then
7 the other I believe it was his wife.

8 Q. What did you tell the individual
9 who was still alive and his wife that you
10 were -- why were you seeking that information?

11 A. Because we wanted to know as much
12 about the diagnosis as possible. We felt that
13 it would be important for the company to
14 understand that and, even more importantly, it
15 would be important information to also share
16 with the individual to the extent that it was
17 any different information than he already had
18 so it would have been shared with him.

19 Q. And it's correct, is it not,
20 Mr. Kelse, that in each one of those cases
21 where you asked the claimant or his spouse to
22 release information, ultimately you used that
23 information to dispute the worker's claim for
24 compensation?

25 MR. RADCLIFFE: Objection,

1 argumentative.

2 BY MS. ABRAMS:

3 Q. That's true, isn't it?

4 A. Actually, it's not. I don't recall
5 using the information to dispute any of those
6 claims.

7 Q. So it's your testimony here today
8 that the R.T. Vanderbilt Company or its
9 carrier did not dispute any of the claims
10 where you sought information from the
11 claimant's personal information and medical
12 information by authorization?

13 MR. RADCLIFFE: Objection,
14 argumentative, misstates previous
15 testimony, assumes facts not in evidence,
16 calls for speculation.

17 A. The most recent case that involved
18 in 2005, the insurance carrier did contest it
19 and it was -- eventually it was awarded
20 regardless, but I don't recall our using any
21 information we collected in respect to
22 contesting that claim. Most of the issue
23 there was other or competing risk, other types
24 of work.

25 MS. ABRAMS: Could you read the

1 answer back, please?

2 (Whereupon, the court reporter read back
3 the previous answer.)

4 BY MS. ABRAMS:

5 Q. Well, you disputed the claim,
6 correct?

7 MR. RADCLIFFE: Same objections.

8 A. For the reason that I stated.

9 Q. Did you dispute the claim, sir?

10 A. The carrier disputed the claim.

11 Q. The carrier disputed the claim in a
12 case where you asked for information from the
13 claimant or the spouse of the claimant and you
14 represented that it was because you were
15 interested in finding out more about their
16 disease, correct?

17 MR. RADCLIFFE: Objection,
18 argumentative, misstates previous
19 testimony.

20 A. Well, in terms of last case,
21 actually, that one case, the data that was
22 presented in the medical records our medical
23 consultants felt that it was sufficient that,
24 in fact, it was a confirmed mesothelioma. So
25 our own records, you know, confirmed it. We

1 didn't dispute the diagnosis.

2 Q. Move to strike as nonresponsive.

3 Did you dispute the claim, sir?

4 A. The carrier disputed the claim.

5 Q. And did you tell the individual who
6 you sought information from, the worker, or
7 did you tell the spouse of the worker who had
8 died that in giving you information that the
9 R.T. Vanderbilt Company or its carrier might
10 ultimately dispute their workers' compensation
11 claim?

12 MR. RADCLIFFE: Objection,
13 argumentative, misstates previous
14 testimony, assumes facts not in evidence.

15 BY MS. ABRAMS:

16 Q. Did you or did you not tell them
17 that?

18 MR. RADCLIFFE: Same objection.

19 A. I did not tell them that.

20 Q. In fact, sir, wasn't that a real
21 possibility, at the time that you asked for an
22 authorization from a worker or the spouse of a
23 deceased worker that you needed information in
24 their medical file that ultimately for one
25 reason or another the R.T. Vanderbilt Company

1 or its carrier might actually dispute their
2 workers' compensation claim? Wasn't that a
3 possibility at the time?

4 MR. RADCLIFFE: Objection, calls for
5 speculation, assumes facts not in evidence
6 argumentative.

7 A. It certainly was not our -- that
8 was not why we asked for the information. We
9 were essentially trying to learn as much as we
10 could about the case.

11 Q. Move to strike as nonresponsive.
12 Could you read the question back to the
13 witness, please?

14 (Whereupon, the court reporter read
15 back the previous question.)

16 MR. RADCLIFFE: Same objections.

17 A. Well, my answer to that is it's not
18 something that actually occurred to us. We
19 were interested in the information. We were
20 not thinking of it in terms of using it to
21 dispute a compensation claim and in that case,
22 to the best of my knowledge, it wasn't used in
23 that way.

24 Q. Sir, how many workers' compensation
25 claims have been filed against the R.T.

1 Vanderbilt Company for cancer related alleged
2 asbestos exposures?

3 A. Do you have the list?

4 Q. And I'm showing you Exhibit 9.

5 A. Right, I think I have a copy of it
6 here.

7 Q. Why don't you just take Exhibit 9.

8 A. Okay. As I've indicated here
9 there's -- to my knowledge there are seven.

10 Q. Seven mesothelioma claims?

11 A. No, no, four mesothelioma claims
12 and three claims related to lung cancer.

13 Q. Well, let's start with the four
14 mesothelioma claims, sir. In each one of
15 those claims did R.T. Vanderbilt or its
16 insurance carrier for one reason or another
17 dispute that R.T. Vanderbilt was liable for
18 that claim?

19 A. I don't know about the first
20 three. I do know the last one was contested
21 for the reason that I stated. The other
22 three, I would have to go back and look in the
23 records to see whatever the insurance
24 carrier's documents reflected in that regard.

25 Q. Let me ask it this way: Do you

1 know of any workers' compensation claim where
2 it was claimed that a mesothelioma was caused
3 from exposure to asbestos by the R.T.
4 Vanderbilt company that R.T. Vanderbilt or its
5 carrier did not dispute the claim?

6 A. Well, R.T. Vanderbilt is really not
7 disputing claims, the carriers are disputing
8 claims. I don't know if that is a routine
9 process for them or not. They are able to
10 gain access to every claim -- to those records
11 to defend their circumstance. They can hire
12 their own independent medical review expert,
13 if they wish.

14 It is sort of running on its own track.
15 The carriers more or less run on their own
16 track. They will call us and ask for
17 information, such as their employment
18 history, things of that nature, but very
19 often, all of that sort of operates in a
20 separate sphere and you find out that a claim
21 has been paid that you had no idea was even
22 submitted.

23 So you get claims runs and you'll see a
24 name and date and it will have a status, open,
25 closed, contested and very often that's the

1 only notice that the company will see.

2 Q. Move to strike as nonresponsive.

3 Could you read the question back, please?

4 (Whereupon, the court read back the
5 previous question.)

6 BY MS. ABRAMS:

7 Q. Do you know of any such claim?

8 MR. RADCLIFFE: Same objections.

9 A. Well, again I'm having a hard time
10 answering it for a number of reasons. One is
11 there's no asbestos.

12 Q. If you can't answer it, just say
13 you can't answer it. Can you answer the
14 question? Do you know of any claim where
15 either the carrier or R.T. Vanderbilt did not
16 dispute the claim when there was an allegation
17 of exposure to asbestos from R.T. Vanderbilt's
18 product for a mesothelioma? Can you answer
19 that question?

20 MR. RADCLIFFE: Objection, different
21 question, vague, ambiguous, compound,
22 assumes facts not in evidence.

23 A. I don't, other than that one case I
24 mentioned. I don't know the status of whether
25 they were contested or not. I can tell you

1 they should have been, whether they were or
2 not, I would have to look at the file.

3 Q. And it's correct, Mr. Kelse, that
4 you told the carriers in every instance that
5 you knew of to dispute the claim because it's
6 R.T. Vanderbilt's position that there isn't
7 any asbestos in their product and it doesn't
8 cause mesothelioma, isn't that construct?

9 A. It's more than a position, that is
10 our understanding.

11 Q. And that's your directive to the
12 carrier, isn't it, sir?

13 A. Well, it's hard to have a disease
14 that people associate with asbestos when you
15 don't have that exposure.

16 Q. Move to strike as nonresponsive.
17 Could you read the question back, please?

18 (Whereupon, the court reporter read
19 back the previous question.)

20 A. The carrier would contest a case
21 based on that. If you don't have -- if an
22 allegation of asbestos exists because they're
23 saying it's associated with exposure to your
24 talc and you don't have asbestos in your talc,
25 I would expect the carrier to dispute that

1 claim, that association.

2 Q. So that's correct, all of the --
3 the carrier disputes every claim for an
4 allegation of asbestos exposure for
5 mesothelioma from R.T. Vanderbilt's product at
6 the direction of R.T. Vanderbilt, isn't that
7 right?

8 MR. RADCLIFFE: Objection,
9 argumentative.

10 A. I don't think I said that we
11 directed them. I think I said that they
12 operate pretty much independently. Sometimes
13 we don't even know whether a claim has been
14 settled until we see it.

15 Q. A mesothelioma claim?

16 A. The last claim we were aware of,
17 the others we heard about later.

18 Q. If that's your testimony here that
19 you did not hear about the mesothelioma claims
20 until they were decided?

21 MR. RADCLIFFE: Objection,
22 argumentative, misstates facts.

23 A. The last one no, we were very
24 actively involved in the last one because the
25 individual was alive, he's filed a claim. It

1 was an active suit. The one prior to that was
2 an individual 87-year-old gentleman who died
3 two years before we even knew there was a
4 claim. That claim was petitioned by his
5 wife. We had no awareness of it until we saw
6 it on a loss run two years later.

7 Q. And what did you do about that?

8 A. The same thing that we did with the
9 claims in 1995, we tried to collect as much
10 information as possible because we think it's
11 important to know the circumstances of the
12 case.

13 Q. And what did you do about the
14 claims?

15 A. I don't recall what we did about
16 them. I was, again, more interested in the
17 characteristics of the case, was the diagnosis
18 correct or not correct or did you know or not
19 know, what was his work history, could this
20 have been something that may be linked to
21 other types of work, yes or no.

22 These were the types of questions that we
23 would want to look at, obviously, because if
24 you don't have answers to those
25 questions, that's a serious medical issue and

1 you would hate to think that exposure to your
2 talc would produce that type of an end point
3 disease and we would be very concerned if we
4 felt that that was the case.

5 If the evidence pointed in that direction,
6 that would be extremely concern -- a major
7 concern so that's why these cases were
8 important to us, we need to know.

9 Q. Move to strike as nonresponsive.
10 Could you read the question back, please.

11 (Whereupon, the court reporter read
12 back the previous question.)

13 A. I don't recall doing anything about
14 the claims.

15 Q. So when you found out that the comp
16 carrier, the compensation carrier, had paid
17 out claims for mesothelioma deaths after the
18 fact, you didn't do anything to try to dispute
19 the claims, object to the claims, talk to the
20 carrier and instruct them otherwise, nothing?

21 MR. RADCLIFFE: Object to the form,
22 argumentative, compound, assumes facts not
23 in evidence.

24 BY MS. ABRAMS:

25 Q. Is that your testimony?

1 A. I do not recall doing anything in
2 terms of going back to the comp carriers and
3 asking them to open cases and contest them.

4 Q. Do you remember the name of the
5 individual where you obtained information on
6 that individual? Do you remember Mr. Evans?

7 A. Yes.

8 Q. Is that a claim that was filed that
9 you knew about at the time and obtained
10 information on that individual?

11 A. No, that's not the one I was
12 referring to. I don't know if we knew it at
13 the time or not, I'd have to look at the file.

14 Q. Did you not on September 30, 1994
15 write a letter to Dr. Paleo stating that
16 you've contacted Mr. Evans to receive
17 permission to have access to his medical
18 records and this is -- I'll give you that
19 letter to refresh your recollection.

20 MR. RADCLIFFE: Is there a Bates
21 stamp on that?

22 MS. ABRAMS: There is not.

23 A. Yes, that's correct. I copied
24 Mr. Evans as well.

25 Q. And you sought that medical

1 information in 1994?

2 A. I did.

3 Q. And that was prior to the time that
4 Mr. Evans was deceased; is that correct?

5 A. I believe that's correct. I think
6 that was 1995 when he died.

7 Q. And is that a case where the R.T.
8 Vanderbilt Company or its carrier disputed
9 that claim?

10 A. I believe they disputed it. I know
11 in one of the cases they had an independent
12 medical review done and they provided
13 information on the composition of the talc and
14 the general issues of the health studies and
15 so forth to that physician that the carriers
16 were using.

17 Q. So you assisted, sir, in the
18 carrier's attempt to dispute a claim by
19 Mr. Evans who died of mesothelioma; is that
20 correct?

21 MR. RADCLIFFE: Objection,
22 argumentative.

23 A. I provided information I had that I
24 thought would be pertinent to it, yes.

25 Q. Who is Dr. Paleo who you wrote this

1 letter to who is in Ogdensburg, New York? Was
2 that his treating physician?

3 A. Well, I hate to speculate, but
4 that's --

5 Q. Perhaps you might want to look at
6 the letter then.

7 A. Well, the name, that's who we would
8 have asked for medical records from would be
9 someone who would have those medical records
10 which would have to be a treating physician.

11 Q. And in this letter, Mr. Kelse, in
12 1994 you wrote to Dr. Paleo, "The company is
13 aware that overexposure to its talc dust,
14 indeed, any mineral dust, can result in
15 adverse pulmonary affects. We are therefore
16 concerned about reports we have received about
17 Mr. Evans' pulmonary condition, wish to be
18 informed on this condition and to assist in
19 any way we can. On behalf of all our talc
20 miners and millers we feel we have a
21 commitment to do so." Did you write that,
22 sir, in this letter? Would you like to see
23 it?

24 A. It's my letter. Yes, I did write
25 that.

1 Q. And then you wrote, It is our hope
2 to obtain a copy of Mr. Evans' medical record,
3 along with available tissue samples for review
4 by Brian, B-O-E-H-L-E-C-K-E, Bohlecke, M.D.,
5 our pulmonary medical advisor and a
6 pathologist familiar with histology, possibly
7 associated with this case. Whatever is
8 learned, and it says form, but I think you
9 meant from, this review will certainly be
10 shared with you, Mr. Evans or any additional
11 parties Mr. Evans might later designate. Did
12 you write that, sir?

13 A. Yes, I did.

14 Q. And that was in September 30th,
15 1994, correct?

16 A. If that's the date, yes.

17 Q. And it's correct, sir, that you
18 disputed Mr. Evans' claim of mesothelioma
19 caused by asbestos from the R.T. Vanderbilt
20 Company? That's correct, you disputed that
21 claim?

22 MR. RADCLIFFE:

23 Objection, argumentative, assumes facts not
24 in evidence, misstates prior testimony.

25 A. I would have to look at the file to

1 see what the carriers disputed, but certainly
2 Vanderbilt would always dispute an association
3 with asbestos because there isn't any in the
4 talc and obviously we would dispute that
5 aspect of it.

6 Q. And you obtained this information
7 and provided it to the carrier, didn't you,
8 sir, in Mr. Evans' case?

9 MR. RADCLIFFE: Objection, assumes
10 facts not in evidence.

11 A. Again, I would have to look at the
12 file. I know I did that. I'm not sure
13 whether it was in Mr. Evans' case or one other
14 or it may have been in all of them. I just
15 have to look. I would want to do that. I
16 would want to be sure that everyone involved
17 in the case would have all the information.

18 MS. ABRAMS: Let's mark that as
19 Exhibit 11, please.

20 (Exhibit Number 11 was marked for
21 identification.)

22 BY MS. ABRAMS:

23 Q. Are you familiar with the case of
24 Robert Rice, sir?

25 A. Yes.

1 Q. Did you seek information from
2 Mr. Rice's treating physicians in August of
3 2005?

4 A. If you have correspondence to that
5 effect, then I would have to say yes.

6 Q. Do you recall anything about
7 seeking information regarding Mr. Rice's
8 medical history at the time that you learned
9 of his death?

10 A. Yes.

11 Q. And are you aware that he died of
12 mesothelioma?

13 A. That's what I believe the death
14 certificate said.

15 Q. Is he one of the claims that you've
16 directed us to in the Exhibit 9, first page?

17 A. He is.

18 Q. Do you know which is his claim? Is
19 this the 2005 claim of the 74-year-old?

20 A. No, it would be the -- I believe
21 he died --

22 Q. I'm sorry, 2001.

23 A. That would be his.

24 Q. I apologize. So that would be the
25 86-year-old died in 2001?

1 A. Correct.

2 Q. Sir, if you don't mind, could you
3 please next to 2001 -- could you write the
4 name Rice there so we know who that is there
5 we're talking about?

6 A. (Witness writing.)

7 Q. With respect to Mr. Evans, do you
8 know which is his claim? This letter was
9 written September 1994, do you know when he
10 died?

11 A. Yes.

12 Q. And when was that?

13 A. 1995.

14 Q. And could you please write Evans
15 down there so we know who we're talking about
16 there. Do you know the identity of the other
17 people that are listed on that page?

18 A. I do.

19 Q. Who are they, sir?

20 A. 1995, the first one, that's Larry
21 Malbeuf.

22 Q. Could you write Malbeuf down there,
23 please?

24 A. I have to remember. How that was
25 spelled, B-E --

1 Q. M-E-L-B-U-E-F, if I'm not
2 mistaken. And how about the other claim, who
3 is that?

4 A. 2005 who is the only one left, I
5 think this one I would remember. Can I look
6 at the file real quick?

7 MR. RADCLIFFE: Is it Mr. LaBow?

8 THE WITNESS: Yes.

9 BY MS. ABRAMS:

10 Q. That's Mr. LaBow?

11 A. Right.

12 Q. That was 2005?

13 A. Right.

14 Q. In fact, in Mr. LaBow's case didn't
15 you review the information from the carrier
16 regarding Mr. LaBow? Do you recall that?

17 MR. RADCLIFFE: Objection,
18 argumentative, assumes facts not in
19 evidence.

20 A. I did see documents from the
21 carrier, sure.

22 Q. And the carrier or R.T. Vanderbilt
23 or both obtained the assistance of
24 Dr. Boehlecke to review that case; is that
25 correct?

1 A. Yes.

2 Q. Do you retain Dr. Boehlecke to
3 review that case?

4 A. Yes, he's our pulmonary consultant.

5 Q. He's not the carrier's consultant,
6 he's the R.T. Vanderbilt consultant, correct?

7 A. Correct.

8 Q. And, in fact, has Dr. Boehlecke
9 reviewed every single one of these claims on
10 this list, to your knowledge?

11 A. He's aware of them. I don't know
12 that I would say reviewed them. He's a
13 pulmonary consultant and I was working with
14 Dr. Baylik to try to -- to work with a
15 pathologist that would be would be familiar,
16 more familiar with mesothelioma than he might
17 be.

18 MS. ABRAMS: I'm sorry. Could you
19 read the answer back, please?

20 (Whereupon, the court reporter read
21 back the previous answer.)

22 BY MS. ABRAMS:

23 Q. So it's your testimony that
24 Dr. Boehlecke is not that familiar with
25 mesothelioma?

1 MR. RADCLIFFE: Objection,
2 argumentative. Assumes facts not in
3 evidence.

4 A. I don't know how familiar he is or
5 he's obviously more familiar with it than I
6 am, but you'd have to talk to him to know how
7 familiar.

8 Q. Well, do you consult with -- strike
9 that. Do you consult with Dr. Boehlecke for
10 other reasons, other than in mesothelioma
11 cases?

12 A. Yes.

13 Q. What types of cases do you believe
14 that you consult with him on?

15 A. Well, we consult with him because
16 he's our pulmonary consultant that we have
17 used since 1985 or 1984 to review our
18 pulmonary surveillance data from the plants.
19 It's not a case issue, it's more the status of
20 the pulmonary condition of our talc workers
21 that he has reviewed every two years since
22 1985.

23 Q. So he looks at company annual or
24 bi-annual medical surveillance information; is
25 that right?

1 A. The pulmonary aspect of that, yes.

2 Q. How often is that data collected?

3 A. Every two years.

4 Q. Every two years, what other

5 physicians do you consult with to interpret

6 that data for you, other than Dr. Boehlecke?

7 A. The way the surveillance program is
8 set up, each employee has a chest x-ray and
9 which is read very shortly after it's taken by
10 the hospital radiologist and that's done
11 during a clinical. If there are issues then
12 you need to immediately act on those.

13 And then at some point subsequent to that,
14 it could be several weeks, it could be a month
15 or so, Dr. Baylik will also look at the chest
16 x-rays independently and that's with some of
17 the chest x-rays. There's also pulmonary
18 function tests that we take every two years
19 and those are interpreted by the pulmonary
20 function technician and Dr. Baylik will look
21 at those when he also looks at the chest
22 x-rays. And that's how that works.

23 Q. Where does R.T. Vanderbilt
24 Corporation have its employees go to have
25 their medical screenings done?

1 A. It's been done, there's a hospital
2 in Gouverneur, New York, E.J. Noble
3 Hospital, I think that's the name of the
4 hospital.

5 Q. And is that the hospital that R.T.
6 Vanderbilt Corporation has used for its
7 medical screenings since at least the time you
8 got there?

9 A. For its x-rays, pulmonary
10 function, hearing tests, yes.

11 Q. Do you know how long R.T.
12 Vanderbilt has been using the Noble hospital?

13 A. I don't know the exact date that
14 they started. They were using E.J. Noble
15 Hospital for those types of tests prior to my
16 arrival, but exactly when they started, I'm
17 not sure.

18 Q. Do you know how much share of stock
19 that the R.T. Vanderbilt Corporation currently
20 owns in E.J. Noble Hospital?

21 MR. RADCLIFFE: Objection,
22 argumentative, assumes facts not in
23 evidence.

24 A. I have no idea.

25 MR. RADCLIFFE: You have to wait

1 until I finish my objection before you
2 talk.

3 THE WITNESS: I'm sorry.

4 BY MS. ABRAMS:

5 Q. Go ahead and answer the question.

6 A. I have no idea.

7 Q. You're not aware that they own any
8 stock in the hospital?

9 A. I'm not.

10 Q. Do you know -- are you aware that
11 the International Talc company owned a hundred
12 percent of the stock of the E.J. Noble
13 Hospital at one point in time?

14 A. No.

15 Q. Do you know whether the R.T.
16 Vanderbilt Company, when it acquired
17 International Talc, whether it acquired any
18 ownership in the E.J. Noble Hospital?

19 A. I have no idea.

20 Q. Do you know any of the people who
21 are members of board of the E.J. Noble
22 Hospital?

23 A. I think Dana Putman, the current
24 plant manager, is a member of that board.

25 Q. Anyone else that you know of?

1 A. That's the only one that I know.

2 Q. Do you know prior to Mr. Putman's
3 joining the board of the E.J. Noble Hospital
4 any other R.T. Vanderbilt employees that were
5 members of the board of the E.J. Noble
6 Hospital?

7 MR. RADCLIFFE: Objection, asked and
8 answered.

9 A. I'm not aware of any others.

10 Q. Are you aware that Mr. Erdman
11 served on the board of E.J. Noble Hospital?

12 MR. RADCLIFFE: Objection, asked and
13 answered.

14 A. No, not one way or the other.

15 MS. ABRAMS: I just want to state for
16 the record that because we're marking
17 exhibits that Mr. Kelse brought, I want to
18 just be clear that Exhibit 11 is not an
19 exhibit that Mr. Kelse brought, it's
20 something that I have added to the record.

21 MR. RADCLIFFE: I'm not sure I agree
22 with that. Are you making the affirmative
23 statement that that document is not in the
24 records that we provided to you?

25 MS. ABRAMS: Yeah, it's in my files.

1 I don't believe it's in your record. it's
2 not a Bates stamped document. It may be in
3 the records, but I don't have it as a Bates
4 stamped document so I'm kind of at a loss
5 of how to say it's yours when you didn't
6 Bates stamp it if you gave it to me, but it
7 did not come with you today, Mr. Kelse? I
8 had it in my own files and it's not one of
9 the two files or the workers' compensation
10 claims that were produced in the last two
11 productions. Whether it exists on the
12 three disks that you gave me that we have
13 not been given hard copies of, I have no
14 idea. You can search it. It's a September
15 30th, 1994 letter.

16 MR. RADCLIFFE: For which plant?

17 MS. ABRAMS: Here, you can keep your
18 hands on it for a few minutes so that you
19 can find it.

20 BY MS. ABRAMS:

21 Q. Now, let's go back on the record and
22 just ask you while we're talking about workers'
23 compensation claims is it your testimony,
24 sir, that Mr. Malbeuf, Mr. Evans, Mr. Rice and
25 Mr. LaBow are the only mesothelioma cases that

1 you know of that came out of the R.T.
2 Vanderbilt mines or concerns in Upstate New
3 York?

4 MR. RADCLIFFE: Objection to the
5 form, vague, argumentative.

6 A. They're the only workman's comp
7 cases that I'm aware of.

8 Q. Are you aware of other people who
9 have died from mesothelioma that had prior
10 occupational employment at R.T. Vanderbilt or
11 International Talc?

12 A. Yes.

13 Q. How are you aware of those cases?

14 A. They were recorded as you would
15 expect they would be in the mortality studies
16 that were done of Upstate New York Talc
17 workers, the most recent being the Honda
18 paper. So up until 1990 which was the vital
19 status cutoff for that study, there were two
20 mesothelioma cases recorded in that study.

21 Q. And what were their names?

22 A. I don't -- I don't know.

23 Q. Do you have the death certificates
24 for those cases?

25 A. I don't believe so. I do know we

1 copied the -- what base data we had from that
2 study, but I don't know whether those were
3 there or not.

4 Q. Did you -- and you provided that
5 data to us recently, in the production you
6 gave us, the data from the Honda study?

7 A. What I had, yes

8 Q. So any information you have about
9 those mesotheliomas we would now have in our
10 possession, so far as you know.

11 A. As far as I know.

12 Q. So in addition to the four
13 mesotheliomas, Mr. Evans, Mr. LaBow, Mr. Rice,
14 and Mr. Malbeuf, you're aware of two
15 additional cases prior to 1990, correct?

16 A. That's correct.

17 Q. What about cases after 1990, are
18 you aware of any of those?

19 A. There was one that we were
20 presented with during a case in New Jersey and
21 that was a couple of years ago that we had had
22 no record of.

23 Q. There was a case in New Jersey of a
24 New York State Talc worker that you had no
25 record of, what case was that?

1 A. The legal case?

2 Q. I'm sorry?

3 A. That was the Hersh case.

4 Q. So Mr. Hersh died of mesothelioma?

5 MR. RADCLIFFE: Object, vague and
6 ambiguous. I think you're not talking
7 about the same case or --

8 BY MS. ABRAMS:

9 Q. Are we talking about the Hersh case
10 right now?

11 A. I mentioned it because during that
12 case, we were presented with a death
13 certificate from a talc worker.

14 Q. I'm sorry, so in the course of the
15 Hersh case in New Jersey you learned of a talc
16 worker's death from mesothelioma in Upstate
17 New York that you didn't know about before?

18 A. That's correct.

19 Q. Do you remember that person's name?

20 A. I don't have it.

21 Q. Do you remember the date of his
22 death?

23 A. I believe it was 1994.

24 Q. Was that Mr. Bickford?

25 A. I believe that's correct, yes.

1 Q. And where did Mr. Bickford work,
2 was that for Gouverneur Talc, if you recall?

3 A. He did, yes.

4 Q. Are you aware of any other
5 mesothelioma deaths where there's an
6 allegation that someone worked at either
7 Gouverneur Talc or International Talc owned
8 mining facilities?

9 A. Allegation or fact?

10 Q. Either one. What do you know of
11 that may lead you to believe that someone may
12 have worked at one of the Gouverneur Talc
13 facilities or the International Talc who is
14 now alleging they have mesothelioma?

15 A. I would have to say none.

16 Q. So there's no other cases that
17 you're aware of?

18 A. From Gouverneur Talc, no.

19 Q. Or International Talc or any
20 International Talc held facilities, are you
21 aware of any mesotheliomas?

22 A. I'm not aware of any from --
23 specifically from International Talc, no.

24 Q. Do you know of a Mr. Donald Lozo?

25 A. No.

1 Q. You've never heard of Mr. Lozo?

2 A. No.

3 Q. And you never heard that he died of
4 mesothelioma in August of 2005?

5 A. No.

6 Q. Do you know where the Carbola talc
7 mine is?

8 A. No.

9 Q. Do you know that that's a -- that
10 was an International Talc owned mine?

11 A. No.

12 Q. And are you aware that that
13 potentially is the same as Mine 3?

14 MR. RADCLIFFE: Objection to form,
15 argumentative, assumes facts not in
16 evidence.

17 A. No.

18 Q. And you've never heard of Mr. Lozo?

19 A. No, I've not.

20 Q. And you've not heard that
21 Mr. Lozo's sister also died of mesothelioma?

22 A. No.

23 Q. And his mother died of
24 mesothelioma?

25 A. No.

1 Q. You never heard that. Have you --
2 are you aware of any spouses or family members
3 of workers at International Talc or Gouverneur
4 Talc that died of mesothelioma that may not
5 have filed workers' compensation claims?

6 A. No, I'm not aware of any.

7 Q. Are you aware of a worker who died
8 of mesothelioma -- strike that. Are you aware
9 of a worker who died of a quote, unquote
10 pleural tumor in May of 2001 who filed a
11 workers' compensation claim against the R.T.
12 Vanderbilt Company?

13 A. I would need a little more
14 information. I would need a name and so
15 forth.

16 Q. I would love to give you a name,
17 but I don't have one to give you because I
18 have a redacted document. Did you ever hear
19 of anyone in 2001 dying of a pleural tumor?
20 We know from the Honda study, for example,
21 that someone died of a pleural tumor before
22 1990, correct?

23 A. I would have to look if that's what
24 it says.

25 Q. And then, but you have not counted

1 in your list anyone who died of a pleural
2 tumor in 2001 as a mesothelioma, correct?

3 A. I don't think pleural tumor
4 necessarily means mesothelioma. I mean,
5 you'd have to ask a medical expert, but that's
6 my understanding.

7 Q. And this was a pleural tumor
8 secondary to talcum exposure on the death
9 certificate, just for the record.

10 MR. RADCLIFFE: Object, move to
11 strike.

12 BY MS. ABRAMS:

13 Q. Mr. Kelse, have you ever heard the
14 name Brent Gale?

15 A. I have heard the name, but it's a
16 name I've heard. I can't -- you'll have to
17 help me.

18 Q. Is Brent Gale someone who died of
19 mesothelioma in 2007?

20 A. Not that I'm aware of.

21 Q. You're not aware of Mr. Gale's
22 workers' compensation case?

23 A. I don't recall any other workman's
24 compensation case that involved mesothelioma.

25 Q. And you're not aware that

1 Mr. Gale's father also died from lung related
2 injury from working with the Gouverneur Talc
3 Company?

4 MR. RADCLIFFE: Objection, assumes
5 facts not in evidence.

6 A. No.

7 Q. How about Lynn Charter, do you know
8 that name?

9 A. No, that's not familiar to me.

10 Q. So in terms of your analysis that
11 the R.T. Vanderbilt talc in Upstate New York
12 does not cause mesothelioma, you have taken
13 into account four workers' comp claims filed
14 against R.T. Vanderbilt, correct?

15 MR. RADCLIFFE:

16 Objection, argumentative, assumes facts not
17 in evidence, misstates prior testimony.

18 A. They exist.

19 Q. And two comp claims -- strike
20 that. And two mesotheliomas that were part of
21 the Honda study, so for a total of six
22 mesotheliomas, it's your testimony that based
23 on that understanding you do not have any
24 doubt in your mind that the material that came
25 out of the ground from International Talc or

1 R.T. Vanderbilt Talc mines, you have no doubt
2 that that does not cause mesothelioma; is that
3 correct?

4 MR. RADCLIFFE: Same objection.

5 A. That's correct. I believe that's
6 correct.

7 Q. And that would include Mine No. 3,
8 correct?

9 A. I have no evidence of anything from
10 Mine No. 3.

11 Q. Well, we know it contained
12 asbestiform talc, but it's your testimony here
13 today that any mesothelioma that came from
14 exposure to asbestiform talc from the
15 International Talc mines would not be caused
16 by that exposure, correct?

17 A. All the data that I have that speak
18 to talc fibers, some of which is asbestiform
19 would say it doesn't.

20 Q. So that's a correct statement then,
21 correct?

22 A. That would be, yes.

23 Q. And even if 20 mesotheliomas were
24 reported out of the Gouverneur Talc and
25 International Talc mines, that would still be

1 your determination, correct?

2 MR. RADCLIFFE: Same objections.

3 A. It would depend on the
4 characteristics of each case. If they were
5 reasonably linked, if there was a question
6 about the link, if it was a reasonable
7 association, I would be very concerned about
8 it.

9 Q. Mr. Kelse, has there ever been a
10 case that you've seen where you believe that
11 there was a reasonable interpretation that any
12 fiber that came from either an International
13 Talc mine or an R.T. Vanderbilt Gouverneur
14 Talc mine caused or contributed to that
15 mesothelioma?

16 A. Not based on the health studies
17 that I'm familiar with.

18 Q. That's not what I asked you, sir.
19 Could you read the question back?

20 (Whereupon, the court reporter read
21 back the previous question.)

22 A. I think the answer that I said was
23 no.

24 Q. And if you saw 20 more
25 mesotheliomas coming out of the mines, your

1 answer wouldn't change, would it?

2 A. It would depend on the
3 characteristics of each case. If the
4 characteristics of case were such that it was
5 reasonably linked to that exposure I would be
6 very concerned. I've not seen that.

7 Q. And what, in your mind, would
8 reasonably link an exposure to a mine worker
9 who mined for a period of time and then got
10 mesothelioma, what would you need to see?

11 MR. RADCLIFFE: Objection, calls for
12 speculation, argumentative.

13 A. Well, there are basically four
14 things. Number one, you'd have to feel very
15 reasonably secure that the diagnosis was
16 correct in the first place, particularly
17 diagnoses that are more than 10 or 15 years
18 old. There are papers written on the
19 reliability of that diagnosis have become much
20 better in more recent years, my understanding,
21 but that's number one.

22 So that's one of the reasons why we ask
23 for tissue samples and additional information
24 so that we could confirm whether these were
25 properly diagnosed in the first place. That's

1 not unreasonable to do because very often
2 there has been, especially in the past that's
3 been a problem. So you need to cross that off
4 first.

5 The second thing you have to obviously
6 look to see is whether or not the person
7 actually had exposure to your material. In
8 all these cases since they worked for the talc
9 company, that would have been met, they did
10 have that exposure.

11 The third thing that you would need to
12 look for is the latency, is the latency
13 consistent with what you would expect for a
14 causal association from the time of exposure
15 to the time of manifestation of the disease.

16 An example of that would be mesothelioma
17 case that was first actually reported by NIOSH
18 who discounted that mesothelioma case as being
19 causally linked to the talc exposure because
20 latency was too short. So while you would
21 count that as one, researchers did not, for
22 that reason.

23 And fourth, very importantly, you would
24 have to also look at the person's entire work
25 history, all of his exposures, and if other

1 work sites, other exposures did for certain or
2 likely included exposure to asbestos, that
3 would be very important to understand because
4 the talc has been tested against asbestos and
5 it doesn't act in the same way on pleural
6 tissue. And it's not present in the product
7 in the first place. So those are the
8 considerations that you would make.

9 Q. Well, if it's not present in the
10 product then what difference does it makes if
11 there are 30 40 mesotheliomas coming out of
12 the mine?

13 MR. RADCLIFFE: Objection,
14 argumentative, assumes facts not in
15 evidence, calls for speculation.

16 BY MS. ABRAMS:

17 Q. Does it make any difference?

18 MR. RADCLIFFE: Same objections.

19 A. It doesn't -- whatever a disease
20 end point is, you want to make -- you want to
21 do a causal association to figure out what it
22 is that produced that disease end point,
23 sometimes it's not one thing, sometimes it may
24 be combinations of things. It's very
25 difficult to tease out, but there are certain

1 basic principles that researchers follow to
2 try to determine whether an end point disease
3 is reasonably associated with an exposure or
4 not.

5 When I look at those general principles
6 and rules and compare them against the
7 experience that we have here, I feel that
8 those mesotheliomas don't meet those four
9 criteria that I described to you. Several of
10 the cases we felt were probably not diagnosed
11 correctly, people could argue that, but the
12 evidence that we have would suggest to us that
13 it wasn't.

14 In almost every of the four comp claims
15 there were also competing risks where it was
16 either likely or known that an individual
17 actually did have asbestos exposure. And then
18 that type of biologic end point is totally
19 inconsistent with all of the research that's
20 been done on the talc, the animal studies, the
21 cell study, even the lung cancers epi studies
22 is inconsistent with it.

23 Q. I move to strike as nonresponsive.
24 Could you read the question back, please?

25 (Whereupon, the court reporter read

1 back the previous question.)

2 MR. RADCLIFFE: Same objections.

3 A. Well, you're drawing -- there's a
4 difference between numbers and causal
5 association and I don't know how to have this
6 discussion with you. If causal association to
7 you is simply numbers, then we can't discuss
8 it.

9 Q. Is there any point at which you
10 would see so many mesotheliomas coming out of
11 the mines that it might actually indicate to
12 you that there was some causal relationship?
13 Would that be 50 or a hundred or how many
14 would that be?

15 MR. RADCLIFFE: Objection,
16 argumentative.

17 BY MS. ABRAMS:

18 Q. If you know.

19 MR. RADCLIFFE: Objection,
20 argumentative, calls for speculation,
21 assumes facts not in evidence.

22 A. I wouldn't use numbers to do that,
23 I would say the more numbers, the more higher
24 the indication is that there may be a causal
25 association, I'll grant you that. As the

1 numbers go up, it's more and more likely that
2 there's causal association.

3 But what we're talking about here, you
4 know, you look at these individual cases and
5 not one of them meet all four of those
6 criteria that I mentioned to you. And even
7 though you may say it's unresponsive, exposure
8 to that dust has been tested for just that
9 type of potential and it doesn't act that --
10 so the biologic plausibility isn't there and
11 it doesn't contain asbestos.

12 So when you've got those things, if you
13 had asbestos in a material and people were
14 exposed to it for sure, you had an appropriate
15 latency, you had a mesothelioma that was
16 reasonably confirmed to exist, if you had all
17 that going for you, you could then say that
18 mesothelioma was in all likelihood caused by
19 that exposure. Not in one case can you say
20 that about this talc.

21 THE VIDEOGRAPHER: Zero minutes left.

22 MS. ABRAMS: I guess it's time to
23 change the tape.

24 THE VIDEOGRAPHER: Off the
25 record, 2:58.

1 (A brief recess was taken.)

2 THE VIDEOGRAPHER: This is the
3 beginning of Tape Number three. We're back
4 on at 3:03.

5 MS. ABRAMS: Move to strike as
6 nonresponsive from the point of, and you
7 may say this is unresponsive but --
8 continuing. And I'm not ready to go off
9 the record yet. I just have a few more
10 questions and then we can go off the
11 record.

12 THE VIDEOGRAPHER: It will take about
13 three minutes.

14 MS. ABRAMS: That's fine.

15 MR. RADCLIFFE: Well, we're off the
16 record.

17 MS. ABRAMS: No, we're not.

18 (A brief recess was taken.)

19 THE VIDEOGRAPHER: This is the
20 beginning of Tape Number 3. We're back on
21 the record at 3:03.

22 BY MS. ABRAMS:

23 Q. Mr. Kelse, let's just continue for
24 just a few more minutes before we take a
25 break. You mentioned latency and your

1 understanding is that you need a 15-year
2 latency, is that your idea of a latency for
3 mesothelioma?

4 MR. RADCLIFFE: Objection, beyond the
5 scope.

6 A. I don't believe that's what I
7 said. I think I said that that case in the
8 NIOSH study reported a 15-year latency which
9 they felt was inadequate. It was too short.

10 Q. Did that worker have prior exposure
11 at New York State Talc mines that were not
12 Gouverneur talc mines?

13 A. I don't recall.

14 Q. You don't recall?

15 A. No.

16 Q. Did Vanderbilt supply the
17 employment information and years of employment
18 to NIOSH for their study?

19 A. They would have, yes.

20 Q. And they supplied only the years of
21 employment for Gouverneur Talc, is that right?

22 MR. RADCLIFFE: Objection,
23 argumentative, assumes facts not in
24 evidence.

25 A. I am not familiar with all the

1 information that was provided to NIOSH during
2 the first effort. So I don't know exactly how
3 complete and thorough the information was in
4 the files.

5 Q. Are there files on that in your
6 office?

7 A. No, there are not.

8 Q. Those don't exist anymore so far as
9 you know?

10 A. As far as I know.

11 Q. You mentioned that their work
12 history at other sites has to be looked at to
13 see if there's asbestos exposure at other
14 sites, correct? You said that?

15 A. That's correct. I can give you an
16 example.

17 Q. Just yes or no.

18 A. Yes.

19 Q. And in some cases you've written on
20 Exhibit 9 that some of these people had
21 possible exposure to brakes, correct?

22 A. That's indicated on their
23 application forms in terms of their prior work
24 history.

25 Q. And your understanding is that

1 exposure to brake dust is an asbestos
2 exposure, is that what you're stating here
3 today?

4 A. It could be.

5 Q. Well, do you know one way or the
6 other?

7 A. No.

8 Q. And so you've written that down
9 here, but you don't really know that that's a
10 possible exposure, correct?

11 MR. RADCLIFFE: Objection, calls for
12 speculation.

13 A. I know it's possible.

14 Q. Have you talked to any experts
15 about whether exposure to brake dust is an
16 exposure to asbestos?

17 A. I've read some articles and I know
18 there's some controversy about it.

19 Q. And whose articles have you read
20 about that?

21 A. I don't know the -- I'm not someone
22 who memorizes every author's name and title,
23 but I can get you a couple, if you'd like.

24 Q. Well, I want know what's in your
25 files, the people that you rely on that you

1 look to for this information. Do you have
2 information in your files about whether or not
3 exposure to brake dust causes mesothelioma?

4 A. I have articles that discusses
5 various types of asbestos, chrysotile being
6 one, and whether -- in the course of many of
7 those discussions they do discuss brake pads
8 and epi studies done on mechanics and things
9 of that nature.

10 Q. Are those in a file?

11 A. I have a file of reference
12 materials.

13 Q. What's the title of the file?

14 A. Well, it would be generally
15 reference materials, but it would be broken
16 down into -- I have one on smoking and things
17 of that nature.

18 Q. And you have one on brakes?

19 A. No, not brakes.

20 Q. What is the one with the brake
21 information called?

22 A. It would be general asbestos linked
23 articles and papers.

24 Q. Did you produce that file?

25 A. I didn't produce reference

1 materials.

2 Q. I ask that you produce that file to
3 your attorneys.

4 MR. RADCLIFFE: I object. I don't
5 think you've requested it.

6 MS. ABRAMS: I think we did.

7 MR. RADCLIFFE: If you can point out
8 to me --

9 MS. ABRAMS: I'm sure we can find it
10 somewhere on our hundreds of --

11 MR. RADCLIFFE: It's not a matter of
12 trying to find it --

13 MS. ABRAMS: We'll meet and confer
14 with you. I'm asking you to produce it to
15 your lawyer and then he can decide whether
16 to give it to us or not.

17 MR. RADCLIFFE: Again, I object to
18 that request. Mr. Kelse is under no
19 obligation to produce that file. Go ahead.

20 BY MS. ABRAMS:

21 Q. Mr. Kelse, you mentioned that --
22 you started to talk about the study showed
23 with respect to talc that it doesn't act that
24 way, right? Do you remember that testimony,
25 it doesn't act like asbestos? Just do you

1 remember that testimony?

2 A. That's right.

3 Q. Now, can you tell me exactly, not
4 everything in the studies or the whole thing
5 about what they say, I'm just going to ask you
6 can you tell me the names of the studies or
7 the authors of every study that you rely on to
8 determine that talc doesn't act the same way,
9 just the author or the names?

10 A. Okay, and I'll preface that with
11 and I saw the papers in the document.

12 Q. I knew you couldn't do it.

13 A. I can't help myself. It's human
14 animal cell, human studies would be the
15 epidemiologic study, the most recent being the
16 Honda study. And then the Gamble case control
17 study and then the -- there are two studies by
18 Steve Lamm, one Vermont-New York comparison
19 and another one entitled short-term worker
20 exposure. Another study by Tabishaw and then
21 of course the very first, the NIOSH 1980
22 Technical Report for which they did a short
23 update, I think, in 1997 or something of that
24 sort. So I think that's a total of seven
25 human studies specific to Vanderbilt talc.

1 Q. Do you have those all in a file
2 called human studies or something to that
3 effect?

4 A. I do.

5 Q. What's the file called?

6 A. It's called Human Studies Specific
7 to Vanderbilt Talc.

8 Q. Do you have anything else in that
9 file besides those studies?

10 A. Those are human studies, then
11 there's a section for animal studies.

12 Q. What animal studies do you have?

13 A. The animal studies include
14 Stanton, 72 materials, Smith, those are the
15 two animal studies.

16 Q. Okay.

17 A. And then there's a cell study.

18 Q. Cell, C-E-L-L?

19 A. C-E-L-L, correct, and that's the
20 Wylie Mossman.

21 Q. Is that the only one in that?

22 A. Only cell study, yes.

23 Q. Are those all the studies that you
24 rely on for the statement that talc doesn't
25 act the same way as asbestos?

1 A. Those are the studies that I
2 partially rely on that the mineral
3 composition --

4 Q. Other than mineral composition,
5 that's fine.

6 A. Okay, because there are other
7 studies that involve the same type of minerals
8 that also speak to this.

9 Q. We'll get to that after the break.

10 A. But it's not exactly out of
11 Vanderbilt's mine.

12 Q. We'll get to that after the break,
13 but just in terms of the human, animal and
14 cell studies, have you given us all of that
15 information?

16 A. I saw them in your -- and they were
17 copied last week.

18 Q. Are there any other studies in your
19 files regarding human, animal or cell studies
20 that you haven't told us about?

21 A. That are specific to Vanderbilt
22 talc?

23 Q. Yes.

24 A. The answer is no.

25 Q. Are there studies that are not

1 specific to Vanderbilt talc in that category?

2 A. The answer is yes.

3 Q. And what is that?

4 A. In terms of human studies there's
5 two studies of gold miners in North Dakota
6 Homestake Mine, one study by NIOSH Harlan
7 Amandus.

8 Q. The gold miners in North Dakota,
9 what's the name of that study or author?

10 A. Homestake.

11 Q. Okay.

12 A. And the second one was done by
13 McDonald.

14 Q. Okay.

15 A. Those are two human epidemiology
16 studies of gold miners.

17 Q. Did you produce those to us?

18 A. Yes, I saw those in your stack and
19 they were copied last week again.

20 Q. What else do you have?

21 A. Then there was epidemiology
22 studies, human studies of Taganite workers,
23 iron ore workers, Mesabi Range in Minnesota.

24 Q. Do you know the name of that study
25 or the author?

1 A. There were, I believe, three of
2 those studies; Cooper did two, Clark Cooper.
3 I don't know who did the third. We can look
4 that up. You do have them in the papers.

5 Q. Okay. Any others?

6 A. Those are the two human studies
7 dealing with non speciform ampiboles, that's
8 the link.

9 Q. Any other animal studies?

10 A. Animal studies, there's a study by
11 Addison Davis, don't know the date. It's in
12 the part of your file that was copied last
13 week as well that dealt with testing three
14 tremolite asbestos samples against three non
15 asbestiform or prismatic tremolite materials
16 of different -- three prismatic tremolite
17 samples were of somewhat different
18 morphologies from granular to acicular.

19 Q. Let's try not get into the details,
20 okay?

21 A. Heaven forbid.

22 Q. Just try to get a list. So there's
23 a Addison Davis study of tremolite, is that a
24 good way to summarize that?

25 A. Yes.

1 Q. And are there any other animal
2 studies?

3 A. There are -- there's a study by
4 Wagner, don't ask me for the date. I know you
5 have copies of this.

6 Q. Okay.

7 A. There's studies by Pott, P-O-T-T.
8 Again, they would be in the file. This is a
9 good memory quiz for me.

10 Q. Terrific memory.

11 A. I think there may be one or two
12 more that do escape me at the moment, but they
13 are in my file.

14 Q. And what about cell studies, are
15 there others?

16 A. There are three or four that I put
17 in the file, yeah. The majority of them
18 actually were produced by Brooke Mossman or
19 her students. Palakar I think is
20 one, P-A-K-A-L-A-R.

21 Q. Okay. Does that pretty much
22 summarize the information that you used other
23 than the mineral studies to determine that
24 talc acts differently than asbestos?

25 A. The minerals in our mixed talc

1 product act differently. If you say talc
2 there's a whole other army of -- a whole other
3 range of studies that deal with just talc, the
4 mineral talc itself.

5 Q. Can we say that those are the
6 studies you rely on to say that Vanderbilt
7 talc and International talc, including talc
8 from Mine 3 that was Mouldene talc do not
9 cause mesothelioma or act the same way as
10 asbestos, can we say it that way?

11 MR. RADCLIFFE: Objection, vague and
12 ambiguous.

13 A. I would qualify it just a little.
14 I can only speak for Vanderbilt talc which is
15 the talc that Vanderbilt was responsible for,
16 and to the extent that it included talc from
17 Talcville, which was owned by International at
18 one time, I would say the same for that
19 because the mineral composition was tested in
20 these studies or linked to them. Beyond any
21 other talc mines that International may have
22 operated that Vanderbilt did not operate, for
23 which I don't know what the mineral
24 composition is, I cannot speak for that.

25 Q. Vanderbilt operated and was

1 responsible for Mine No. 3 at one point in
2 time that produced Mouldene, correct?

3 A. That's correct.

4 MR. RADCLIFFE: Objection, vague and
5 ambiguous.

6 BY MS. ABRAMS:

7 Q. Is it your testimony that the
8 Mouldene that was produced by Vanderbilt from
9 Mine No. 3 does not cause mesothelioma, based
10 on all of the studies that you just told us
11 about?

12 A. Yes.

13 Q. And other than the mineral studies,
14 are there any other studies that you rely on
15 to make that representation?

16 A. Help me -- what do you mean by
17 mineral studies? You mean the two things --
18 mineralogy, is there asbestos there, yes or
19 no, or health, which are you talking about?

20 Q. Well, I'm just talking about the
21 animal cell and epidemiological studies, are
22 there any others that you rely on for that
23 representation other than the ones that you've
24 told us about?

25 A. That I just gave you, off the top

1 of my head, no.

2 Q. And is it fair to say that not one
3 of those studies specifically tested Mouldene
4 talc, is that fair?

5 A. Yes.

6 Q. That's correct?

7 A. Well, I hesitate. There's a reason
8 I hesitate. I gave you the cell study,
9 that's a talc fiber concentrate. We talked
10 about this at the last deposition. That's
11 reason I brought it with me.

12 Q. You believe the Wylie Mossman cell
13 study was testing Mouldene?

14 A. It's the closest you would come.
15 It's very, very close because it is the fiber
16 concentrate from that mine and there was
17 actually another sample, it was an
18 intermediate. There was FD-4 which was a
19 typical talc product generated from, not from
20 Talcville like a Nytal. Then there was an
21 intermediate fiber tested and that was
22 fibercal which also was another grade from
23 Talcville. And then there was a fiber
24 concentrate which was as the name implies a
25 concentration of talc fiber extracted from the

1 ore from that same mine. So to the extent
2 that that's where Mouldene came from, it is
3 very close, if not the same.

4 Q. Well, it's your testimony that the
5 cell study that Wylie Mossman did tested or
6 used fiber from Mine No. 3, is that what
7 you're saying?

8 A. For certain.

9 Q. Okay. Other than that study, all
10 the other studies that you're relying on do
11 not address the specific fiber from Mine No.
12 3; is that right?

13 A. Actually, that's not right. To the
14 extent that the other studies involve talc
15 from the other mines and that talc also
16 contained the same type of talc fiber, then
17 that talc fiber was tested in those tests as
18 well.

19 Q. Which other mines --

20 A. I can give you an example.

21 Q. Which other mines contain the same
22 talc fiber as Mine No. 3 that Gouverneur Talc
23 was mining?

24 MR. RADCLIFFE: Objection. He didn't
25 finish his answer.

1 BY MS. ABRAMS:

2 Q. I'm sorry, I didn't mean to
3 interrupt you.

4 A. No, that's okay.

5 Q. Were you finished?

6 A. No, I wasn't.

7 Q. Please finish your answer. Do you
8 want to finish your answer or do you want to
9 move on and answer my question?

10 A. Well, maybe what we might do is why
11 don't you ask read back your question because
12 I do tend to ramble.

13 MR. RADCLIFFE: Well, you were saying
14 I will give you an example.

15 MS. ABRAMS: Thank you. Could you
16 read the question back, please?

17 (Whereupon, the court reporter read back the
18 previous question.

19 BY MS. ABRAMS:

20 Q. I'll ask it again. Which other
21 Gouverneur Talc mines contain the same fiber
22 as International Talc Mine No. 3?

23 MR. RADCLIFFE: Objection, vague and
24 ambiguous, assumes facts not in evidence.
25 Go ahead.

1 A. My understanding that you will find
2 the same type of talc fiber, but to a much
3 lesser extent in the Arnold pit mine.

4 Q. Okay. Now, I want to let you take
5 a break because I've been keeping you way too
6 long. I just want to make sure I'm finished
7 with that topic.

8 Let me just ask you this: In your files
9 do you have any studies that don't support
10 your position that the talc operates the same
11 way -- doesn't operate the same way as
12 asbestos, animal studies, cell studies,
13 epidemiological studies, do you have any of
14 those in your file?

15 MR. RADCLIFFE: Objection, compound,
16 vague and ambiguous, including double
17 negatives.

18 A. The health studies that I have,
19 the ones that I listed to you, do not feel a
20 single one shows that same effect.

21 Q. Okay, I asked a bad question, let
22 me ask it again. I understand that --

23 MR. RADCLIFFE: Objection sustained
24 then.

25 BY MS. ABRAMS:

1 Q. Exactly. You have provided for us
2 the studies that you have that support your
3 position and R.T. Vanderbilt's position that
4 talc doesn't operate the same way as
5 asbestos. What I'm asking you now is do you
6 have studies that do support the position that
7 asbestos and talc have similarities and do act
8 the same way with respect to human health, and
9 that would be epidemiological studies, animal
10 studies or cell studies?

11 MR. RADCLIFFE: Objection, compound,
12 vague, ambiguous.

13 BY MS. ABRAMS:

14 Q. Whether or not you personally
15 believe that -- the conclusions of the
16 studies. And all I want to know is yes or no,
17 do you have such a thing?

18 MR. RADCLIFFE: Same objection.

19 BY MS. ABRAMS:

20 Q. Yes or no.

21 A. I don't -- I'm not going to say yes
22 or no. I'm going to tell you flat out the
23 studies that I listed to you are all the
24 studies that are available that speak to
25 Vanderbilt talc, period. Good, bad and

1 indifferent, they all tell us it doesn't act
2 in the same way.

3 MR. RADCLIFFE: Does that mean no,
4 you don't have any studies that are the
5 opposite?

6 BY MS. ABRAMS:

7 Q. I didn't say the opposite, but that
8 don't support that position. Do you have
9 anything in your files?

10 A. The NIOSH study suggested that the
11 excess lung cancer that they recorded was
12 causally associated with exposure to the talc.

13 Q. Any others?

14 A. No.

15 Q. Are there any researchers that you
16 know of that don't agree with you and do
17 believe that there is a relationship between
18 talc exposure and mesothelioma?

19 MR. RADCLIFFE: Objection, calls for
20 speculation, beyond the scope --

21 BY MS. ABRAMS:

22 Q. If you know.

23 MR. RADCLIFFE: Beyond the scope of
24 the designated testimony.

25 A. I don't know what researchers think

1 now. I don't know the people who helped
2 create the original NIOSH technical report
3 which now has a disclaimer on it that says
4 we're not responsible or don't stand by this
5 anymore. So I don't know if that can be
6 interpreted as NIOSH no longer feels that way
7 or not.

8 It would suggest to me that they don't or
9 they have questions about it. Other than
10 that, there has been nobody else that has
11 studied Vanderbilt talc specifically that
12 concluded the way NIOSH did. Everyone else in
13 every other study and all the other
14 evaluations and analysis of that data suggests
15 other than what NIOSH suggested in 1980.

16 Q. Move to strike to the extent it's
17 nonresponsive. With respect to talc
18 generally, are you aware of studies or
19 scientists that believe that talc acts like
20 asbestos and causes mesothelioma?

21 MR. RADCLIFFE: Same objections.

22 A. I assume when you say talc you're
23 talking about --

24 MR. RADCLIFFE: No assumptions, don't
25 speculate.

1 BY MR. ABRAMS:

2 Q. Do you understand the question?

3 A. Well, you said talc.

4 Q. Do you understand the question? I
5 can rephrase it.

6 A. Yeah, I don't think I can answer
7 it, actually.

8 Q. You can't answer whether there are
9 scientists that actually support the idea that
10 exposure to talc contributes to the
11 development of mesothelioma?

12 MR. RADCLIFFE: Same objections.

13 A. Well, I can tell you that there has
14 been studies of talc, IARC has a monograph on
15 talc. And they do not consider talc as a
16 carcinogen or as capable of causing
17 mesothelioma.

18 Q. Mr. Kelse, I'm not asking you for
19 other studies that support your position.
20 What I'm asking you is whether you are aware
21 of scientists or studies that support the
22 alternative, that talc, exposure to talc, does
23 contribute to the development of
24 mesothelioma? Are you aware of any scientists
25 or studies that support that position?

1 MR. RADCLIFFE: Same objections,
2 asked and answered and compound.

3 BY MS. ABRAMS:

4 Q. And if you don't know of
5 any, that's fine, just say so.

6 MR. RADCLIFFE: Same objection.

7 A. I would have to -- I know there
8 are, there have been a couple of researchers
9 who feel that there is a possible association.

10 Q. Who are they?

11 A. There was New York State, Vienna
12 was the head of the New York State Health
13 Department that looked at mesothelioma rates
14 in New York State published on that.

15 Q. Is there a study that's published?

16 A. Yeah, an old study.

17 Q. Do you know what year that was?

18 A. No, I can get that for you.

19 Q. Do you have that study?

20 A. I do.

21 Q. Did you produce it to us?

22 A. No, because it's a general New York
23 State type study, it's not Vanderbilt talc
24 miners or anything.

25 Q. So in other words, you did not

1 produce to us any general studies, only
2 studies about specifically Vanderbilt talc, is
3 that a fair statement?

4 MR. RADCLIFFE: Objection, assumes
5 facts not in evidence, argumentative.

6 BY MS. ABRAMS:

7 Q. Is that true?

8 A. Well, we actually just talked about
9 studies that are specific to Vanderbilt talc
10 and then we talked about studies that were
11 linked to that issue because of the
12 commonality of the mineral issue and --

13 Q. So you did produce to us the
14 studies that you believe support the position
15 that talc is not associated with the
16 development of mesothelioma, but you did not
17 produce studies or scientists or research that
18 doesn't support that position, correct?

19 A. I'm sorry, actually in that file
20 and this was copied last week, in that file I
21 also had a study by Kleinfeld and there was
22 also there was a case study, it was called the
23 Hull paper.

24 Q. The Hull paper?

25 A. Right, and that was in the file as

1 not specific to Vanderbilt, but that has some
2 linkage.

3 Q. But you didn't produce the Vienna
4 study?

5 A. You know what, I think that's in
6 there too, but I will check. If it's not,
7 you're welcome to it.

8 Q. Thank you. Would you give that to
9 your attorney, if you would?

10 A. Sure.

11 Q. So there's Vienna, there's
12 Kleinfeld and there's Hull, are there any
13 other studies?

14 MR. RADCLIFFE: Objection, asked and
15 answered.

16 A. Not that I'm aware of.

17 Q. Are you aware of Dr. Abraham's
18 work?

19 A. Yes.

20 Q. Do you have his study?

21 A. Well, I think that's the Hull
22 paper.

23 Q. Okay. That's the same as the Hull
24 paper. How about Dr. Stopford, never heard of
25 him?

1 A. He's in North Carolina. I think
2 he's a toxicologist.

3 Q. Do you have his studies in your
4 file?

5 A. I'm not aware that he produced any
6 studies.

7 Q. How do you know about him?

8 A. He is a consultant for I think the
9 Arts and Crafts Institute, so he would be
10 asked by his association to comment on various
11 materials that arts and crafts people might
12 use.

13 Q. So in answer to my question about
14 researchers who have an alternate opinion from
15 yours and believe that there is a relationship
16 between exposure to talc and the development
17 of mesothelioma, you would answer potentially
18 to look at Dr. Vienna, Dr. Kleinfeld, Stopford
19 and Hull, Abraham? Are there any others,
20 whether or not they have published are of that
21 opinion?

22 MR. RADCLIFFE: Objection, asked and
23 answered. Compound, assumes facts not in
24 evidence. Argumentative.

25 A. Well, I'll be happy to give you

1 what paper I have on Dr. Stopford because I
2 don't think that's how he concluded.

3 Q. Are there others that do conclude
4 that, that you know of?

5 A. I'm trying to think, not off the
6 top of my head. The ones I mentioned are the
7 ones that come to mind.

8 MR. RADCLIFFE: I think it's now
9 about 10 minutes after you said we would
10 take a break.

11 MS. ABRAMS: Let's take a break.

12 MR. RADCLIFFE: It's been way too
13 long.

14 THE VIDEOGRAPHER: Off the record at
15 3:32.

16 (A brief recess was taken.)

17 THE VIDEOGRAPHER: We're back on the
18 record at 3:52.

19 BY MS. ABRAMS:

20 Q. Mr. Kelse, I'm looking at what
21 we've marked as Exhibit 9. The first page is
22 the workers' comp mesothelioma deaths claimed
23 or the WC, that's workers' comp, right?

24 A. Yes.

25 Q. The next page of that at the top

1 says WC Non Malignant Pulmonary Claims GTC,
2 and these span from 1992 until 2009. Do you
3 have that document in front of you?

4 A. Yes, and this is attached to it so
5 it actually expands from about 1970 or '65
6 through 2009.

7 Q. And you've redacted the names of
8 all these claimants; is that right?

9 A. I did, yes.

10 Q. The first two pages -- the pages,
11 the claims filed on the last two pages range
12 from 1962 to 1980, correct?

13 A. File dates, yes, looks like 1980 is
14 it.

15 Q. Can you tell me, the first three
16 pages of this set have injury date
17 information, is that the claim date, the file
18 date?

19 A. Yeah, that's the date that on the
20 form it says date of injury so.

21 Q. That's the file date, so these
22 range from 1986 all the way up to 2009 and
23 then it says See continuing list as of 5-85
24 and 10-82, where is that continuing list?

25 MR. RADCLIFFE: Objection,

1 compound, misstates prior testimony,
2 assumes facts not in evidence. Also the
3 predicate is not a part of the question.

4 BY MS. ABRAMS:

5 Q. Do you see that statement?

6 A. Yes, I do.

7 Q. That list is not here, is it?

8 A. I'm confused by that. I think what
9 I meant by typing that in was trying to refer
10 to the continuing list, continuing going back
11 in time rather than forward, but it's
12 confusing because I typed in 5-31-85.

13 Q. This last two pages refer to cases
14 1962 through 1980, correct?

15 A. That's -- yes, that's right.

16 Q. And these next three pages in front
17 ago from 1986 to 2009, correct?

18 A. Yes.

19 Q. So we don't have claims from 1980
20 to 1986 reflected in these documents, is that
21 fair?

22 A. Not reflected, but I don't know
23 whether that's because there were no claims
24 that I had a record of or for those years or
25 whether there were claims, but I just didn't

1 have the records for them.

2 Q. Okay. And what file did you get
3 these documents out of?

4 MR. RADCLIFFE: Objection, asked and
5 answered.

6 BY MS. ABRAMS:

7 Q. Let me just say, would you look
8 back in that file and see if that information
9 is included in your file and give it to your
10 attorney if it is?

11 MR. RADCLIFFE: Objection, it's been
12 provided. If we have it, it's in the file
13 that you have, on mine it is at least.

14 BY MS. ABRAMS:

15 Q. Would you do that, sir?

16 A. I'll check again. I remember how I
17 put this together, though, and they were from
18 the available data that was in the file so if
19 there's a three, four, five year gap, it's
20 either because I don't have the data or there
21 were no claims, no pulmonary claims for those
22 years.

23 Q. If you would look at the page
24 that -- the second page of the set, it says WC
25 Non Malignant Pulmonary Claims. If you look

1 under claim descriptions in that column there
2 are several entries that say none?

3 A. None, that's right.

4 Q. Does that mean you have no
5 information about what the allegation for
6 disease was?

7 A. It means that there was no claim
8 description that would suggest that there was
9 a pulmonary claim for that year. There were
10 certainly comp claims, but none of them
11 involved pulmonary claims.

12 Q. So you included comp claims, but
13 also if they were not pulmonary, you didn't
14 put in here what they were?

15 A. This list is for non malignant
16 pulmonary claims, so that would be any claim
17 for a pulmonary injury that was not lung
18 cancer or mesothelioma.

19 Q. So under 2007 where it says none,
20 that's some pulmonary injury, but you don't
21 know what it is, is that fair?

22 A. No, it's just none recorded for
23 that year, no one filed a claim.

24 Q. I see. There were no claims?

25 A. Exactly.

1 Q. Thank you for clarifying that.
2 Now, for the cancers you have listed cancers
3 of the pulmonary tract claims, 1972, 1996,
4 1993, 1995, 1995, 2001 and 2005. The last
5 four entries are the same cases that you've
6 reflected on the first page of mesotheliomas,
7 correct?

8 A. That's correct.

9 Q. So is it your information, sir,
10 that there were only three cancer claims with
11 respect to all Gouverneur Talc workers ever?

12 A. According to my records. I was
13 looking at them actually yesterday, and I was
14 having a hard time actually even knowing
15 whether to put them in because they were
16 actually talcosis claims, but then the
17 individual eventually died of lung cancer and
18 there was discussion of linkage between
19 talcosis contributing to lung cancer, which I
20 don't quite see what that is, but whatever
21 that link is, somehow or other it ended up
22 getting an award. So I didn't really know
23 quite how, but it did deal with a lung cancer
24 so I listed it.

25 MR. RADCLIFFE: I object to vague and

1 ambiguous, misstates prior testimony.

2 BY MS. ABRAMS:

3 Q. Did you include lung cancer claims
4 where talcosis was not also claimed?

5 A. I include the claims that-- where
6 lung cancer was part of the claim information.

7 Q. Did you need to see talcosis claim
8 to include it in this list is my question?

9 A. No.

10 Q. And so it's your testimony that so
11 far as you know, there have only been three
12 lung cancer workers' comp claims out of the
13 Gouverneur Talc Mines?

14 A. As far as I know, yes.

15 Q. And these records reflect
16 Gouverneur Talc and not International Talc,
17 correct?

18 A. That's correct.

19 Q. And in previous submissions in the
20 production, did you notice that there were 67
21 workers' comp claims by International Talc
22 workers at the time that that facility was
23 purchased by R.T. Vanderbilt?

24 MR. RADCLIFFE: Objection, assumes
25 facts not in evidence, calls for

1 speculation.

2 A. I did not see those records.

3 Q. The next group of documents is a --
4 which I'll mark as Exhibit 12 is a three-page
5 document called note to file. Did you prepare
6 that document?

7 A. Yes, I did.

8 Q. Can you tell us what this is?

9 A. During our last deposition, you
10 asked for a number of documents and you asked
11 for did I check this file or that file and so
12 forth. So in response to that, I did want to
13 follow up. I was sure that what I reported
14 was accurate, but I thought I would go ahead
15 and follow up anyway and that's what this is,
16 is a note to the file that essentially
17 addresses what I believed you were asking me
18 at the last deposition and I had to say no, I
19 didn't check this or I didn't check that so
20 this was an effort to in good faith to check
21 these things.

22 Q. So you called Dana Putman, the
23 plant manager at Gouverneur Talc; is that
24 correct?

25 A. That's correct.

1 Q. And I notice that you asked him
2 about various kinds of files. Did you ask him
3 if anywhere at the -- at the old International
4 Talc facility that is now currently owned by
5 Gouverneur Talc, R.T. Vanderbilt, whether they
6 had any historical International Talc
7 records?

8 A. I did. I think I made a note to
9 that effect at the very bottom.

10 Q. And would you read that note to us?

11 A. I also confirmed the absence of IT,
12 International records pertaining to dust data
13 or insurance in their records, meaning
14 Gouverneur Talc's records.

15 Q. Other than dust data or insurance
16 records, did you ask if they had any other
17 historical records for International Talc?

18 A. No.

19 Q. Did you ask Mr. Putman, sir, if
20 they had any International Talc historical
21 records at the plant?

22 A. No.

23 MR. RADCLIFFE: Objection, asked and
24 answered.

25 A. No, I asked for these records

1 because they're risk linked, that's what I do.

2 Q. So the only records that you asked
3 him to look for were dust data or insurance
4 records of International Talc Company,
5 correct?

6 A. That's correct.

7 Q. You went to Dr. Thompson's lab
8 files, does Dr. Thompson maintain a lab at the
9 R.T. Vanderbilt facility?

10 A. No, he doesn't.

11 Q. So this was an old lab that he used
12 to use; is that correct?

13 A. That's correct.

14 Q. Is that someone else's lab right
15 now?

16 A. Yes, it is.

17 Q. Whose lab is that?

18 A. Peter Cuillo.

19 Q. Could you spell that name?

20 A. C-U-I-L-L-O.

21 Q. And when you say you did a random
22 search in your notes for Dr. Thompson's lab
23 files, what did you look for?

24 A. I went to his file cabinet that
25 was -- I knew was there from his days, opened

1 the drawers to get a sense of what records he
2 had, whether those records were familiar to me
3 or different than what I had already
4 maintained in my centralized repository of
5 documents. And paging through the files, I
6 saw nothing that I didn't already have or that
7 wasn't pertinent to the issue of risk or the
8 composition of New York State talc.

9 Q. What was in -- what kind of files
10 did he have?

11 A. Actually, he did have files where
12 there were copies of analytical reports, but
13 they were the same ones that I had in my
14 chronological lists that were copied by the
15 attorneys.

16 Q. What other types of files did he
17 have?

18 A. He had some records of sending
19 samples out which also were the same as those
20 that appear in my analytical folders.

21 Q. Did he have any files from
22 International Talc?

23 A. I didn't see any.

24 Q. Did you look in all of his file
25 cabinets?

1 A. I looked through, I pulled the
2 drawer.

3 Q. So it's only one drawer?

4 A. No, I pulled a couple.

5 Q. How many drawers did he have in
6 there?

7 A. I don't know, it was just one
8 cabinet and maybe three.

9 Q. Did he have a file on Mouldene
10 talc?

11 A. I didn't see that.

12 Q. Do you know whether or not he has a
13 file on Mouldene talc?

14 MR. RADCLIFFE: Don't speculate.

15 A. I didn't see it. You can ask him.

16 Q. Well, he doesn't have -- I'm asking
17 you what's in the filing cabinet of the R.T.
18 Vanderbilt Company. Are you certain that
19 there was not a file in that, in his files
20 that said Mouldene talc on it?

21 MR. RADCLIFFE: Objection, asked and
22 answered.

23 A. I don't know one way or another, I
24 didn't see it.

25 Q. Did you look for it?

1 A. I looked for anything that I
2 thought was pertinent to this and I didn't see
3 anything that was. That would have been one
4 that would have been. I do know they have --
5 and I mentioned this at the last deposition,
6 there is -- that's where the sample came
7 from. It's still held in that laboratory, the
8 material itself.

9 Q. You mentioned a can that had a
10 wrapping on it?

11 A. Right.

12 Q. And I believe you said it said
13 Mouldene on it?

14 A. It did, yes.

15 Q. Did you find that can?

16 A. I know where it is, yes, it's in
17 that lab.

18 Q. Did you take a sample from that can
19 to produce to us today?

20 A. Yes.

21 Q. And does that -- what does that say
22 on it for identification purposes?

23 A. It says Mouldene and it's S-158 or
24 I'll -- whatever the number is that's on the
25 tag. It's the same as the material that was

1 sent to Dr. Wylie for analysis, that one-sheet
2 analysis that we discussed.

3 Q. So was that can sealed?

4 A. Yes.

5 Q. Did you open the can?

6 A. I opened it to take a sample months
7 and months ago. I haven't opened it in
8 months, just for that sample.

9 Q. So Mr. Kelse, is it your testimony
10 today that months and months ago you took a
11 sample of the material that was in the
12 Mouldene can out of the can?

13 MR. RADCLIFFE: Objection,
14 argumentative, assumes facts not in
15 evidence, misstates the prior testimony.

16 A. It was not months and months, it
17 was at least a month and a half, two months
18 ago I believe I took the sample.

19 Q. What did you do with it?

20 A. I labeled it and kept it.

21 Q. Did you send it out for testing?

22 A. I send it to Hawkins & Parnell.

23 Q. Did they send it out for testing?

24 A. I'm not sure.

25 Q. Have you ever seen the results of

1 any testing from that sample of Mouldene talc?

2 A. No, I have not.

3 Q. Did you reopen that can and get
4 another sample to bring with you for this
5 deposition?

6 A. No, I took a cut of that. I always
7 keep a retained sample of anything that I
8 send.

9 Q. So please explain to me again
10 exactly what you did. You took material out
11 of the can several months ago and what did you
12 do with it?

13 A. Sent it to Hawkins & Parnell.

14 Q. All of it?

15 A. No, I took a cut and I kept a
16 sample.

17 Q. How did you take a cut?

18 A. I had two bags, took it out of the
19 primary container. I put one in one bag and
20 then I took out of the primary container and
21 put it in the second bag, label them the same
22 way and I made a notation on the bag that I
23 kept that this was a cut of the sample that
24 was sent to Hawkins & Parnell.

25 Q. Where did you put that bag, the one

1 you kept?

2 A. I have it, it's in my office.

3 Q. So this was a powdery material,
4 not a rock?

5 A. No, it was the product.

6 Q. It's a powder material?

7 A. Sure, yes.

8 Q. And is it your testimony that you
9 do not know from any source the results of the
10 testing of the sample of that Mouldene that
11 was sent to Hawkins & Parnell?

12 A. No, I don't.

13 Q. How did you seal that material up?

14 A. The original container or the
15 samples?

16 Q. Both.

17 A. Well, the original container is in
18 a metal box and so the lid is metal, so I
19 pressed that back down. The sample bags are
20 typical plastic sample bags. We tear the top
21 off and then there's little tabs that you roll
22 down and fold over.

23 Q. And sealed?

24 A. Yes, it's a sample bag specifically
25 made for that type of sample.

1 Q. Did you wear any protective
2 equipment when you opened the tin and put the
3 sample in the bag?

4 A. For a tiny little scoopful, no.

5 Q. For any reason, did you wear any
6 gloves?

7 A. Did I wear any gloves, no. What I
8 did was I took a piece -- this is the way I do
9 it, tear it off, it was clean, fold it, scoop
10 it, drop it, throw that away. If it's another
11 sample or another material, you use another
12 sheet, fold it, take it, drop it, throw it
13 away.

14 Q. Did you use the same sheet to get
15 the two scoops out of the can, if you recall?

16 A. No, actually I used two, two slips
17 of paper. Arguably, I didn't need to do that,
18 but I did.

19 Q. And did you wear any face
20 protection when you got the material?

21 A. I'm an industrial hygienist. I
22 don't think that that would have been an
23 exposure that would have put me into any
24 jeopardy, so I did not.

25 Q. So that physical sample is labeled

1 S-1 --

2 A. -- 57 or 58. I would have to --

3 Q. All right. You mentioned that you
4 also had a sample from the 1992 abatement that
5 was done in, I believe, Upstate New York, do
6 you remember that testimony?

7 A. That's correct.

8 Q. Did you do anything with that
9 sample to bring any of that material?

10 A. What I did was -- I don't know if
11 you have this or not.

12 Q. What are you looking at, sir?

13 A. What this is, is --

14 Q. Can you show me?

15 A. Sure. Is during the last
16 deposition you wanted samples, not only that,
17 but I think you even asked for any other
18 materials that have been sent out for testing
19 or something of that nature. And I do, as I
20 just said, I retain samples of material that I
21 send out and so the attorneys asked me to go
22 into my -- into the file drawer where I
23 maintain those cut samples and to basically go
24 through them and put a collection together of
25 all the samples I had and list what those

1 samples were and who they were sent to and
2 what product grade and so forth. And I
3 included in that the Mouldene sample that
4 Dr. Wylie looked at and the reason I was
5 looking at that, I was wondering if I took any
6 of the material from that other, that removal
7 project that we talked about in 19 -- whenever
8 that was, '82 or '88 or something.

9 MS. ABRAMS: This document,
10 Mr. Radcliffe, are you producing this
11 because I didn't have this in mine?

12 MR. RADCLIFFE: I didn't have it this
13 morning so I didn't make a copy of it.
14 You're welcome to a copy of it.

15 MS. ABRAMS: Let's mark this as the
16 next exhibit.

17 (Exhibit Number 12 was marked for
18 identification.)

19 (Exhibit Number 13 was marked for
20 identification.)

21 BY MS. ABRAMS:

22 Q. Now, let's go back to the 1992
23 abatement where you had written a note to the
24 file and we asked you about that last time and
25 you brought the note to the file, but you

1 didn't produce the file. Did you produce the
2 entire abatement file to your attorneys?

3 A. I did.

4 Q. Did they --

5 A. You can have another copy of it,
6 but I know they copied it and sent it to you,
7 but here's yet other.

8 MR. RADCLIFFE: The only caveat to
9 that is I'll note that I have a color
10 photocopy of the picture which that's black
11 and white, you can read it, but I have a
12 color one that I still have to send to you.

13 BY MS. ABRAMS:

14 Q. Thank you. You had several
15 pictures that you talked to us about?

16 A. It's on that one page, if you
17 notice.

18 Q. All of them are on the page?

19 A. Yeah, I lined them up.

20 Q. So we'll mark this as the next in
21 order which is Note to File and then there are
22 several pages after that.

23 (Exhibit Number 14 was marked for
24 identification.)

25 BY MS. ABRAMS:

1 Q. Mr. Kelse, is this the entire
2 content of your file regarding the 1992
3 abatement?

4 A. It's the 12, 13 pages that I
5 mentioned that I had not provided to you
6 originally because I mistakenly thought it
7 wasn't pertinent, but --

8 Q. This material cost \$7,500 to
9 transport and dispose of, correct?

10 A. Correct.

11 Q. And that was taken from -- where
12 was this? Where did this occur?

13 A. The plant, there was a plant in
14 Syracuse.

15 Q. In New York?

16 A. Yes.

17 Q. And the disposal, they took it all
18 the way to West Virginia to dispose of it, to
19 put it into a hazardous waste dump; is that
20 right?

21 A. That's what it says.

22 Q. Okay. And this waste transporter
23 permit says that they were transporting
24 asbestos containing waste, is that correct?

25 A. That's what it says.

1 Q. Do you know where -- you had this
2 material in your file, correct?

3 A. The Mouldene file, correct.

4 Q. And you had a baggie in that same
5 file?

6 A. Yes.

7 Q. Prior to last week, had that ever
8 been tested by you? Did you send it out to
9 anyone or give it to your attorneys?

10 A. No, I did not.

11 Q. What did you do with that baggie?

12 A. It's still in the file.

13 Q. Did you take a sample to give to
14 us?

15 A. I did not, if it's not on that
16 list, that's why I was looking at it, I was
17 trying to remember whether I took a sample of
18 that or not. It would say so. I don't
19 believe that's the case.

20 Q. This two page list, when did you
21 create this list that's Exhibit 13?

22 A. Right, at some point last week, I
23 think it was Wednesday or Thursday.

24 Q. How did you create it? What did
25 you use to compile it?

1 A. At the request of the attorneys I
2 pulled the file drawer where I have my
3 retained samples and I've many retained
4 samples, not just talc, but from other mineral
5 products as well, but I pulled all the talc
6 ones, took them into my office and made cuts
7 so that I would have a sample for each of
8 these. And on the labels, whenever I sent
9 these samples to anyone and the date, I
10 reflected it on the cover so as I did it, I
11 typed in the information so that it would be a
12 complete package.

13 Q. So where did you get the
14 information that the Mouldene sample, the
15 origin date was 1975?

16 A. It was on the container. I
17 couldn't think of any other place where I
18 would get that. It was on the container.

19 Q. And it says in 1998 part of that
20 was sent to Ann Wylie, correct?

21 A. That's correct.

22 Q. And in July 2009 what is HPP York?

23 A. It's Hawkins & Parnell.

24 Q. In August 2009, M. Gunter, what
25 does that mean?

1 A. That means I gave a sample of that
2 material to a mineralogist by the name of
3 Mickey Gunter.

4 Q. Which you just gave to him
5 recently?

6 A. Yes.

7 Q. When did you give it to him?

8 A. I think about a week and a half
9 ago, two weeks ago.

10 Q. Before your deposition?

11 A. I have to remember. I'll have to
12 look up when he visited, it may have been
13 before the deposition.

14 Q. And even though we had talked at
15 your last deposition about that sample of
16 Mouldene talc from the 1992 abatement, you did
17 not bring any of that material or put it into
18 a sample bag to give to us, correct?

19 MR. RADCLIFFE: Objection,
20 argumentative.

21 A. That's correct.

22 Q. And is it fair to say that the
23 samples that you did bring or gave to your
24 attorney in sample bags, those are all listed
25 on Exhibit 13?

1 A. That's correct.

2 Q. And they involve many different
3 kinds of R.T. Vanderbilt talc other than
4 Mouldene talc, correct?

5 MR. RADCLIFFE: Objection,
6 argumentative, vague and ambiguous.

7 BY MS. ABRAMS:

8 Q. Is that correct?

9 A. That's right.

10 Q. And there's only one entry for
11 Mouldene, correct, the subject of this
12 litigation?

13 A. That's all I had.

14 Q. Is that all you had?

15 A. That one container in
16 Dr. Thompson's office, that's the only source
17 of that product that I'm aware of.

18 Q. What about the baggie in your --
19 hold on -- let me ask my question -- what
20 about the baggie in your file that was part of
21 the 1992 abatement?

22 A. That would be another sample, yes.

23 Q. You don't know whether that's
24 Mouldene though, do you?

25 A. To the extent that it came out of a

1 bag that said Mouldene, that's all I can say.

2 Q. The next document that I want to
3 mark as Exhibit 15 is a letter to Terry Losee
4 from Allan Harvey, did you bring that with
5 you? Your attorney gave that to me, I
6 believe.

7 A. 1983, this would have been one of
8 those documents that would have appeared in my
9 product correspondence file that we
10 discussed. We did go through that product
11 correspondence file for the names of the
12 companies that you gave me.

13 Q. And this is a letter from -- to
14 Georgia-Pacific from Mr. Harvey; is that
15 correct?

16 A. Yes, that's what it says.

17 Q. Let's mark that.

18 (Exhibit Number 15 was marked for
19 identification.)

20 BY MS. ABRAMS:

21 Q. Is that the only other document you
22 found in a Georgia-Pacific file?

23 A. Yes, it was.

24 Q. That was all? Was that in a file
25 that said Georgia-Pacific?

1 A. It was in the file that I described
2 at the last deposition which is I have all of
3 the correspondence with customers asking about
4 the composition of talc by -- in chronological
5 order so everything prior to -- so each folder
6 is a year. So we looked in every folder that
7 was earlier than 1990 for any correspondence
8 linked to Georgia-Pacific, that's what we
9 found.

10 Q. And then I believe that the rest of
11 these documents pertain to information you got
12 out of a file about DAP, can you take a look
13 and just confirm that for me?

14 A. Same file.

15 MR. RADCLIFFE: Look at them all,
16 don't just assume.

17 A. Okay. These would be in my file.

18 Q. And those are the business records
19 of R.T. Vanderbilt Corporation?

20 A. Yes.

21 Q. You -- do you maintain files from
22 customers where there have been OSHA
23 citations?

24 A. If they're sent to us and we're
25 made aware of them, I would keep those types

1 of records, yes.

2 Q. Do you have other files other than
3 this DAP file where there have been OSHA
4 citations for R.T. Vanderbilt product
5 constituents?

6 MR. RADCLIFFE: Objection, calls for
7 speculation.

8 A. There's one that comes to mind. It
9 had to do with a company by the name of Borg
10 Warner, I think.

11 Q. Where was that?

12 A. Well, before my time, Borg Werner.

13 Q. Do you know where, though?

14 A. Where it was, no, I don't.

15 Q. Do you know of any other OSHA
16 citations other than Borg Warner and the DAP
17 citation?

18 A. No, I don't.

19 Q. And who would keep those records,
20 if they existed?

21 A. I would have them. I would be -- I
22 inherited those types of records from my
23 predecessor.

24 Q. This exhibit, let's mark it as 16,
25 the DAP documents. Let's mark as 17 a

1 document with a handwritten note at the top,
2 Status as I understand it, Watson versus RTV.

3 Would you mark that, please.

4 (Exhibit Number 16 was marked for
5 identification.)

6 (Exhibit Number 17 was marked for
7 identification.)

8 Q. Do you have this two-page document
9 in front of you, that's now Exhibit 17?

10 A. Yes, I do.

11 Q. Are these your handwritten notes?

12 A. Yes.

13 Q. And whose typewritten notes are
14 these?

15 A. They're mine as well.

16 Q. Why did you put this together?

17 A. When I read through the draft
18 deposition from a couple of weeks ago, as I
19 read through I wrote down the requests that
20 you made, what you had asked me. And then
21 I -- from that those notes, I typed this out
22 and then my -- this was actually an action
23 plan to try to address each of the issues that
24 you raised.

25 Q. Okay. So the first issue is the

1 talc analytical reports and check for any
2 additional in Dr. Thompson's files and you
3 mentioned that you did that?

4 A. Yes.

5 Q. Second is all underlying data
6 pertaining to the Honda study, that's
7 something that you provided?

8 A. Yes.

9 Q. The R.T. Vanderbilt talc health
10 files maintained by Kelse, what are those?

11 A. The ones we earlier discussed,
12 those that are specific to Vanderbilt, non RTV
13 specific, but linked, and what we didn't
14 discuss, any formal overviews of the health
15 science base as it pertains to these issues,
16 but those were copied and provided to you.

17 Q. Have you finished your answer?

18 A. Yeah.

19 Q. Available maps, did you provide any
20 more available maps?

21 A. I don't know what was provided. I
22 did have this available which I thought was
23 quite good. It's a single page and I think
24 really gives you a good sense of where these
25 various mines are located. And with this map

1 which was in a file with some records and
2 maps, there was also these two pages which I
3 thought were also helpful. I showed them to
4 our attorney who informed me that they had
5 also found these same two and provided them,
6 but you're welcome to them.

7 Q. Are these copies that you're able
8 to give us and we're able to attach as an
9 exhibit or we can try to make copies of them?

10 MR. RADCLIFFE: You have a copy of
11 them yesterday from Dr. Thompson, same
12 documents. They were marked as an exhibit
13 to the deposition although you marked them
14 as two different exhibits, they actually
15 are one.

16 BY MS. ABRAMS:

17 Q. These are documents that are kept
18 in the regular course of R.T. Vanderbilt
19 business?

20 A. Sure, yes.

21 Q. And if I knew the exhibit numbers I
22 wouldn't have a problem, but I don't, so --

23 A. You're welcome to those. I think I
24 can find other copies.

25 Q. I'm just going to mark all this as

1 Exhibit 18.

2 (Exhibit Number 18 was marked for
3 identification.)

4 BY MS. ABRAMS:

5 Q. The next --

6 MR. RADCLIFFE: Excuse me. Since we
7 had some discussion off the record I just
8 want to indicate on the record that
9 Mr. Kelse indicated to me that he can stay
10 until five o'clock.

11 BY MS. ABRAMS:

12 Q. The next is, number five is
13 Dr. Thompson to Mr. Fiederlein memo, includes
14 reference to his Talcville analysis. What did
15 you bring there or what did you do for that?

16 A. I believe this was also provided
17 through the attorneys, but I have an extra
18 copy. This is the paper for some reason I
19 couldn't find at the last deposition. It
20 includes a reference to Talcville, item three
21 or four.

22 Q. Let's just mark this as number 19.

23 (Exhibit Number 19 was marked for
24 identification.)

25 BY MS. ABRAMS:

1 Q. Exhibit 19 is also a document dated
2 May 31st, 1990, Mr. G.L. Fiederlein from C.S.
3 Thompson and this is a document that you kept
4 in the regular course of business for R.T.
5 Vanderbilt?

6 A. Yes.

7 Q. And it was created at or around the
8 time of the date on the document?

9 A. Yes.

10 Q. You -- the next was the remaining
11 Mouldene bag removal disposal project in 1992
12 and sample of that Mouldene K/-200 and you
13 have a notation that you copied -- documents
14 copied, including improved copy of bag label
15 photo. This says the sample also, doesn't it?

16 A. It does list that.

17 Q. And you didn't produce the sample,
18 did you?

19 MR. RADCLIFFE: We haven't produced
20 any samples yet, although we're willing to
21 do so.

22 BY MS. ABRAMS:

23 Q. Are you -- Mr. Kelse, will you
24 provide for us a copy -- strike that.

25 Mr. Kelse, will you provide for us a

1 sample of the material that you have in your
2 office K-100 Mouldene?

3 MR. RADCLIFFE: I'm going to object
4 to that request. I need to make sure it's
5 an appropriate sample to provide from a
6 legal standpoint. So whether Mr. Kelse is
7 willing to do so or not, I don't want it to
8 be taken as a binding agreement on behalf
9 of the company.

10 BY MS. ABRAMS:

11 Q. Well, let's just clarify. To your
12 knowledge, that's one of only two existing
13 samples of Mouldene talc that R.T. Vanderbilt
14 has in its possession, correct?

15 A. To my knowledge.

16 Q. And as far as you know, there
17 aren't any others?

18 A. As far as I know.

19 Q. And they come from different time
20 periods and different material or bags?

21 MR. RADCLIFFE: Objection, compound,
22 assumes facts not in evidence.

23 A. I don't recall, unless the
24 documents indicate, but I don't recall seeing
25 it. Doesn't mean it's not there, but I don't

1 know the age of the bags that were removed
2 from that plant. I don't know at what time
3 they -- how long they sat in their warehouse
4 or from what year they came.

5 Q. The next entry on Exhibit 17 is
6 check GTC for any asbestos analytical reports
7 pertaining to Mouldene and confirm the nature
8 of the files at GTC relative to dust
9 risks, and did you do that?

10 A. I did, and we discussed that a
11 little earlier in respect to the note to the
12 file.

13 Q. You checked the quality department
14 to confirm that their files don't contain
15 records of talc risk customer injuries not in
16 your file already?

17 A. I did.

18 Q. Did you look for files regarding NL
19 Industries?

20 A. No, I did not.

21 Q. Were you asked to look for files
22 regarding NL Industries?

23 A. I don't recall. If you did, I
24 don't remember.

25 Q. Do you have files regarding NL

1 Industries?

2 A. I don't know, I would have to look.

3 Q. We would ask that you look as that
4 was part of the request and provide that to
5 your attorney.

6 MR. RADCLIFFE: We're going to object
7 on the grounds that you're assuming he
8 didn't look for it.

9 MS. ABRAMS: I'm sorry, he just said
10 he didn't look for it.

11 BY MS. ABRAMS:

12 Q. Did you look for NL Industries,
13 sir? You've testified that you didn't look
14 for NL Industries and your list on number nine
15 does not reflect NL Industries.

16 A. That's right, that's why I
17 hesitate. These were the companies that I
18 asked my secretary to look in the file and
19 pull out and show to me.

20 Q. So your secretary looked for the
21 files.

22 A. She did, I did as well.

23 Q. And you have not asked anyone to
24 look for NL Industries, correct?

25 A. When I looked through the -- I must

1 have missed it from the deposition, I didn't
2 pick up that request.

3 Q. Okay. So again, I ask that you
4 look for that and provide that information to
5 your attorney.

6 A. And that would be pre 1990?

7 Q. No, that's NL Industries, no date.
8 And did you only produce pre 1990 information?

9 A. That was what was indicated in the
10 deposition, I believe.

11 Q. The notice asked for some
12 information pre 1990 and other information
13 that was not limited to time. Did you only
14 limit all of the information to 1990 or
15 before?

16 A. I did, I took it from the
17 deposition.

18 Q. For all of the entities listed in
19 number nine, do you believe that you have in
20 your files information that post dates 1990
21 that you did not produce?

22 A. I know for DAP.

23 Q. Okay. And are there any others
24 that you believe that you may have
25 information, for example, Georgia-Pacific?

1 A. I don't know.

2 Q. United States Gypsum.

3 A. There may be, but I have to check.

4 I know for certain DAP, maybe Gypsum. The
5 others, I don't know.

6 Q. I ask that you look for that
7 information as it was requested and give that
8 information to your attorney, sir.

9 Next category is internal RTV memoranda
10 regarding the first OSHA asbestos standard in
11 1972. Why did you list that?

12 A. We discussed it in respect to what
13 was Vanderbilt's -- something along the lines
14 of what was Vanderbilt's position on the
15 asbestos standard or something of that sort
16 and I think I recall saying or as I read in
17 the deposition that based on the files that I
18 have seen, the first discussion on the
19 asbestos standard, there was no earlier
20 discussion than 1972 and that discussion
21 reflected to me a recognition by R.T.
22 Vanderbilt that there was something, you know,
23 that they objected to the standard and
24 wondered if the standard applied to them, they
25 didn't think it did. They were somewhat

1 confused by it and intended to look into it.

2 And these were internal memoranda that
3 spoke to that impression that we discussed at
4 the deposition. And I know that those were
5 copied from a file that was entitled Talc
6 Documents 1984 back or key documents 1984
7 back, and so when you go to 1972, you'll see a
8 number of documents that were submitted to you
9 that reflect what I described in that
10 deposition.

11 Q. Did you have your entire key talc
12 documents file copied and produced?

13 A. Yes.

14 Q. Now, I'd like to go back to what's
15 been marked as Exhibit 12, which is your note
16 to the file on the work that you did and talk
17 about the next entry, 8-24-09. You apparently
18 talked to Konrad Rieger; is that right?

19 A. That's correct.

20 Q. And where does Mr. Rieger, where is
21 his office?

22 A. Right over -- he's on the next
23 floor over me.

24 Q. What is CPS-183 that you mention in
25 the first paragraph?

1 A. That's the designation of that
2 sample, the fiber concentrate.

3 Q. Do you have CPS-183?

4 A. Yes, I think it's listed fiber
5 concentrate. It was the one that was used in
6 the Wylie Mossman study.

7 Q. So on Exhibit 13, L fiber
8 concentrate 1996, that's CPS-183?

9 A. Yeah, I think it should say that,
10 if I'm not mistaken.

11 Q. Why don't you look at that.

12 A. It doesn't say that, but that's
13 what it is.

14 Q. Are you certain of that?

15 A. Yes.

16 Q. Would you mark that on there and
17 write CPS-183?

18 A. (Witness writing).

19 Q. And Mr. Rieger reported some
20 uncertainty to you about what that sample
21 contained, didn't he?

22 A. No, he reported some uncertainty
23 about its origin. In other words, was it from
24 an outcrop material on the soil or did they
25 concentrate it from an actual product from

1 Talcville, like say a fibercal or even a
2 Mouldene.

3 Q. He didn't know the answer to that
4 dilemma, did he?

5 MR. RADCLIFFE: Object,
6 argumentative, vague and ambiguous.

7 A. He didn't know for certain.

8 Q. Okay. And he didn't have any
9 record of what that was either, correct?

10 A. No, he didn't.

11 Q. So the particular material that
12 Dr. Wylie used in her cell study, was that
13 CPS-183?

14 A. Yes.

15 Q. And it's correct that as far as
16 Mr. Rieger described to you, he could not for
17 sure say exactly how that sample originated?

18 A. As I indicated here, he felt it was
19 more likely, contrary to what I thought, he
20 felt it was more likely a concentrate from one
21 of the high fiber products from that mine
22 because it's a lot easier to concentrate it
23 once it's already a powder than to take
24 something and then break it down from there
25 and they were used to doing that type of

1 concentration so he felt that's the more
2 likely scenario.

3 Q. Move to strike as nonresponsive.
4 Could you read the question back, please?

5 (Whereupon, the court reporter read
6 back the previous question.)

7 A. Well, directly I'd have to say no.

8 Q. You talked to the quality
9 department?

10 A. Yes, I did.

11 Q. And you provided for us a graph on
12 the next page, Notifications August '08 to
13 August '09. Why did you pick August '08 to
14 August '09?

15 A. Well, I asked them for a sampling
16 of a graph that they routinely put together
17 which essentially reflects the number of
18 customer communications. And the reason I
19 asked for it is it breaks it down into
20 categories of information that that department
21 would maintain files on. And as I described
22 to you in the last deposition, quality
23 department is as the name implies, it's after
24 you know damaged goods, out of spec, bag
25 ripped, that type of thing and those are the

1 types of files that they maintain. They would
2 not maintain risk files.

3 Q. Do you know, sir, if under the
4 category customer request that would include
5 customer complaints?

6 A. Well, I asked him specifically if
7 they had ever seen or -- and I looked in the
8 file where they maintain the customer
9 inquiries, and if they ever recall ever seeing
10 anyone asking about the risk of New York State
11 talc or the composition of New York State in
12 regard to whether it contained asbestos or not
13 and they just looked at me and said why would
14 -- of course not.

15 Q. Move to strike as nonresponsive.
16 Could you read the question back and while
17 you're reading the question back we can change
18 the tape.

19 THE VIDEOGRAPHER: Off the record,
20 4:47.

21 (A brief recess was taken.)

22 THE VIDEOGRAPHER: It's the beginning
23 of Tape Number 4. We're back on the record
24 at 4:50.

25 MS. ABRAMS: Could you read the

1 question back, please?

2 (Whereupon, the court reporter read
3 back the previous question.)

4 BY MS. ABRAMS:

5 Q. Do you know?

6 A. No, I don't know exactly what that
7 would entail.

8 Q. Does R.T. Vanderbilt keep a record
9 and chart the extent of customer complaints
10 for a particular product, to your knowledge?

11 A. I've seen this graph and it's --
12 and I've seen graphs with various products
13 listed so that's the extent of my knowledge
14 that I must keep some records along that line
15 by product type.

16 Q. Did you ever see a graph about
17 Mouldene?

18 A. No.

19 Q. Did you see one about Nyal?

20 A. No.

21 Q. How about IT 3X?

22 A. No.

23 Q. How about any talc products from
24 Upstate New York?

25 A. None that I recall.

1 Q. What types of files do they keep
2 that you have seen?

3 A. They're listed on the graph.
4 Actually have tabs that are broken down in
5 those same categories.

6 Q. I'm sorry, let me rephrase the
7 question, not what's on that graph. Have you
8 seen graphs or information about customer
9 complaints about any R.T. Vanderbilt talc
10 products?

11 A. No.

12 Q. And do you know whether R.T.
13 Vanderbilt compiles that information in any
14 form?

15 A. For the quality department a bag
16 broke or something like that, yes, that's what
17 that department does.

18 Q. Do they chart that out in a form
19 that's called customer complaints? Is there
20 somewhere that they register customer
21 complaints for the talc products that are
22 created out of Upstate New York?

23 MR. RADCLIFFE: Objection, assumes
24 facts not in evidence.

25 A. The type graph I'm used to seeing

1 which they present once a month at a staff
2 meeting is a reflection of what I produced to
3 you by type of complaint. Over the years on a
4 couple of occasions quality managers had a
5 graph in which he's broken down product areas
6 because they're interested in which products
7 are seem to be presenting the biggest
8 transportation issues or container breakage or
9 shelf life or spec changes, things of that
10 sort. I don't recall ever seeing any mention
11 of talc on any on those. How they produce
12 those, I have no idea.

13 Q. Sir, could you find the E-Tek
14 report that's dated 1984 in your -- let me
15 find it for you. This was in the documents
16 that you provided to us today and it's in
17 this -- in Exhibit 16. The document is headed
18 June 4th, 1984. It's a letter to Mr. Donald
19 Miller from general manager DAP, Inc.
20 regarding sample results, from C-Tek and it
21 starts on October 17, 1984 C-Tek performed a
22 general industrial hygiene survey at your
23 location. Could you read the paragraph
24 starting The main concern up until Sample
25 results, please, sir? just read that for all

1 of us.

2 A. "The main concern is with the
3 health hazard potential associated with the
4 Vanderbilt IT 3X talc. Although not strictly
5 an asbestos containing product, it is largely
6 an asbestiform product and highly fibrous.

7 At the present time, the significance of
8 that distinction is in dispute in the
9 scientific community. From an insurance
10 standpoint, it is C-Tek's opinion that both
11 asbestos and asbestiform talc should be
12 handled with equal care in the workplace
13 because none of the DAP products using IT 3X
14 talc are friable in finished form. The
15 potential for cancer related product liability
16 claims is nil."

17 Q. Were you at the Hartford during the
18 time this was written in 1984?

19 A. I was.

20 Q. And was it your position at the
21 Hartford that from an insurance standpoint as
22 with C-Tek both asbestos and asbestiform talc
23 should be handled with equal care in the
24 workplace?

25 MR. RADCLIFFE: Objection,

1 argumentative.

2 BY MS. ABRAMS:

3 Q. Did you have that opinion?

4 A. We did not take a position on that
5 other than what I described to you at the last
6 deposition which was we were not going to
7 comment on that issue because the science was
8 beyond us.

9 Q. Sir, I'll try to quickly move
10 through some other matters. I want to just
11 follow up from when you were here at your last
12 deposition. You mentioned that you had
13 extensive files relating to mineral analysis
14 and composition of Vanderbilt talc, including
15 a mineral file used in prior cases that
16 contains all of Vanderbilt's analytical
17 reports in chronological order. Did you
18 supply that to us now?

19 A. Yes.

20 Q. And did you supply them as you had
21 them in chronological order, to the best of
22 your knowledge?

23 A. I know it was done last week
24 because they copied it in exactly the order it
25 was in my file.

1 Q. And you described that as large
2 enough to fill the drawer of a file cabinet?

3 MR. RADCLIFFE: Objection,
4 argumentative, misstates the prior
5 testimony.

6 BY MS. ABRAMS:

7 Q. Is that basically what you
8 supplied?

9 A. If I said that, that was overblown.
10 It's about as high as that stack so that
11 wouldn't be a file cabinet. I kept it in a
12 file cabinet with data, but also with health
13 data which we already discussed so --

14 Q. Whatever was in that file drawer
15 you did produce?

16 A. Oh, yes.

17 Q. You mentioned that the file had
18 summaries and CVs of those who wrote summaries
19 and observations from the reports. Did you
20 provide CVs, if you had them?

21 A. Where they were available, where
22 they were appended to a study, they would have
23 been copied and provided to you.

24 Q. And you provided the 2001 Mine
25 Safety Health Administration report?

1 A. Yes.

2 Q. Just bear with me, I'm just going
3 through my notes from your last deposition for
4 a minute.

5 You mentioned regarding International
6 Talc's insurance coverage that Jim McDonald
7 might know, did you talk to Mr. McDonald?

8 A. No.

9 Q. Did you make any attempt to
10 determine whether R.T. Vanderbilt has
11 insurance coverage for International Talc as
12 on your list of things to do?

13 A. No.

14 Q. And do you believe Mr. McDonald
15 would be the best person to ask of that -- for
16 that information?

17 A. I believe so, but I could be wrong.

18 Q. Regarding the sample that you
19 discussed with Mr. Rieger, would you agree
20 with me that Mr. Rieger is the person who
21 would be most knowledgeable and qualified to
22 discuss about that sample specifically?

23 MR. RADCLIFFE: Objection, calls for
24 speculation, assumes facts not in
25 evidence, argumentative.

1 A. Again, I don't know. I reported
2 what he reported to me so.

3 Q. He's the one with the first-hand
4 knowledge of that?

5 A. That's why I spoke to him.

6 Q. But he's the one with the first-
7 hand knowledge with respect to what happened
8 with that sample as far as you know?

9 MR. RADCLIFFE: Same objections.

10 BY MS. ABRAMS:

11 Q. Correct?

12 A. He would be the one with first-hand
13 information?

14 Q. Yes.

15 A. As he did the concentrate, yes.

16 Q. Now, Mouldene was discontinued as a
17 product as of sometime in 1976 or
18 '77, correct, as far as you know?

19 A. That's what I understand.

20 Q. And R.T. Vanderbilt never produced
21 that product again; is that correct?

22 A. That's my understanding.

23 Q. And R.T. Vanderbilt closed Mine No.
24 3, correct?

25 A. Yes.

1 Q. They don't mine out of there
2 anymore?

3 A. That's correct.

4 Q. They didn't mine out of there in
5 1985, correct, when you went and joined the
6 company?

7 A. That's right.

8 Q. They didn't mine out of there in
9 1987?

10 A. Not that I was aware of.

11 Q. They didn't mine out of there in
12 1989; is that right?

13 A. I know they didn't produce any
14 products from that mine, that's my
15 understanding.

16 MR. RADCLIFFE: My computer is
17 telling me that it's one minute after
18 five.

19 BY MS. ABRAMS:

20 Q. So far as you know, was there any
21 reason to sample test or otherwise evaluate
22 the constituent elements of Mouldene talc
23 after 1977 with respect to the R.T. Vanderbilt
24 Corporation?

25 MR. RADCLIFFE: Objection,

1 argumentative, misstates prior testimony.

2 A. Not that I would be aware of.

3 Q. With your indulgence, why don't I
4 get through what we did at the last deposition
5 which shouldn't take more than five or ten
6 minutes, then we can go.

7 MR. RADCLIFFE: If it's going to be
8 10 minutes by everybody's clock, that's
9 fine.

10 MS. ABRAMS: I'll do my very best.

11 MR. RADCLIFFE: Very best and ten
12 minutes are not --

13 MS. ABRAMS: You can be the judge,
14 how's that?

15 MR. RADCLIFFE: Good, case dismissed.

16 BY MS. ABRAMS:

17 Q. We talked about the Fiederlein
18 memo.

19 MR. RADCLIFFE: Which has been
20 provided.

21 BY MS. ABRAMS:

22 Q. Yes. You talked to Dr. Thompson,
23 according to your testimony, before you had
24 your deposition, do you recall that testimony?

25 A. I recall talking to Dr. Thompson.

1 Q. Did you meet with Dr. Thompson?

2 MR. RADCLIFFE: Objection, vague and
3 ambiguous.

4 A. I met with Dr. Thompson many times.

5 Q. Did you meet with Dr. Thompson
6 prior to your testifying in this case and
7 discuss the issues of Vanderbilt talc with
8 Dr. Thompson prior to your deposition?

9 A. Certainly.

10 Q. How long did you meet with
11 Dr. Thompson?

12 A. I met with Dr. Thompson many
13 times, many periods of time.

14 Q. When was the most recent time you
15 met with Dr. Thompson?

16 A. It's probably been a week.

17 Q. What did you talk about at that
18 meeting?

19 A. We're working on -- I'm working on
20 a paper on analytical issues and so I speak
21 with him about the content of that, look for
22 his advice and I want to be sure it's
23 technically accurate and so forth, so it's
24 kind of a project that's a work in progress.

25 Q. What is the paper about?

1 A. It's a document on analytical
2 issues, essentially why is it that people have
3 mischaracterized the minerals in Vanderbilt
4 talc as asbestos, why is that, what's the
5 issue, what are the strengths and weaknesses,
6 the various analytical protocols relative to
7 that error.

8 Q. Did you ever talk to Dr. Thompson
9 about this case, particularly about Mouldene?

10 A. I did talk to him about the memo
11 that he wrote to Paul Vanderbilt in which he
12 described his analysis of those five talcs
13 from IT. Essentially it was is this you know
14 your recollection. I did that because I
15 thought I would be asked about it.

16 Q. Did you talk to him about anything
17 else at that meeting?

18 A. No, just his recollection of what
19 he described in that memo and how accurate he
20 felt that it was.

21 Q. And that was the only thing you
22 discussed at that entire meeting?

23 A. Well, that and the project that I
24 mentioned before.

25 Q. Did you in your customer -- in the

1 customer files you -- did you specifically
2 look to see if National Gypsum, Georgia-
3 Pacific, DAP or anyone else had asked for a
4 confirmation that there was no asbestos in the
5 talc, regardless of time period?

6 A. Well, unfortunately, I did it from
7 1990 back thinking that that -- I don't know
8 why I had that stuck in my head.

9 Q. Just to let you know, I think that
10 was a reasonable mistake on your part, sir,
11 because there were several categories and some
12 of them were limited to 1990 and others
13 weren't, so if that was ambiguous or unclear,
14 then that's probably what happened there. So
15 I hear you that you only looked to 1990. So
16 you wouldn't know, as you sit here, whether
17 there was anything after 1990?

18 A. Other than what I just mentioned.
19 I know there's DAP and that's the only one I'm
20 certain of. I would have to look.

21 Q. Did you look in -- do you have a
22 Johns Manville file?

23 A. Another by year, I would have to
24 look.

25 Q. So in order to find anything about

1 any discussions, you would have to go to every
2 yearly file and look for the individual's, the
3 individual entity per year, in that year?

4 A. Yeah, whatever correspondence
5 ensued during that year, a copy of that
6 correspondence would be in the file and some
7 years there's hardly anything in it, and other
8 years there's a lot, so they're not all --
9 they're quite variable.

10 Q. How far back do those files go?

11 A. They go back to when I started 1985
12 and then I do have a file that says pre '85 in
13 which I put whatever I inherited from my
14 predecessor which is where I think the
15 documents came from for, was it Georgia-
16 Pacific, or I forget, it was 1984. So that
17 would have come from that older file.

18 Q. DAP.

19 A. DAP.

20 Q. So sir, from pre 1985 all the way
21 up through 1990, you have researched all the
22 names with the exception NL and Johns Manville
23 which you didn't know to look for; is that
24 right?

25 A. That's correct, as I indicated.

1 Q. And then from 1990 forward in those
2 years you didn't look for those for anything?

3 A. Correct.

4 Q. And do you have, sir, in your own
5 files any file, not in date order, but a file
6 that has information about Johns Manville
7 other than what might be in those
8 chronological files?

9 A. I have -- I don't.

10 Q. Did you -- when you looked in
11 Mr. Thompson's lab, look for a file that had
12 to do with Johns Manville?

13 A. Oh, I'm sorry, there are so many
14 files and so many papers. I mentioned a file
15 that said key talc documents, 1984 back. And
16 I know that there was an interchange with
17 Johns Manville before my time and I believe
18 material relative to that interchange in a
19 meeting, I guess, and some correspondence back
20 and forth is in that file and that file was
21 produced.

22 Q. Okay. Did you look in under
23 Thompson's files for files regarding Johns
24 Manville?

25 A. I didn't. I didn't see any.

1 Q. You would have noticed if it was
2 there?

3 A. Yeah, if there was something that
4 said Johns Manville, they would have caught my
5 eye, but then I would have checked to see if
6 it was what I already had.

7 Q. And that didn't happen because it
8 wasn't there, right?

9 A. Right.

10 Q. Are you aware that the R.T.
11 Vanderbilt Company is no longer mining talc
12 from the Arnold pit and the Gouverneur mines?

13 A. Yes.

14 Q. When did they stop mining talc?

15 A. At the end of -- I think it was the
16 end of 2007 or no, it was the end of 2008.

17 Q. In the documents that you provided
18 for us in the surveys and assessments
19 regarding the Arnold pit, there's information
20 that says that there are reserves of ore in
21 the Arnold pit that can last for hundreds of
22 years, are you aware of that?

23 A. I've heard something along that
24 line, but I have no direct recollection of any
25 document that said that. I've heard people

1 say the ore was pretty extensive.

2 Q. So it's correct that mining didn't
3 stop in the Arnold pit because the ore was
4 depleted there, that's right, isn't it?

5 A. That's my understanding, yes.

6 Q. But the R.T. Vanderbilt company
7 closed up shop in the Gouverneur area and no
8 longer mines there; is that right?

9 MR. RADCLIFFE:

10 Objection, argumentative, misstates prior
11 testimony.

12 A. No longer mines talc there.

13 Q. That's right. They continue to
14 mine the product that -- whose name I have a
15 real problem with, it's called Wollastonite,
16 correct?

17 A. Yes, that's right.

18 Q. And that's a product that has a
19 different mineralogical makeup than the Nyal
20 products, correct?

21 A. Completely different.

22 Q. And it's completely different than
23 Mouldene, isn't it?

24 A. Absolutely.

25 Q. And in fact, it doesn't have fibers

1 in it, does it?

2 MR. RADCLIFFE: Objection, calls for
3 speculation.

4 A. Do you mean -- what do you mean
5 by -- I'm sorry to do this. What do you mean
6 by fiber, three to one, longer than five, is
7 that what you're calling fiber or anything
8 that's elongated?

9 Q. Let me ask you then, does it have
10 any material in it that is longer than five
11 microns with a greater than a three to one
12 aspect ratio, to your knowledge?

13 A. Well, I sample it, so Wollastonite
14 is a circular material, it's very circular.
15 It's needle-like. So when you grind it up you
16 will get aerosol particulate, some of which
17 will be, have a three to one, some of which
18 not too much would be longer than five, but
19 they're pretty thick.

20 Q. What's the percentage?

21 A. All -- I don't know, probably 5 to
22 10 percent, if that.

23 Q. And that material does not have any
24 asbestiform talc in it, isn't that correct?

25 A. Not to my knowledge. I've never

1 seen it.

2 Q. And does it have any anthophyllite?

3 A. Not to my knowledge, I've never had
4 that reported, never saw it.

5 Q. Does it have any tremolite?

6 A. I've never seen that reported in it
7 either.

8 Q. And it doesn't have any fibrous
9 talc in it, does it?

10 A. No, it's from another area miles
11 and miles from that talc belt.

12 Q. Have you seen any studies, animal,
13 cell or epidemiological on that material
14 showing that it causes cancer?

15 MR. RADCLIFFE: Objection, asked and
16 answered, vague, ambiguous.

17 A. There are a number of studies on
18 Wollastonite. Every single one demonstrates
19 that it has no greater risk than a nuisance
20 dust and the reason for that is it's very
21 soluble, it has a half life in the body of
22 about two weeks.

23 MR. RADCLIFFE: It's 5:14.

24 MS. ABRAMS: You gave me four extra
25 minutes. So let me state for the record,

1 sir, that I believe we've gotten through
2 quite a lot of your person most qualified C
3 COR deposition.

4 We do probably need to ask you
5 additional questions because I haven't
6 finished today with the material that I
7 brought regarding all the documents that
8 you produced. I don't think I have a whole
9 lot more on that part of the deposition,
10 but I do reserve my right to continue the
11 deposition and I do believe that your
12 attorney had a few questions as well.

13 And with respect to the three disks
14 of I don't know how many thousands of
15 documents that may pertain to your
16 custodial or person most qualified role, it
17 remains to be seen whether we have
18 questions and how many those would be. So
19 with that, I would conclude for the day and
20 note that the deposition will be continued
21 at a later time that is mutually convenient
22 to the parties.

23 MR. RADCLIFFE: I'll just say that
24 there's no agreement that the deposition
25 will be continued, although I do agree that

1 it is not finished because I have not been
2 provided an opportunity to ask my
3 questions.

4 MS. ABRAMS: And I will state, for
5 the record, that it is 5:15. I'm prepared
6 to stay here until midnight, if necessary,
7 to finish my portion of what I have in
8 front of me, but I understand that the
9 witness needs to leave and so we will leave
10 for the day.

11 THE VIDEOGRAPHER: Off the record,
12 5:16.

13 (Whereupon, the deposition was suspended at
14 5:16 p.m.)

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1 JURAT

2
3 I, JOHN KELSE, do hereby certify that the foregoing
4 testimony given by me on August 26, 2009, is true and
5 accurate, including any corrections noted on the
6 corrections page, to the best of my knowledge and
7 belief.

8
9
10 _____
11 JOHN KELSE

12 At _____ in said County of
13 _____, this ___ day of _____, 2009,
14 personally appeared JOHN KELSE, and he/she made oath
15 to the truth of the foregoing corrections by him/her
16 subscribed.

17 Before me, _____ Notary Public.

18 My Commission Expires: _____
19
20
21
22
23
24
25

1 TRANSCRIPT CORRECTIONS
 2 REPORTER: MARIAN E. CUMMINGS, LSR
 3 CASE NUMBER: RG 08-426405
 4 CASE STYLE:
 5 ERIC WESTON
 6 VS.
 7 ASBESTOS CORPORATION LIMITED, ET AL.

8 PAGE LINE CORRECTION REASON

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24 NAME: _____

25 DATE: _____

1 CERTIFICATE

2 STATE OF CONNECTICUT

3 I, MARIAN E. CUMMINGS, a Licensed Shorthand
4 Reporter/Notary Public within and for the State of
5 Connecticut, do hereby certify that I reported the
6 deposition of JOHN KELSE on August 26, 2009, at the
7 Marriott Stamford, 243 Tresser Boulevard, Stamford,
8 Connecticut 06901.

9 I further certify that the above-named deponent was by
10 me first duly sworn to testify to the truth, the whole
11 truth and nothing but the truth concerning his/her
12 knowledge in the matter of the case of ERIC WESTON vs.
13 ASBESTOS CORPORATION LIMITED, ET AL., now pending in
14 the SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND
15 FOR THE COUNTY OF ALAMEDA.

16 I further certify that the within testimony was taken
17 by me stenographically and reduced to typewritten form
18 under my direction by means of COMPUTER ASSISTED
19 TRANSCRIPTION; and I further certify that said
20 deposition is a true record of the testimony given by
21 said witness.

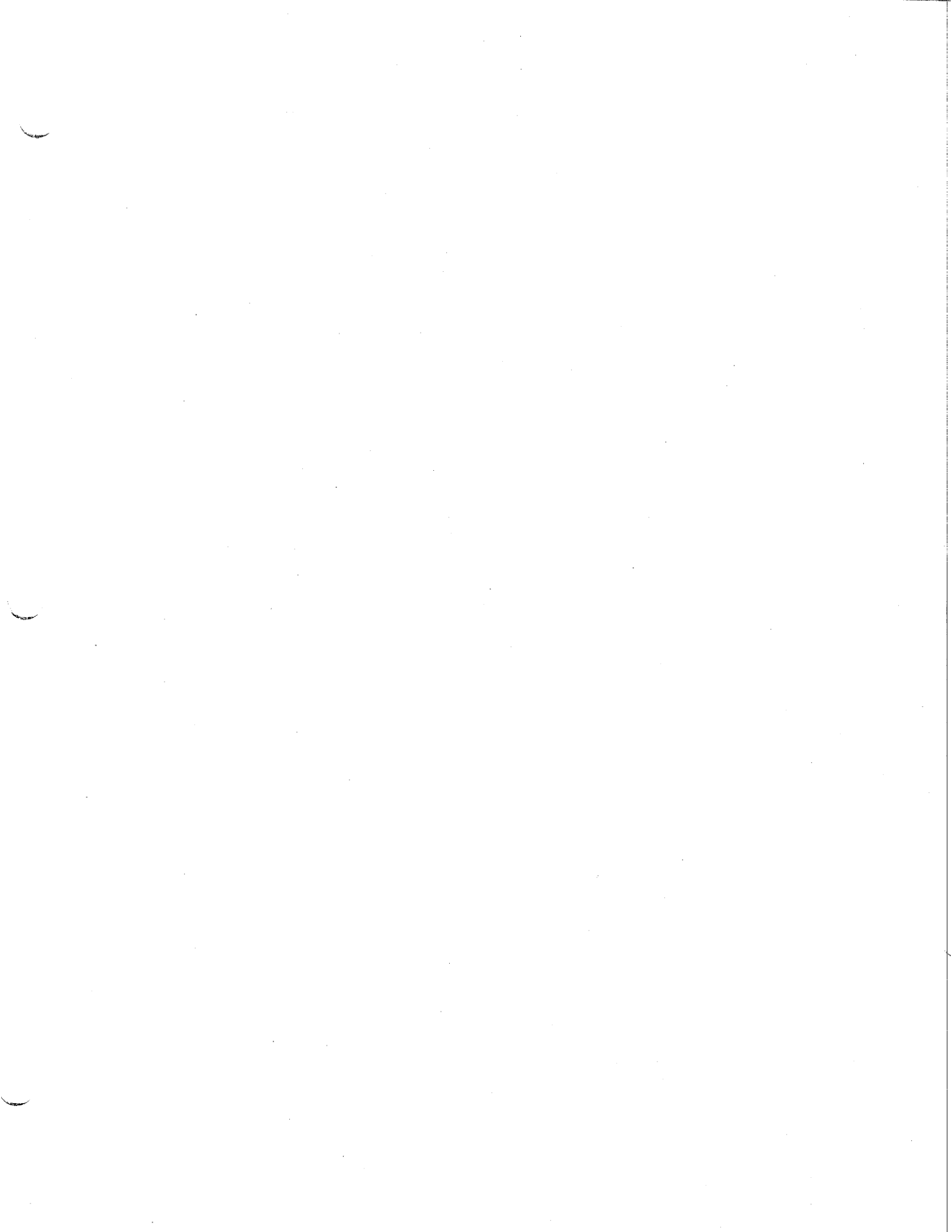
22 I further certify that I am neither counsel for,
23 related to, nor employed by any of the parties to the
24 action in which this deposition was taken; and
25 further, that I am not a relative or employee of any
attorney or counsel employed by the parties hereto,
nor financially or otherwise interested in the outcome
of the action.

WITNESS my hand and seal this _____ day of
_____, 2009.


Marian E. Cummings, LSW
Notary Public

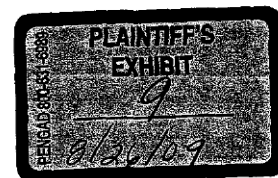
My Commission Expires: December 31, 2010
License Registration Number: 472

24
25



WC Mesothelioma Deaths Claimed:

<u>DOD</u>	<u>Age at Death</u>	<u>Yrs at GTC</u>	<u>Jobs at GTC</u>	<u>Other Work</u>	<u>Diagnosis</u>	<u>Actual Asbestos Exposure</u>
<i>c. melboet</i>	1995 64	40 (54-94)	Mill QC	Pre 4yrs Navy	Tissue re-analysis supports ademocar. Vs meso. -25 yrs Smoker - prostate C.	Very likely, Navy 50-54.
	1995 71	33 (54-87)	Mill, misc.	Pre 4 yrs municipal Repairman	Questionable - MD feels more likely matas. from underlying lung C. Cardio-pulmonary arrest.	Possible, from municipal exposures
	2001 86	20 (56-76)	Mine, scraper, mucker	Pre. 15 yrs other area mines	Sparse Med. data, no tissue, learned about in 2004.	Definite asb. exp. In scraper brake padsGTC
<i>R. LaBow</i>	2005 74	34 (64-97)	Mill, wheeler mill op.	Pre. 2 yrs army demolition, 10yrs auto garage -brake work	Confirmed	Very prob. army demolition bldgs/ bridges. Very likely during brake work in 50's. Known asb. Pads on wheeler -GTC



WC Nonmalignant Pulmonary Claims: GTC

As of April 21, 2009

<u>Injury Date</u>	<u>Claim description</u>	<u>Claim Status</u>	<u>Name</u>
2009	Alleg. Lung disease -dust Alleg. Lung disease - dust	open open	
2008	Alleg. Lung disease - dust Alleg. Lung disease - dust Alleg. Lung disease - dust Alleg. Lung disease - dust Alleg. Lung disease - dust Alleg. Lung disease - dust Alleg. Lung disease - dust Alleg. Lung disease - dust	No Action open partial Awd Canceled	
2007	NONE		
2006	Alleg. Asbestosis	Awarded (medical only)	
2005	Lung disease & asbestosis	Awarded	
2004	Alleg. Occ. Lung Disease	Denied	
2003	Talcosis	Awarded	
2002	NONE		
2001	NONE		
2000	NONE		
1999	NONE		
1998	NONE		
1997	Alleg. Occ. Lung/heart	Open	
1996	Alleg. Dust disease Exposure to Dust	Denied Open	
1995	Alleg. Dust disease Alleg. Dust disease	Denied Open	

	Talcosis/pneumoconiosis	Awarded
	Pneumoconiosis	Denied
1994	NONE	
1993	Pol. Dust disease	Awarded
1992	Pol. Dust disease	Denied
	Pol. Dust disease	Denied
	Pol. Dust disease	Denied

<u>Injury Date</u>	<u>Claim description</u>	<u>claim Status</u>
--------------------	--------------------------	---------------------

1991	Pul. Dust claim	awarded
	Pul Dust Claim	awarded
	Pul Dust claim	denied
	Pul Dust claim	denied
	Pul Dust claim	denied
	Pul. Dust claim	denied
	Pul. Dust claim	awarded
	Pul. Dust claim	denied
1990	COPD	awarded
	Pul. Dust claim	awarded
	Pul. Dust claim	awarded
	Pul. Dust claim	denied
	" "	awarded
	" "	denied
	" "	denied
	" "	awarded
1989	Occ. Disease lungs	awarded
	Pul. Dust claim	awarded
	" "	denied
	" "	denied
	" "	awarded
	" "	denied
	" "	awarded
	" "	awarded
	" "	denied

“	“	denied
“	“	awarded
“	“	awarded
“	“	denied
“	“	denied
“	“	denied
“	“	awarded
“	“	awarded
“	“	awarded
“	“	denied
“	“	awarded
“	“	awarded
“	“	awarded
“	“	awarded

<u>Injury Date</u>	<u>Claim description</u>	<u>Claim Status</u>
1988	Pul. Dust Claim	awarded
1987	pneumoconiosis Talcosis	awarded awarded
1986	Talcosis	awarded

See Continuing lists: as of 5/31/85 and 10/82

Cancers of the Pulmonary tract Claims

1972	Talcosis & pos asb contributed To lung cancer (allegedly)	awarded
1996	Talcosis contributed to lung Cancer (allegedly)	awarded
1993	Talcosis contrib. to lung C.	awarded
1995	Alleg. Meso	awarded
1995	Alleg. Meso	awarded
2001	Alleg. Meso	awarded
2005	Conf. Meso	awarded

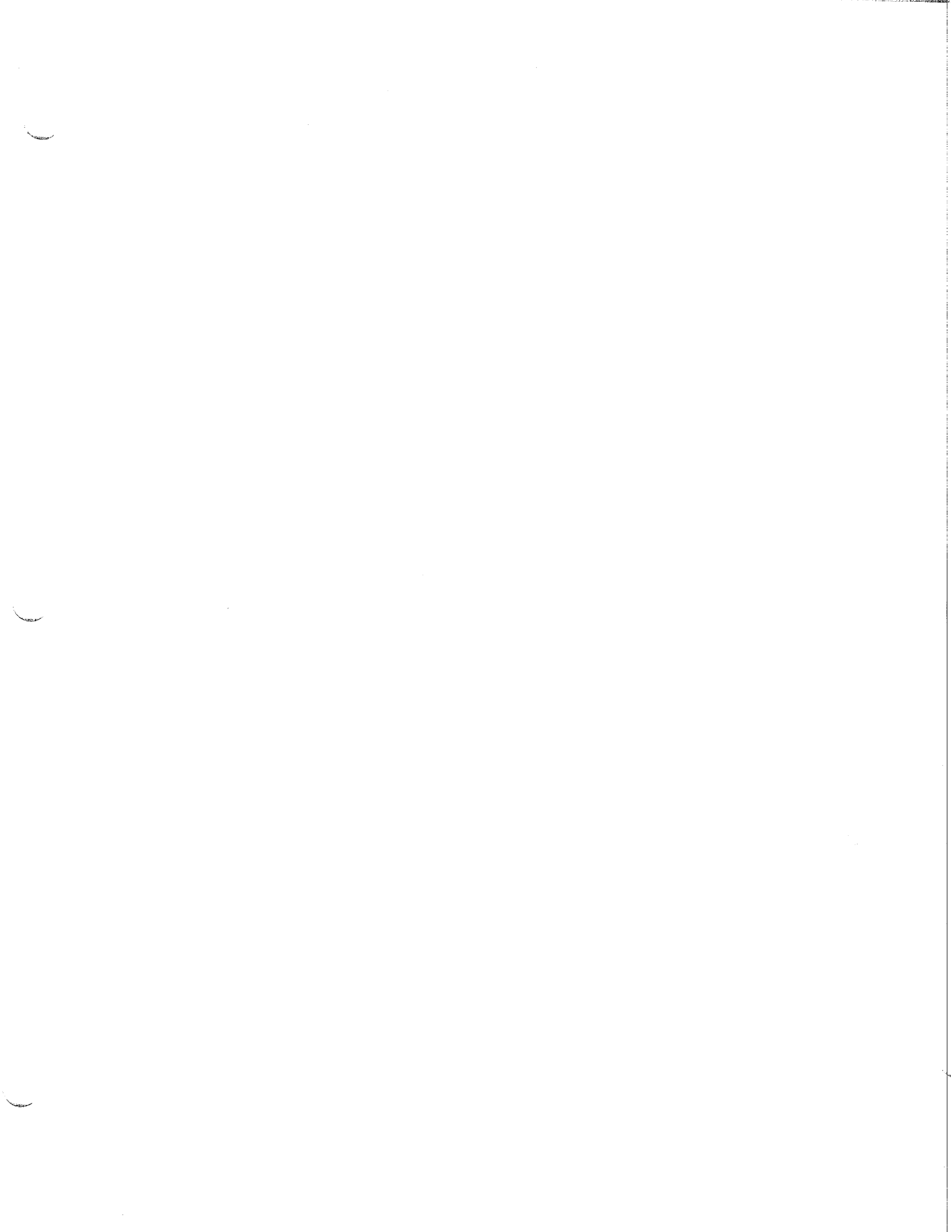
GOUVERNEUR TA. CO., INC.

as of 10/82

RECORD OF CLOSED AND PENDING WORKMEN'S COMPENSATION DUST DISEASES OF THE LUNGS CASES

NAME	HIRE DATE	DISABLE OR RETIRE DATE	FILE DATE	PAYMENT START	AWARD DATE	PERCENT DISABLED	WEEKLY PAYMENT	DATE DECEASED	TYPE DISEASE TO LUNGS
	07/11/49	11/06/49	04/23/62	07/20/60	03/25/65	100	\$ 50.00	08/21/61	Silicosis
	07/20/48	08/27/68	07/26/68	08/31/70	09/09/70	100	70.00	11/10/78	Pulmonary Fibrosis
	06/25/49	01/01/72	06/14/71	03/15/71	04/04/72	100	80.00	08/11/79	Chronic Bronchitis, Talcos & Pulmonary Emphysema
	07/28/54	08/24/71	09/01/71	08/24/71	01/26/72	100	80.00		Chronic Bronchitis, Talcos & Pulmonary Emphysema
	08/31/48	03/01/72	03/24/72	02/11/72	12/13/72	100	80.00		Talcosis
	08/29/50	02/01/72	01/18/73	11/15/72	05/24/74	100	80.00		Talcosis
	01/25/56	10/03/72	04/11/72	01/22/73	02/07/73	100	80.00	10/13/73	Talcosis
	08/24/48	03/01/73	03/15/73	02/26/73	07/09/74	100	80.00		Talcosis
	05/13/53	07/01/76	01/15/74	02/16/77	10/30/80		90.00		Talcosis
	12/17/51	06/01/74	09/13/74	11/01/73	02/10/76	100	80.00		Talcosis
	09/17/61	05/07/73	08/02/74	06/03/74	04/26/78	100	80.00		Chronic Bronchitis, Talcosi & Pulmonary Emphysema
	Electrical 1974-75	Consultant 5 Months	05/23/75	11/16/74	12/03/75	100	95.00		Talcosis
	07/20/53	11/01/76	11/13/75	10/30/75	12/15/76	100	95.00		Talcosis
	08/22/50	04/22/67 Term.	07/06/77	11/09/77	07/29/80		60.00		P.P.D. - Talcosis
	04/19/52	09/05/69	08/25/77	05/03/76	04/19/79	40	48.13*	05/03/76	Talcosis
	06/11/74	08/30/77	01/16/78	08/31/77	06/18/79	50	80.00		Talcosis
	06/21/74	01/30/78	01/30/78	01/27/78	07/13/78	75	105.00		Talcosis
	07/27/48	06/01/75	03/16/78	11/28/77	07/03/79		71.11		P.P.D. - Talcosis
	11/23/51	08/17/77	03/20/78	08/01/77	11/25/80		57.00*	08/17/77	Pneumoconiosis

P. P. D. = PERMANENT PARTIAL DECAPACITY



EMANUEL RUBIN, M.D.
1505 Monk Road
Gladwyne, PA 19035
610-642-7300
emanuel.rubin@jefferson.edu

November 8, 2006

John W. Kelse, Corporate IH
Mgr. Corporate Risk Mgt. Department
R. T. Vanderbilt Company, Inc.
30 Winfield Street
P.O. Box 5150
Norwalk, Connecticut 06856-5150

Dear Mr. Kelse:

At your request I have reviewed four Workers' Compensation Claims alleging mesothelioma.

Lawrence Malbeuf

Mr. Malbeuf worked for R. T. Vanderbilt as a miller operator and laborer from August, 1954 to January, 1955, during which time he was involved in crushing talc. Subsequently until 1970 he worked in quality control, spending only five percent of his time in the mill. From 1970 until 1994 he worked 25% of his time in the mill as a supervisor of quality control and was assigned a respirator in 1974. He smoked a pack of cigarettes a day since age 16. Chest x-rays on 02/29/88 were described as showing scarring in the pulmonary parenchyma or pleura of both lower lobes. In a letter dated 12/01/94 Dr. Ashraf diagnosed cancer of the lung and a pleural effusion, with a mention of alleged mesothelioma. Mr. Malbeuf also suffered carcinoma of the prostate. A right-sided pleural effusion was noted on 03/22/94, and the PSA level was high. On 06/03/94 was PSA level was 9.7 and pleural fluid cytology was suspicious for adenocarcinoma. Biopsy on that date was reported to show malignant mesothelioma with calcified pleural plaques and "pulmonary ferruginous bodies." Dr. A. L. Katzenstein "felt that there was a mesothelioma present." Dr. W. K. C. Morgan attributes calcified pleural plaques to talc dust while working for R. T. Vanderbilt which did not become evident until mid or late 1980s. He cannot say whether the malignant effusion was caused by carcinoma of the lung or prostate, or whether it was a mesothelioma. In favor of a lung cancer was the presence of a nodule in the right middle lobe, which was not biopsied. Dr. Morgan notes



that Mr. Malbeuf may have been exposed to asbestos before beginning to work for R. T. Vanderbilt. Before he developed a pleural effusion, pulmonary function tests indicated a restrictive impairment, consistent with pulmonary fibrosis.

On 07/06/95 a letter from Dr. Bertha Garcia of University Hospital, London, Ontario, states that the cytology from two cell blocks were suggestive of adenocarcinoma. In a report dated 06/07/95, Dr. Garcia notes "immunohistochemical stains are equivocal." On 01/17/96 Dr. Brian Boehlecke, Associate Professor of Medicine at the University of North Carolina sees "nothing which specifically suggests a mesothelioma."

On 06/03/94 Mr. Malbeuf was admitted to St. Joseph's Hospital Health Center because of shortness of breath. The discharge diagnoses included pleural effusion, prostate cancer, and "malignant mesothelioma vs. benign asbestosis pleural disease." He was described as a 63-year old man with a 45-year history of smoking one pack of cigarettes a day. A Workers' Compensation Board Report dated 09/09/94, signed by Dr. Ashraf, lists "carcinoma lung, pleural effusion."

Mr. Malbeuf died on 09/06/95, and the Death Certificate lists the cause of death as mesothelioma.

Based on the information available to me, it is not possible to distinguish lung cancer from mesothelioma in this case, particularly in view of the long smoking history. If blocks of biopsy tissue are available, a careful immunohistochemical study would be advisable.

George Evans

Dr. W. K. C. Morgan, in a letter of 02/01/95, states that a Mr. Evans worked for R. T. Vanderbilt from 03/19/54 to 06/30/87. He worked briefly as a talc crusher and then in quality control, spending 20% of his time in a dusty area. He was given a respirator in 1974. Mr. Evans smoked a pack of cigarettes per day from the age of 18 to 43. The claims examiner stated that Mr. Evans' chest x-ray showed calcified pleural plaques consistent with prior exposure to asbestos or talc. A chest film on 08/05/81 mentions pulmonary fibrosis and a possibility of cardiomegaly. Emphysema was diagnosed on 02/18/86. Dr. Boehlecke described right-sided pleural thickening and possible fibrosis of the base of the left parenchyma on 02/18/86. Mr. Evans was admitted to a hospital in Ogdensburg, New York on 05/06/94 because of right-sided pleural effusion, and a CT scan showed two masses in the right lung. A biopsy was diagnosed as fibrosis mesothelioma, but "the basis for this diagnosis is uncertain." However, the initial diagnosis was pulmonary carcinoma with a right pleural effusion. The pathology report by Dr. Roark is compatible with lung cancer and mesothelioma. Bilateral calcified pleural plaques were diagnosed at the Mayo Clinic on 07/14/94, which could be related either to inhalation of asbestos or talc. A note indicates Mr. Evans had smoked 45-pack years. His date of birth was 1924. A slight restrictive impairment was noted on pulmonary function tests on 09/15/81. Dr. Morgan concludes that Mr. Evans had pleural plaques and pleural calcification related to his exposure to talc. He believes the

malignancy is most likely lung cancer rather than mesothelioma. In a letter by Dr. Morgan dated 08/08/95 he notes that Mr. Evans died as a result of carcinoma of the lung, related to cigarette smoking.

Robert Rice

Mr. Rice died on 05/17/01. The Certificate of Death lists the immediate cause of death as respiratory failure secondary to pleural effusion due to pleural tumor. "Talcum exposure" is also noted. A letter from Carl B. Friedman, M.D. (01/03/03) notes that Mr. Rice was exposed to "non-asbestiform amphibole (sic) consistent with tremolite." He points out that the "carcinogenicity of these materials is not associated with an increasing risk factor for mesothelioma or lung cancer in cohorts inside and outside of the talc industry." Vanderbilt talc is composed of non-asbestiform tremolite from 40-60%.

An autopsy was restricted to the chest. Lesions secondary to talc pleurodesis were present. The lower lobe and medial aspect of the lung was encased by a large, firm, white nodular mass, adherent to the diaphragm. Bulky masses were noted over the medial and upper lung. Microscopically, both lungs contained ferruginous bodies "consistent with asbestos bodies." In some foci, four or five asbestos bodies were present per high-power field. The tumor that involved the right pleura and lung showed a diffuse proliferation of atypical pleomorphic cells with sarcomatous and epithelioid patterns, "consistent with diffuse, malignant mesothelioma." The decedent was 87 years old at the time of death. A Workers' Compensation Form noted that "the death was found related to exposure to talcum dust." It is more likely that Mr. Rice was exposed to asbestos.

Ray LaBow

On 02/02/05 Mr. LaBow was 73 years old. While in the Army from 1952-1954 he worked with dynamite and plastic explosives. He did mechanical work including brake adjustments as a service station attendant from 1956 to 1963. In 1964 he began employment with Gouverneur Talc from 1964 to 1997 (34 years). For 26 years he worked in a rotary mill operating a bulk loader. He smoked two packs of cigarettes per day for an approximate 76-pack year history. On 07/25/04 a CT scan had shown increased pleural thickening and an anterior mediastinal mass. He had previously been diagnosed with COPD. A note from Dr. Innhaber on 07/15/04 stated that Mr. LaBow had significant exposure to asbestos and was on compensation for pleural thickening. On 08/05/04 a needle biopsy of the left upper lobe pleural-based mass was diagnosed by Dr. Abraham as consistent with mesothelioma. X-rays showed pleural plaques that were mildly calcified and bilateral lower lobe fibrotic changes with interstitial densities. On 01/20/05 an anterior mediastinal mass was seen, together with an opacity at the right base.

Dr. Abraham noted that the tumor is predominantly an epithelial pattern malignancy. The tumor was positive for cytokeratin on both epithelial and spindle components, making it a biphasic mesothelioma. The tumor was positive for calretinin and WT-1 and stains for adenocarcinoma (CD15, CLA, B72.3, BerET4 and TTF-1) were negative. The

study by Honda, et al. of talc miners is reviewed in detail. Mesothelioma is probably related to asbestos exposure.

Please feel free to call upon me for any further information.

Sincerely,

A handwritten signature in cursive script that reads "Emanuel Rubin". The signature is written in dark ink and is positioned above the typed name.

Emanuel Rubin, M.D.



R. T. Vanderbilt Company, Inc.
INDUSTRIAL MINERALS AND CHEMICALS

30 WINFIELD STREET, P.O. BOX 5150, NORWALK, CONNECTICUT 06856-5150 - (203) 853-1400
FAX (203) 853-1452 - CABLE "BILTVAN", NORWALK, CONNECTICUT - TWX 710-468-2940

September 30, 1994

Manuel C. Paleo, M.D.
215 Rensselaer Avenue, Suite 303
Ogdensburg, NY 13669

Re: Mr. George Evans

Dear Dr. Paleo:

As his former employer we have contacted Mr. Evans and received his permission to access his medical records. A copy of the records release is attached. For many years the Gouverneur Talc Company has maintained an active medical surveillance program. Over the last ten years we have coordinated this program through a pulmonary specialist at The University of North Carolina at Chapel Hill.

The company is aware that overexposure to its talc dust - indeed any mineral dust - can result in adverse pulmonary effects. We are therefore concerned about reports we have received about Mr. Evans' pulmonary condition, wish to be informed on this condition and to assist in any way we can. On behalf of all our talc miners and millers we feel we have a commitment to do so.

It is our hope to obtain a copy of Mr. Evans' medical record along with available tissue samples for review by Brian Boehlecke, M.D. (our pulmonary medical advisor) and a pathologist familiar with histology possibly associated with this case. Whatever is learned from this review will certainly be shared with you, Mr. Evans or any additional parties Mr. Evans might later designate.

If you could provide a copy of Mr. Evans' medical record pertaining to his pulmonary status and any related tissue samples available, we would be most grateful. Please forward this material to my attention. Please feel free to contact Dr. Boehlecke at 919-966-2532 or me at 203-853-1400 if we can clarify this request or help in any other way.

Very truly yours,

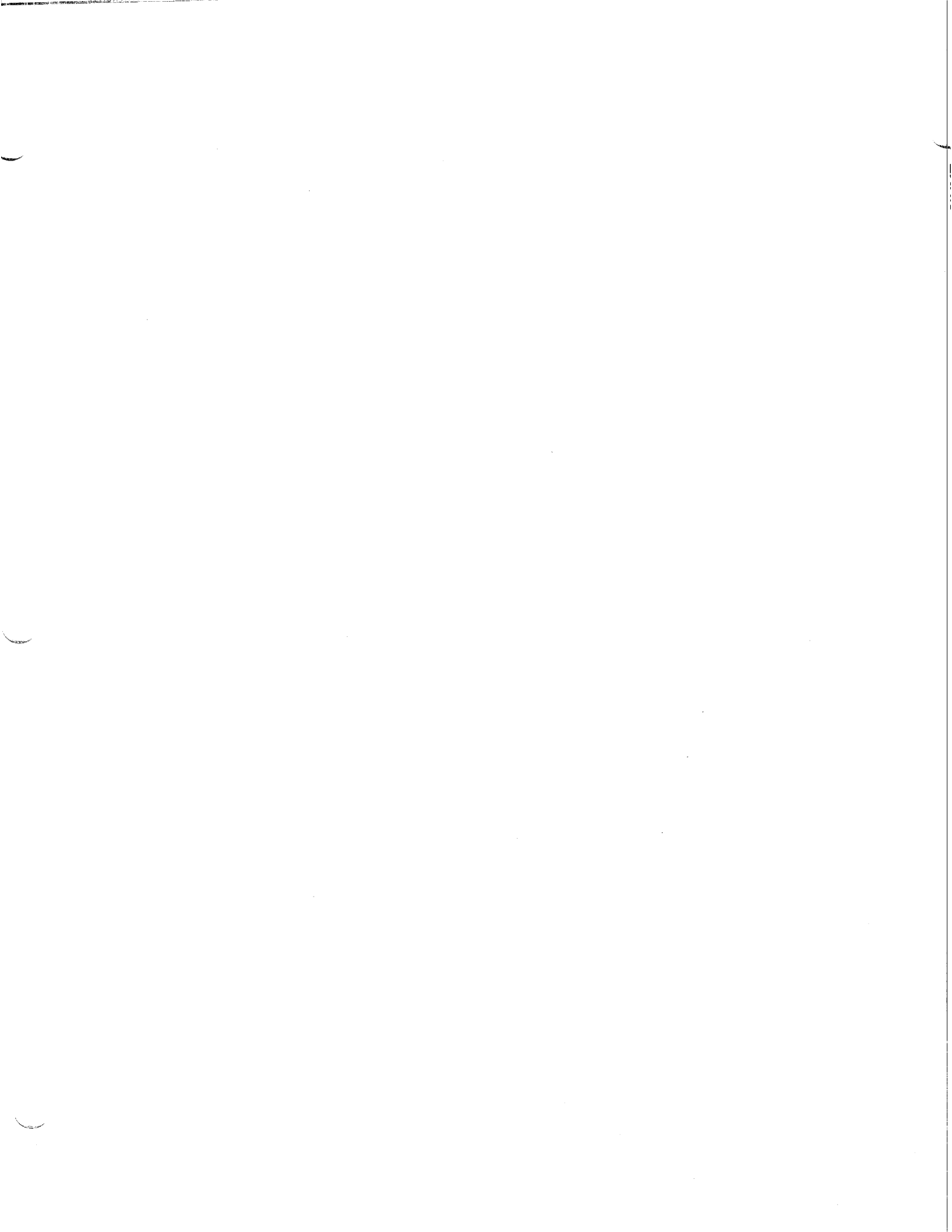
R. T. VANDERBILT COMPANY, INC.

John W. Kelse
Corporate Industrial Hygienist
Manager, Occupational Health & Safety

/sk
Attachment

cc: Mr. George Evans
Brian Boehlecke, M.D.
Mr. Dana Putman





NOTE TO FILE:

08/24/09 - Phone call to Dana Putman (GTC Plant Mgr.) regarding and all dust linked files maintained at the plant.

Personnel Files: Contents as described in my deposition. Prior employment from application form, record of jobs held and dates held. Any injury records and WC records for an employee is maintained in a notebook by name.

Medical Surveillance Files: Contents as described in my deposition. Per employee, chest x-ray reports, PFT's with questionnaires, copy of any dust monitoring result obtained on that employee and a copy of the employee summary notice of work related results per surveillance (every two years).

Chest x-ray Packets: As described in my deposition. Kept at the plant in folders by employee name. Employees given copies to use with their own physicians upon request though some originals have been lost over the years when not returned.

MSHA Related Records: As mandated – contains training plans and records (to include respiratory policy, housekeeping requirements, etc.). Copies of any dust sampling results from MSHA are kept but also sent to me for my central file. As described.

General Administrative Records: Asked if these would include any customer correspondence dealing with the mineral composition of the talc – specifically any inquiries as to the presence or absence of asbestos. As described, any such inquiries are sent to Norwalk (Kelse). Dana reported no file would exist on this at the plant.

I also confirmed the absence of IT records pertaining to dust data or insurance in their records. I also asked if the Quality lab ever addressed the talc in respect to the identification of asbestos. As previously reported, it was confirmed that nothing beyond routine Quality testing is done in this lab (whiteness, oil absorption, viscosity in paint blends, etc.).

08/20/09 Dr. Thompson's Lab. Files.

Did a random search of Dr. Thompson's old lab files for indication of talc linked composition documents that were not familiar to me (in my files). I did not see any such documents.



08/24/09: Further Discussion with Konrad Reiger (Ceramic Engineer) regarding the origin and preparation of the talc fiber concentrate (CPS 183) used in the Wylie/Mossman cell study.

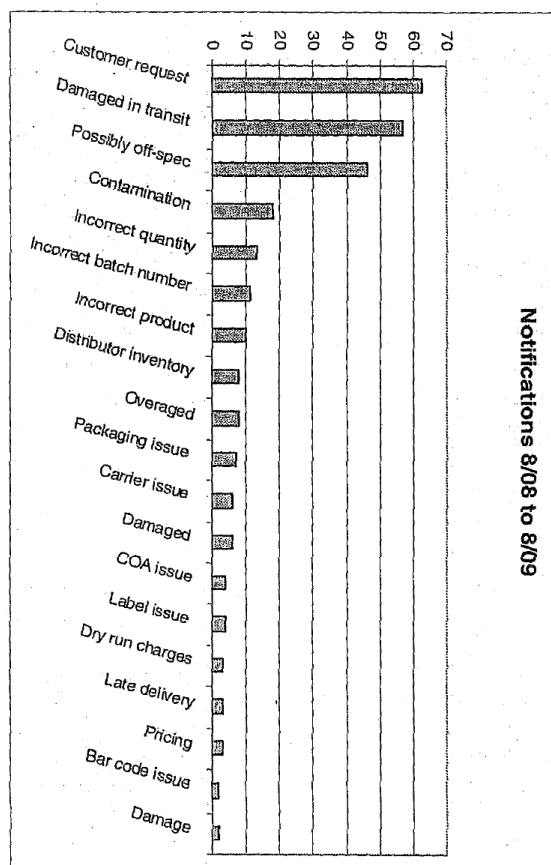
Konrad reported that he was not sure if the original sample was from a high fiber outcrop from the Talceville mine (as I had thought) or it instead originated from one of the high fiber grades from that same mine. In either case, the sample did originate from Talceville as reported. Konrad felt it was most likely concentrated from one of the high fiber products (would more typically be used for this purpose if a concentrate was being sought).

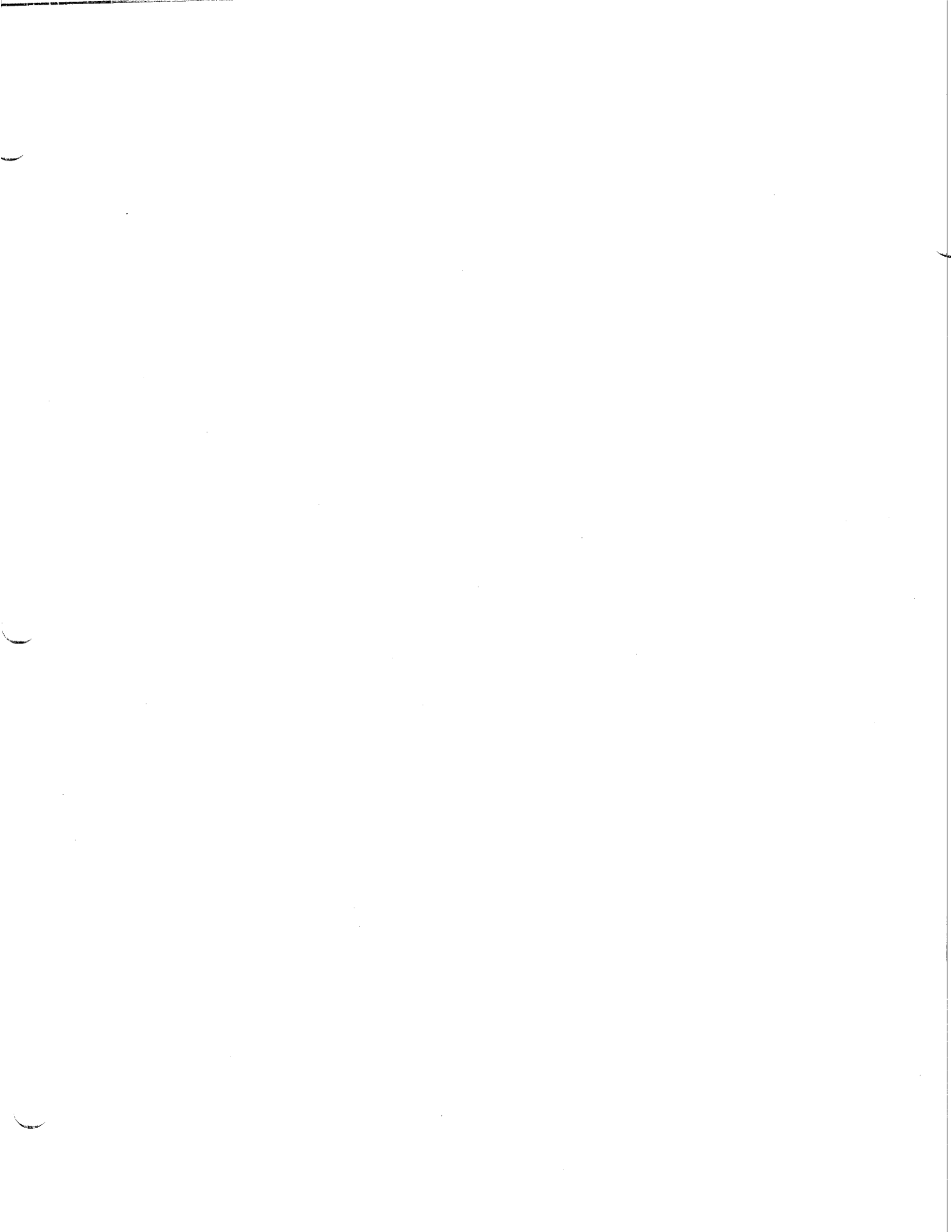
Konrad did concentrate the talc fiber as noted in my deposition – he felt in late 1992. This produced a fiber concentrate of approx. 60% (noted in the published paper). The concentration process was different than I thought (it wasn't simply a floatation process). Basically, the material was wetted and sieved with the talc fiber remaining on the top of the screen. The residual was then dried on a metal screen with the static charge on the fibers causing them to clump or ball - these clumps were then air classified – blown from the top of the metal screen.

This fiber concentrate was given to Dr. Thompson who supplied it to Dr. Wylie for the cell study. It was noted in the paper that an “intermediate” talc fiber grade was used in the study as well – sample S-157. This sample was also provided by RTV and was identified as Fibertal #1 in our records (sample number on container). This sample was reported as containing 37% talc fiber and Fibertal was produced from the Talceville mine as well.

08/25/09: Visited the Quality Dept. (managed by Jerry Dvorneck) and asked if they maintained any files in which customer inquiries might have been made about the composition of RTV talc (particularly in regard to the presence of absence of asbestos) – or any other documents linked to that matter. I did look through several files that contained customer complaints but found no evidence of such documents. It was reported, as stated in my deposition, that any such inquiry would immediately be sent to me if it was inadvertently sent to them – they did not recall seeing any such inquiries. Such inquiries would not be viewed as “quality” documents (past shelf life, broken containers, off-spec., etc.). Appended is a Quality dept. graph which depicts the categories of files/records they keep – note there is no category for “risk” linked issues.

Notifications 8/08 to 8/09





Talc Grade Retained Samples (RTV files)

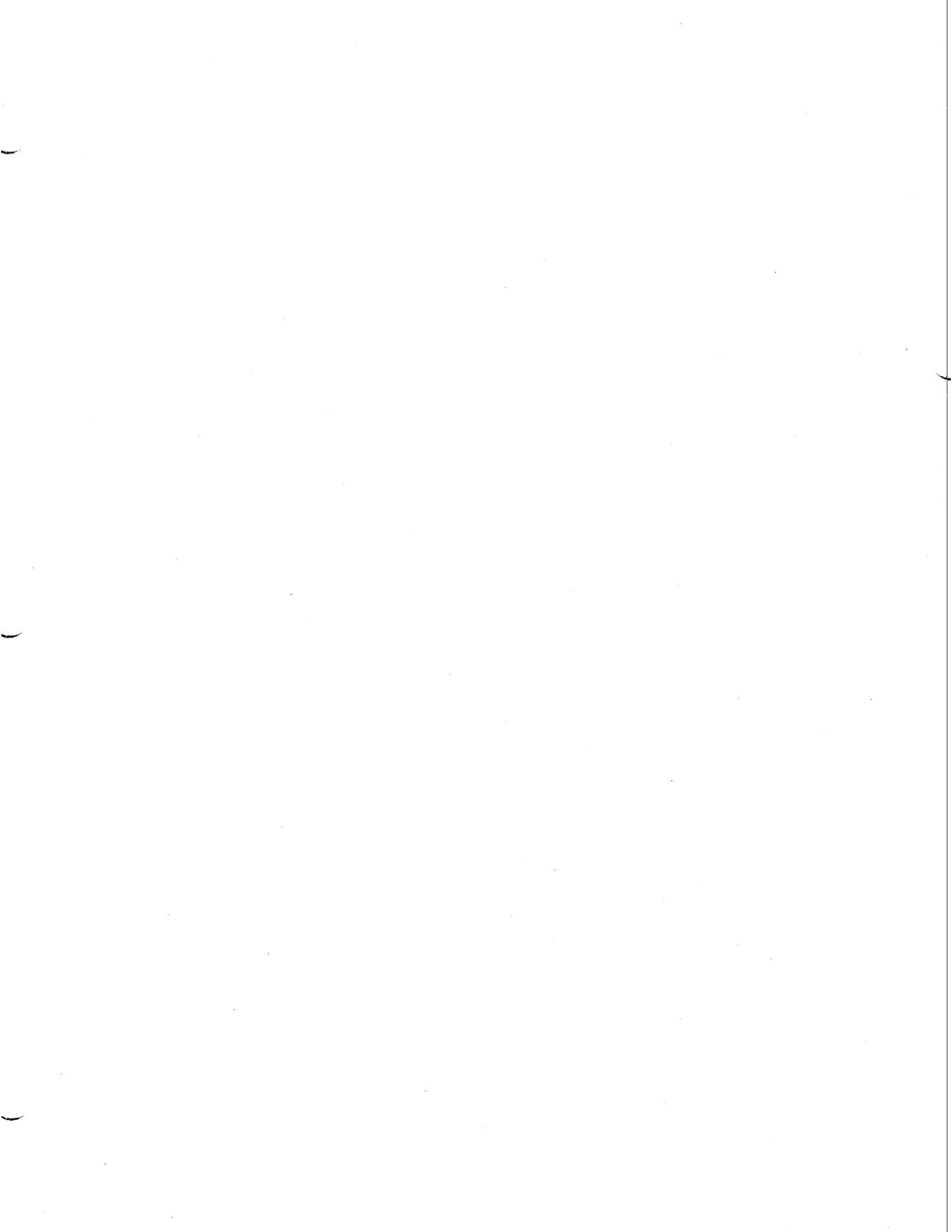
Cuts of retained talc product samples were taken Aug. 20, 2009 and the distribution of these samples to investigators – as noted on the original sample containers (typically small bags) – is recorded below. Product samples originated from requests to Gouverneur Talc (talc plant) to forward designated product samples from product production.

<u>Sample</u>	<u>Grade/Prod.</u>	<u>Origin Date</u>	<u>Date(s) Provided</u>	
			<u>to others</u>	<u>Recipients</u>
A	NYTAL 100	1998	Oct. 2007 Nov. 2007 Aug. 2007	C. Skinner HP (P. York) RJLee, Inc.
B	NYTAL 300	2002	Mar. 2005 Nov. 2008	J. Addison M. Gunter
C	NYTAL 100	1998	June 2000	RJLee, Inc.
D	NYTAL 200	1998	June 2000 Mar. 2005 Nov. 2009	RJLee, Inc. J. Addison M. Gunter
E	IT 3X	1998	June 2000 July 2008	RJLee, Inc. C. Skinner
F	NYTAL 400	1998	June 2000 Mar. 2005 Aug. 2009	RJLee, Inc. J. Addison M. Gunter
G	NYTAL 7700	1998	June 2000	RJLee, Inc.
H	NYTAL 3300	1998	June 2000	RJLee, Inc.
I	NYTAL 300 (old IT 325)	1998	June 2000 Oct. 2007 Nov. 2007	RJLee, Inc. C. Skinner HP (P. York)



J	Mouldene	1975	1998 July 2009 Aug. 2009	A.Wylie HP (P. York) M. Gunter
K	Fibertal 2 (S-157)	1975	1996	A. Wylie
L	Fiber Concentrate (CPS-187)	1996	1996	A. Wylie
M	IT-3X (MCP-398)	1992	1992 1993 ?	A. Wylie F. Pooley RJLee, Inc. McCrone Lab.
N	NYTAL 3300	1997	1998	RJLee
O	Tremolite Conc. (C.P. 57 - cps 1204 NTP feeding study)	1980 (approx)	1980	NTP & BOM
P	Ceramitalc # 1	1994	1999 Feb. 2000 Nov. 2007	German Lab (?) RJLee HP (P York)
Q	NYTAL 100 HR	1994	2000 Feb. 2005	German Lab (?) J. Addison
R.	NYTAL 200	1994	2000 2001	German Lab (?) RJLee

Obtained from office storage by
John Kelse RTV



Note to the File

Removal of 300 bags of MOULDENE Talc
From Armstrong Mold Company - Syracuse, NY

On May 2, 1992 I visited Armstrong Mold Company to observe the removal of 300 bags of unused "Mouldene". Because this discontinued talc product had been improperly labeled as asbestos containing, a licensed abatement contractor was retained by the owner of this material to remove it from his premises as an asbestos containing material. Rather than bear the analytical costs involved in proving this material contains no asbestos and was mislabeled, it was decided to handle this material "as though it did" contain asbestos in the interest of cost containment.

Overseeing this removal project was Mr. Alan Avrigh, who serves as the owner's occupational health and safety consultant. Mr. Avrigh is licensed to oversee projects of this nature and was responsible for retaining the removal contractor and obtaining all state required certificates and the burial permit. As per standard operating procedure (mandated), this removal project involved the following basic steps:

1. Each paper Mouldene bag was placed in a pre-labeled plastic bag and sealed after torn bags were patched with tape.
2. The removal contractors wore the typical removal gear (i.e. full body coveralls and respirators). The area was properly vacuumed after the work.
3. Double wrapped bags were placed in a covered box trailer and taken to a secured landfill for burial in West Virginia.
4. During and after the bags were removed from the owner's warehouse, air samples were taken to confirm the absence of residual contamination in the warehouse area.

Prior to the re-bagging, I inspected the bags and found about 5% to be in poor condition (some bags were torn). There was some evidence of spillage in the warehouse area. I took a sample from one of the bags to hold in the event future inquiries develop. This sample is labeled "K-100 (Mouldene)" and shall be filed with this record.

The removal project went smoothly and took approximately three hours. A listing of participants, phone numbers and license numbers was partially obtained on the removal date. A more complete listing shall be forwarded with the bill and retained in our files.

There was no evidence of any "hidden" agenda. I spoke with the owner of the metal casting facility who was not in the least concerned. In fact, Mr. Armstrong asked about the possible use of our talcs or our wollastonite in new processes he was considering (I left Randy Johnson's name and number for follow-up in that regard). The removal activity took place after work hours, there were no spectators, inquiries or any sign that this was anything other than a straight forward removal/disposal effort.

John W. Kelse
Corporate Industrial Hygienist
May 4, 1992





R. T. Vanderbilt Company, Inc.
INDUSTRIAL MINERALS AND CHEMICALS

30 WINFIELD STREET, P.O. BOX 5150, NORWALK, CONNECTICUT 06856-5150 • (203) 853-1400
FAX (203) 853-1452 • CABLE: "BILTVAN", NORWALK, CONNECTICUT • TWX 710-468-2940

April 3, 1992

Mr. Alan ^{Avrich}~~Azrick~~
RIMTECH
12 Deer Run
Fulton, NY 13069

Dear Mr. ~~Azrick~~ Avrich:

Regarding our telephone conversation of March 27, 1992, I have enclosed assorted reference material. This material addresses both the nonasbestiform amphibole issue and our New York State tremolitic talc products.

As discussed, confusion over whether our tremolitic talcs (including "Mouldene") do or do not contain asbestos involves this general nonasbestiform amphibole issue as well as the ability to distinguish fibrous talc from anthophyllite asbestos. Nonasbestiform amphibole in these talc products is quite high (30-60%) though much lower for Mouldene. Talc fiber (and to a lesser degree transitional fibers that are both talc and anthophyllite) is quite low (1-2%). Such fibers, however, are generally more common in the "Mouldene" product. This higher fiber grade was discontinued in the early 1970's because sales decreased and confusion over "asbestos" content was too great. As I described, even the company believed this talc grade contained asbestos and labeled the bags as such for a brief period in the mid 1970's. Obviously when we believed asbestos to be present we had no problem saying so. Although we erred in this regard, we have been haunted by this mistake ever since.

The analytical problems inherent in the analysis of our talcs is great. It takes a high degree of mineralogical expertise to properly deal with this material. I believe some of the attached gives you some appreciation of why this is so. Over the years, despite initial protestation, many laboratories have learned this.

Given these circumstances and the fact that an "asbestos" label is incorrectly affixed to these bags, if you would prefer, we would pick up this material for you. If you would like to handle this in this way please contact our Plant Manager, Dana Putman (315) 287-0100 for specifics.

I appreciate your interest in the mineralogical aspects of this issue and trust you will find the enclosed material interesting. If I can answer any remaining questions for you regarding these issues, please do not hesitate to call.

Very truly yours,

R. T. VANDERBILT COMPANY, INC.

John W. Kelse
Corporate Industrial Hygienist
Manager, Occupational Health & Safety

JWK/sk

attachment The recommendations for use of our materials are based upon tests believed to be reliable. However we do not guarantee the results to be obtained



R. T. Vanderbilt Company, Inc.
INDUSTRIAL, MINERALS AND CHEMICALS

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FAX (203) 853-1452 • CABLE: "BILTVAN", NORWALK, CONNECTICUT • TWX 710-468-2940

April 10, 1992

Mr. Alan Avrigh
RIMTECH
12 Deer Run
Fulton, NY 13069

Dear Mr. Avrigh:

As per our phone conversation of April 9, 1992, we believe your plans to dispose of your client's unwanted MOULDENE talc product as if it were an asbestos containing material (ACM) is appropriate. Although this talc does not contain asbestos, as explained in my letter of April 3, 1992, we believe a prudent approach is warranted, given the understandable concerns that may be raised whenever the word "asbestos" is involved. By retaining a licensed asbestos removal company as you suggest to handle this material as an ACM, we agree with you that unnecessary concern will be held to a minimum.

It is unfortunate this talc product was mislabeled and that unnecessary time and expense must now be sustained. Since the labeling error was ours, the R. T. Vanderbilt Company feels it is appropriate to reimburse your client for costs incurred in handling and disposing of this material as an ACM consistent with the price you quoted (approximately \$7,500). Please forward these disposal bills to my attention.

As per your request, please consider this correspondence as our approval for a leachate test (TCLP method) on this material as per landfill requirements. The content of our discontinued "MOULDENE" talc is reflected in Dr. Wylie's analysis - primarily fibrous talc, with smaller amounts of nonasbestiform tremolite and anthophyllite (5-10% of the material) with the remainder carbonate, platy talc, feldspar (trace) and quartz (likely <1%). This talc product, like all our talc products, is merely ground and contains mineral components only. Hence, the TCLP test should result in no leachates of concern.

If I can be of any further assistance, please feel free to call.

Very truly yours,

R. T. VANDERBILT COMPANY, INC.

John W. Kelse
Corporate Industrial Hygienist
Manager, Occupational Health & Safety

JWK/sk

INTER-OFFICE MEMORANDUM

Date: May 11, 1992

To: Mr. G. L. Fiederlein
From: J. W. Kelse
Subject: BILL FOR REMOVAL OF "MOULDENE" - May 2, 1992

Attached please find an invoice for \$7,500 which we agreed to pay for the removal and disposal of the captioned material. Would you please expedite payment on this so that we can close our file on this project.

As the cover letter (also attached) indicates, I have received full documentation on this project and shall establish a file. I would appreciate a copy of the check sent for this file.

Thank you for your interest and cooperation on this matter. Although this discontinued talc product is not an asbestos containing material (ACM), I believe our conservative approach minimized costs.

JWK/sk
attachment

cc: Mr. H. B. Vanderbilt Sr.

RIMTECH

RISK MANAGEMENT CONSULTING SERVICES

FAXED 5/8/92

May 8, 1992

Mr. John W. Kelse, Manager Safety and Health
R. T. Vanderbilt Company, Inc.
30 Winfield Street
P.O. Box 5150
Norwalk, Connecticut 06856-5150

Re: Asbestos Project - Mouldéne
Armstrong Mold Corp., N. Y.
Invoice

Dear Mr. Kelse:

It was a pleasure meeting you on May 2, 1992 - I wish it could have been under different circumstances. Enclosed are requested copies of reports, permits and letters pertaining to the R.T. Vanderbilt "Mouldéne" product that was at the Armstrong Mold Corporation facility in East Syracuse, New York.

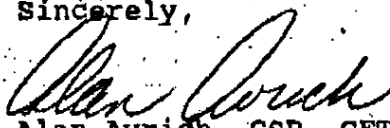
The Bianchi Trison Corporation, waste hauler, letter confirms receipt of the "Mouldéne" material removed from Armstrong. This material will be transported (mid-May schedule upon payment) to and disposed at the Meadowfill Landfill in West Virginia. A copy of the manifest, and any other disposal records, will be furnished by this company to us after project completion. The transporters permit lists this landfill on page 2 of 4.

The TCLP and removal project air monitoring results were acceptable as noted on the laboratory reports.

An invoice for the quoted \$ 7,500 price is attached. This invoice covers labor, laboratory fees, material costs, equipment charges, transportation, and disposal.

Should you have any questions, please let me know.

Sincerely,



Alan Avrich, CSP, CET, ARM

RIMTECH

RISK MANAGEMENT CONSULTING SERVICES

TO: R.T. VANDERBILT CO., INC. DATE: May 8, 1992
30 WINFIELD ST., P.O. BOX 5150
NORWALK, CONNECTICUT 06856-5150

ATTENTION: MR. JOHN KELSE

RE: REMOVAL "MOULDENE" ACM FROM ARMSTRONG MOLD CORPORATION
EAST SYRACUSE, NEW YORK on May 2, 1992

DESCRIPTION OF SERVICES	AMOUNT
BAG PER NYS CODE RULE 56/OSHA REGULATIONS MOULDENE BAGS AT THE ABOVE LOCATION TRANSPORT AND DISPOSE MATERIAL INCL LABOR, MATERIAL, LAB ANALYSIS TRANSPORT AND DISPOSAL COSTS	
PER LETTER AGREEMENT DATED 04/10/92 <u>PAYABLE UPON RECEIPT</u> <u>TO TRANSPORT AND DISPOSE</u>	\$ 7500.00
TOTAL AMOUNT DUE THIS INVOICE	\$ 7500.00

Please make check payable to "RIMTECH"

RIMTECH

12 Deer Run, Fulton, New York 13069
(315) 593-6424 FAX (315) 593-1990

MEMO

OVERNIGHT DELIVERY
5/13/92

TO: JOHN KELSE

COMPANY: R.T.VANDERBILT

FROM: ALAN AVRICH

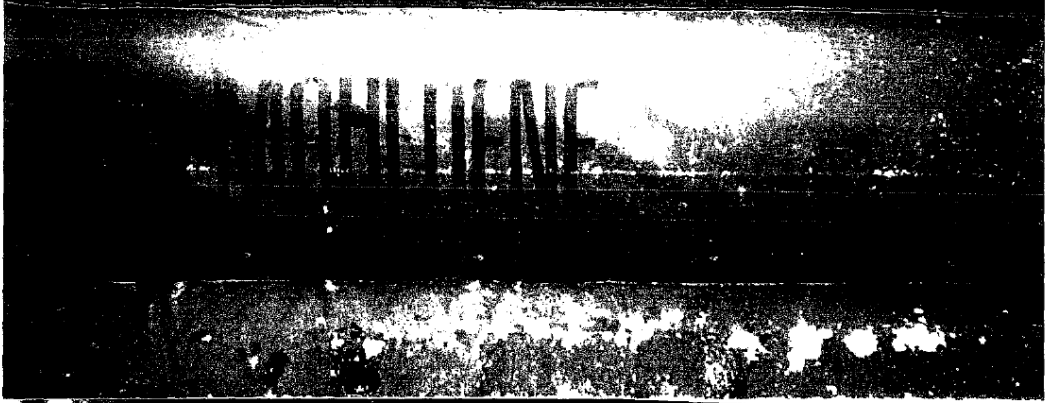
RE: 1. MOULDENE PROJECT
ARMSTRONG MOLD CORP.

JOHN -

As discussed today, May 12th, I am enclosing an original copy of the invoice for this project and some photographs of the material, pre and post removal, and loaded trailer.

ALAN AVRICH, CSP, CET, ARM

Caution-Product Contains Asbestos
and Creating Dust. Breathing Asbestos
Can Cause Serious Health Problems



RIMTECH

RISK MANAGEMENT CONSULTING SERVICES

FAXED 5/8/92
May 8, 1992

Mr. John W. Kelse, Manager Safety and Health
R. T. Vanderbilt Company, Inc.
30 Winfield Street
P.O. Box 5150
Norwalk, Connecticut 06856-5150

Re: Asbestos Project - Mouldene
Armstrong Mold Corp., N. Y.
Invoice

Dear Mr. Kelse:

It was a pleasure meeting you on May 2, 1992 - I wish it could have been under different circumstances. Enclosed are requested copies of reports, permits and letters pertaining to the R.T. Vanderbilt "Mouldene" product that was at the Armstrong Mold Corporation facility in East Syracuse, New York.

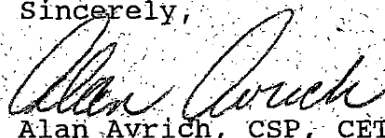
The Bianchi Trison Corporation, waste hauler, letter confirms receipt of the "Mouldene" material removed from Armstrong. This material will be transported (mid-May schedule upon payment) to and disposed at the Meadowfill Landfill in West Virginia. A copy of the manifest, and any other disposal records, will be furnished by this company to us after project completion. The transporters permit lists this landfill on page 2 of 4.

The TCLP and removal project air monitoring results were acceptable as noted on the laboratory reports.

An invoice for the quoted \$ 7,500 price is attached. This invoice covers labor, laboratory fees, material costs, equipment charges, transportation, and disposal.

Should you have any questions, please let me know.

Sincerely,



Alan Avrigh, CSP, CET, ARM

RIMTECH

RISK MANAGEMENT CONSULTING SERVICES

TO: R.T. VANDERBILT CO., INC. DATE: May 8, 1992
30 WINFIELD ST., P.O. BOX 5150
NORWALK, CONNECTICUT 06856-5150

ATTENTION: MR. JOHN KELSE

RE: REMOVAL "MOULDENE" ACM FROM ARMSTRONG MOLD CORPORATION
EAST SYRACUSE, NEW YORK on May 2, 1992

DESCRIPTION OF SERVICES	AMOUNT
BAG PER NYS CODE RULE 56/OSHA REGULATIONS MOULDENE BAGS AT THE ABOVE LOCATION TRANSPORT AND DISPOSE MATERIAL INCL LABOR, MATERIAL, LAB ANALYSIS TRANSPORT AND DISPOSAL COSTS	
PER LETTER AGREEMENT DATED 04/10/92 <u>PAYABLE UPON RECEIPT</u> <u>TO TRANSPORT AND DISPOSE</u>	\$ 7500.00
TOTAL AMOUNT DUE THIS INVOICE	\$ 7500.00

Please make check payable to "RIMTECH"

INVOICE DATE	INVOICE NUMBER	DESCRIPTION	INVOICE AMOUNT	DISCOUNT	NET AMOUNT
5/08/92	050892	REMOVAL MOULDENE-ARMSTRON	7,500.00	.00	7,500.00

DATE 5/14/92 VENDOR NO. 13294

TOTAL

7,500.00

R. T. VANDERBILT COMPANY, Inc.

NO. 151125

CTIBANK, N.A.
399 Park Avenue
New York, N.Y. 10043

R. T. VANDERBILT COMPANY, INC.
30 WINFIELD STREET
NORWALK, CT 06856

151125

1

5144

NO. 151125

1-8

210

DATE 5/14/92

PAY
TO THE ORDER OF

****7,500.00****

DOLLARS

AMOUNT
****7,500.00

RIMTECH
12 DEER RUN

VOID AFTER 90 DAYS FROM DATE OF CHECK

R. T. VANDERBILT COMPANY, Inc.

FULTON, NY

13069-

Authorized Signatur

Authorized Signatur

⑈0000151125⑈

⑆021000089⑆

05359186⑈



47-20-3.(5/90)--26a

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
 DIVISION OF HAZARDOUS SUBSTANCES REGULATION • BUREAU OF PROGRAM AND TECHNICAL SUPPORT
 50 WOLF ROAD, ALBANY, NEW YORK 12233-7250

WASTE TRANSPORTER PERMIT

Pursuant to 6 NYCRR Part 364

No. of Additional Sheets Attached

01

NYSDEC PERMIT NUMBER 7A-097	EPA TRANSPORTER ID NUMBER NYD980766497	VEHICLE STATE & LICENSE NUMBER SEE LIST OF VEHICLES
---------------------------------------	--	---

THIS IS TO CERTIFY THAT:

BUSINESS NAME
BIANCHI TRISON CORP

MAILING ADDRESS
5908 BUTTERNUT DR

CITY
EAST SYRACUSE

COUNTY
ONONDAGA

STATE
NY

ZIP CODE
13057

Having complied with the provisions of the Environmental Conservation Law Titles 3 and 15, of Article 27, is hereby authorized to engage in waste transporting within the State of New York in the manner described herein.

TYPE OF WASTE AND LOCATION OF TREATMENT, STORAGE OR DISPOSAL FACILITY:

TSD# # 1 INFORMATION

WASTE WASTE DESCRIPTION

**04307
 NANTICOKE/BROOME CO SANIT
 KNAPP RD
 NANTICOKE NY 13902**

N807 ASBESTOS WASTE (SEE CONDITIONS)

TSD# # 2 INFORMATION

WASTE WASTE DESCRIPTION

**32911
 NEWCO/NIAGARA RECYCLING
 56TH ST/NIAGARA FALLS BLV
 NIAGARA NY 14302**

N011 OIL SOAKED DEBRIS

TSD# # 3 INFORMATION

WASTE WASTE DESCRIPTION

**50808
 SENECA MEADOWS INC
 1786 SALCMAN RD
 WATERLOO NY 13165**

**N011 OIL SOAKED DEBRIS
 N807 ASBESTOS WASTE (SEE CONDITIONS)
 N899 NON-HAZARDOUS WASTE(S) SPECIFY BELOW**

***** CONTINUED ON NEXT PAGE *****

PAGE 1 OF 4 PAGES

THIS PERMIT WILL EXPIRE AT MIDNIGHT MARCH 31 19 93 and is subject to revocation at any time. This permit is not transferable.

In witness whereof, the Department of Environmental Conservation has caused this permit to be executed on this 24 day of APRIL 19 92

By *Alene Schmidt*
 New York State Department of Environmental Conservation Representative

NOTE: This Permit does not relieve the transporter of the responsibility of complying with any other applicable federal, state or local regulations. Please refer to warning notice on back of this Permit.

47-20-3 (5/90)--26a

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF HAZARDOUS SUBSTANCES REGULATION • BUREAU OF PROGRAM AND TECHNICAL SUPPORT
50 WOLF ROAD, ALBANY, NEW YORK 12233-7250

WASTE TRANSPORTER PERMIT

Pursuant to 6 NYCRR Part 364

No. of Additional Sheets Attached

02

NYSDEC PERMIT NUMBER 7A-097	EPA TRANSPORTER ID NUMBER NYD980766497	VEHICLE STATE & LICENSE NUMBER SEE LIST OF VEHICLES
---------------------------------------	--	---

THIS IS TO CERTIFY THAT:

BUSINESS NAME
BIANCHI TRISON CORP

MAILING ADDRESS
5908 BUTTERNUT DR

CITY
EAST SYRACUSE

COUNTY
ONONDAGA

STATE
NY

ZIP CODE
13057

Having complied with the provisions of the Environmental Conservation Law Titles 3 and 15, of Article 27, is hereby authorized to engage in waste transporting within the State of New York in the manner described herein.

TYPE OF WASTE AND LOCATION OF TREATMENT, STORAGE OR DISPOSAL FACILITY:

TSDF # 4 INFORMATION	WASTE WASTE DESCRIPTION
00007 MEADOWFILL CORPORTION ROUTE #2, BOX 68 BRIDGEPORT WV 26330	N807 ASBESTOS WASTE (SEE CONDITIONS)

TSDF # 5 INFORMATION	WASTE WASTE DESCRIPTION
00009 PRICHARD LANDFILL 5830 BIG SANDY RIVER ROAD PRICHARD WV 25555	N807 ASBESTOS WASTE (SEE CONDITIONS)

***** END OF TREATMENT, STORAGE OR DISPOSAL FACILITY INFORMATION *****

PAGE 2 OF 4 PAGES

THIS PERMIT WILL EXPIRE AT MIDNIGHT MARCH 31 93 and is subject to revocation at any time. This permit is not transferrable.

In witness whereof, the Department of Environmental Conservation has caused this permit to be executed on this 24 day of APRIL 19 92

By Heene Schmidt
New York State Department of Environmental Conservation Representative

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47-20-3 (5/90)--26a

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF HAZARDOUS SUBSTANCES REGULATION • BUREAU OF PROGRAM AND TECHNICAL SUPPORT
50 WOLF ROAD, ALBANY, NEW YORK 12233-7250

WASTE TRANSPORTER PERMIT

Pursuant to 6 NYCRR Part 364

No. of Additional Sheets Attached

03

NYSDEC PERMIT NUMBER 7A-097	EPA TRANSPORTER ID NUMBER NYD980766497	VEHICLE STATE & LICENSE NUMBER SEE LIST OF VEHICLES
---------------------------------------	--	---

THIS IS TO CERTIFY THAT:

BUSINESS NAME
BIANCHI TRISON CORP

MAILING ADDRESS
5908 BUTTERNUT DR

CITY
EAST SYRACUSE

COUNTY
ONONDAGA

STATE
NY

ZIP CODE
13057

Having complied with the provisions of the Environmental Conservation Law Titles 3 and 15, of Article 27, is hereby authorized to engage in waste transporting within the State of New York in the manner described herein.

TYPE OF WASTE AND LOCATION OF TREATMENT, STORAGE OR DISPOSAL FACILITY:

CONDITION: EPA TCLP HAZARDOUS WASTE REGULATIONS EFFECTIVE 9/25/90 ADDED 25 ORGANIC MATERIALS, INCLUDING SEVERAL VOLATILE SOLVENTS TO ITS TOXICITY CHARACTERISTIC LIST. PETROLEUM SUBSTANCES MAY BE AFFECTED BY THESE REGULATIONS. THE TRANSPORTER IS RESPONSIBLE FOR COMPLIANCE WITH 40 CFR 263.

CONDITION: ASBESTOS-CONTAINING WASTES SHALL BE COLLECTED, PACKAGED, TRANSPORTED AND DISPOSED OF IN ACCORDANCE WITH THE U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA) REGULATIONS (CODE OF REGULATIONS, TITLE 40, PART 61, SUBPARTS A AND M [40 CFR 61 A AND M]) AND THE U.S. DEPARTMENT OF LABOR - OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA) ASBESTOS REGULATIONS (29 CFR 1910).

CONDITION: TRANSPORTER IS NOT PERMITTED TO HAUL HAZARDOUS WASTES.

N899 TO SENECA MEADOWS IS LEAD OXIDE CONTAMINANTS.

ALL WASTE TO SENECA MEADOWS MUST BE APPROVED VIA A WASTE STREAM ANALYSIS FORM (47-19-7) PRIOR TO DISPOSAL.

CONDITION: N899 TO SENECA MEADOWS IS DUCT WORK, METAL PARTITIONS, FLOOR TILES AND FILTERS FROM GENERAL ELECTRIC.

***** END OF CONDITIONS *****

PAGE 3 OF 4 PAGES

THIS PERMIT WILL EXPIRE AT MIDNIGHT MARCH 31 93 and is subject to revocation at any time. This permit is not transferrable.

In witness whereof, the Department of Environmental Conservation has caused this permit to be executed on this 24 day of APRIL 19 92

By Heene Schmidt
New York State Department of Environmental Conservation Representative

NOTE: This Permit does not relieve the transporter of the responsibility of complying with any other applicable federal, state or local regulations. Please refer to warning notice on back of this Permit.

47-20.1(5/90)-268

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF HAZARDOUS SUBSTANCES REGULATION • BUREAU OF PROGRAM AND TECHNICAL SUPPORT
50 WOLF ROAD, ALBANY, NEW YORK 12233-7250

WASTE TRANSPORTER PERMIT

Pursuant to 6 NYCRR Part 364

No. of Additional Sheets Attached

04

NYSDEC PERMIT NUMBER 7A-097	EPA TRANSPORTER ID NUMBER NYD980766497	VEHICLE STATE & LICENSE NUMBER LIST OF VEHICLES
---------------------------------------	--	---

THIS IS TO CERTIFY THAT:

BUSINESS NAME
BIANCHI TRISON CORP

MAILING ADDRESS
5908 BUTTERNUT DR

CITY
EAST SYRACUSE

COUNTY
ONONDAGA

STATE
NY

ZIP CODE
13057

Having complied with the provisions of the Environmental Conservation Law Titles 3 and 15, of Article 27, is hereby authorized to engage in waste transporting within the State of New York in the manner described herein.

TYPE OF WASTE AND LOCATION OF TREATMENT, STORAGE OR DISPOSAL FACILITY:					
70533S	DEMO15	DEMO18	DEMO17	DEMO16	DEMO20
DEMO19	25126S	DEMO7	DEMO4	DEMO11	23862V

***** END OF PERMITTED VEHICLE LISTING *****

PAGE 4 OF 4 PAGES

THIS PERMIT WILL EXPIRE AT MIDNIGHT MARCH 31 19 93 and is subject to revocation at any time. This permit is not transferrable.

In witness whereof, the Department of Environmental Conservation has caused this permit to be executed on the 24 day of APRIL 19 92

By Alene Schmitt
New York State Department of Environmental Conservation Representative

NOTE: This Permit does not relieve the transporter of the responsibility of complying with any other applicable federal, state or local regulations. Please refer to warning notice on back of this Permit.



1401 Erie Blvd. East
Syracuse, NY 13210
Phone 315-478-2374
Fax 315-478-2107

TO: Rimtech Associates
12 Deer Run
Fulton, New York 13069

DATE: May 4, 1992

Account #: 1809130

ATTENTION: Mr. Alan Avrich

Page 1 Of 1

Armstrong Mold

LOG # SAMPLE NUMBER/LOCATION	DATE COLLECTED	DATE ANALYZED	SAMPLE TYPE	TOTAL VOLUME (L)	RESULTS (fiber/cc)
12191 AMS2-1/NEAR PALLETTS	05/02/92	05/03/92	E	2372	0.007
12192 AMS2-2/HALLWAY TO MAIN OFFICES	05/02/92	05/03/92	E	2352	0.009
12193 AMS2-3/BLANK	05/02/92	05/03/92	B		acceptable
12194 AMS2-4/BLANK	05/02/92	05/03/92	B		acceptable

WP=Personal PST=Personal Short Term WA=Work Area E=Environmental PA=Pre-Abatement C=Clearance B=Blank

CES does warrant that laboratory or field services completed by its employees for this report were conducted in accordance with the environmental services and analytical industries recognized methods or standards. CES does not assume any other liabilities other than re-performance of work if completed services were determined to be deficient due to the negligence of CES. CES will not accept any liability in whole or in part as a result of data interpretation by the client.

NYSDOH LAB ID NO. 11246

APPROVED BY:

Sereia A. Covert



Client: Rimtech Assoc.
 Location: ARMSTRONG MOLD
 Date: MAY 2, 1992
 Job#: _____
 Sampled By: HOOSOCK
 Analyst: FIBTES (MOSH 7400)

Sample Number	Sample Location	CES Log #	Pump TO	Calibrated Flow Before	Calibrated Flow After	Time (min)	Elapsed Time	Total Volume	Results	Sample Type
AMS2-1	Waste Pallets Hallway to MIRA OFFICES	12191	CES 0307	3.0	3.0	1607	791	2373		E
AMS2-2		12192	CES #12	3.0	3.0	1616	784	2352		E
AMS2-3	Blank	12193								B
AMS2-4	Blank	12194								B

Chain of custody:
 Delivered by: HOOSOCK Date: 5/3/92 Time: 0600
 Received by: _____ Date: _____ Time: _____

Sample Type Key
 P- Personal
 PST- Personal Short Term
 WA - Work Area
 E- Environmental
 PA- Pre-Abatement
 C- Clearance
 B- Blank



**Certified
Environmental
Services, Inc.**

1401 Erie Blvd. East
Syracuse, NY 13210
Phone 315-478-2374
Fax 315-478-2107

RIMTECH ASSOCIATES
12 DEER RUN
FULTON, NEW YORK 13069

MAY 1, 1992

ATTN: MR. ALAN AVRICH

PROJECT : ARMSTRONG MOLD
CLIENT ID: MOOLDENE SAMPLE

DATE COLLECTED: 04/22/1992
TIME COLLECTED: 1545

**REPORT OF ANALYSES
SAMPLE NO: 11580**

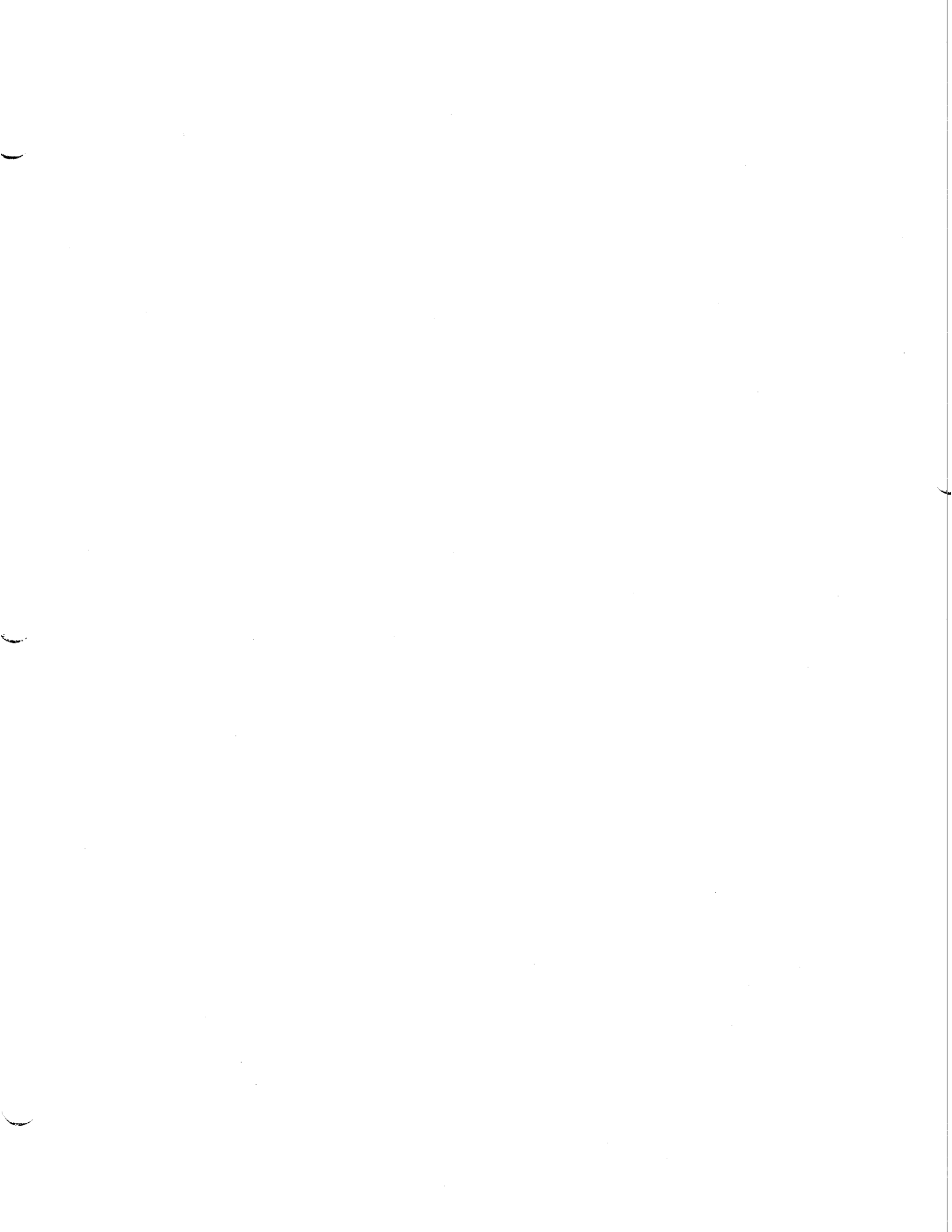
PARAMETERS	RESULTS	UNITS
Arsenic, Total (As)	<1.0	mg/Kg
Barium, Total (Ba)	132.	mg/Kg
Cadmium, Total (Cd)	<0.50	mg/Kg
Chromium, Total (Cr)	<1.0	mg/Kg
Lead, Total (Pb)	<5.0	mg/Kg
Mercury, Total (Hg)	<0.25	mg/Kg
Selenium, Total (Se)	<0.25	mg/Kg
Silver, Total (Ag)	<0.20	mg/Kg

CES does warrant that laboratory or field services completed by its employees were conducted in accordance with the environmental services and analytical industries recognized methods or standards. CES does not assume any other liabilities other than re-performance of the work if the completed services were determined to be deficient due to the negligence of CES. CES will not accept any liability in whole or in part as a result of data interpretation by the client.

NYSDOH ELAP #11246

APPROVED BY:

Barbara L. Calomina



AMH's Copy

Mr. V. Carlson
Mr. G. O'Brien



R. T. Vanderbilt Company, Inc.
INDUSTRIAL MINERALS AND CHEMICALS

30 WINFIELD STREET, NORWALK, CONNECTICUT 06855 • (203) 853-1400
CABLE: "BILTVAN", NORWALK, CONNECTICUT • TWX 710-468-2940

January 4, 1983

Mr. Terry Losee
GEORGIA PACIFIC CORPORATION
Polymer Materials Division
100 Adams Boulevard
Farmingdale, NY 11735

Dear Mr. Losee:

Our salesman George O'Brien has asked me to send you an update on the status of NYLTALS and the talc-asbestos situation.

Things have quieted down quite nicely these past few years in the area of OSHA regulation and enforcement. Although the asbestos standard has not been changed, our talc customers have had no problems with federal OSHA for almost four years. This lack of activity has resulted from our successful challenge of the methods OSHA had been using to analyze for asbestos. Analysts in the OSHA Salt Lake City laboratory now admit that the mineral particles found in Vanderbilt's talcs cannot be confirmed as asbestos by existing techniques.

To supplement our animal studies, we commissioned Dr. Tabershaw of Tabershaw Occupational Medicine Associates to run an epidemiological study of our talc miners and millers. The results of that study are reported in the enclosed publication. Together with the results of the animal study, we believe we now have good evidence that the NYLTALS do not constitute an asbestos health hazard, and we believe OSHA recognizes this finding.

Please contact us if more information is needed.

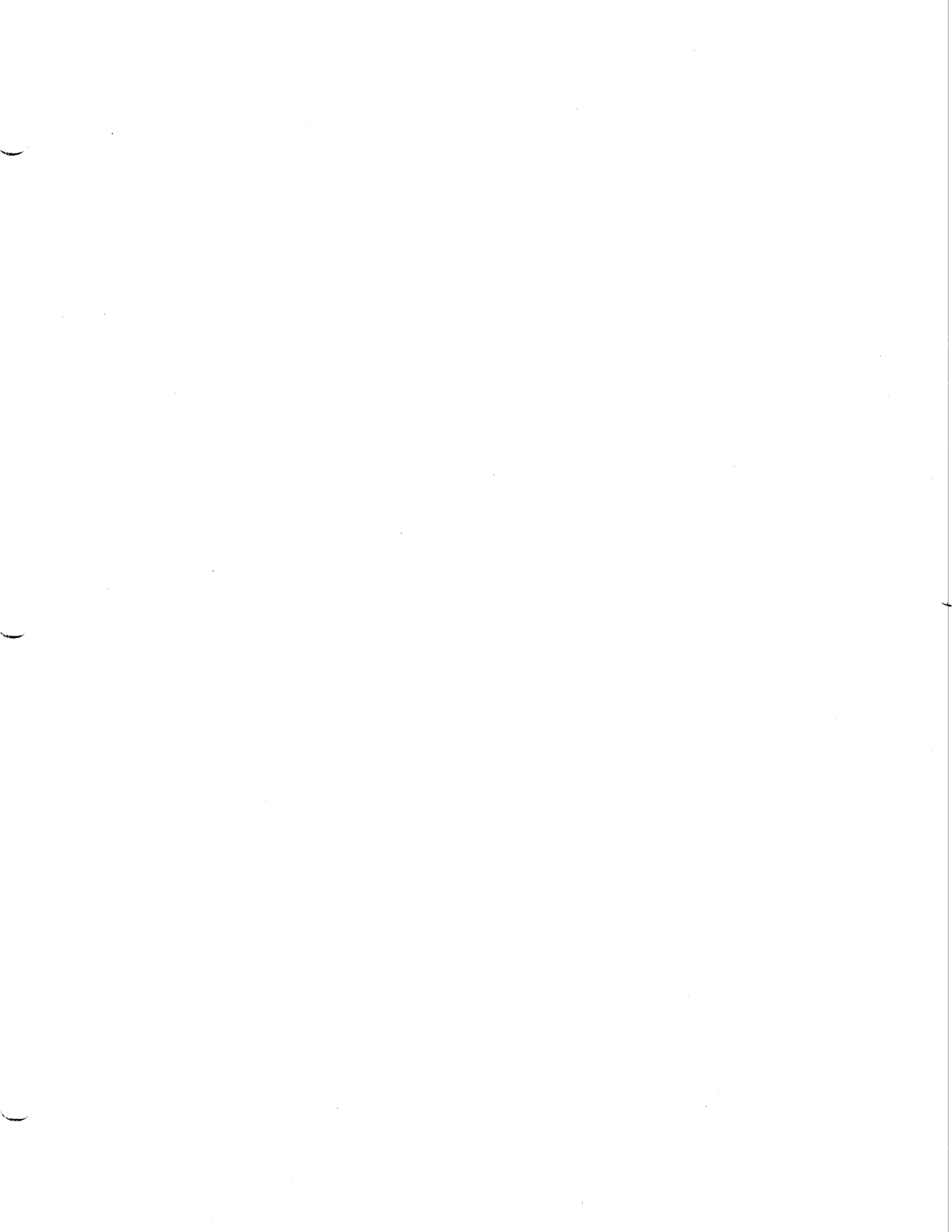
Sincerely,

R. T. VANDERBILT COMPANY, INC.

Allan M. Harvey
Allan M. Harvey, Director
Environmental Affairs

AMH:lsm
Enclosure







The Industrial Commission
Of Ohio
Division Of Safety & Hygiene
246 N. High St., Col., O. 43215

September 30, 1983

Mr. David L. Harrison
Safety & Regulatory
Affairs Coordinator
DAP Inc.
P.O. Box 277
Dayton, Ohio 45401

Dear Mr. Harrison:

We have received your letter dated September 22, 1983, expressing your disagreement with the asbestos section of our report concerning the industrial hygiene survey conducted at the Dayton plant on May 31, June 1, and June 3.

Analysis of the bulk samples of talc for asbestos content was conducted with polarized light dispersion staining microscopy by an accredited private laboratory—NATLSCO (National Loss Control Services Corporation). Please note that this is a different method from the phase contrast and X-ray diffraction methods used by OSHA in the past. Polarized light dispersion staining microscopy is a recognized method for asbestos identification and NATLSCO chemists report that their results are in line with those of the other labs participating in a round-robin survey conducted by the Research Triangle.

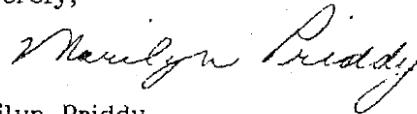
Please refer to our report page 2, paragraph 2. The controversy of the length-to-width ratio in asbestos determination between suppliers, who in general use a 25:1 ratio, and other laboratories who use the 3:1 ratio was mentioned previously. This controversy will probably continue.

Based on present information we do not feel our report is in error and do not intend to amend the report. However, we can assure you, as we assured Mary Gerard before beginning the survey, that the report is confidential. Attached is a copy of the Workers' Compensation Law of Ohio, Section 4123.27 which should make it clear that information obtained during the survey will not be made public.



If you have any further questions, please contact me at 1(800)282-3045.

Sincerely,

A handwritten signature in cursive script that reads "Marilyn Priddy".

Marilyn Priddy
Acting Director of
Industrial Hygiene & Engineering

MP:gjb

§ 4123.27 Information not open to public nor available in court proceedings. (GC § 1465-46)

Information contained in the annual report provided for in section 4123.26 of the Revised Code, and such other information as may be furnished to the industrial commission by employers in pursuance of said section, is for the exclusive use and information of the commission in the discharge of its official duties, and shall not be open to the public nor be used in any court in any action or proceeding pending therein unless the commission is a party to such action or proceeding; but the information contained in said report may be tabulated and published by the commission in statistical form for the use and information of other state departments and the public. No person in the employ of the commission or of the department of industrial relations, except such as are authorized by the commission or the director of industrial relations, shall divulge any information secured by him while in the employ of the commission or the department of industrial relations in respect to the transactions, property, claim files, records, or papers of the commission or department of industrial relations or in respect to the business or mechanical, chemical, or other industrial process of any company, firm, corporation, person, association, partnership, or public utility to any person other than members of the commission or to the superior of such employee of the commission or of the department of industrial relations.

Notwithstanding the restrictions imposed by this section, the governor, select or standing committees of the general assembly, the auditor of state, the attorney general, or their designees, pursuant to the authority granted in Chapters 4121. and 4123. of the Revised Code may examine any records, claim files, or papers in possession of the commission or the bureau of workers' compensation. They also are bound by the privilege that attaches to these papers.

Whoever violates this section shall thereafter be disqualified from holding any appointment or employment with the commission or the department of industrial relations.

HISTORY: GC § 1465-46; 103 v 72(73), § 5; 109 v 181; 114 v 769, § 1. Eff 10-1-53; 136 v S 545. Eff 1-17-77.

Cross-References to Related Sections

Improper use of stenographer's notes, RC § 2923.29.
Penalty, RC § 4123.99(A).
Penalty for divulging information, RC § 4901.16.
See RC § 4123.88 which refers to this section.

Research Aids

O-Jur2d: Work. Comp. §§ 138, 248, 258
Am-Jur: Records §§ 14-26

CASE NOTES AND OAG

1. Publication of an industrial directory by the industrial commission would not be in conflict with

this section [RC § 4123.27]: 1918 OAG vol.1, p.553.

2. Power of member of public to inspect records of industrial commission for audit or survey, discussed: 1939 OAG No.1071.

3. (1978) Apart from traditional privilege claims, RC § 4123.27 does not prevent consideration of medical reports filed with a self-insured employer and relied upon by the employer in an employment discrimination action: Sutton v. National Distillers Products Co., 445 FSupp 1319.

§ 4123.28 Record of injuries; report.

Every employer in this state shall keep a record of all injuries and occupational diseases, fatal or otherwise, received or contracted by his employees in the course of their employment and resulting in seven days or more of total disability. Within a week after the occurrence of such an injury or death therefrom, and in the event of occupational disease or death therefrom, within one week after the occurrence of or diagnosis of or death from said occupational disease or of a report to such employer of such occupational disease or death, a report thereof shall be made in writing to the industrial commission upon blanks to be procured from the commission for that purpose. Such report shall state the name and nature of the business of the employer, the location of his establishment or place of work, the name, address, nature and duration of occupation of the injured, disabled, or deceased employee and, the time, the nature, and the cause of injury, occupational disease, or death, and such other information as is required by the commission.

The employer shall give a copy of each such report to the employee it concerns or his surviving dependents.

No employer shall refuse or neglect to make any report required by this section.

HISTORY: GC § 1465-99; 103 v 72 (90), § 52; 123 v 250 (260), § 1; 128 v 743 (747), § 1. Eff 11-2-59.

See provisions, § 3 of HB 470 (128 v 743 [771]) following RC § 4121.02.

Penalty, RC § 4123.99(B).

Text Discussion

See Young, Workmen's Comp (2d Ed) §§ 4.4, 13.12

Research Aids

O-Jur2d: Work. Comp. §§ 138, 258
Am-Jur: Work. Comp. § 326

Law Review

Legislative amendments to Ohio workmen's compensation in 1959. Oliver Schroeder, Jr. 20 OSLJ 601.

CASE NOTES AND OAG

1. A report to the employer by the employee is necessary in order that the employer can comply with this section, requiring the employer to keep a record of all injuries and report them to the industrial commission and where a rule of the employer requires such a report, failure of an employee to re-

AUG 15 1983



The Industrial Commission
Of Ohio
Division Of Safety & Hygiene
246 N. High St., Col., O. 43215

August 12, 1983

Mary Gerard
Safety Director
D.A.P.
855 North Third Street
Tipp City, Ohio 45371

Dear Ms. Gerard:

On May 31, June 1, and June 3 an industrial hygiene survey was conducted at the Dayton plant by this writer with the assistance of Bob Prim, Industrial Hygienist, and Don Bentley, Engineer. Sampling at the Tipp City plant was completed July 26, 1983 and will be the subject of a separate report.

Sampling and analytical methods used are discussed in Attachment 1. Analysis of all samples, excluding noise dosimetry, was conducted by an accredited laboratory. Data tables A-D have been organized according to the area sampled. The date of the survey is shown in the upper left-hand corner of these tables. The noise data is shown in tables E-G, date in upper right-hand corner.

As can be seen from the attached tables, for the most part, exposures were within acceptable limits established by the agencies referenced. (Attachment 2) These values represent exposures only under the conditions and production levels found during this survey and may vary considerably under other conditions, particularly in the winter months.

Caution must also be used in applying respirable "nuisance dust" standards to some of the chemicals which are handled by the compounders for which little, if any, toxicological information is available. Of concern specifically are the powdered preservatives and fungicides used, for which sampling methods are not yet available.

Of more immediate concern is the lab report of approximately 1-3% tremolite asbestos in a bulk sample of talc (Code 22) which was in use during the survey. The respirable dust values cannot be used to project asbestos exposure levels. Asbestos monitoring must be conducted in accordance with the OSHA regulation 29 CFR 1910.1001, (Attachment 3).

Due to the lack of local exhaust ventilation for compounding areas and due to the extreme health hazard posed by asbestos exposure, it is recommended that use of this particular talc be eliminated. As we understand the situation, there are several suppliers of Code 22, most of who state on material safety data sheets that the talc is non-fibrous. According to our conversation during the Tipp City survey, the talc in question was supplied by Vanderbilt. The lab reports an approximate \pm 25% accuracy in determining the asbestos content of a talc bulk sample by polarized light staining microscopy. The chemist stated that the manufacturers generally are not using the criteria of a 3:1 length-to-diameter ratio in determining asbestos content, and thus their reports of asbestos content are generally lower.

If use of the Vanderbilt talc continues, initial monitoring of employee exposure is required by the current OSHA asbestos standard. The Director of the Occupational Safety and Health Administration recently described the 2.0 fibers per cubic centimeter permissible exposure limit (PEL) as "insufficient to prevent cancer, at least in some cases." He projected that revision of the PEL and issuance of a final rule should be completed later this year (1983).

In the interim and until initial monitoring results are available, it is recommended that, in areas where the asbestos-containing talc is in use, employee use of respirators approved for protection against toxic dust including asbestos (not the 3M 8710) become mandatory and that strict housekeeping practices for dust control be implemented. Dry sweeping of dust containing asbestos is prohibited. Clean-up methods include wet methods which prevent reintrainment of the dust after the water has evaporated or high-efficiency filtered vacuum systems. (Attachment 4 for illustration purposes only)

It is also recommended that since asbestos had been used to a much larger extent in the past, an effort be made to identify those employees who incurred exposure and to place them in a medical surveillance program. Such a program would include an annual or semi-annual physical examination, pulmonary function testing and chest X-rays. Implementation of such a program may lead to early detection, and thus early treatment, for asbestos-related disease, perhaps reducing the suffering and costs now associated with asbestosis and cancer. You may wish to contact the Kettering Lab of the University of Cincinnati College of Medicine, the Mt. Sinai School of Medicine in New York, or the National Institute for Occupational Safety and Health (NIOSH) in Cincinnati, Ohio, for information concerning a medical surveillance program.

The following paragraphs regarding asbestos have been summarized from several resources. Much additional information is available through contacting our Resource Center in Columbus, Ohio, at 1 (800) 282-3045.

Asbestos fibers find entry into the body by inhalation and ingestion. The fibers are retained in the body tissues throughout the lifetime of the host, even long after cessation of exposure. Fibers may migrate to other organs following retention in the lung. Asbestosis and certain malignancies are related to exposure to fibers of the asbestos minerals.

Asbestosis is a progressive restrictive pulmonary fibrosis associated with inhalation of asbestos fibers. Malignancies related to the inhalation and possibly ingestion of asbestos fibers by epidemiological studies include carcinomas of the lung, mesotheliomas of the pleura and peritoneum, and neoplasms of other sites.

Asbestos has a synergistic effect with cigarette smoking in producing carcinoma of the lung. Asbestos workers who are smokers have over 90 times the risk of non-exposed non-smokers of contracting lung cancer.

Although respirator use is now considered voluntary in the compounding area, a physical exam to determine if an employee is capable of wearing a respirator is standard practice. Such a determination is required by the 1980 ANSI standard Z-88.2 paragraph 3.5.3 and is referenced in the OSHA standard 29 CFR 1910.134. In regard to your question on OSHA enforcement activity on this matter, the Industrial Hygiene Department of the OSHA Cincinnati Area Office was contacted but the details (company name, exposure levels) were not discussed. Mr. Dick Gilgrist stated the requirement for physicals was not generally cited without documentation of overexposures, however the situation would be evaluated on a case-by-case basis with factors such as working-force age, smoking history, history of cardiovascular disease, heat stress, and past exposure to toxic chemicals considered.

Regardless of Federal policy in enforcing or not enforcing this standard, the determination by a physician that an employee should not suffer additional cardiovascular or pulmonary stress or experience other physical problems before he or she is given a respirator to wear is important in protecting worker health and possibly in reducing future occupational disease claims. Such an exam also provides an excellent opportunity to review selection, fitting, cleaning and storage practices included in a respiratory protection program.

The nature of some of the materials handled in the Dayton plant presents the opportunity for the development of dermatitis. It was observed that cleaning of the Butyl-flex line was conducted by employees who were not wearing protective gloves. Solvents can defat the skin causing dryness, irritation and cracking which can be complicated by infection. Additionally, some solvents enter the bloodstream through the skin, the skin acting as a route of exposure.

Norval Phillips, a compounder, complained of a "poison-ivy" type rash after using Napocide N-40-D. According to the material safety data sheet this material is a skin irritant and "causes an increased tendency to become allergic." Apparently, the manufacturer is stating the fungicide is a sensitizer. We observed that Norval used disposable clothing, a dust mask, and gloves when adding Napocide to the batch. Such strict measures to prevent skin contact should be implemented among all compounders who handle Napocide and those exhibiting hypersensitivity should not be required to handle the material.

According to Patty's Industrial Hygiene and Toxicology, Vol. 1, the classification of dusts as nuisance or "inert" can be misleading and a more correct implication would be that such dusts do not cause pulmonary fibrosis, physical impairment or disease." Inert dusts do not produce fibrosis, but increased airway resistance can result from excessive mucous production stimulated by the deposition of inert particles on the surface of the upper airways. Although exposure to such dust may not be as potent a factor in causing chronic bronchitis and emphysema as cigarette smoke, there is some evidence according to Patty that "occupational dust" may at least contribute to chronic bronchitis.

The ability of the Napocide to cause allergic reactions illustrates our introductory cautionary statement concerning the classification of such materials in their dry form as "nuisance dust." In general, fungicides and preservatives must contain one or more biologically active ingredients in order to be effective.

The specific chemicals in use are listed below for ease of reference. The lab could not provide sampling method information for any of these:

Code 187	Dowacil 75	-	67.5%	1-(3 chloroallyl)-3,5,7-triaza-1-azoniandomentane chloride
Code 774	Troysan 174	-		2-[(hydroxy ethyl) amino] ethanol
Code C-795	Nuo Sept 95	-	24.5%	5-hydroxy methoxy methyl-1-aza-3,7-dioxabicyclo (3.3.0) octane
			17.7%	5-hydroxy methyl-1-aza-3,7-dioxabicyclo (3.3.0) octane
			7.8%	5-hydroxypoly [methylene oxy (74.% C ₂ 21% C ₃ , 4% C ₄ , 1% C ₅)] methyl-1-aza-3,7-dioxabicyclo (3.3.0) octane
Code	Napocide N-40-D	-	40.4%	tetrachloroisophthalanitrile

The material safety data sheets provided little toxicological information for these chemicals, but all were listed as eye, skin, or respiratory irritants. Until information is available to the contrary, it should be assumed that inhalation of or skin contact with these materials may elicit a negative response in humans. Use of adequate protective equipment including protective clothing and gloves, respirators, and goggles is advised.

The noise levels were for the most part below an 8-hour time-weighted average of 85 dBA during the survey date. The exception was on the Panel Line where exposures were borderline, 86 dBA and 84 dBA for the operator and crew chief, respectively. Employees in this area should be included in a hearing conservation program as outlined in Attachment 5.

Control of compressed air noise from the straight tubing used to move parts along this packaging line might reduce employee exposure to a point where a hearing conservation program is not needed in this area. A longer sample is needed for the Butyl-flex packaging line.

Due to resource limitations, we cannot conduct an annual industrial hygiene survey; however, we will try to assist you in monitoring specific processes as requested. Our three-day survey did not enable us to sample several operations which are of interest. One of these is the premix compounding for Butyl-flex in which the "rubber hog" is used. The noise and dust from this operation was the subject of more than one complaint by employees. The operation was scheduled for June 3, 1983, but was cancelled when an employee did not report for the first shift.

In addition to the "rubber hog" other operations for which sampling is recommended include the following:

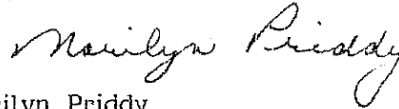
1. Cabosil transfer in small Flexiseal Room - dust
2. Putty making of pipe joint and soil pipe cement - dust
3. Ceramic tile adhesive - ammonia
4. Compounding of products which contain Code 586 for free crystalline silica.
5. Compounding of products which contain Code 803 (PVC acetate emulsion) - formaldehyde. A grab sample taken with a Lion Formaldehyde Meter showed 17 ppm formaldehyde present in the head space of a drum of Code 803 immediately after the cover of the drum was lifted. The meter reading may have been falsely high due to interferences from alcohols; however, it does indicate employee exposure monitoring is warranted.

6. Six-stem packaging line in General Compounding for full shift noise exposure. This operation only ran a half day during our survey.
7. Filling lithocans, which are reported to be noisier than the paper-labeled cans.
8. Full-shift monitoring for Butyl-flex packaging line. A 135-minute sample was obtained due to scheduling difficulties.
9. Filling of epoxy products containing Cellosolve acetate (compounded in Tipp City) See Attachment 6.
10. Duratite 6000 compounding - toluene
11. Because past sample results in General Compounding and other mixing areas were for total dust, it would be helpful to obtain additional total dust samples for comparison. However, given the choice between obtaining total dust samples and respirable dust samples in the limited time available, we chose to sample for respirable dust since this more accurately represents the amount of dust which enters the deeper portions of the lung. The filter contained in the 10mm nylon cyclone used is generally considered to capture particles of less than 10 microns in diameter which are defined as respirable.

It is interesting to note in Table A the large variation in the total dust sample and respirable dust sample obtained for the pigment weigher; 80.0 mg/M^3 vs. 1.0 mg/M^3 , respectively. The total dust sample may have been tampered with, but the cyclone sample for respirable dust appeared normal. The total dust and respirable dust sample results for the spackling compounder are much closer in value; 2.2 mg/M^3 and 1.4 mg/M^3 , respectively.

Please contact our Dayton District Office (513) 898-3206 if you need further assistance or have questions concerning this report. It was a pleasure to work with you and other D.A.P. employees.

Respectfully submitted,



Marilyn Priddy
Industrial Hygienist



DAP Inc.
P.O. Box 277
Dayton, Ohio 45401
513/667-4461

JUL 9 1984

July 5, 1984

Mr. Gerald Garrett, CIH
Continental Technical Services
9742 Skillman Avenue
Dallas, TX 75243

RE: Industrial Hygiene
Survey Report

Dear Mr. Garrett:

In regards to your report dated June 4, 1983, concerning the survey that was conducted at our Dallas facility, I as well as R.T. Vanderbilt, have the following comments:

On line Number One of the second page, it states that "it is largely an asbestos form product and highly fibrous." According to Vanderbilt, their talcs have a fibrous talc range of zero to a maximum of 5 percent. The remainder is not fibrous.

In regards to categorizing talc with asbestos in regards to health hazards, it was agreed upon by all parties in the meeting that overexposure to talc can cause pneumoconiosis and that talc should be handled with care. I as well as Vanderbilt feel that placing talc alongside asbestos in regards to health effects is erroneous.

On the first line of the last paragraph on Page 3 it states that "However, to this date there have been no on-going epidemiological studies showing a lack of cause and effect in the working population." The Stille-Tabershaw study and the Lamm report deal with the Health studies of miners exposed to fibrous talc. If fibrous talc exhibited a biological response similar to asbestos, it should have become evident. In addition, it would be evident in some of W.E. Smith's early studies with interpleural injections of talc in hamsters. A content of 5 percent fibrous talc would be enough to show a positive effect if it were indeed asbestos.

As for the statement that OSHA is still implicating Vanderbilt talcs in asbestos related citations, correspondence with Vanderbilt indicates that the last citation was 5 years ago in 1979. The basis for this statement was due to the article that appeared in BNA's Occupational Safety and Health Report, Volume 13, Number 41 on March 15, 1984.

Mr. Gerald Garrett, CIH
Industrial Hygiene Survey Report

(2)

July 5, 1984

I talked to R.T. Vanderbilt about this particular case and I was told that it stemmed from a citation in 1979. If my memory is correct, we had a brief conversation concerning this matter in April and I suggested that you contact Vanderbilt for further clarification. Evidently, you chose not to contact the company.

In regards to the analytical results, an error was made in either reporting or analysis. On Page 2 of Table I, Sample Number J1673 indicates a lead exposure of less than 12.77 mg/m³. We do not use lead in Dallas or in any of our products. If this were indeed true, it certainly exceeds the PEL.

As you can see, there is still considerable disagreement between all parties on some aspects involving the use of Vanderbilt's talc. If you have any questions or comments regarding this, please contact me or Alan Harvey of R.T. Vanderbilt.

Sincerely,

DAP Inc.



David L. Harrison
Safety & Regulatory
Affairs Coordinator

DLH:efb

cc: Paul S. Pfeffer
Beecham Inc.

bcc: R.K. Mommsen
J.R. Hall
D. Wilson
R. Twedell
M. Fogt

cc: Mr. D. Hook
AMH's Copy



R. T. Vanderbilt Company, Inc.
INDUSTRIAL MINERALS AND CHEMICALS

30 WINFIELD STREET, NORWALK, CONNECTICUT 06855 • (203) 853-1400
CABLE: "BILTVAN", NORWALK, CONNECTICUT • TWX 710-468-2940

May 4, 1984

DAP/ARNO
174 Bartley Drive
Toronto, Ontario
Canada M4A 1E3

Attention: Dr. Turkewitch

Dear Sirs:

Please find enclosed the requested documents concerning analysis of our industrial talcs.

The talc analyzed by Dr. Wylie is our IT-3X talc product, which has the same mineral components as NYTAL 200, 300, 400.

As reported by Dr. Wylie, IT-3X talc contains fibers of the pure mineral talc. These fibers, which are not asbestos and are not regulated as asbestos in the United States, are reported as "mineral fibers" in the OSHA letter.

You may be interested to know that OSHA has proposed (Federal Register, April 10, 1984) new definitions for asbestos that will have the effect of clearing up the confusion over the classification of the mineral particles in tremolitic talc. When these definitions are adopted we hope to be able to certify our talc as "asbestos free" without the reservations we made in our letter to Mr. Mommsen.

Please contact us if there is anything more we can add to this explanation.

Sincerely,

R. T. VANDERBILT COMPANY, INC.

Allan M. Harvey, Director
Environmental Affairs

AMH:ism
Enclosure



R. T. Vanderbilt Company, Inc.
INDUSTRIAL MINERALS AND CHEMICALS

30 WINFIELD STREET, NORWALK, CONNECTICUT 06855 • (203) 853-1400
CABLE: "BILTVAN", NORWALK, CONNECTICUT • TWX 710-468-2940

June 27, 1984

Mr. David L. Harrison
Safety and Regulatory
Affairs Coordinator
DAP, INCORPORATED
P.O. Box 277
Dayton, Ohio 45401

Dear Dave:

Slim Thompson and I have the following comments on the C-tek report:

At the top of page 2, we take exception to the words "largely an asbestos from product and highly fibrous."

Our talcs contain as a maximum only 5 percent of fibrous talc, and some contain zero. The rest is definitely nonfibrous.

We believe that we supplied enough medical data to show that fibrous talc should not necessarily be in the same category of hazard as asbestos, as C-tek believes on line on line 5 on page 2.

Also, if C-tek is referring to epidemiological studies of fibrous talc exposures, in the last 2 lines of page 3, we disagree that nothing is on going. The Stille-Tabershaw study and the Lamm report deal with the health studies of miners exposed to fibrous talc, as well as to the other ingredients in our talcs. If fibrous talc exhibited a biological response similar to asbestos, we believe it would become evident in these studies.

In addition, it would be evident in some of W. E. Smith's early studies with hamsters injected with New York State talcs, if fibrous talc was as toxic as asbestos. A content of 5% fibrous talc would be enough to show a positive effect if it were indeed asbestos. The same could be said for the Stanton studies.

On the top line of page 4, C-tek is wrong. None of our customers have been cited by Federal OSHA since late 1979, and the last 2 or 3 citations before that date were dismissed because OSHA could not support a finding of asbestos in our talcs.

Mr. David L. Harrison
DAP, INCORPORATED
June 27, 1984
Page 2

Slim or I would be pleased to discuss this report further with you or anyone else if needed.

Please contact us if we can be of further help.

Sincerely,

R. T. VANDERBILT COMPANY, INC.

Allan M. Harvey

Allan M. Harvey, Director
Environmental Affairs

AMH:ism
ism



JUN 19 1984

9742 Skillman Avenue
Dallas, TX 75243

June 7, 1984

David L. Harrison
Safety & Regulatory
Affairs Coordinator
Dap Inc.
P.O. Box 277
Dayton, Ohio
45401

Dear Mr. Harrison:

I am forwarding a draft of the industrial hygiene report of the Dallas Dap facility. The report discusses the findings of the survey performed there on October 17, 1983. I am not recommending any product substitutions as long as you can keep the fibrous talc out of the friable finished products. I will be releasing the report through normal distribution as soon as I hear from you.

Regards,

Gerald Garrett, CIH
Continental Technical Services

GG/jm
Enclosures:

June 4, 1984

Mr. Douglas Miller
General Manager
Dap Inc.
13555 Jupiter Rd.
Dallas, TX 75238

Dear Mr. Miller:

On October 17, 1983, Ctek performed a general industrial hygiene survey at your location. The survey was requested by the underwriters of the Continental Insurance Co.'s Special Risk Department to investigate employee exposures to noise, organic solvent vapors, and dusts. Factors effecting product liability were also noted. Because of the asbestos form fibrous talc discovered during the October survey, an additional meeting of Dap management, Ctek technical personnel, and representatives of the R.T.Vanderbilt Co. was held on March 9, 1984, at Ctek's Dallas Lab. The March meeting was held to clarify the health hazard potential of the Vanderbilt supplied talc.

SUMMARY OF RESULTS

With the exception of the talc used in various Dap caulks, sealants, cements, and glazing compounds, no significant health hazards were discovered at the Dallas facility. Some employee noise exposures were above 50% of the present OSHA noise standard, but none were above 100% of the standard. All effected employees participate in an adequate hearing conservation program. No excessive solvent or dust exposures were monitored.

The main concern is with the health hazard potential associated with the Vanderbilt IT-3X talc. Although not strictly an

asbestos containing product, it is largely an asbestos form product and highly fibrous. At the present time the significance of that distinction is in dispute in the scientific community. From an insurance standpoint, it is Ctek's opinion that both asbestos and asbestos form talc should be handled with equal care in the work place. Because none of the Dap products using IT-3X talc are friable in finished form, the potential for cancer related product's liability claims is nil.

SAMPLE RESULTS

Table I shows results of air samples taken in the breathing zones of production employees. Samplers ran approximately 5 hours. Results are presented as 8 hour time-weighted averages based on the premise that exposures during the unsampled period were equal to those during the sampled period. Results are compared to both ACGIH TLV's and OSHA PEL's.

Table II shows results of the noise dosimeter survey. Results are presented as 8 hour TWA's and represent total noise exposures of sampled employees. Results are corrected for an 8 hour work day and compared to the present OSHA noise standard of 90 dB(A).

DISCUSSION

Employee exposures to organic solvent vapors associated with latex and butyl caulk production were all very low. Local and general dilution ventilation systems, in place, controlled vapor contamination of breathing air quite well. Clean up solvents also presented very little health hazard potential.

No employee sampled received a noise exposure greater than the

current 90dB(A) 8 hour OSHA PEL. Most exposures were between 50 and 100% of the standard. Employees falling into this category of noise exposure are required to participate in a modified hearing conservation program. The general points of the program are seen in Appendix I. Your present program does a good job in complying with the required OSHA program. Because no employee is over exposed to the standard, hearing protection will not be required, nor will engineering control studies.

Although some dry products containing significant free silica are required to be hand dumped into mixing systems, existing local ventilation controls on these systems do an excellent job of controlling dust up. Breathing zone air sample results for respirable free silica were less than 25% of the PEL and TLV.

The main health hazard concern is with asbestos form talc used in the products listed in Appendix II. Everyone at the March meeting agreed that the talc in IT-3X can cause pneumoconiosis; however, the role of this dust in the production of lung cancer was arguable. The scientific community is about evenly split over this question. Although much of the data collected in the 60's & 70's seems to suggest the products resembling IT-3X are associated with elevated lung cancer risks in the effected working population, many studies actually dealt with asbestos contaminated talc.

Recent retrospective studies sponsored by the Vanderbilt Co. suggest no significant link between the working population at the mine site and lung cancer. The scientist at Vanderbilt also contend that the ACGIH listing of fibrous talc with fibrous asbestos is in error.

However to this date there have been no on going epidemiological studies showing a lack of cause and effect in the working

population. OSHA is still implicating Vanderbilt talcs in asbestos related citations.

The only obvious characteristic of fibrous talc besides its morphology, is its controversial health hazard potential. Therefore it is Ctek's opinion that although fibrous talc may not be a human carcinogen, its should be treated as such until more information to the contrary is available.

This decision should not pose undue hardships on production requirements at the Dallas plant. Existing local ventlation on bag dumping operations appeared to control the fiber content of the breathing air satisfactorily.

Additional ventilation control or use of personal protective equipment will not be necessary, although use of toxic dust respirators should be considered an option. Worker exposures should be keep to a practically achievable minimum. Employees should be made aware of the hazard potential when using talc and handle it accordingly. A regular air monitoring program should be started to demonstrate that air contamination levels observed during the October survey represent day in and day out conditions. Every six months or yearly breathing zone air samples should be collected while employees work with fibrous talc. If exposures remain below the applicable PEL, no changes in protective equipment or local ventilation control will be required.

A product substitution for the fibrous talc, should be considered, but is not being recommended. Substitution will simplify health and safty proceedures but may complicate production requirements.

None of the existing products using fibrous talc present a

products liability risk based on the non friable nature of the finished products. Any future products should be considered off limits to fibrous talc make up if a friable hazard is likely to exist to the consuming public. This product restriction should include items such as interior spackling presently using calcium carbonate.

RECOMMENDATIONS

Based on sample results and observations, Ctek makes the following recommendations:

- 1) Continuation of the present hearing conservation program for existing and new employees.
- 2) Yearly or semi-annual breathing zone air sampling program to document employee exposures to fibrous talc.
- 3) The use of fibrous talc should be restricted to products that are non friable in finished form.

COMPANY DAP INC.

TABLE 1 - RESULT OF AIR SAMPLES TAKEN IN THE BREATHING ZONES OF PRODUCTION EMPLOYEES

SURVEY LOCATION DALLAS, TEXAS

SURVEY CONDUCTED BY GERALD GARRETT

SAMPLE NUMBER	EMPLOYEE NAME	JOB DESCRIPTION	SURVEY DATE	EXPOSURE PERIOD		CONTAMINANT	RESULTS	TLV	PEL
				START	STOP				
J1674	Ernest Holland	Glazing	10-17-83	10:02	15:00	Asbestos Form Talc	0.45 f/cc	2 f/cc	2 f/cc
J1680	Fred Eldridge	Compounding	10-17-83	12:10	15:53	Vinyl Acetate	<0.001 ppm	10 ppm	
J1673	Ernest Holland	Glaze Mixer	10-17-83	10:08	14:45	Chromium	<0.002 mg/M ³	0.5 mg/M ³	
						Lead	<12.77 mg/M ³	.05 mg/M ³	
						Total Weight	0.072 mg/M ³	10.0 mg/M ³	
J1677	Fred Eldridge	Compounding	10-17-83	10:05	15:53	Total Weight	0.17 mg/M ³		0.77 mg/M ³
						% Free Silica	11%		
J1678	Robert Moore	Compounding	10-17-83	10:20	15:50	Total Weight	0.07 mg/M ³		0.67 mg/M ³
						% Free Silica	13%		

RECEIVED

CALL REPORT

JUN 07 1984

JUN 0 1984

CUSTOMER	DAP Inc
ADDRESS	5300 Huberville Rd
	Dayton, OH 45431

DISTRIBUTION

SALES MGR.	X		
R & D			
MFG.			
PLT. MGR.			
SALES/SERVICE			
F/U DATE	X	A. HARVEY	

DATE	5-31-84
SALESMAN	R. F. Churnat

CONTACTS:

Dr. Tuhteh Habash, Q-C Mgr.

PRODUCTS DISCUSSED:

IT-3X

ACTION REQUIRED

SALES OBJECTIVE (SPECIFIC)

SUMMARY

Met Dr. Habash for first time. Her main concern about IT-3X is getting a statement that ~~ESTA~~ IT-3X contains no asbestos. Reviewed with her Al Harvey's letter to her of Nov. 23, 1983 and Al's letter to Mr. Mommson of Dec. 20, 1983. Explained we were making every effort to clear up the matter of ~~a~~ asbestos definition and referenced the Federal Register of April 10, 1984. I will send her a copy. She would appreciate any and all updates on this matter.



R. T. Vanderbilt Company, Inc.
INDUSTRIAL MINERALS AND CHEMICALS

30 WINFIELD STREET, NORWALK, CONNECTICUT 06855 • (203) 853-1400
CABLE: "BILTVAN". NORWALK, CONNECTICUT • TWX 710-468-2940

December 20, 1983

Mr. Richard K. Mommsen
Executive Vice-President
DAP, INC.
P.O. Box 277
Dayton, OHIO 45401

Dear Mr. Mommsen:

In response to your request for a statement regarding the possibility of finding asbestos in our IT-3X talc product, recently a noted mineralogist and microscopic expert who analyzed our talc did not observe anthophyllite or tremolite asbestos fibers. (Analysis upon request).

Similarly, the OSHA analytical laboratory in Salt Lake City, in the most recent analysis of our talcs was unable to confirm the existence of asbestos using current analytical techniques. (Document upon request).

Our company has been involved in considerable litigation with OSHA over our products and over that agency's asbestos standard. We have contended, and are in fact convinced, that the OSHA asbestos standard is scientifically unsound and unconstitutionally vague. However, the standard has not yet been officially clarified or amended in a way that would allow us to make an unqualified certification that our talcs are asbestos free.

Eventually we expect this matter of asbestos definition and analyses to be settled. At the present time Vanderbilt talc products continue to be sold and used in large volume without problems from the Federal regulatory agencies.

Moreover, extensive health studies sponsored by our company of our talc miners and millers, as well as animal studies, have confirmed that exposure to NYTAL products does not constitute an asbestos health hazard.

We trust this statement satisfies your request.

Sincerely,

R. T. VANDERBILT COMPANY, INC.

Allan M. Harvey
Allan M. Harvey, Director
Environmental Affairs

AMH:lsm



DAP Inc.
P.O. Box 277
Dayton, Ohio 45401
513/667-4461

MAR 16 1984

March 13, 1984

Mr. Alan Harvey
R. T. Vanderbilt Company, Inc.
30 Winfield Street
Norwalk, CT 06855

Dear Mr. Harvey:

Thank you for your assistance and cooperation that you gave me during the meeting that was held on March 9, 1984. I very much appreciated the effort that you and Dr. Thompson gave.

If you require any further information or assistance, please contact me.

Sincerely,

DAP Inc.

A handwritten signature in cursive script, appearing to read "David L. Harrison", with a long horizontal flourish extending to the right.

David L. Harrison
Safety & Regulatory
Affairs Coordinator

DLH/smj

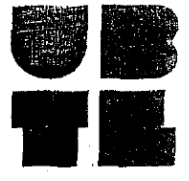
3X

copy CST ✓
KCR

FEB 24 1994

NOV 28 1983

November 21, 1983



UBTL
520 WAKARA WAY
SALT LAKE CITY,
UTAH 84108
801 581-8267

ANALYTICAL REPORT

SUBMITTED TO: David L. Harrison

SUBMITTED BY: Bahareh Sahami

REFERENCE DATA:

Analysis of: Asbestos
Identification No.: 84-233
Sample(s): 3 Analyses: 3
UBTL Laboratory No.: CE-1625 through CE-1627

A visual estimation of the percentage of asbestos was made on the above numbered samples utilizing polarized light microscopy and dispersion staining techniques.

SPECIAL CONSIDERATIONS:

The following observations were made on samples CE-1625 and CE-1626:

1. Each sample contained 5% truly fibrous talc according to the NIOSH definition of 3:1 ratio with a noticable inner fibrous structure.
2. Approximately 50% of each sample was composed of talc which met the gross definition (3:1 ratio) of a fiber.
3. Less than 5% tremolite was observed. However, the tremolite observed did not meet the 3:1 definition of a fiber.

The results are tabulated on the following page(s).

Bahareh Sahami
Bahareh Sahami

Rand Potter
Rand Potter

rd to
A. Harvey

Richard
Tweedell
Head of Lab.
D.A.P.

MEDICINE
BIOENGINEERING
CHEMISTRY
RESEARCH
DEVELOPMENT
ANALYSIS



ANALYTICAL REPORT FORM

Date 11/22/83
 UBTL Identification Number 84-233

Corporate/Agency Name DAP Inc.
 Address P.O. Box 277
Dayton, Ohio 45401
 Attention David L. Harrison Telephone _____

Sampling Collection and Shipment

Sampling Site _____ Date of Collection _____
 Date Samples Received at UBTL November 11, 1983

Analysis

Method of Analysis Polarized Light Microscopy
 Date(s) of Analysis 11/17/83

Analytical Results

Field Sample Number	UBTL Lab Number	Sample Type	Results
			ASBESTOS <i>i. and TYPE</i>
1	CE 1625	BULK	<i>Please refer to attached letter form report</i>
2	CE 1626		<i>Please refer to attached letter form report</i>
3	CE 1627		<i>No ASBESTOS Detected</i>

Comments _____

Bahareh Sahami
 Analyst
 Reviewer *[Signature]*
 Laboratory Supervisor

JAN 23 1983

January 19, 1984

Mr. Rand Potter
UBTL
University of Utah Research Institute
520 Wakara Way
Salt Lake City, Utah 84108

Dear Mr. Potter:

I am enclosing a sample of talc, which we would like to have analyzed for mineral content, with specific attention to the determination of the presence or absence of asbestos. We would also appreciate a semi-quantitative estimate of the principal mineral phases present.

Two other samples of talc are being sent to you by Dr. Ann Wylie of the University of Maryland for similar analyses.

I have spoken to Jack Holt regarding this project so he is aware of our needs.

Thank you for your attention.

Very truly yours,

C. S. Thompson, Manager
Minerals, Ceramics & Paper
Research & Development Division

CST:lag

Enclosure

cc: Mr. Jack Holt
University of Utah

bc: Mr. Gibbs
Mr. Harvey

Wm's Copy

INTER-OFFICE MEMORANDUM

Date: March 1, 1984

To: To File

From: Mr. A. M. Harvey

Subject: Willard Dixon - Ontario Advisory Council

Dr. David Muir, head of the Ontario Advisory Council commissioned by the Ministry of Health to determine whether or not the official Ontario asbestos definitions should be used in enforcement proceedings dealing with industrial talc, told me he had asked Willard Dixon of the OSHA Salt Lake City Laboratory to meet with the Council but was refused permission by Thorne Auchter.

Dr. Muir's panel had recognized Dixon as an expert in the matter being investigated, so they wanted his scientific input in the area of talc and asbestos analysis. Apparently a visit by Dixon for this purpose was against OSHA policy. (It wasn't against NIOSH policy for Dement to present a paper before the Ontario Royal Commission on asbestos a few years ago, however).

Dr. Muir's panel still wants to meet with Dixon, and Dr. Muir asked me if I could influence Auchter in any way to authorize that visit. In view of Dixon's knowledge and attitude towards analysis of our talcs it would certainly be helpful to our cause for this discussion to take place.

Fortunately, Dr. Muir leans towards a recommendation to the Ministry that they don't use their definitions of asbestos in enforcement proceedings where talc is used. The obvious outcome of a recommendation of this nature is a further commission for the panel to come up with definitions and analytical methods suitable for industrial talc. In this case, Dixon's input would be invaluable. Any favorable (to us) action by the Ontario authorities would help in our efforts in the United States as well as in Europe, where Canada has strong influence.

Note: The Ontario Ministry of Health had been informed by their analytical group that some industrial talcs contained large quantities of asbestos. They are aware, however, (possibly through our efforts) that there has been a fair amount of controversy and resulting litigation in the United States when definitions used for asbestos regulation were used in enforcement proceedings involving industrial talc analyses. To settle the question, they commissioned Dr. Muir's panel to find out if they would run into legal problems in the court room by continuing to use the official asbestos definitions. They might have already had trouble with suppliers like Canada Talc Industries, who supply talc containing a certain amount of tremolite.

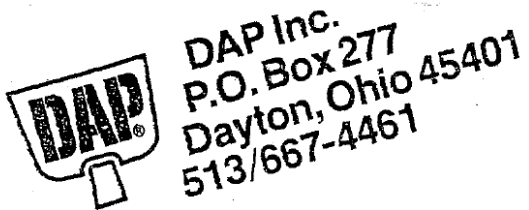
March 1, 1984

Note: Dr. Muir didn't take me up on my suggestion that Dr. Wylie could also provide the scientific expertise he wants. He seems intent on talking to Dixon only. This might result from Muir's knowledge that Dixon has been intimately involved in several court proceedings, and has had problems when he tried to use unscientific asbestos definitions.



AMH:ism

cc: Dr. C. S. Thompson



February 27, 1984

Dr. Roger Hallstein
C-Tek
9742 Skillman
Dallas, TX 75243

RE: Talc Analysis

Dear Dr. Hallstein:

This is to confirm the meeting that will be held at C-Tek's facility on March 9, 1984 at 10:00 a.m. regarding the Talc Analysis. Mr. Richard Twedell, Manager of Manufacturing, and I will be representing DAP Inc.

Mr. Alan Harvey, Director of Environmental Affairs, and Dr. C.S. Thompson, Chief Mineralogist, will be representing R.T. Vanderbilt, Inc.

It is of my understanding that Mr. Alan Weckerling of Spectrum Labs will also attend.

Thank you for your cooperation and assistance in scheduling this meeting. If you have any questions or a scheduling conflict develops, please contact me.

Sincerely,

DAP Inc.

A handwritten signature in dark ink, appearing to read 'David L. Harrison', is written over the typed name.

David L. Harrison
Safety & Regulatory
Affairs Coordinator

DLH/kmc

cc: R.K. Mommsen
D. Wilson
R. Twedell
M. Fogt



February 27, 1984

Mr. Alan Harvey
R.T. Vanderbilt Company, Inc.
30 Winfield Street
Norwalk, CT 06855

Dear Mr. Harvey:

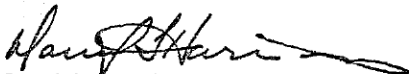
Attached is the confirming letter that was sent to C-Tek in regards to the meeting that is scheduled for March 9, 1984 at 10:00 a.m. In addition, I have the following information regarding the talc analysis that was performed.

I.T.3X Talc Lot # 8-25-83
X-ray diffraction and polarized light microscopy performed by C-Tek in Dallas. Results: 35-40% Asbestos
Electron microscopy and polarized light microscopy performed by Spectrum Labs in Dallas. Results: Confirmed asbestos fibers.

I will contact you next week regarding the location and directions to the facility. If you have any questions or need any additional information, please contact me.

Sincerely,

DAP Inc.


David L. Harrison
Safety & Regulatory
Affairs Coordinator

DLH/kmc

cc: R.K. Mommsen
D. Wilson
R. Twedell
M. Fogt

Attachment

AMH's Copy
cc: Mr. V. Carlson
Mr. J. McCarthy



R. T. Vanderbilt Company, Inc.
INDUSTRIAL MINERALS AND CHEMICALS

30 WINFIELD STREET, NORWALK, CONNECTICUT 06855 • (203) 853-1400
CABLE: "BILTVAN", NORWALK, CONNECTICUT • TWX 710-468-2940

November 23, 1983

Dr. Tuhfeh Habash
5300 Huberville Road
Dayton, OHIO 45431

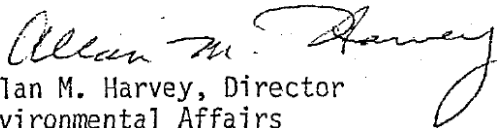
Dear Dr. Habash:

Enclosed is a Mineral Safety Data Sheet for our IT-3X talc product.
As is evident from the ingredient list the product does not contain asbestos.

There is a good chance that our mineralogist, Dr. C. S. Thompson,
and I will be visiting DAP offices in the near future to discuss the matter
of asbestos allegations concerning our talcs. Hopefully we will be able to
meet with you at that time and answer any further questions you might have.

Sincerely,

R. T. VANDERBILT COMPANY, INC.


Allan M. Harvey, Director
Environmental Affairs

AMH:ism

Enclosure

CALL REPORT

CUSTOMER D. A. P. Inc.,
ADDRESS 855 North Third Street, Tipp City, Ohio 45371

W DEC 15 1983

DATE December 7, 1983
SALESMAN J.F. McCarthy

DISTRIBUTION

SALES MGR.	X		
R & D	X	A. HARVEY	
MFG.		S. THOMPSON	
PLT. MGR.			
SALES/ SERVICE			
F/U DATE			

CONTACTS:

Richard K. Mommsen - Exec. V.P.
 Albert R. Hunt - V.P. Marketing &
 Mfg. Distribution
 Don Montgomery - Dir. Purchases
 M.L. Fogt - Personnel Mgr.
 Others including T.D. Dr. Hun C.
 Al Harvey has all the names.

PRODUCTS DISCUSSED:

IT 3X Talc, Absence of
Asbestos.

ACTION REQUIRED

SALES OBJECTIVE (SPECIFIC)

Visit by Dr. Slim Thompson, and Al Harvey to convince them that IT 3X is free of asbestos.

SUMMARY

As indicated above, called with our Slim Thompson, and Al Harvey.

Reference my TCR Nov. 10, and 11, covering abrupt discontinuance our IT 3X talc. Al and Slim covered the full matter, in their usual masterful style. Mommsen was the spokesman for their views, comments, and questions. He was very courteous to our group, and in essence, asks for a letter worded as strongly as we can this side of certification. Al and Slim will cover the revised letter with our legal staff and with Verg Carlson. The 18 minute film was videotaped and it was to all appearances very impressive to all of them.

Mr. Hunt noted he would like to have a brochure from us, covering the international scope of our sales and marketing to multiple industries, with a broad offering of raw materials. Beacham Ltd. parent Company would like to assess the possibilities of world wide purchasing from R.T. Vanderbilt Co..

Al and or Slim will have in depth details as needed, in their Report.

12-16

Al Harvey

FOR YOUR INFO

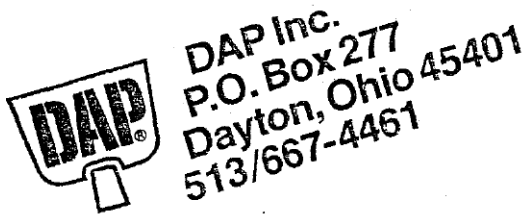
Dap. Dayton Ohio.

has come back -

ordered Carlond of the 17-3x

they had some problem with a state
environmental agency about a month
ago.

Jerry Samuels



November 29, 1983

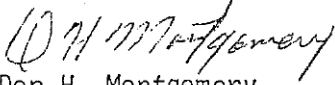
R.T. Vanderbilt Co., Inc.
30 Winfield Street
Norwalk, CT 06856
ATTN: Al Harvey and ~~Dr. Thompson~~

Gentlemen:

Just a reminder of our meeting scheduled for 10:00 a.m. on December 7, 1983 to discuss IT3X Talc, DAP Code 22.

Sincerely,

DAP Inc.


Don H. Montgomery
Director of Purchasing

DHM/kmc

cc: R. Mommsen
D. Wilson
H. Choung
A. Hunt
D. Harrison



DAP Inc.

P.O. Box 277 • Dayton, Ohio 45401
(513) 667-4461

October 5, 1983

Mr. Alan M. Harvey
Director, Environmental Affairs
R.T. Vanderbilt Company, Inc.
30 Winfield Street
Norwalk, Connecticut 06855

Dear Mr. Harvey:

I recently contacted you concerning the results of the Talc Analysis that was conducted by the Ohio Safety and Hygiene in conjunction with the Industrial Hygiene Survey. I corresponded with Ms. Marilyn Priddy of Safety and Hygiene, expressing our as well as Vanderbilt's disagreement with the results of the analysis, as well as with the analytical techniques utilized. At the end of the letter, I expressed a desire to have the report amended to exclude the section on Asbestos. I received a reply, a copy of which is enclosed, stating that they feel that their report is not in error and will not change the report.

Based on this information, do you have any ideas or recommendations on which way we should proceed on this matter? For your information, the Ohio Safety and Hygiene section of the Industrial Commission does not have any legal or enforcement capabilities in these situations. Of course, one of our concerns is the possibility of the contents of the report be divulged.

I would appreciate any assistance that you could give me on how I should proceed on this matter.

Sincerely,

DAP Inc.

David L. Harrison
Safety & Regulatory
Affairs Coordinator

DLH/kss
enclosure

DAP Most trusted name in caulks, fillers & adhesives.



DAP Inc.

P.O. Box 277 • Dayton, Ohio 45401
(513) 667-4461

September 22, 1983

Ms. Marilyn Priddy, Industrial Hygienist
Industrial Commission of Ohio
Division of Safety & Hygiene
246 N. High Street
Columbus, Ohio 43215

RE: Industrial Hygiene
Survey
Dayton Facility

Dear Ms. Priddy:

I am writing in reference to the report on the Industrial Hygiene Survey that was conducted at the Dayton Facility on May 31, June 1 and June 3. I want to commend you on a thorough and comprehensive report that you prepared. However, there is one section of the report that DAP Incorporated disagrees with in its entirety, which is the section on Asbestos associated with Talc.

DAP Incorporated has a considerable history with Talc and its association with Asbestos with OSHA and our suppliers. On June 5, 1978, DAP was issued a citation from OSHA regarding the use of Talc, Asbestos in the Talc and the general safety requirements associated with Asbestos. The Talc was analyzed by OSHA and supposedly contained 0.6% Tremolite Asbestos. On June 27, 1978, DAP contested the citations as unreasonable based on a variety of information from our staff, Talc suppliers and independent studies on the Analytical Techniques for Asbestos Qualitative Analysis on Bulk Samples. Subsequently, after a series of meetings, transactions of information and a hearing, the OSHA Citation was withdrawn and vacated on November 3, 1978.

Our position as well as our suppliers is that the method for Asbestos content in Talc is erroneous and not in conformance with the analysis of the same Talcs by the OSHA Laboratory in Salt Lake City. The sample that was obtained during your survey was analyzed to have a Tremolite Asbestos content in the range of 1 to 3%. This procedure utilized a polarized light staining microscopy technique. The OSHA procedures in Salt Lake utilizes both a phase contrast microscopy and a x-ray defraction technique. In 1978, the OSHA Lab analyzed the same Talc and determined an Asbestos content of 0.6%. Aside from the discrepancy in the analytical results of the Asbestos content in the Talc, it is our position as well as the Talc manufacturers that the past and present analytical methods are not adequate for asbestos determination and they have led to the misidentification of Talc constituents as Asbestos. In 1974, OSHA reported that the Vanderbilt Talc had an Asbestos content in the range of 50 to 60% and as of 1978, this had dropped to 0.6%. This is attributed to the refinement of the analytical techniques. Due to controversy surrounding the techniques and by legal challenges, OSHA requested a study in 1977, to be performed by the National Bureau of Standards on the fiber content of eighty Talc samples using OSHA's analytical procedures. The study concluded that "the existing

DAP

Most trusted name in caulks, fillers & adhesives.


OSHA procedure is useful only for determining fiber content and not Asbestos content."

Based on this information, we are very concerned about the possibility of having what we feel to be erroneous information to be divulged and having to go through the legal proceedings again. I would like to discuss this matter with you to determine how the report could be amended to delete the Asbestos information.

Please contact me if you have any further questions or comments. Thank you for your assistance and cooperation.

Sincerely,

DAP Inc.



David L. Harrison
Safety & Regulatory
Affairs Coordinator

DLH/kss

cc: R. Mommsen
D. Wilson
M. Fogt

CALL REPORT

CUSTOMER Dicks, Armstrong, Pontius, Inc.,
ADDRESS Corp. Hdqtrs Tipp City, Ohio Laboratories, Dayton, Ohio

DISTRIBUTION

SALES MGR.	X		
R & D		X	AL HARVEY
MFG.			
PLT. MGR.			
SALES/ SERVICE			
F/U DATE			

DATE Nov. 10, and 11 1983
SALESMAN J.F. McCarthy

CONTACTS:

11/10 Sue Smith, Purchasing Dept.
11/11 Dr. Tussie Habasa Res. Dept.

PRODUCTS DISCUSSED:

IT 3X

RECEIVED

NOV 16 1983

ACTION REQUIRED

SALES OBJECTIVE (SPECIFIC)

SUMMARY

VIA TELEPHONE

Reference our Customer Service Dept. note to Verg Carlson, 11/7/83 telling of abrupt cancellation of two carloads of IT 3X, one for Baltimore Plant and one for the Dayton Plant. Sue Smith was at first as strangely evasive to me as she must have been to Customer Service. Persisted in making point that we are entitled to know what is the nature of your problem, and the right to try to help resolve same. She finally told me her directive came from this woman, Dr. Tussie Habasa, at Dayton R. & D. Labs.. Couldn't reach Habasa today, got hold of her on Friday, 11/11/83. She tried to clam up completely, indicating orders from top level. Decided no more pussy footing on this so asked her if it pertains to the O.S.H.A. Asbestos Dust Standard, to which she had to admit, qualifying that it is only a temporary stoppage in use IT 3X, while they investigate for asbestos in our IT 3X. Advised her that we would like to have our Mr. Al Harvey contact her to cover this matter. I suspect our Montana friends, as she asked for a letter of certification from officers of our Company to wit we have absolutely no asbestos in our IT 3X talc. I shall have spoken to our Verg Carlson on this matter, first thing Monday, Nov. 14.



DAP Inc.
P.O. Box 277
Dayton, Ohio 45401
513/667-4461

JUN 22 1984

1984

June 19, 1984

Mr. Allan M. Harvey
Director - Environmental Affairs
R. T. Vanderbilt Company Inc.
30 Winfield Street
Norwalk, CN 06855

RE: IH Survey Report

Dear Mr. Harvey:

Attached is a copy of the Dallas Industrial Hygiene Survey that was conducted in October, 1983. Would you please review the report and send me your comments.

Thank you for your assistance and cooperation.

Sincerely,

DAP Inc.

A handwritten signature in cursive script, appearing to read "David L. Harrison".

David L. Harrison
Safety & Regulatory
Affairs Coordinator

DLH:efb
Attachment

CUSTOMER	DAP
ADDRESS	P.O. Box 277
	Dayton, OH. 45401

ke

JAN 13 1989

DISTRIBUTION

SALES MGR.	<input checked="" type="checkbox"/>	
R & D	<input type="checkbox"/>	
MFG.	<input type="checkbox"/>	
PLT. MGR.	<input type="checkbox"/>	
SALES/SERVICE	<input type="checkbox"/>	
	<input checked="" type="checkbox"/>	P. VITWIK
F/U DATE		J. KILSE

DATE	1/6/89
SALESMAN	B. BARNICK

CONTACTS:

SUE MILLER - PA

PRODUCTS DISCUSSED:

NYTAL 300
IT 3X

TELEPHONE REPORT

ACTION REQUIRED

SALES OBJECTIVE (SPECIFIC)

SUMMARY

SUE CALLED AND REQUESTED AN UPDATE ON THE NYTAL-OSHA SITUATION. SHE WAS CONCERNED IF OUR MSDS STATED WE ARE ASBESTOS FREE; I GAVE HER A BRIEF UPDATE, NOTING THAT OSHA DOES AGREE THAT OUR TALL IS NON-ASBESTIFORM BUT IS STILL CONSIDERING TO REGULATE AS AN ASBESTOS. SHE SAID SHE WOULD PASS THIS INFORMATION ON TO "ANOTHER PERSON" AT DAP WHO WAS QUESTIONING THE SITUATION. SHE ALSO REQUESTED WE FAX OUR CURRENT MSDS ON NYTAL 300 AND IT 3X TO HER. (THIS WAS DONE VIA REQUEST TO LYNN ON 1/9.) I ASKED IF SHE WANTED EITHER MYSELF OR OUR ENVIRN. AFFAIRS DEPT. TO CONTACT THIS "OTHER PERSON". SHE SAID NOT AT THIS TIME, BUT SHE SAID SHE WOULD ALSO PASS THIS OFFER ON.



status - as I understand it.

Watson vs RTV

Kelse Deposition Aug. 10, 2009 - Documents Requested

1. All talc analytical reports that address asbestos content (present or absent) from Kelse file (chronological) - check for any additional in Dr. Thompson's file (old lab.).

Status: Entire file was again copied - last week. will/has been provided

2. All available underlying data pertaining to the Honda study to include long term employee dust level questionnaire available in Kelse file.

Status: Entire underlying data file available at RTV was copied last week. will/has been provided

3. All RTV talc health files maintained by Kelse. This includes studies specific to RTV talc, non-RTV studies that are linked and formal overviews of the health science base.

Status: Entire file was copied - last week. will/has been provided.

4. Available maps showing mining locations in the Balmat NY area.

Status: will/has been provided

5. Dr. Thompson to Mr. Feiderline memo - includes reference to his talcville analysis.

Status: will/has been provided

6. Remaining Mouldine bag removal/disposal project in 1992 documents and sample of that Mouldine (K-100).

Status: Documents copied - including improved copy of bag label photo. will/has been provided

7. Check GTC for any asbestos analytical reports pertaining to Mouldine. Also, confirm nature of files maintained at GTC relative to dust risks.

Status: Did review the content & nature of dust linked records held at GTC with Dana Putnam. Note to file reflects status. Essentially as earlier described (prior depo)



8. Check Quality Dept. to confirm their files contain no records of talc risk customer inquires not available in Kelse file.

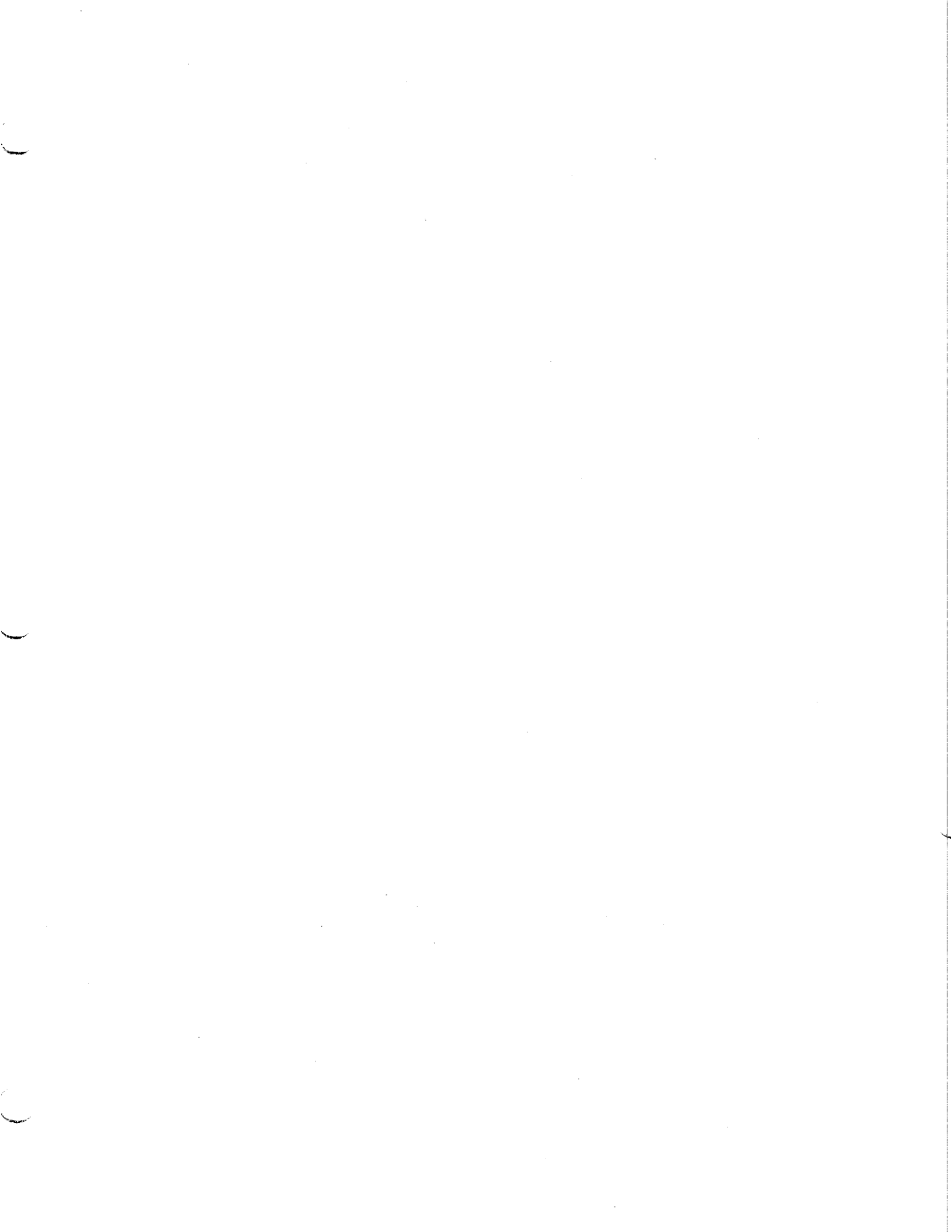
Status: *Did visit Dept., looked in files and discussed records they maintain. Information reflected in Note to file.
- As described in prior deposition.*

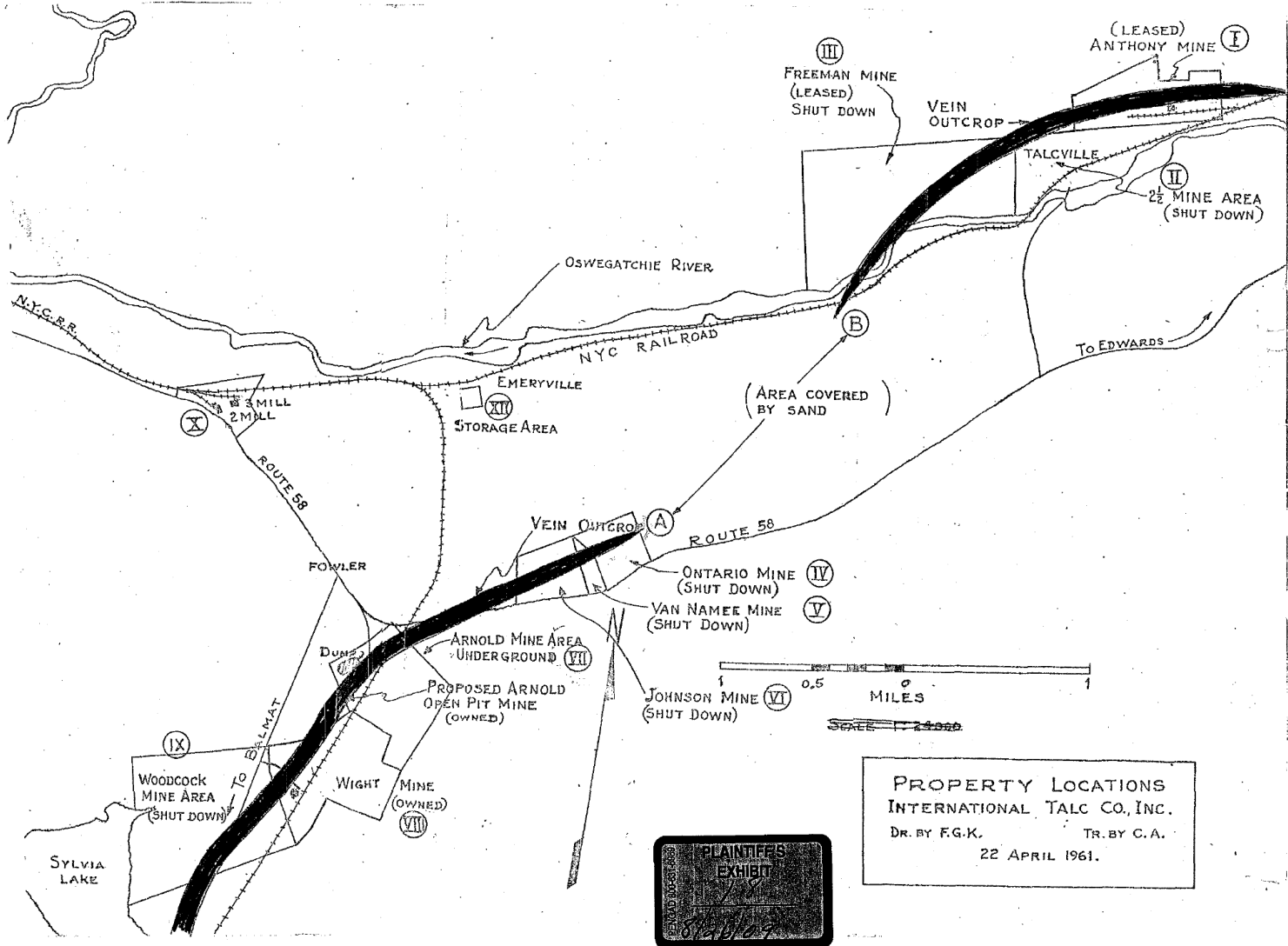
9. Provide copies of any customer communications in Kelse file prior to 1990 on RTV talc for the following: US Gypsum, Kyser Gypsum, DAP, Georgia Pacific, Certanteed Corp. and Dowain.

Status: *This file was checked and available correspondence to these companies was copied
will/has been provided*

10. Internal RTV memoranda regarding the first OSHA asbestos Std. in 1972.

Status: *File containing this memoranda was copied (again) - last week.
will/has been provided*





PROPERTY LOCATIONS
 INTERNATIONAL TALC CO., INC.
 DR. BY F.G.K. TR. BY C.A.
 22 APRIL 1961.

PLAINTIFFS
 EXHIBIT

INTERNATIONAL TALC COMPANY OPERATIONS

ORE	MILL	ITC PRODUCT	USE	NYTAL EQUIVALENT
Arnold Open Pit	No. 2 Mill	a. IC, 2C, 1R, 3X, 151A, Loomite	Medium oil grade. Ore nearer hanging wall has higher oil absorption. Ceramic grades are 1C, 2C and 1R. These grades do not have good pressing characteristics of HDT but give good strength in some applications. Loomite is also 3X - Initial supply was off-color ore with spec. of 98.5 thru 325 mesh and color 83-86. When this supply was depleted, 3X material was supplied. DISCONTINUED last year.	NYTAL 200
		b. FT (Fine Texture)	Higher oil and finer product than 3X. Popular before 325.	-----
		c. 8OWSA (Originally made with scale ore)	DISCONTINUED. Less abrasive than 6N Fibre. Resembled Montana talcs.	-----
		d. MSK	Same as FT	-----
	No. 3 Mill	a. X	Low oil material. Demand is low	-----
		b. 5X	High oil material	-----
		c. 10A	Low oil, original ceramic grade. Popular grade prior to HDT.	-----
	No. 6 Mill	a. 325 (Fine fraction from Alpine Air Classifier)	Fine grind medium oil grade - most popular paint grade	NYTAL 500
	No. 6N Mill	a. 425	DISCONTINUED - processing difficulty	NYTAL 400
		b. 525, 625 (Originally made in Wheeler mill using steam. Most recently made using air sifter for a 4 1/2 - 5 Hegman)	DISCONTINUED - processing difficulties	-----
		c. F-725 (Originally made with scale ore thru steam plant)	DISCONTINUED - processing difficulties	-----
		d. 10AC (Alpine Air Classifier Used)	Coarser than 10A with lower fired strength. Used for hobby slip and molding clay. Variation of HDT.	NYTAL 100
No. 6 and 6N Mills	a. HDT (Coarse fraction from Alpine Air Classifier)	Coarse fraction (approximately 60X) - Large tonnage ceramic grade product.	NYTAL 99	
No. 3 Mine	No. 2 Mill	a. 6N Fibre	Least fibrous due to pebble mill grinding. Used for vinyl flooring.	-----
		b. International W	Least fibrous due to pebble mill grinding. Used in asphalt mixes for tighter mixes and better indentation resistance.	-----
		c. Asbestine W	Least fibrous due to pebble mill grinding.	-----
		d. No. 2 Fibre	Wheeler mill grinding. More fibrous than No. 1 Fibre. Good anti-slump properties. Used in caulking compounds, textured paint and stucco coatings.	-----
		e. Fibra PL	Same as No. 2 Fibre	-----
		f. Mouldens	Same as No. 2 Fibre - Used in plaster molds	-----
No. 3 Mill	a. International Fibre	Similar to No. 2 Fibre as noted above. Used in caulking compounds, textured paint and stucco coatings.	-----	

GRADES

DESCRIPTION

- #1 FIBRE This is a highly fibrous material that is made at #3 Mill from #3 Mine ore.
- #2 FIBRE This is somewhat better fiber than No. 1 and is made at the same Mill from the similar ores as No. 1 Fibre. Incidentally, both of these grades must be made in the fluid energy mill.
- INT. FIBRE PL Made from a specially selected fiber for Polypropylene plastics where heat stability is a factor.
- 425 This material is in effect a 5 Hegman, 40 - 45 oil material and is made through the Steam Plant from Arnold Pit ore.
- 525 This is a high oil 325 grade, (+50 oil), with a Hegman in the neighborhood of 3+, and made from Arnold Pit ore. It is not being produced in any great quantity now, but as a substitute for MVA, it may have merit.
- 625 This grade has a Hegman of 5+ and an Oil Absorption of something over 55+. It must be made at the Steam Plant. It is impossible to make this grade with an Alpine Machine.
- 725 This material is a 5+ Hegman material, with at least 65 Oil, and is made from Arnold Pit Scale, using the Steam Plant. It cannot be made in the Alpine Machine.

INTER-OFFICE MEMORANDUM

Date: May 31, 1990

To: Mr. G. L. Fiederlein
From: C. S. Thompson
Subject: Gouverneur Talc Company Ores

In response to your inquiry seeking confirmation from me regarding the absence of asbestos minerals in our GTC orebody, I can confirm that we have never found asbestos present in the deposit. It is important to note that only minor to trace amounts of the total pure mineral talc occurs in the fibrous/asbestiform habit. While this form of talc has some of the same physical (shape) characteristics as asbestos, it is clearly the mineral talc and is not asbestos. The great majority of the mineral talc present is normal platy talc. For mineralogical purposes the words "asbestiform" and "fibrous" are merely used as descriptive terms relating to the appearance of the mineral.

In attempting to make estimates ("guess-timates") of the fibrous talc content of the entire ore deposit I would like to make the following comments:

1. The ores thus far developed in the No. 1 Mine (underground) contain little, if any, fibrous talc, well under 1%.
2. The No. 2 Mine (Arnold open pit) ores are estimated to contain about 2% fibrous talc, which is rather randomly distributed throughout but is mainly present in the higher KU paint grade material.
3. The Talcville deposits (closed) were developed specifically to produce a high fiber material and to avoid whatever low fiber ores were present in the area. No conclusions, therefore, may be made as to the overall fiber content of the entire Talcville orebody.
4. I have no data on the ores that may exist between our operating mines or along the "talc belt" between the Arnold Pit and Talcville, so that any comments on their mineral content would not be meaningful.
5. The fibrous/asbestiform talc present in this ore deposit is predominantly pure mineral talc with very minor amounts of hybrid (mixed mineral) particles and is not asbestos. None of the other minerals present in our orebody are fibrous, asbestiform or asbestos. Neither we, nor our consultants have found asbestos in our ore or products.

CST/cac

cc: H.B. Vanderbilt, Sr.

CST



Weston v. Asb. Corp. Ltd., et al. Depo of J. Kelse, Vol. II 8/26/09

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CONDENSED TRANSCRIPT AND CONCORDANCE
PREPARED BY:

AIKEN WELCH COURT REPORTERS

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(1) IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
 (2) IN AND FOR THE COUNTY OF ALAMEDA
 (3)
 (4) ERIC WESTON, :
 (5) Plaintiff, :
 (6) VS. : NO. RG 08-426405
 (7) ASBESTOS CORPORATION LIMITED, :
 et al.

(8) Defendants.

(9) VOLUME II

(10) VIDEOTAPE DEPOSITION OF JOHN KELSE

(11) DATE: Wednesday, August 26, 2009

(12) HELD AT: Marriott Stanford

(13) 243 Tresser Boulevard

(14) Stamford, Connecticut 06901

(15) Reporter: Marian E. Cummings, LSR #472

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 (4) Representing Defendant DAP:
 SIMON LEE, ESQ.
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 (7) Representing Defendant Modern Plastics, Inc.
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 Herr & Zapala
 (8) 152 North 3rd Street
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 (11)

(12) Also Present:

(13) JEFFREY C. BROHEL, ESQ.
 Litigation Counsel, R.T. Vanderbilt
 (14) JACOB BRANDON, VIDEOGRAPHER
 Brandon Smith Reporting & Video
 (15)

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(1) APPEARANCES:

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 (3) DENISE ABRAMS, ESQ.
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 (860) 616-4441
 (6) Representing the Defendant Calavares Asbestos:
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 (7) Representing the Defendant Kaiser Gypsum:
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 (8) Representing the Defendant CertainTeed Corp.:
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 (9) Representing Defendant Henry Company and W.W. Henry
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 (10) Representing Defendant R.T. Vanderbilt:
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(12)

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 (24)
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(1) STIPULATIONS

(2)

(3) It is stipulated by counsel for the parties

(4) that all objections are reserved until the time of

(5) trial, except those objections as are directed to the

(6) form of the question.

(7) It is stipulated and agreed between counsel

(8) for the parties that the proof of the authority of the

(9) Notary before whom this deposition is taken is waived.

(10) It is further stipulated that any defects in

(11) the Notice are waived.

(12) It is further stipulated that the reading and

(13) signing of the deposition transcript by the witness

(14) may be signed before any Notary Public.

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(1) McCambridge on behalf of DAP,

(2) Incorporated.

(3) **THE VIDEOGRAPHER:** Anybody on the

(4) phone?

(5) **MR. DAVIS:** Good morning. Mark Davis

(6) for Kaiser Gypsum Company, Inc. with the

(7) law firm of Hassard Bonnington.

(8) **MR. EPSTEIN:** Morning. Mark T.

(9) Epstein of McKenna, Long & Aldridge, LLP,

(10) appearing for Certaineed Corporation.

(11) **MR. CHON:** Richard Chon from Perkins

(12) Coie for Georgia-Pacific.

(13) **MR. JACKSON:** Warren Jackson for

(14) Cyprus Amax Minerals Company.

(15) **MS. GILLEN:** Linn Gillen, Foley &

(16) Mansfield on behalf of Calavares Asbestos

(17) Limited and the University of California

(18) Regents.

(19) **MR. DONATON:** Adam Donaton with

(20) Walsworth, Franklin, Bevins & McCall

(21) representing W.W. Henry and the Henry

(22) company.

(23) **MR. DEANE:** Jeffrey Deane of Selman

(24) Breitman for RT Vanderbilt Company, Inc.

(25) JOHN KELSE,

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(1) PROCEEDINGS

(2) **THE VIDEOGRAPHER:** This is the

(3) videotaped deposition of John Kelse taken

(4) by the plaintiff in the matter of Weston

(5) versus Asbestos Corporation Limited, et al.

(6) This case is filed in the Superior Court of

(7) California, Docket Number RG 08-426405.

(8) This deposition is being held at 243

(9) Tresser Boulevard, Stamford, Connecticut on

(10) August 26, 2009. My name is Jacob Brandon

(11) from Brandon Smith Reporting and Video

(12) with offices in Hartford, Connecticut. The

(13) court reporter is Marian Cummings from

(14) Brandon Smith Reporting and Video with

(15) offices in Hartford, Connecticut.

(16) We're now going on the record at

(17) 10:19 a.m. Counsel will now state their

(18) appearances, for the record, please, after

(19) which the court reporter will swear in the

(20) witness.

(21) **MS. ABRAMS:** Denise Abrams and Will

(22) Ruiz for the plaintiff.

(23) **MR. RADCLIFFE:** Tom Radcliffe for

(24) R.T. Vanderbilt Company, Inc.

(25) **MR. LEE:** Simon Lee from Siegel

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(1) (after being first duly sworn or affirmed,

(2) was examined and testified as follows:)

(3) DIRECT EXAMINATION

(4) **BY MS. ABRAMS:**

(5) **Q.** Good morning, Mr. Kelse.

(6) **A.** Good morning.

(7) **Q.** As you know, we are here on the

(8) second day of your deposition as the person

(9) most qualified and custodian of records for

(10) the R.T. Vanderbilt Company in this case. You

(11) understand you're here in that capacity?

(12) **A.** I understand I'm here to answer the

(13) questions as best I can.

(14) **Q.** Well, sir, let me show you again

(15) the Notice of Deposition. We have a copy of

(16) it here, which was attached to the first

(17) volume of your deposition which is the reason

(18) that you're here to talk to us today. And you

(19) have been designated for bringing documents

(20) and discussing 76 categories of documents.

(21) **MR. RADCLIFFE:** That's not accurate.

(22) **BY MS. ABRAMS:**

(23) **Q.** Excuse me, 56 categories of person

(24) most qualified information with the exception

(25) of two categories of information that

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(1) Mr. Thompson has been designated for regarding
 (2) Mouldene and correspondence with Johns
 (3) Manville, and I think several categories of
 (4) information regarding sales, and other than
 (5) that, you have been brought here today
 (6) pursuant to this notice.

(7) Have you in the interim between your last
 (8) deposition and this deposition reviewed the
 (9) Notice of Deposition in this case and why
 (10) don't you show him a copy of the notice.

(11) **MR. RADCLIFFE:** I'm going to object
 (12) to that very long predicate as not being a
 (13) question and being a statement by counsel
 (14) for plaintiff as not being accurate and not
 (15) part of the question. The question is
 (16) compound. Go ahead and answer.

(17) **A. Whether or not I had seen this
 (18) document?**

(19) **BY MS. ABRAMS:**

(20) **Q.** We can start there. Have you seen
 (21) that document before? We showed it to you at
 (22) your last deposition and asked if you had seen
 (23) it and you said no, so I'm asking in the
 (24) interim, have you reviewed that Notice of
 (25) Deposition for which you're being produced

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(1) **Q.** So other than your role in the
 (2) technical aspects of the issues as you
 (3) understand them that relate to this case, did
 (4) you do anything or talk to anyone to become
 (5) educated or learn about information that is
 (6) being asked in the notice of deposition?

(7) **A. Well, I've been involved over the
 (8) last week with Mr. Radcliffe in the sense of
 (9) going through my records and files. And it
 (10) was explained to me that that exercise was to
 (11) extract information that would be pertinent to
 (12) the case. My role was to show the attorneys
 (13) where the records were kept, basically what
 (14) the records were, and they proceeded to copy
 (15) them.**

(16) **Q.** Where did you show them the records
 (17) were?

(18) **A. At my office.**

(19) **Q.** Inside your own office?

(20) **A. Inside my own office and adjacent
 (21) areas to my office.**

(22) **Q.** What adjacent areas?

(23) **A. There's a fax machine and a copy
 (24) machine area that's just 20 feet away where
 (25) there's a bank of file cabinets and a couple**

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(1) today?

(2) **A. No. My understanding is I'm here
 (3) to respond to questions that pertain to
 (4) technical aspects of the case because I do
 (5) keep all of the technical records in my office
 (6) from an occupational health standpoint since
 (7) it's my job at the company.**

(8) **Q.** I move to strike the response and
 (9) ask you again, Mr. Kelse. Between the time
 (10) that we first met and your first deposition
 (11) and today, have you reviewed the notice of
 (12) deposition in front of you?

(13) **A. No.**

(14) **Q.** Have you in any other way learned
 (15) of the categories of information that you have
 (16) been designated as the person most qualified
 (17) here today to speak on behalf of the R.T.
 (18) Vanderbilt Company?

(19) **MR. RADCLIFFE:** Objection, vague,
 (20) ambiguous.

(21) **A. The attorneys have explained to me
 (22) that my role is to explain as best I can what
 (23) I know from my technical records and my
 (24) experience at Vanderbilt on the issues that
 (25) relate to this case.**

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(1) of file cabinets are devoted to information
 (2) that pertains to New York State Talc.

(3) **Q.** Did you show the attorneys a locked
 (4) room with historical files in it?

(5) **A. There is a room probably 40 feet or
 (6) so away where we had some old records, I think
 (7) probably a couple of file drawers, two or
 (8) three file drawers of records.**

(9) **Q.** Did you show that room to your
 (10) attorneys?

(11) **A. Yes, I did.**

(12) **Q.** What else is in that room besides
 (13) two to three file drawers?

(14) **A. Records that pertain to New York
 (15) State Talc. The others are patent files and
 (16) research and development on chemical products
 (17) and things of that nature.**

(18) **Q.** Did you look in those files?

(19) **A. Well, there would be no need to
 (20) look in those files for those are files for
 (21) other types, we sell over 700 products.**

(22) **Q.** So is it fair to say that you did
 (23) not search for files regarding Mouldene talc
 (24) and the patenting or any other information,
 (25) research information in those files for

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- (1) Mouldene talc?
- (2) **MR. RADCLIFFE:** Objection, misstates
- (3) prior testimony.
- (4) **A. Well, the files that pertain to New**
- (5) **York State Talc which would incorporate**
- (6) **information relative to Mouldene would be in**
- (7) **the files that I indicated. They wouldn't be**
- (8) **anywhere else.**
- (9) **Q. Did you find a file called Mouldene**
- (10) **talc patent information in the New York State**
- (11) **Talc files?**
- (12) **A. Patent information?**
- (13) **Q. Correct.**
- (14) **A. No, that wouldn't be in those files**
- (15) **because I'm risk, I'm not patent.**
- (16) **Q. But there are a set of files in**
- (17) **that room that contain patent information,**
- (18) **correct?**
- (19) **A. I don't know one way or another.**
- (20) **Q. Didn't you just testify that there**
- (21) **is a bank of files in there and some of the**
- (22) **information in the files includes patent**
- (23) **information?**
- (24) **A. Yes, on some 6- or 700 products.**
- (25) **Q. Understood. And is it fair to say,**

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- (1) sir, that you did not search those files for
- (2) any information on Mouldene?
- (3) **MR. RADCLIFFE:** Objection, vague,
- (4) ambiguous, misstates prior testimony.
- (5) **A. I don't really know how to answer.**
- (6) **I keep files on risk. I don't keep files on**
- (7) **patents.**
- (8) **Q. Sir, does the R.T. Vanderbilt**
- (9) **Company keep files on patents?**
- (10) **A. Of course.**
- (11) **Q. Did you search any R.T. Vanderbilt**
- (12) **files for the patent for Mouldene?**
- (13) **A. No.**
- (14) **Q. Is it fair to say, sir, that in the**
- (15) **interim, the last period of time between your**
- (16) **last deposition and this deposition, the only**
- (17) **files you searched and the only place that you**
- (18) **directed your attorneys was to information**
- (19) **regarding your work and your files?**
- (20) **MR. RADCLIFFE:**
- (21) **Objection, misstates --**
- (22) **A. I directed them to the files that I**
- (23) **know contain information relative to New York**
- (24) **State Talc from a risk perspective.**
- (25) **Q. And that is the only information**

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- (1) that you disclosed, the files for New York
- (2) State Talc from a risk perspective; is that
- (3) correct?
- (4) **MR. RADCLIFFE:** Objection, vague and
- (5) ambiguous.
- (6) **A. Those are the files that I'm**
- (7) **responsible for keeping, yes.**
- (8) **Q. And with respect to any other**
- (9) **department of the RT Vanderbilt Company or any**
- (10) **other area that might bear on this case, that**
- (11) **may be in files at the RT Vanderbilt Company,**
- (12) **but may not be in your technical files or your**
- (13) **files with respect to risk management, you**
- (14) **left that to somebody else to determine and**
- (15) **take care of; is that right?**
- (16) **MR. RADCLIFFE:** Objection,
- (17) argumentative.
- (18) **A. I really don't know how to answer**
- (19) **that question. I maintain information on New**
- (20) **York State Talc as part of my files as I**
- (21) **maintain risk information for any of our other**
- (22) **products that exist. And to the extent that**
- (23) **questions arise as to the mineral composition**
- (24) **of talc and the risk associated with that**
- (25) **talc, as best we have information, I am the**

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- (1) **keeper of that information, that's my job,**
- (2) **that's what I keep. What other people keep in**
- (3) **their files and what they have in their file,**
- (4) **I can't imagine why that type of information**
- (5) **would be anywhere else other than with me.**
- (6) **Q. Well, you don't have patent**
- (7) **information, correct?**
- (8) **A. Nor would it apply to me, no.**
- (9) **Q. And in your opinion, it doesn't**
- (10) **apply to the case; is that right?**
- (11) **A. I don't have an opinion one way or**
- (12) **the other about it. It's just not something**
- (13) **that I'm responsible for or particularly**
- (14) **interested in.**
- (15) **Q. So if it was out of your area of**
- (16) **expertise, then is it fair to say you didn't**
- (17) **look for it or talk to anyone else with**
- (18) **respect to finding documents for this case or**
- (19) **educating yourself on information that might**
- (20) **be outside your area?**
- (21) **MR. RADCLIFFE:** Objection, compound,
- (22) misstates prior testimony, assumes facts
- (23) not in evidence.
- (24) **A. I would be interested in**
- (25) **information that pertains to my area of**

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- (1) **responsibility, period.**
- (2) **Q.** Let me ask you something, sir. If
- (3) you were told that you were going to be the
- (4) representative of the company in a certain
- (5) area and you were going to speak for the
- (6) company, in speaking for the company would you
- (7) rely solely on yourself to determine what you
- (8) should say and what you might have to gather
- (9) up in order to do that?
- (10) **A.** I would rely only on my best
- (11) **knowledge or understanding of the issues of**
- (12) **the question that you pose to me. I would try**
- (13) **to answer it as fully and completely as I**
- (14) **could and that's all I can do.**
- (15) **Q.** I'm not talking about in the
- (16) litigation matter. I'm talking about if you
- (17) were speaking on behalf of the company, for
- (18) example, on an corporate matter, would you
- (19) talk to other corporate individuals to
- (20) determine the range of information that you
- (21) would need to make that effort?
- (22) **MR. RADCLIFFE:** Same objections.
- (23) **A.** I would defer – if I were asked
- (24) **questions on issues that I was not responsible**
- (25) **for or knowledgeable about or if I felt there**

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- (1) **were others who knew more about that subject,**
- (2) **like patents or quality or other issues, I**
- (3) **would defer to those individuals to speak**
- (4) **about their area of expertise because I think**
- (5) **you would get more complete information that**
- (6) **way than have me make assumptions and – so in**
- (7) **other words, I would want the person who knew**
- (8) **the most about that topic to be the person you**
- (9) **speak to.**
- (10) **Q.** Who would you consult to learn
- (11) about historical information on patents?
- (12) **A.** Patents, the employee that did most
- (13) **of the patents unfortunately is deceased. I**
- (14) **think her name was Rasma (phonetic) Balodis,**
- (15) **B-A-L-O-D-I-S, and I believe she passed away**
- (16) **seven or eight years ago.**
- (17) **Q.** Where were her files kept?
- (18) **A.** They were kept in what was known as
- (19) **the R & D library and then they were**
- (20) **subsequently moved into these banks of files,**
- (21) **into this locked room that you mentioned**
- (22) **before, which is a room just off the old R & D**
- (23) **library.**
- (24) **Q.** And who is responsible for her
- (25) files at this time?

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- (1) **A.** At this time, I don't know for
- (2) **certain so I'd rather not say.**
- (3) **Q.** That's something you could find out
- (4) if you asked somebody?
- (5) **A.** Sure.
- (6) **Q.** And what else is in the room, and
- (7) I'm assuming this is the room you told us
- (8) about that has a key and you have the key; is
- (9) that correct?
- (10) **A.** I have the key, other people have
- (11) **the key.**
- (12) **Q.** What else is in that room besides
- (13) the New York State files on New York State
- (14) Talc and the historical files on patents,
- (15) what else is in there?
- (16) **A.** There's several bookcases that
- (17) **contain some reference materials mainly**
- (18) **related to rubber chemicals, journals and**
- (19) **things of that sort that are used by the**
- (20) **rubber chemists. That's probably the biggest**
- (21) **product line of the company are rubber**
- (22) **chemicals. There's also reference and**
- (23) **journals and documents linked that are used by**
- (24) **chemists in the area of lubricants, things of**
- (25) **that nature, ceramic information because the**

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- (1) **company is broken up into these various**
- (2) **product lines.**
- (3) **Q.** Do you keep formulas, do you know,
- (4) for other customer products?
- (5) **MR. RADCLIFFE:** Objection to form,
- (6) vague and ambiguous.
- (7) **A.** Well, for every product, all six or
- (8) **seven hundreds of them, for every product**
- (9) **there's a chemical structure and that's**
- (10) **available in the product literature.**
- (11) **Q.** Perhaps I wasn't clear. For
- (12) example, if a company was making a product
- (13) that included a New York State Talc component
- (14) to it, would you – let me finish my
- (15) question – would you have any formulas or
- (16) batch information regarding their product and
- (17) how they use the talc in their product?
- (18) **A.** I can say that generally we
- (19) **wouldn't, but I cannot swear that we might not**
- (20) **because our research and development group and**
- (21) **our sales group are technical or research and**
- (22) **development, obviously, would be and they do**
- (23) **interface with customers and they do discuss**
- (24) **the application and uses of our products and**
- (25) **their formulations and so forth. More often**

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(1) **than not, ultimate formulations are -- by**
 (2) **customers are proprietary, they keep them to**
 (3) **themselves.**

(4) **Q.** If there were files from a customer
 (5) that had that information, where would those
 (6) be kept?

(7) **A.** If such information existed, they
 (8) would be kept in the R & D departments that
 (9) were linked to that particular product line,
 (10) such as the rubber lab or the lubricant lab.

(11) **Q.** Did you search any R & D files for
 (12) information on customers that may have used
 (13) Mouldene in their products?

(14) **MR. RADCLIFFE:** Objection, vague and
 (15) ambiguous.

(16) **BY MS. ABRAMS:**

(17) **Q.** Do you understand the question?

(18) **A.** I do. That would not be -- that
 (19) would not be an area that I would have any
 (20) interest in.

(21) **Q.** Well, whether you're interested in
 (22) it or not, did you search for any files in the
 (23) R & D department that may have pertained to
 (24) the use of Mouldene in a customer's product?

(25) **A.** Well, my area is risk so my area is

(1) specialty products?

(2) **A.** I'm not sure we even have a
 (3) specialties department anymore. It used to be
 (4) a fellow by the name of McCausland (phonetic)
 (5) and Jim McCausland also died four or five
 (6) years ago.

(7) **Q.** And where are his files kept?

(8) **A.** They would be in the sales area of
 (9) the company.

(10) **Q.** Did you check at all with any of
 (11) the sales people in searching for documents in
 (12) response to our notice asking for documents?

(13) **MR. RADCLIFFE:** Excuse me, could you
 (14) read back that question?

(15) **(Whereupon, the court reporter read back the**
 (16) **previous question.)**

(17) **MR. RADCLIFFE:** Objection. Beyond
 (18) the scope of the designations for this
 (19) witness. Go ahead.

(20) **A.** No.

(21) **Q.** Do you know if anyone at the R.T.
 (22) Vanderbilt Corporation has searched for any
 (23) records regarding Mouldene or any Mouldene
 (24) customer information or other information in
 (25) the sales department at the R.T. Vanderbilt

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(1) **not product applications.**

(2) **Q.** Move to strike as nonresponsive.
 (3) Could you read the question back and please
 (4) answer the question.

(5) **(Whereupon, the court reporter read**
 (6) **back the previous question.)**

(7) **A.** And the answer is no for the reason
 (8) I gave you.

(9) **Q.** Who would have access to those
 (10) files, if they existed?

(11) **A.** Certainly the research and
 (12) development personnel responsible for those
 (13) product lines.

(14) **Q.** Well, who would that be, who was in
 (15) charge?

(16) **A.** The company's broken up into
 (17) different sales group. I think I mentioned
 (18) that once before, so you would have -- the
 (19) largest department would be the rubber
 (20) department. So there is a sales manager that
 (21) heads the rubber department.

(22) **Q.** Who is that?

(23) **A.** I don't think it's Ken Kelly any
 (24) longer. I'm not sure. I would have to check.

(25) **Q.** Is this someone who is in charge of

(1) Corporation?

(2) **MR. RADCLIFFE:** Same objection.

(3) **A.** I'm not aware of any.

(4) **Q.** You -- just going back to this
 (5) locked room that you have a key, you, I
 (6) believe, in your prior deposition you said
 (7) that there was a locked file that said see
 (8) John Kelse and you're the only one that had
 (9) the key to that, do you remember that
 (10) testimony?

(11) **A.** Yes, I do.

(12) **Q.** What was that file?

(13) **A.** Those are -- there are two file
 (14) cabinets, five drawers in each, and old
 (15) records on dealing with New York State Talc
 (16) risk aspect of it, mineralogy aspect of it,
 (17) reference documents linked, you know, to that
 (18) subject, most of which I have working copies
 (19) in my own office for so these are more
 (20) historical, but that's what was in those two
 (21) file cabinets. So they -- because they were
 (22) not really working files, documents that I
 (23) refer to or really use because I have the
 (24) originals or because I have copies in my
 (25) office, so it was just the storage for those

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- (1) **types of records so that's what's in those two**
 (2) **file cabinets.**
 (3) **Q.** So that's ten file drawers, sir?
 (4) **A.** Well, they're not all full with
 (5) **that. I've put other information in some of**
 (6) **those drawers to get them out of my office and**
 (7) **make room to expand some of the talc files in**
 (8) **my own office, so it's no longer that many**
 (9) **drawers. It's maybe four, four or five, and**
 (10) **these were drawers that I directed the**
 (11) **attorneys to, I believe that they copied the**
 (12) **material in those records.**
 (13) **Q.** You mentioned that -- I believe you
 (14) mentioned last time that you had
 (15) questionnaires and underlying data information
 (16) I believe for the Honda study, correct?
 (17) **A.** That's correct.
 (18) **Q.** Did you direct your attorneys to
 (19) that information?
 (20) **A.** I did.
 (21) **Q.** Was that in the locked drawers that
 (22) we're talking about?
 (23) **A.** No, that was in my office.
 (24) **Q.** And did that information get copied
 (25) and produced?

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- (1) **A.** Yes, they got copied. You'll have
 (2) **to ask the attorneys if it was produced.**
 (3) **MS. ABRAMS:** Just for the record, at
 (4) this point we have no idea what was
 (5) produced because it was produced on disk
 (6) and we have not been able to obtain hard
 (7) copies here, so with respect to anything
 (8) that was produced yesterday on disk, we
 (9) reserve our right to redepose the witness
 (10) on any of that information and any new
 (11) information.
 (12) And I just also state for the record
 (13) that in meeting and conferring with
 (14) Mr. Chusid last week, we explained that if
 (15) we were to get any new documents we needed
 (16) them by last Friday and if we were to get
 (17) anything here at the deposition we needed
 (18) it in hard copy so that we could review it
 (19) and we did not get that. And I understand
 (20) that there's been an effort made to get us
 (21) information, but in terms of deposing the
 (22) witness, it's unavailable to us to review
 (23) at the moment.
 (24) **MR. RADCLIFFE:** I understand that you
 (25) met and conferred with Mr. Chusid last

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- (1) week. I don't know if your description is
 (2) accurate or not. I'm happy to tell you for
 (3) the specific documents that you've just
 (4) requested, I'm happy to tell you where they
 (5) are located on the CD that I provided to
 (6) you so that you can look at them right now,
 (7) if you wish.
 (8) **MS. ABRAMS:** Are you saying you have
 (9) an index of the documents?
 (10) **MR. RADCLIFFE:** I do not. I just
 (11) happen to know the particular file number
 (12) for those documents. I happen to know the
 (13) particular file numbers for a number of
 (14) documents, but that's one of which I know.
 (15) **MS. ABRAMS:** As I said, I reserve the
 (16) right to redepose the witness after I can
 (17) properly review the information that's been
 (18) given to us and not waste a lot of time
 (19) sitting here trying to look on a computer
 (20) at probably hundreds of pages.
 (21) **MR. RADCLIFFE:** Mr. Ruiz is here,
 (22) you don't have to do it. We want to get
 (23) finished. I understand your reservation.
 (24) I don't agree with it.
 (25) **MS. ABRAMS:** You don't have to agree

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- (1) with it.
 (2) **BY MS. ABRAMS:**
 (3) **Q.** How many pages are on the
 (4) questionnaires for the Honda study? Was it a
 (5) file drawer full?
 (6) **A.** No, I would say it's the backup
 (7) data that I had in the file which included
 (8) those and everything else that I had that
 (9) pertained to the Honda study is a stack of
 (10) paper from here to about here, so I'm
 (11) indicating of about five or six inches.
 (12) **MS. ABRAMS:** Thank you. Why don't
 (13) you -- we'll take you up on your offer.
 (14) You can let us know where those documents
 (15) are, if possible.
 (16) **MR. RADCLIFFE:** OKAY. Your files
 (17) that are named JK04DR02F001, that contains
 (18) the Honda study. And then there are backup
 (19) data. That contains -- that's
 (20) approximately 159 pages. That contains a
 (21) copy of the Honda study and various backup
 (22) information. And the files that follow
 (23) that, 002, 003 and a couple, there are
 (24) additional backup documents that may have
 (25) been used in the Honda study.

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- (1) **MS. ABRAMS:** Thank you.
- (2) **MR. RUIZ:** Can you tell me which disk
- (3) that is?
- (4) **MR. RADCLIFFE:** Yes, that would be CD
- (5) two.
- (6) **BY MS. ABRAMS:**
- (7) **Q.** Mr. Kelse, anything else in the 10
- (8) drawers that you have the key to that we've
- (9) been talking about?
- (10) **A.** There's nothing that I know that
- (11) hasn't been copied. I pointed out the file
- (12) drawers and records that pertain to New York
- (13) State Talc and I did observe the law firm
- (14) copying those files.
- (15) **Q.** Do you have correspondence files
- (16) with -- that contain correspondence with
- (17) Dr. Wylie?
- (18) **A.** Those would be in several files,
- (19) one of which is the chronological order of all
- (20) the analytical reports and so that file was
- (21) copied completely. I know that was, from what
- (22) I understand, it was provided before, but you
- (23) asked some questions about it, if it had been
- (24) updated because it had been copied five years
- (25) prior. So it was copied just last week so

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- (1) it's as up to date as what I have, but that's
- (2) where there would be some reference and some
- (3) correspondence with Dr. Wylie. I'm trying to
- (4) think where else you might find that.
- (5) **Q.** Do you have a file that just says
- (6) Dr. Wylie or Ann Wylie on it?
- (7) **A.** I do, yes.
- (8) **Q.** Did you produce that file?
- (9) **A.** I showed the attorneys where
- (10) that -- where those files were.
- (11) **Q.** How many files are there that are
- (12) just Dr. Wylie files?
- (13) **A.** It's just one file and the
- (14) correspondence has to do with the analytical
- (15) reports which is replicated in the
- (16) chronological list. There's also when they
- (17) copied the backup data for the Hull paper, I
- (18) also had in that file drawer backup data for
- (19) the cell study that we -- I think we discussed
- (20) briefly at the last deposition, that's the
- (21) Wylie Mossman, so it was a considerable amount
- (22) of correspondence linked to that study which
- (23) that was copied as well.
- (24) **Q.** When you say backup data, was that
- (25) with respect to the samples that you provided

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- (1) for that study?
- (2) **A.** It pertained to that and it
- (3) pertained to data that was shared with
- (4) Vanderbilt relative to particle sizing and
- (5) characterization and other work that was done
- (6) that went into the preparation of the
- (7) published paper.
- (8) **Q.** Do you -- last time we were
- (9) talking, you mentioned that when you were
- (10) first hired to work at R.T. Vanderbilt that
- (11) one of the people that was actually on your
- (12) hiring committee was Dennis Race, do you
- (13) remember that?
- (14) **A.** I mentioned that I had met Dennis
- (15) Race at the time, whether he was on a hiring
- (16) committee or not, I don't know if that's how
- (17) he would describe it, but yes, I did meet him.
- (18) **Q.** If I mischaracterized your
- (19) testimony, I apologize, that's what I
- (20) understood. Can you tell me -- and Dennis
- (21) Race is an attorney with Akin Gump; is that
- (22) right?
- (23) **A.** He is, yes.
- (24) **Q.** And he's still an attorney for R.T.
- (25) Vanderbilt?

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- (1) **A.** Yes.
- (2) **Q.** And he's been an attorney for R.T.
- (3) Vanderbilt since before you got to R.T.
- (4) Vanderbilt, correct?
- (5) **A.** That's correct.
- (6) **Q.** And he's -- do you know when he
- (7) first started working for the R.T. Vanderbilt
- (8) Company?
- (9) **A.** I don't.
- (10) **Q.** It's correct that Mr. Race is an
- (11) attorney that has -- and without giving me any
- (12) attorney-client information because I don't
- (13) want you to -- but you work with him on
- (14) asbestos litigation matters; is that right?
- (15) **MR. RADCLIFFE:** Objection, vague and
- (16) ambiguous. Beyond the scope.
- (17) **A.** I have communicated and worked with
- (18) Mr. Race on all issues that pertain to New
- (19) York State Talc and not just litigation, but
- (20) regulatory and legislative and scientific and
- (21) every avenue that we have been involved in
- (22) that I've been involved in.
- (23) **Q.** That includes asbestos litigation,
- (24) correct?
- (25) **MR. RADCLIFFE:** Same objections.

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- (1) **BY MS. ABRAMS:**
- (2) **Q.** I'm not saying it's the only thing
- (3) you talk about, but it's one of the things you
- (4) do.
- (5) **A.** It's certainly not.
- (6) **Q.** He does have that role as well as
- (7) other roles?
- (8) **MR. RADCLIFFE:** Same objection.
- (9) **A.** To the extent that I get involved
- (10) in cases involving New York State Talc, he's
- (11) aware of it and sometimes he'll be the first
- (12) person to tell me that this is a case and
- (13) you'll be contacted by the attorneys and that
- (14) sort of thing.
- (15) **Q.** So far as you know, he is involved
- (16) in the asbestos litigation and knows about
- (17) this case, correct?
- (18) **MR. RADCLIFFE:** Same objections.
- (19) **A.** Well, if you remember from my last
- (20) deposition you know it's like waving a red
- (21) flag in front of a bull when you use the term
- (22) asbestos, right, we don't have any asbestos in
- (23) the talc, whatever you want to call it.
- (24) **Q.** I apologize for raising the red
- (25) flag. Let me ask you this question, with

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- (1) respect to cases where the R.T. Vanderbilt
- (2) Corporation has been sued by people alleging
- (3) exposure to asbestos and asbestos-related
- (4) diseases, Mr. Race is someone who is involved
- (5) in that litigation, correct?
- (6) **MR. RADCLIFFE:** Same objection.
- (7) **A.** He is aware of it, exactly what his
- (8) involvement is, I'm not really familiar. I
- (9) know he's always involved as you would expect
- (10) he would be.
- (11) **Q.** Why would you expect that?
- (12) **A.** Because he's an attorney and he's
- (13) been working with the Vanderbilt company over
- (14) this whole span of years and I think they look
- (15) to Mr. Race for overviews as to what's going
- (16) on in the legal arena.
- (17) **MR. RADCLIFFE:** I'm going to object
- (18) and move to strike as speculative and lack
- (19) of foundation for that response and the
- (20) prior one.
- (21) **BY MS. ABRAMS:**
- (22) **Q.** Do you know the composition of the
- (23) board of directors of the R.T. Vanderbilt
- (24) Corporation?
- (25) **A.** No, I don't.

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- (1) **Q.** Do you know if Mr. Race serves on
- (2) the board of directors of the R.T. Vanderbilt
- (3) Corporation?
- (4) **A.** He is, yes.
- (5) **Q.** So he's currently a board member?
- (6) **A.** I know that, yeah.
- (7) **Q.** And do you know any other board
- (8) members that come to mind?
- (9) **A.** Well, certainly Hugh Vanderbilt,
- (10) the CEO, certainly Paul Vanderbilt, I believe
- (11) the CFO chief financial officer, Joe Dinaro
- (12) (phonetic) and quite frankly, beyond that, I'm
- (13) not sure. It's changed over time.
- (14) **Q.** You are obviously a salaried
- (15) employee of the R.T. Vanderbilt Corporation?
- (16) **A.** Yes.
- (17) **Q.** Do you own stock in the
- (18) corporation?
- (19) **A.** No.
- (20) **Q.** Do you have stock options?
- (21) **A.** Yes, there is a stock option for
- (22) salaried employees.
- (23) **Q.** And what is the nature of that
- (24) option?
- (25) **A.** Well, as I understand it and I'm

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- (1) not an expert at it, but there's a certain
- (2) portion or set amount of stock that's set
- (3) aside for and that stock stays static and as
- (4) employee's salary, salaried employees at
- (5) certain salary rankings retire or leave the
- (6) company, they have to sell that stock back to
- (7) this pool and then it's redistributed to the
- (8) remaining pool of individuals that are
- (9) eligible for that stock.
- (10) So it's -- and I think that's the way the
- (11) agreement works. So in other words, when I
- (12) retire, whatever I have and I don't even know
- (13) what it is, is then sold back to the company
- (14) at whatever the rate is at the time I retire
- (15) and then that same number of stocks are
- (16) distributed to others that are in the pool.
- (17) **Q.** So in other words, when you retire,
- (18) part of your retirement is going to be a
- (19) benefit from the sale of your stock option
- (20) that is based on the value of the stock at the
- (21) time you retire; is that right?
- (22) **A.** That's my understanding, yes.
- (23) **Q.** Was that stock option available and
- (24) a benefit when you first hired in in 1985?
- (25) **A.** Yes, I believe it was.

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(1) **Q.** So that's available to all salaried
(2) R.T. Vanderbilt employees at least since 1985,
(3) so far as you know?

(4) **MR. RADCLIFFE:** Objection. Calls for
(5) speculation.

(6) **BY MS. ABRAMS:**

(7) **Q.** Correct?

(8) **A.** That's my understanding.

(9) **Q.** Do you know whether the amount of
(10) your stock option, the amount of stock you --
(11) for your option, does that vary between
(12) employees or is there a flat rate per
(13) employee? Do you have any idea how that
(14) works?

(15) **A.** It's predicated on your rank, first
(16) of all, it's only available for managers and
(17) above and it's also linked to the number of
(18) years of service, so it will vary from person
(19) to person.

(20) **Q.** Do you -- is it ever the case
(21) that -- strike that. Do you receive annual
(22) bonuses from the R.T. Vanderbilt Corporation?

(23) **A.** Not as a strict rule, but
(24) generally, yes.

(25) **Q.** So it's not part of the deal, but

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(1) over time you have gotten a bonus, for the
(2) most part, every year?

(3) **MR. RADCLIFFE:** Objection, assumes
(4) facts not in evidence, vague and
(5) ambiguous.

(6) **A.** When the company has the funds to
(7) do that then they do and when they don't,
(8) they don't.

(9) **Q.** And over the last 10 years have you
(10) received bonuses every year?

(11) **A.** I have, yes.

(12) **Q.** How about over the last 20 years,
(13) do you recall any years when you did not
(14) receive a bonus?

(15) **A.** I believe there were a couple of
(16) years when no one did.

(17) **Q.** Do you remember approximately when
(18) that was?

(19) **A.** No, I don't.

(20) **Q.** Was that in the 1980s?

(21) **A.** I don't recall. It has a lot to do
(22) with the sales, obviously.

(23) **Q.** And during any time in your work at
(24) the R.T. Vanderbilt Company from 1985 until
(25) the present, other than your annual bonus did

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(1) you ever receive any special bonuses that
(2) didn't come on an annual basis?

(3) **A.** No, I haven't.

(4) **Q.** Do you know if employees receive
(5) other kinds of bonuses other than annual
(6) bonuses?

(7) **MR. RADCLIFFE:** Objection, calls for
(8) speculation.

(9) **A.** I'm not aware of any. I don't
(10) know.

(11) **Q.** Have you gotten any special awards
(12) from your employment at R.T. Vanderbilt from
(13) the company?

(14) **A.** No.

(15) **Q.** Now, we -- I want to turn your
(16) attention to what is stamped WES 00001 to WES
(17) 001361 and I'll represent to you that that is
(18) a set of documents that were produced to the
(19) plaintiff in this case in sometime around mid
(20) July. And I want to know if you have had an
(21) opportunity to review that set of documents
(22) and whether you can attest, sir, that these
(23) are business records of the company that are
(24) kept in the regular course of the company's
(25) business?

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(1) **MR. RADCLIFFE:** Objection, compound,
(2) vague, ambiguous.

(3) **BY MS. ABRAMS:**

(4) **Q.** And why don't you have an
(5) opportunity to look through these documents
(6) because I'm going to ask you to authenticate
(7) that these are true and correct copies, every
(8) single one of them, of R.T. Vanderbilt
(9) Company's business records unless your counsel
(10) wants to stipulate to that. You can go ahead
(11) and take a look at them, one at a time.

(12) **A.** Well, if I recognize these as
(13) documents from my files, I'll tell you that.
(14) If I don't recognize them, then I don't
(15) recognize them.

(16) **Q.** That's fine.

(17) **A.** That doesn't necessarily mean they
(18) may not have been in my blizzard of files.

(19) **Q.** Well, you've been produced as the
(20) custodian of these records and if there's a
(21) different custodian of the records who needs
(22) to come in here and authenticate them as
(23) business records, then we need to see that
(24) person.

(25) **MR. RADCLIFFE:** There's no different

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(1) custodian of records. Mr. Kelse is the
 (2) custodian of records -- let me withdraw
 (3) that and say Mr. Kelse is the custodian of
 (4) the records for the categories for which he
 (5) has been designated. If those documents
 (6) fall within categories for which he has
 (7) been designated, he is the person to answer
 (8) your questions, but I also think you should
 (9) define what business records mean because
 (10) that has yet to be defined.

BY MS. ABRAMS:

(11) **Q.** The question is still pending.
 (12)

(13) **MR. RUIZ:** In the letter where you
 (14) guys parsed out who was going to answer
 (15) what, you only referred to persons most
 (16) qualified. You didn't refer to custodians
 (17) of record. I think we said the
 (18) correspondence. The problem is we had more
 (19) document requests than we did categories.

(20) **MR. RADCLIFFE:** And they didn't match
 (21) up.

(22) **MR. RUIZ:** Right, because we had
 (23) specific documents we requested.

(24) **MR. RADCLIFFE:** What we did say was
 (25) that Mr. Kelse was the custodian of records

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(1) for the documents, the categories --
 (2) **MS. ABRAMS:** We can notice the
 (3) custodian of records for every single piece
 (4) of paper that you've produced, if you want
 (5) us to do that, we'll do it, or you can
 (6) stipulate that these are documents that
 (7) were kept in the regular course of business
 (8) that were made at or around the time of the
 (9) document and that they are true and correct
 (10) copies of those records, if you'd like to
 (11) stipulate to that, we can avoid that, but
 (12) at one point or another, someone from the
 (13) R.T. Vanderbilt Corporation is going to
 (14) have to attest that every single piece of
 (15) paper that you've produced is a business
 (16) record and is admissible at trial. And if
 (17) you don't want to do that the easy way,
 (18) we'll just do it the hard way and you can
 (19) bring someone here because we'll notice the
 (20) deposition and you can bring them out to
 (21) California, it's up to you.

(22) **MR. RADCLIFFE:** I don't think that
 (23) those are my only choices and we have
 (24) designated someone to respond to your
 (25) custodian of records designation and that

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(1) is Mr. Kelse for the categories for which
 (2) he is responsible. There are other
 (3) categories for which Mr. Vanderbilt has
 (4) been designated.

BY MS. ABRAMS:

(6) **Q.** The sales records, so other than
 (7) that, the sales records which are included in
 (8) there, there's several page of sales records.
 (9) You can skip over those, if you like.

(10) **A.** These right at the top is an
 (11) agreement.

(12) **MR. RADCLIFFE:** That's already been
 (13) taken care of.

(14) **Q.** Excuse me, can I have that one?

(15) **MR. RADCLIFFE:** There's already been
 (16) questions and answers on that one.

BY MS. ABRAMS:

(18) **Q.** Is this agreement are you
 (19) stipulating that the agreement which is WES
 (20) 001 through WES 0040 -- 41 is a true and
 (21) correct copy of business records kept, a
 (22) document kept in the ordinary course of
 (23) business?

(24) **MR. RADCLIFFE:** I'll stipulate that
 (25) the documents in your hands, including the

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(1) asset purchase agreement and the letter
 (2) were marked individually as exhibits for
 (3) Mr. Vanderbilt's deposition for which he is
 (4) the custodian of records and that you asked
 (5) him questions about whether or not they
 (6) were true and accurate and he responded on
 (7) the record while we were in California two
 (8) weeks ago, whenever it was.

(9) **MS. ABRAMS:** I don't believe we asked
 (10) him if they were records kept in the
 (11) ordinary course of business of the R.T.
 (12) Vanderbilt Corporation, did we?

(13) **MR. RADCLIFFE:** I think that -- it's
 (14) my recollection that you did, but I think
 (15) Mr. Ruiz has his transcript.

BY MS. ABRAMS:

(17) **Q.** Do you know whether these -- do you
 (18) have these records in your file?

(19) **A.** No, those, I do not.

(20) **Q.** So you can't attest to anything,
 (21) okay?

(22) **A.** Well, I can attest to these, these
 (23) are in my files.

(24) **MR. RADCLIFFE:** What you need to do
 (25) instead of saying "these," what you need to

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(1) do is read the numbers at the bottom right-
 (2) hand corner and you can say 6 through 20 or
 (3) whatever.

(4) **A. So you want to sit here and go
 (5) through this right now?**

(6) **MR. RADCLIFFE:** That's what she wants
 (7) to do.

(8) **BY MS. ABRAMS:**

(9) **Q.** May I help you, please?

(10) **A. This group here is from my files.**

(11) **Q.** Let me ask the questions, okay?

(12) **A. Sure. You want the whole stack?**

(13) **Q.** No, you keep the stack. So
 (14) document number 43, 44, 45 all up through 56,
 (15) these are documents that these are true and
 (16) correct copies of documents that you've kept
 (17) in your own personal files?

(18) **A. Yes.**

(19) **Q.** At the R.T. Vanderbilt Corporation?

(20) **A. Yes.**

(21) **Q.** And these are records that you keep
 (22) in the ordinary course of your business with
 (23) the R.T. Vanderbilt Corporation?

(24) **A. Linked to my job, yes.**

(25) **Q.** And these were made at or time of

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(1) the date of the document, you didn't create
 (2) them today or yesterday?

(3) **A. No.**

(4) **Q.** So this first document for,
 (5) example, September 23rd, 1987, that's when
 (6) that was written; is that right?

(7) **A. I believe so.**

(8) **Q.** And that's true for all of these
 (9) documents? These aren't things that are new,
 (10) these were business records that were kept at
 (11) the time they were made, correct?

(12) **A. Yes.**

(13) **MR. RADCLIFFE:** Objection. Compound,
 (14) vague and ambiguous.

(15) **MS. ABRAMS:** Did you get the answer?

(16) **THE COURT REPORTER:** Yes.

(17) **BY MR. ABRAMS:**

(18) **Q.** You can keep the sales records, sir.

(19) **A. That's what these are. It looks
 (20) like the next group of files, the next group
 (21) of files are part of that analytical,
 (22) chronological analytical history file that I
 (23) mentioned a number of times.**

(24) **Q.** Can I have that, please?

(25) **A. Hold on. I'm not finished putting**

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(1) **these together. This is going to be a tall
 (2) one, should be a tall one, if it was complete.**

(3) **Q.** I'll tell you what, why don't we go
 (4) off the record and take a five-minute break
 (5) and let you go through that whole stack, okay?

(6) **THE VIDEOGRAPHER:** Off the record at
 (7) 11:08.

(8) **(A brief recess was taken.)**

(9) **MR. ZAPALA:** Hi, this is Al Zapala,
 (10) I'm checking in.

(11) **THE VIDEOGRAPHER:** This is the
 (12) beginning of Tape Number 2. We're back on
 (13) the record at 12:06.

(14) **(Whereupon, the court reporter read
 (15) back the previous question.)**

(16) **BY MS. ABRAMS:**

(17) **Q.** Back on the record, Mr. Kelse, and
 (18) you have spent the last hour looking at every
 (19) single page of the first set of documents that
 (20) was produced by the R.T. Vanderbilt
 (21) Corporation to determine whether each and
 (22) every page of those documents was a
 (23) document -- a true and correct copy of a
 (24) document that was kept by the R.T. Vanderbilt
 (25) Corporation in the regular course of their

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(1) business made at or around the time that the
 (2) document was created. Can you tell
 (3) me, sir, can you read the first number on the
 (4) document there, WES --

(5) **A. -- 000069.**

(6) **MR. RADCLIFFE:** Let me just object.

(7) **MS. ABRAMS:** Let me finish my
 (8) question, please.

(9) **MR. RADCLIFFE:** You made a question
 (10) and I'm going to make an objection to it.
 (11) The first question was a long predicate, I
 (12) disagree with it, incorrect statement of
 (13) facts. It's compound.

(14) **MS. ABRAMS:** can you read the
 (15) question back, please, because I wasn't
 (16) finished with my question. I would
 (17) appreciate it if you would let me finish
 (18) the question and then you can make your
 (19) objection. So let's get on the record that
 (20) question that's pending and let me finish
 (21) the question.

(22) **(Whereupon, the court reporter read
 (23) back the previous question.)**

(24) **Q.** Mr. Kelse, did you spend the last
 (25) hour looking at every single page of the

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- (1) documents of the stack in front of you which
 (2) was the first production of the R.T.
 (3) Vanderbilt Corporation of documents?
 (4) **A. Yes, I did.**
 (5) **MR. RADCLIFFE:** Objection, incorrect
 (6) statement of facts. Go ahead.
 (7) **BY MS. ABRAMS:**
 (8) **Q.** Did you look at every single page
 (9) of that stack in front of you?
 (10) **A. Yes.**
 (11) **Q.** Can you give me the first number on
 (12) the top of that stack?
 (13) **A. WES 000069.**
 (14) **Q.** And can you give me the last
 (15) number, please?
 (16) **A. The last number WES 001361.**
 (17) **Q.** And with the exception of several
 (18) documents we're going to talk about, is every
 (19) single one of those documents in that series,
 (20) WES 000069 through 1361 a document, a true and
 (21) correct copy of a document kept by the R.T.
 (22) Vanderbilt Corporation in the regular course
 (23) of its business and a document that was made
 (24) at or around the time that it says on the
 (25) document that it was created?

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- (1) **MR. RADCLIFFE:** Objection, vague,
 (2) ambiguous, compound, incorrect statement of
 (3) facts.
 (4) **BY MS. ABRAMS:**
 (5) **Q.** Do you understand the question?
 (6) **A. I believe so.**
 (7) **Q.** And is that correct, other than the
 (8) exceptions which we're going to talk about --
 (9) **A. Yes, it is.**
 (10) **Q.** -- every one of those documents is
 (11) a business record of the R.T. Vanderbilt
 (12) Corporation that you found in your files?
 (13) **MR. RADCLIFFE:** Same objections.
 (14) **BY MS. ABRAMS:**
 (15) **Q.** Can you answer the question?
 (16) **A. I recognize them all, yes.**
 (17) **Q.** Thank you. Now, let's talk about
 (18) the exceptions that you tagged. Which
 (19) documents did you tag, sir?
 (20) **A. I tagged a couple of documents that**
 (21) **I didn't recognize --**
 (22) **Q.** All right.
 (23) **A. -- as being in my files.**
 (24) **Q.** Why don't you give me the first
 (25) document that you recognize -- that you don't

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- (1) recognize?
 (2) **A. Okay, and I'll try to keep these in**
 (3) **order for you.**
 (4) **Q.** I'll take those from you. What's
 (5) the Bate number on that?
 (6) **A. This is WES 000363.**
 (7) **Q.** And how many pages, what's the last
 (8) page of that document you don't recognize?
 (9) **A. The last page would be WES 000372.**
 (10) **Q.** Okay, can I have that. Thank you.
 (11) This is entitled Analytical Report on Ceiling
 (12) Samples Taken From Apartment Winston Towers,
 (13) Cliffside Park, New Jersey, is that correct?
 (14) That's what this says, yes? I just want to
 (15) identify it for the record.
 (16) **A. I didn't recognize it.**
 (17) **Q.** That's what the document is,
 (18) though?
 (19) **MR. RADCLIFFE:** He doesn't have it in
 (20) front of him.
 (21) **A. That's what it says, yes.**
 (22) **Q.** Can you read for us the first page
 (23) of that?
 (24) **A. Analytic report on ceiling samples**
 (25) **taken from Apartment 25 through -19 of Winston**

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- (1) **Towers, Cliffside Park, New Jersey.**
 (2) **Q.** Thank you. And what's the next
 (3) document that you don't recognize?
 (4) **A. Actually.**
 (5) **Q.** And strike that. Do you know where
 (6) this document came from, WES 363?
 (7) **A. It came from my files, I just don't**
 (8) **recognize it.**
 (9) **Q.** Okay. This one?
 (10) **A. This one appears to be linked to**
 (11) **that and this is a Report of Investigation**
 (12) **dated 1993. Do you want the number?**
 (13) **Q.** Please.
 (14) **A. WES 0000643.**
 (15) **Q.** And 644, correct? The two page are
 (16) 643 and 644?
 (17) **A. Yes.**
 (18) **Q.** And other than that, these are all
 (19) business records that you kept in the regular
 (20) course of your business as the risk manager
 (21) for the R.T. Vanderbilt Corporation, correct?
 (22) **A. I recognize them as being in my**
 (23) **files, yes.**
 (24) **Q.** And then, I'm sorry, I think you
 (25) have one more tag on there?

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- (1) **A. Yes, there was one other. This**
 (2) **is -- these look like computer printouts.**
 (3) **Q. This is WES 000972 through 990.**
 (4) **These are tox line printouts --**
 (5) **A. Yes.**
 (6) **Q. -- you don't recognize?**
 (7) **A. I don't.**
 (8) **Q. Do you know where they came from?**
 (9) **A. Again, they could be in my file, I**
 (10) **just didn't recognize them.**
 (11) **Q. These are reports of studies?**
 (12) **A. Abstracts of published papers.**
 (13) **Q. Do you know whether you have the**
 (14) **actual papers in your files for those**
 (15) **abstracts?**
 (16) **A. I would have to look through each**
 (17) **of these. I may have some, I may not have**
 (18) **others. Do you want me to do that?**
 (19) **Q. We can maybe do that later, but you**
 (20) **don't recognize the abstracts?**
 (21) **A. I don't recognize the abstracts.**
 (22) **Q. And are there any other documents**
 (23) **that you cannot attest are business records of**
 (24) **the corporation?**
 (25) **A. No, all the rest are familiar to**

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- (1) **me.**
 (2) **Q. Thank you, sir. Now, this next**
 (3) **production, the second production of documents**
 (4) **was in three sections. The first section is**
 (5) **WES 001362 through 1742 and these appear to be**
 (6) **files regarding International Talc Company.**
 (7) **Can you tell me if you recognize these**
 (8) **files? And I'll represent to you that we**
 (9) **received these last Friday so they were**
 (10) **recently produced. Did they come out of your**
 (11) **file that you mentioned, International Talc**
 (12) **files that you told us about?**
 (13) **MR. RADCLIFFE: Objection to the form**
 (14) **of the question. It's compound. Predicate**
 (15) **is a statement, it's not a question. It's**
 (16) **incorrect.**
 (17) **A. So you want me to look through**
 (18) **these and tell you whether I recognize these?**
 (19) **Q. That's right, and if these are**
 (20) **records from your files that you mentioned.**
 (21) **Why don't we go off the record for a minute.**
 (22) **THE VIDEOGRAPHER: Off the record at**
 (23) **12:17.**
 (24) **(A brief recess was taken).**
 (25) **THE VIDEOGRAPHER: We're back on the**

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- (1) **record at 12:35.**
 (2) **BY MS. ABRAMS:**
 (3) **Q. Mr. Kelse, you've had an**
 (4) **opportunity to look at Bates stamp number 1362**
 (5) **through 1742 which appear to be records of**
 (6) **International Talc; is that correct?**
 (7) **A. That's correct.**
 (8) **Q. And are those true and correct**
 (9) **copies of records that you have kept in your**
 (10) **file as a risk manager for the R.T. Vanderbilt**
 (11) **Company?**
 (12) **MR. RADCLIFFE: Objection, vague and**
 (13) **ambiguous.**
 (14) **A. I don't recognize them. Those are**
 (15) **not records that I keep.**
 (16) **Q. Those are not records that you can**
 (17) **recognize or can authenticate for us?**
 (18) **A. That's correct.**
 (19) **Q. Bates stamp 1743 through 1969,**
 (20) **these are mineralogical studies, do you**
 (21) **recognize these?**
 (22) **A. With the exception of one document,**
 (23) **I recognize them all.**
 (24) **MR. RADCLIFFE: You have two tabs in**
 (25) **there.**

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- (1) **BY MS. ABRAMS:**
 (2) **Q. This is Bates 1824 and it's**
 (3) **entitled Asbestos Selected Cancer, is that the**
 (4) **one you don't recognize?**
 (5) **A. I don't.**
 (6) **Q. And that is 1824 through 1835. You**
 (7) **don't believe this was kept in your file, sir?**
 (8) **A. I don't recognize it. I couldn't**
 (9) **tell you whether it was there or not.**
 (10) **Q. Okay. And we also tagged Bates**
 (11) **1891 through 1894 and some blank pages and**
 (12) **I'll represent to you that the next number in**
 (13) **the series is 1905. So this would be the**
 (14) **documents 1891 through 1905.**
 (15) **This is a Bureau of Mines Report of**
 (16) **Investigation in 1979 entitled Relationship of**
 (17) **Mineral Habit to Size Characteristics for**
 (18) **Tremolite Cleavage Fragments and Fibers by**
 (19) **William Campbell, Eric Steel, Robert Virta and**
 (20) **Michael Eisner. Do you actually recognize**
 (21) **this study as one that you have in your**
 (22) **possession?**
 (23) **A. Yes, I do.**
 (24) **Q. This document here is not a**
 (25) **complete document; is that correct?**

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- (1) **A. Right.**
- (2) **Q.** Some of the pages are blank?
- (3) **A. Yes.**
- (4) **Q.** And I ask your attorney if you
- (5) would provide the complete document. You have
- (6) the complete document, correct?
- (7) **MR. RADCLIFFE:** It's been provided.
- (8) It's on the CD that I've given to
- (9) you.
- (10) **THE WITNESS:** Yes.
- (11) **MS. ABRAMS:** Thank you.
- (12) **MR. RADCLIFFE:** Probably several
- (13) times.
- (14) **BY MS. ABRAMS:**
- (15) **Q.** Other than that, you recognize all
- (16) the documents in that series 1743 through 1969
- (17) with the exception of the asbestos selected
- (18) cancer document?
- (19) **A. I do.**
- (20) **Q.** And these are all true and correct
- (21) copies of documents that you keep in your own
- (22) files as business records?
- (23) **A. Yes.**
- (24) **MR. RADCLIFFE:** Objection, vague and
- (25) ambiguous.

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- (1) **BY MS. ABRAMS:**
- (2) **Q.** And they were created at the time
- (3) that the writings on the documents indicate;
- (4) is that correct?
- (5) **A. Yes, as indicated.**
- (6) **Q.** Mr. Kelse, the rest of this
- (7) production starting with 1970 are workers'
- (8) compensation files. Do you keep workers'
- (9) compensation files in your office?
- (10) **A. Some.**
- (11) **Q.** And do you know whether these files
- (12) were copied from your office, do you have any
- (13) idea, one way or the other?
- (14) **A. If that stack is from last week,**
- (15) **they were, yes.**
- (16) **Q.** Do you keep redacted copies of
- (17) workers' compensation files in your office, in
- (18) order words, where the names and Social
- (19) Security numbers and other information is
- (20) blocked out?
- (21) **A. I do not.**
- (22) **Q.** So the files in your office are
- (23) complete files that have all the information
- (24) in an unredacted form; is that right?
- (25) **A. Yes.**

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- (1) **MS. ABRAMS:** And we have -- there's
- (2) been an offer made by Mr. Radcliffe that he
- (3) will look through the workers' compensation
- (4) files and let us know if he'll stipulate to
- (5) business records by September 11th.
- (6) **MR. RADCLIFFE:** Correct.
- (7) **BY MS. ABRAMS:**
- (8) **Q.** And we will consider that offer and
- (9) at least forego for this deposition your going
- (10) through every single one of those files,
- (11) okay?
- (12) **A. Thank you.**
- (13) **MS. ABRAMS:** With that, I think we'll
- (14) break for lunch.
- (15) **THE VIDEOGRAPHER:** Off the record at
- (16) 12:40.
- (17) **(A luncheon recess was taken.)**
- (18) **THE VIDEOGRAPHER:** We're back on the
- (19) record at 1:51.
- (20) **BY MS. ABRAMS:**
- (21) **Q.** Good afternoon, Mr. Kelse.
- (22) **A. Afternoon.**
- (23) **Q.** We're back from lunch and I would
- (24) like now to move on to the exhibits that you
- (25) produced at your last deposition and ask you,

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- (1) I've brought the exhibits with me, we got them
- (2) from the court reporter. I'll ask you if you
- (3) could just take a look at that set of
- (4) documents which were attached to your prior
- (5) deposition and let us know if those were your
- (6) records that you kept in the regular course of
- (7) your business and that they were made at or
- (8) around about the time indicated on the
- (9) document. I believe last time you did tell us
- (10) those were your records, you went through your
- (11) files and you brought them?
- (12) **A. Yes, I did.**
- (13) **Q.** So can you verify for us that those
- (14) are business records of the R.T. Vanderbilt
- (15) Company?
- (16) **A. Three copies of the same thing.**
- (17) **Q.** We marked what you brought. Can I
- (18) see that?
- (19) **A. That's what it looks like. I'd**
- (20) **better take a quick look.**
- (21) **Q.** Are those your business records
- (22) sir?
- (23) **A. Yes.**
- (24) **Q.** And all of these documents were
- (25) created at or around the time indicated on the

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- (1) documents?
- (2) **A. Yes.**
- (3) **Q.** Today your counsel handed me a
- (4) stack of pages which I'm going to now mark for
- (5) this record. The first document is entitled
- (6) Workers Comp Mesothelioma Deaths Claimed. The
- (7) second page of that document is workers'
- (8) comp, WC Non Malignant Pulmonary claims GTC
- (9) and this is a four page document. Can you
- (10) take a look at that and let me know if that's
- (11) something that was produced in your file?
- (12) **A. Yes, it is and actually, the table**
- (13) **you have is an extension of this.**
- (14) **Q.** So let's add these next two pages
- (15) and mark that whole stack as an exhibit.
- (16) **A. Right, they actually go like this.**
- (17) **Q.** All right.
- (18) **A. I think that's the complete**
- (19) **package.**
- (20) **Q.** So this is going to be Exhibit 9 to
- (21) the deposition and it's a seven-page document.
- (22) **(Exhibit Number 9 was marked for identification.)**
- (23) **BY MS. ABRAMS:**
- (24) **Q.** And where did you find that
- (25) document, sir, Exhibit 9 in your files?

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- (1) **A. Where -- in -- the file was labeled**
- (2) **Compensation Claims.**
- (3) **Q.** And is this the entirety of that
- (4) file?
- (5) **A. No, no, it's not.**
- (6) **Q.** What else is in that file?
- (7) **A. There were four mesothelioma**
- (8) **compensation claims which were copied last**
- (9) **week and there are -- there was a summary list**
- (10) **which was part of that.**
- (11) **Q.** Other than these pages, there's a
- (12) summary list?
- (13) **A. That is the summary list.**
- (14) **Q.** Okay, so this -- you have produced
- (15) the summary list?
- (16) **A. You have it there.**
- (17) **Q.** Yes, anything else in the file that
- (18) you haven't produced, other than the claims
- (19) themselves?
- (20) **MR. RADCLIFFE:** Objection, vague and
- (21) ambiguous.
- (22) **A. No, I indicated which were the**
- (23) **compensation files that were taken out and**
- (24) **they were copied and included in that was the**
- (25) **summary table, the list that I gave you, and**

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- (1) **the files of the mesothelioma claims,**
- (2) **information that I had on those, and that's**
- (3) **what was in the file.**
- (4) **Q.** So it's your understanding that
- (5) Exhibit 9 that I'm holding right now was also
- (6) copied in the production?
- (7) **A. Yes, it was in the file.**
- (8) **Q.** And is there a particular reason
- (9) why you also brought this with you today?
- (10) **A. Other than it's -- I like to try to**
- (11) **have summary papers rather than -- so I**
- (12) **brought it because if we did discuss any of**
- (13) **these, that would be helpful for me to**
- (14) **reference.**
- (15) **Q.** Okay. Next is a Emanuel Rubin,
- (16) November 6, 2006 letter to you, Mr. Kelse, and
- (17) this is a four-page document which we'll mark
- (18) as Exhibit 10.
- (19) Would you take a look at that and we can
- (20) mark it in a minute. Was that also in the
- (21) file that you're speaking about?
- (22) **A. Yes, it was.**
- (23) **Q.** Okay, and is this a summary --
- (24) strike that. Did you send certain information
- (25) to Dr. Rubin for his review?

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- (1) **A. I sent him the files that we had on**
- (2) **the four mesothelioma workman's comp cases**
- (3) **which were the same as what was produced to**
- (4) **you.**
- (5) **Q.** Did you send Dr. Rubin a version of
- (6) the files that were redacted or unredacted?
- (7) In other words, were there black marks that
- (8) marked out the names and the information of
- (9) the people or were they sent to Dr. Rubin
- (10) without black marks on them?
- (11) **A. They were unredacted, without the**
- (12) **black marks.**
- (13) **(Exhibit Number 10 was marked for**
- (14) **identification.)**
- (15) **BY MS. ABRAMS:**
- (16) **Q.** Is it correct, sir, that Dr. Rubin
- (17) is not a treating physician for any of those
- (18) individuals?
- (19) **A. That's correct.**
- (20) **Q.** And he is your consultant?
- (21) **MR. RADCLIFFE:** Objection, vague and
- (22) ambiguous.
- (23) **BY MS. ABRAMS:**
- (24) **Q.** Strike that. Who is Dr. Rubin and
- (25) why did you send him the information?

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- (1) **A. Dr. Rubin is a pathologist who we**
 (2) **consulted on for advice regarding the content**
 (3) **of the four mesothelioma claims, the files**
 (4) **that we sent to him.**
 (5) **Q. Did you send Dr. Rubin actual**
 (6) **pathology?**
 (7) **A. When it was available.**
 (8) **Q. How did you get the pathology?**
 (9) **A. I think it was only one case where**
 (10) **there was actually tissue available. I don't**
 (11) **believe he looked at the tissue unless he**
 (12) **states it in his letter. There was another**
 (13) **pathologist who did look in one case at tissue**
 (14) **and Dr. Rubin reviewed her analysis.**
 (15) **Q. What pathologist was that?**
 (16) **A. I would have to look at the file.**
 (17) **He may have mentioned her name, she was in**
 (18) **London, Ontario.**
 (19) **Q. Perhaps you can review the record.**
 (20) **A. Sure. Dr. Bertha Garcia,**
 (21) **G-A-R-C-I-A.**
 (22) **Q. And do you know why Dr. Rubin**
 (23) **selected Dr. Garcia to review the pathology?**
 (24) **A. Dr. Rubin didn't select Dr. Garcia**
 (25) **to review the pathology, that was done prior**

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- (1) **to Dr. Rubin doing the report.**
 (2) **Q. Who selected Dr. Garcia to review**
 (3) **the pathology?**
 (4) **A. I sent that file to Dr. Morgan,**
 (5) **Keith Morgan, in London, Ontario Hospital and**
 (6) **Dr. Morgan selected that pathologist**
 (7) **apparently because he knew her.**
 (8) **Q. Who is Dr. Morgan?**
 (9) **A. He's a pulmonary specialist.**
 (10) **Q. What is his role? Is he a treating**
 (11) **doctor for any of these people?**
 (12) **A. No.**
 (13) **Q. What is his role?**
 (14) **A. He's a physician that we knew of.**
 (15) **He had formerly worked at NIOSH as the**
 (16) **director or their pulmonary division in**
 (17) **Morgantown, I believe.**
 (18) **Q. So you retained Dr. Morgan to**
 (19) **review information for R.T. Vanderbilt**
 (20) **Company?**
 (21) **A. To review that file, yes.**
 (22) **Q. That one particular file?**
 (23) **A. I think there were two files. I**
 (24) **think these were cases, were two cases in**
 (25) **1995. Those were the two files.**

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- (1) **Q. He reviewed these cases in order to**
 (2) **render an opinion for purposes of the workers**
 (3) **compensation cases, correct?**
 (4) **A. He reviewed the files to advise me**
 (5) **as to his impressions of the files as to**
 (6) **whether or not the cases appear to have been**
 (7) **properly diagnosed to begin with and any other**
 (8) **information he saw in the file because we**
 (9) **needed assistance of someone was qualified to**
 (10) **review those files.**
 (11) **Q. Did you utilize that opinion in any**
 (12) **way in objecting to the workers' compensation**
 (13) **claim of the claimant?**
 (14) **A. I would have to look at the dates,**
 (15) **but I believe the claims had already been**
 (16) **awarded. It was not a part of that process.**
 (17) **Q. So you didn't submit Dr. Morgan's**
 (18) **report to the compensation people?**
 (19) **A. No.**
 (20) **Q. And it wasn't part of any appeal?**
 (21) **A. No, as I recall, it wasn't.**
 (22) **Q. Did you ever use Dr. Morgan to**
 (23) **render opinions for purposes of disputing**
 (24) **workers' compensation claims?**
 (25) **A. No.**

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- (1) **Q. Have you reviewed the workers'**
 (2) **compensation files that were produced to my**
 (3) **office prior to your testimony today?**
 (4) **A. I've seen them, yes.**
 (5) **Q. If I told you that there were**
 (6) **reports from Dr. Morgan that were in the**
 (7) **workers' compensation files, you would**
 (8) **assume -- your testimony is that those would**
 (9) **not have been submitted to the claims board,**
 (10) **those would have been for R.T. Vanderbilt's**
 (11) **own in-house use?**
 (12) **A. That's my knowledge, yes.**
 (13) **Q. In order to -- well, strike that.**
 (14) **How did you get the pathology in one of these**
 (15) **cases in order to have someone review it?**
 (16) **A. Well, in the two cases in 1995, we**
 (17) **actually asked for releases for the medical**
 (18) **records which we obtained signed releases and**
 (19) **we used them for the medical records that**
 (20) **the -- that were pertinent to the claim.**
 (21) **Q. Who did you ask to release the**
 (22) **information?**
 (23) **A. I think -- well, in the files that**
 (24) **were copied, those release forms, a copy of**
 (25) **the release form is there and the release form**

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(1) is a release form to Vanderbilt.

(2) Q. Who did you ask to obtain release
(3) information? Who released the information to
(4) you?

(5) A. In one case I believe it was the
(6) individual while he was still alive and then
(7) the other I believe it was his wife.

(8) Q. What did you tell the individual
(9) who was still alive and his wife that you
(10) were -- why were you seeking that information?

(11) A. Because we wanted to know as much
(12) about the diagnosis as possible. We felt that
(13) it would be important for the company to
(14) understand that and, even more importantly, it
(15) would be important information to also share
(16) with the individual to the extent that it was
(17) any different information than he already had
(18) so it would have been shared with him.

(19) Q. And it's correct, is it not,
(20) Mr. Kelse, that in each one of those cases
(21) where you asked the claimant or his spouse to
(22) release information, ultimately you used that
(23) information to dispute the worker's claim for
(24) compensation?

(25) MR. RADCLIFFE: Objection,

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(1) answer back, please?

(2) (Whereupon, the court reporter read back
(3) the previous answer.)

(4) BY MS. ABRAMS:

(5) Q. Well, you disputed the claim,
(6) correct?

(7) MR. RADCLIFFE: Same objections.

(8) A. For the reason that I stated.

(9) Q. Did you dispute the claim, sir?

(10) A. The carrier disputed the claim.

(11) Q. The carrier disputed the claim in a
(12) case where you asked for information from the
(13) claimant or the spouse of the claimant and you
(14) represented that it was because you were
(15) interested in finding out more about their
(16) disease, correct?

(17) MR. RADCLIFFE: Objection,
(18) argumentative, misstates previous
(19) testimony.

(20) A. Well, in terms of last case,
(21) actually, that one case, the data that was
(22) presented in the medical records our medical
(23) consultants felt that it was sufficient that,
(24) in fact, it was a confirmed mesothelioma. So
(25) our own records, you know, confirmed it. We

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(1) argumentative.

(2) BY MS. ABRAMS:

(3) Q. That's true, isn't it?

(4) A. Actually, it's not. I don't recall
(5) using the information to dispute any of those
(6) claims.

(7) Q. So it's your testimony here today
(8) that the R.T. Vanderbilt Company or its
(9) carrier did not dispute any of the claims
(10) where you sought information from the
(11) claimant's personal information and medical
(12) information by authorization?

(13) MR. RADCLIFFE: Objection,
(14) argumentative, misstates previous
(15) testimony, assumes facts not in evidence,
(16) calls for speculation.

(17) A. The most recent case that involved
(18) in 2005, the insurance carrier did contest it
(19) and it was -- eventually it was awarded
(20) regardless, but I don't recall our using any
(21) information we collected in respect to
(22) contesting that claim. Most of the issue
(23) there was other or competing risk, other types
(24) of work.

(25) MS. ABRAMS: Could you read the

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(1) didn't dispute the diagnosis.

(2) Q. Move to strike as nonresponsive.

(3) Did you dispute the claim, sir?

(4) A. The carrier disputed the claim.

(5) Q. And did you tell the individual who
(6) you sought information from, the worker, or
(7) did you tell the spouse of the worker who had
(8) died that in giving you information that the
(9) R.T. Vanderbilt Company or its carrier might
(10) ultimately dispute their workers' compensation
(11) claim?

(12) MR. RADCLIFFE: Objection,
(13) argumentative, misstates previous
(14) testimony, assumes facts not in evidence.

(15) BY MS. ABRAMS:

(16) Q. Did you or did you not tell them
(17) that?

(18) MR. RADCLIFFE: Same objection.

(19) A. I did not tell them that.

(20) Q. In fact, sir, wasn't that a real
(21) possibility, at the time that you asked for an
(22) authorization from a worker or the spouse of a
(23) deceased worker that you needed information in
(24) their medical file that ultimately for one
(25) reason or another the R.T. Vanderbilt Company

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(1) or its carrier might actually dispute their
 (2) workers' compensation claim? Wasn't that a
 (3) possibility at the time?
 (4) **MR. RADCLIFFE:** Objection, calls for
 (5) speculation, assumes facts not in evidence
 (6) argumentative.
 (7) **A.** It certainly was not our -- that
 (8) was not why we asked for the information. We
 (9) were essentially trying to learn as much as we
 (10) could about the case.
 (11) **Q.** Move to strike as nonresponsive.
 (12) Could you read the question back to the
 (13) witness, please?
 (14) (Whereupon, the court reporter read
 (15) back the previous question.)
 (16) **MR. RADCLIFFE:** Same objections.
 (17) **A.** Well, my answer to that is it's not
 (18) something that actually occurred to us. We
 (19) were interested in the information. We were
 (20) not thinking of it in terms of using it to
 (21) dispute a compensation claim and in that case,
 (22) to the best of my knowledge, it wasn't used in
 (23) that way.
 (24) **Q.** Sir, how many workers' compensation
 (25) claims have been filed against the R.T.

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(1) Vanderbilt Company for cancer related alleged
 (2) asbestos exposures?
 (3) **A.** Do you have the list?
 (4) **Q.** And I'm showing you Exhibit 9.
 (5) **A.** Right, I think I have a copy of it
 (6) here.
 (7) **Q.** Why don't you just take Exhibit 9.
 (8) **A.** Okay. As I've indicated here
 (9) there's -- to my knowledge there are seven.
 (10) **Q.** Seven mesothelioma claims?
 (11) **A.** No, no, four mesothelioma claims
 (12) and three claims related to lung cancer.
 (13) **Q.** Well, let's start with the four
 (14) mesothelioma claims, sir. In each one of
 (15) those claims did R.T. Vanderbilt or its
 (16) insurance carrier for one reason or another
 (17) dispute that R.T. Vanderbilt was liable for
 (18) that claim?
 (19) **A.** I don't know about the first
 (20) three. I do know the last one was contested
 (21) for the reason that I stated. The other
 (22) three, I would have to go back and look in the
 (23) records to see whatever the insurance
 (24) carrier's documents reflected in that regard.
 (25) **Q.** Let me ask it this way: Do you

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(1) know of any workers' compensation claim where
 (2) it was claimed that a mesothelioma was caused
 (3) from exposure to asbestos by the R.T.
 (4) Vanderbilt company that R.T. Vanderbilt or its
 (5) carrier did not dispute the claim?
 (6) **A.** Well, R.T. Vanderbilt is really not
 (7) disputing claims, the carriers are disputing
 (8) claims. I don't know if that is a routine
 (9) process for them or not. They are able to
 (10) gain access to every claim -- to those records
 (11) to defend their circumstance. They can hire
 (12) their own independent medical review expert,
 (13) if they wish.
 (14) It is sort of running on its own track.
 (15) The carriers more or less run on their own
 (16) track. They will call us and ask for
 (17) information, such as their employment
 (18) history, things of that nature, but very
 (19) often, all of that sort of operates in a
 (20) separate sphere and you find out that a claim
 (21) has been paid that you had no idea was even
 (22) submitted.
 (23) So you get claims runs and you'll see a
 (24) name and date and it will have a status, open,
 (25) closed, contested and very often that's the

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(1) only notice that the company will see.
 (2) **Q.** Move to strike as nonresponsive.
 (3) Could you read the question back, please?
 (4) (Whereupon, the court read back the
 (5) previous question.)
 (6) **BY MS. ABRAMS:**
 (7) **Q.** Do you know of any such claim?
 (8) **MR. RADCLIFFE:** Same objections.
 (9) **A.** Well, again I'm having a hard time
 (10) answering it for a number of reasons. One is
 (11) there's no asbestos.
 (12) **Q.** If you can't answer it, just say
 (13) you can't answer it. Can you answer the
 (14) question? Do you know of any claim where
 (15) either the carrier or R.T. Vanderbilt did not
 (16) dispute the claim when there was an allegation
 (17) of exposure to asbestos from R.T. Vanderbilt's
 (18) product for a mesothelioma? Can you answer
 (19) that question?
 (20) **MR. RADCLIFFE:** Objection, different
 (21) question, vague, ambiguous, compound,
 (22) assumes facts not in evidence.
 (23) **A.** I don't, other than that one case I
 (24) mentioned. I don't know the status of whether
 (25) they were contested or not. I can tell you

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(1) **they should have been, whether they were or**
 (2) **not, I would have to look at the file.**

(3) **Q.** And it's correct, Mr. Kelse, that
 (4) you told the carriers in every instance that
 (5) you knew of to dispute the claim because it's
 (6) R.T. Vanderbilt's position that there isn't
 (7) any asbestos in their product and it doesn't
 (8) cause mesothelioma, isn't that construct?

(9) **A.** It's more than a position, that is
 (10) our understanding.

(11) **Q.** And that's your directive to the
 (12) carrier, isn't it, sir?

(13) **A.** Well, it's hard to have a disease
 (14) that people associate with asbestos when you
 (15) don't have that exposure.

(16) **Q.** Move to strike as nonresponsive.
 (17) Could you read the question back, please?

(18) (Whereupon, the court reporter read
 (19) back the previous question.)

(20) **A.** The carrier would contest a case
 (21) based on that. If you don't have -- if an
 (22) allegation of asbestos exists because they're
 (23) saying it's associated with exposure to your
 (24) talc and you don't have asbestos in your talc,
 (25) I would expect the carrier to dispute that

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(1) **claim, that association.**

(2) **Q.** So that's correct, all of the --
 (3) the carrier disputes every claim for an
 (4) allegation of asbestos exposure for
 (5) mesothelioma from R.T. Vanderbilt's product at
 (6) the direction of R.T. Vanderbilt, isn't that
 (7) right?

(8) **MR. RADCLIFFE:** Objection,
 (9) argumentative.

(10) **A.** I don't think I said that we
 (11) directed them. I think I said that they
 (12) operate pretty much independently. Sometimes
 (13) we don't even know whether a claim has been
 (14) settled until we see it.

(15) **Q.** A mesothelioma claim?

(16) **A.** The last claim we were aware of,
 (17) the others we heard about later.

(18) **Q.** If that's your testimony here that
 (19) you did not hear about the mesothelioma claims
 (20) until they were decided?

(21) **MR. RADCLIFFE:** Objection,
 (22) argumentative, misstates facts.

(23) **A.** The last one no, we were very
 (24) actively involved in the last one because the
 (25) individual was alive, he's filed a claim. It

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(1) **was an active suit. The one prior to that was**
 (2) **an individual 87-year-old gentleman who died**
 (3) **two years before we even knew there was a**
 (4) **claim. That claim was petitioned by his**
 (5) **wife. We had no awareness of it until we saw**
 (6) **it on a loss run two years later.**

(7) **Q.** And what did you do about that?

(8) **A.** The same thing that we did with the
 (9) claims in 1995, we tried to collect as much
 (10) information as possible because we think it's
 (11) important to know the circumstances of the
 (12) case.

(13) **Q.** And what did you do about the
 (14) claims?

(15) **A.** I don't recall what we did about
 (16) them. I was, again, more interested in the
 (17) characteristics of the case, was the diagnosis
 (18) correct or not correct or did you know or not
 (19) know, what was his work history, could this
 (20) have been something that may be linked to
 (21) other types of work, yes or no.

(22) These were the types of questions that we
 (23) would want to look at, obviously, because if
 (24) you don't have answers to those
 (25) questions, that's a serious medical issue and

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(1) **you would hate to think that exposure to your**
 (2) **talc would produce that type of an end point**
 (3) **disease and we would be very concerned if we**
 (4) **felt that that was the case.**

(5) **If the evidence pointed in that direction,**
 (6) **that would be extremely concern -- a major**
 (7) **concern so that's why these cases were**
 (8) **important to us, we need to know.**

(9) **Q.** Move to strike as nonresponsive.
 (10) Could you read the question back, please.

(11) (Whereupon, the court reporter read
 (12) back the previous question.)

(13) **A.** I don't recall doing anything about
 (14) the claims.

(15) **Q.** So when you found out that the comp
 (16) carrier, the compensation carrier, had paid
 (17) out claims for mesothelioma deaths after the
 (18) fact, you didn't do anything to try to dispute
 (19) the claims, object to the claims, talk to the
 (20) carrier and instruct them otherwise, nothing?

(21) **MR. RADCLIFFE:** Object to the form,
 (22) argumentative, compound, assumes facts not
 (23) in evidence.

(24) **BY MS. ABRAMS:**

(25) **Q.** Is that your testimony?

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- (1) **A. I do not recall doing anything in**
 (2) **terms of going back to the comp carriers and**
 (3) **asking them to open cases and contest them.**
 (4) **Q. Do you remember the name of the**
 (5) **individual where you obtained information on**
 (6) **that individual? Do you remember Mr. Evans?**
 (7) **A. Yes.**
 (8) **Q. Is that a claim that was filed that**
 (9) **you knew about at the time and obtained**
 (10) **information on that individual?**
 (11) **A. No, that's not the one I was**
 (12) **referring to. I don't know if we knew it at**
 (13) **the time or not, I'd have to look at the file.**
 (14) **Q. Did you not on September 30, 1994**
 (15) **write a letter to Dr. Paleo stating that**
 (16) **you've contacted Mr. Evans to receive**
 (17) **permission to have access to his medical**
 (18) **records and this is -- I'll give you that**
 (19) **letter to refresh your recollection.**
 (20) **MR. RADCLIFFE: Is there a Bates**
 (21) **stamp on that?**
 (22) **MS. ABRAMS: There is not.**
 (23) **A. Yes, that's correct. I copied**
 (24) **Mr. Evans as well.**
 (25) **Q. And you sought that medical**

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- (1) **information in 1994?**
 (2) **A. I did.**
 (3) **Q. And that was prior to the time that**
 (4) **Mr. Evans was deceased; is that correct?**
 (5) **A. I believe that's correct. I think**
 (6) **that was 1995 when he died.**
 (7) **Q. And is that a case where the R.T.**
 (8) **Vanderbilt Company or its carrier disputed**
 (9) **that claim?**
 (10) **A. I believe they disputed it. I know**
 (11) **in one of the cases they had an independent**
 (12) **medical review done and they provided**
 (13) **information on the composition of the talc and**
 (14) **the general issues of the health studies and**
 (15) **so forth to that physician that the carriers**
 (16) **were using.**
 (17) **Q. So you assisted, sir, in the**
 (18) **carrier's attempt to dispute a claim by**
 (19) **Mr. Evans who died of mesothelioma; is that**
 (20) **correct?**
 (21) **MR. RADCLIFFE: Objection,**
 (22) **argumentative.**
 (23) **A. I provided information I had that I**
 (24) **thought would be pertinent to it, yes.**
 (25) **Q. Who is Dr. Paleo who you wrote this**

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- (1) **letter to who is in Ogdensburg, New York? Was**
 (2) **that his treating physician?**
 (3) **A. Well, I hate to speculate, but**
 (4) **that's --**
 (5) **Q. Perhaps you might want to look at**
 (6) **the letter then.**
 (7) **A. Well, the name, that's who we would**
 (8) **have asked for medical records from would be**
 (9) **someone who would have those medical records**
 (10) **which would have to be a treating physician.**
 (11) **Q. And in this letter, Mr. Kelse, in**
 (12) **1994 you wrote to Dr. Paleo, "The company is**
 (13) **aware that overexposure to its talc dust,**
 (14) **indeed, any mineral dust, can result in**
 (15) **adverse pulmonary affects. We are therefore**
 (16) **concerned about reports we have received about**
 (17) **Mr. Evans' pulmonary condition, wish to be**
 (18) **informed on this condition and to assist in**
 (19) **any way we can. On behalf of all our talc**
 (20) **miners and millers we feel we have a**
 (21) **commitment to do so." Did you write that,**
 (22) **sir, in this letter? Would you like to see**
 (23) **it?**
 (24) **A. It's my letter. Yes, I did write**
 (25) **that.**

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- (1) **Q. And then you wrote, it is our hope**
 (2) **to obtain a copy of Mr. Evans' medical record,**
 (3) **along with available tissue samples for review**
 (4) **by Brian, B-O-E-H-L-E-C-K-E, Bohlecke, M.D.,**
 (5) **our pulmonary medical advisor and a**
 (6) **pathologist familiar with histology, possibly**
 (7) **associated with this case. Whatever is**
 (8) **learned, and it says form, but I think you**
 (9) **meant from, this review will certainly be**
 (10) **shared with you, Mr. Evans or any additional**
 (11) **parties Mr. Evans might later designate. Did**
 (12) **you write that, sir?**
 (13) **A. Yes, I did.**
 (14) **Q. And that was in September 30th,**
 (15) **1994, correct?**
 (16) **A. If that's the date, yes.**
 (17) **Q. And it's correct, sir, that you**
 (18) **disputed Mr. Evans' claim of mesothelioma**
 (19) **caused by asbestos from the R.T. Vanderbilt**
 (20) **Company? That's correct, you disputed that**
 (21) **claim?**
 (22) **MR. RADCLIFFE:**
 (23) **Objection, argumentative, assumes facts not**
 (24) **in evidence, misstates prior testimony.**
 (25) **A. I would have to look at the file to**

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(1) **see what the carriers disputed, but certainly**
 (2) **Vanderbilt would always dispute an association**
 (3) **with asbestos because there isn't any in the**
 (4) **talc and obviously we would dispute that**
 (5) **aspect of it.**

(6) **Q.** And you obtained this information
 (7) and provided it to the carrier, didn't you,
 (8) sir, in Mr. Evans' case?

(9) **MR. RADCLIFFE:** Objection, assumes
 (10) facts not in evidence.

(11) **A.** Again, I would have to look at the
 (12) file. I know I did that. I'm not sure
 (13) whether it was in Mr. Evans' case or one other
 (14) or it may have been in all of them. I just
 (15) have to look. I would want to do that. I
 (16) would want to be sure that everyone involved
 (17) in the case would have all the information.

(18) **MS. ABRAMS:** Let's mark that as
 (19) Exhibit 11, please.

(20) **(Exhibit Number 11 was marked for**
 (21) **identification.)**

(22) **BY MS. ABRAMS:**

(23) **Q.** Are you familiar with the case of
 (24) Robert Rice, sir?

(25) **A.** Yes.

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(1) **A.** Correct.

(2) **Q.** Sir, if you don't mind, could you
 (3) please next to 2001 -- could you write the
 (4) name Rice there so we know who that is there
 (5) we're talking about?

(6) **A.** **(Witness writing.)**

(7) **Q.** With respect to Mr. Evans, do you
 (8) know which is his claim? This letter was
 (9) written September 1994, do you know when he
 (10) died?

(11) **A.** Yes.

(12) **Q.** And when was that?

(13) **A.** 1995.

(14) **Q.** And could you please write Evans
 (15) down there so we know who we're talking about
 (16) there. Do you know the identity of the other
 (17) people that are listed on that page?

(18) **A.** I do.

(19) **Q.** Who are they, sir?

(20) **A.** 1995, the first one, that's Larry
 (21) Malbeuf.

(22) **Q.** Could you write Malbeuf down there,
 (23) please?

(24) **A.** I have to remember. How that was
 (25) spelled, B-E --

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(1) **Q.** Did you seek information from
 (2) Mr. Rice's treating physicians in August of
 (3) 2005?

(4) **A.** If you have correspondence to that
 (5) effect, then I would have to say yes.

(6) **Q.** Do you recall anything about
 (7) seeking information regarding Mr. Rice's
 (8) medical history at the time that you learned
 (9) of his death?

(10) **A.** Yes.

(11) **Q.** And are you aware that he died of
 (12) mesothelioma?

(13) **A.** That's what I believe the death
 (14) certificate said.

(15) **Q.** Is he one of the claims that you've
 (16) directed us to in the Exhibit 9, first page?

(17) **A.** He is.

(18) **Q.** Do you know which is his claim? Is
 (19) this the 2005 claim of the 74-year-old?

(20) **A.** No, it would be the -- I believe
 (21) he died --

(22) **Q.** I'm sorry, 2001.

(23) **A.** That would be his.

(24) **Q.** I apologize. So that would be the
 (25) 86-year-old died in 2001?

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(1) **Q.** M-E-L-B-U-E-F, if I'm not
 (2) mistaken. And how about the other claim, who
 (3) is that?

(4) **A.** 2005 who is the only one left, I
 (5) think this one I would remember. Can I look
 (6) at the file real quick?

(7) **MR. RADCLIFFE:** Is it Mr. LaBow?

(8) **THE WITNESS:** Yes.

(9) **BY MS. ABRAMS:**

(10) **Q.** That's Mr. LaBow?

(11) **A.** Right.

(12) **Q.** That was 2005?

(13) **A.** Right.

(14) **Q.** In fact, in Mr. LaBow's case didn't
 (15) you review the information from the carrier
 (16) regarding Mr. LaBow? Do you recall that?

(17) **MR. RADCLIFFE:** Objection,
 (18) argumentative, assumes facts not in
 (19) evidence.

(20) **A.** I did see documents from the
 (21) carrier, sure.

(22) **Q.** And the carrier or R.T. Vanderbilt
 (23) or both obtained the assistance of
 (24) Dr. Boehlecke to review that case; is that
 (25) correct?

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- (1) **A. Yes.**
- (2) **Q.** Do you retain Dr. Boehlecke to
- (3) review that case?
- (4) **A. Yes, he's our pulmonary consultant.**
- (5) **Q.** He's not the carrier's consultant,
- (6) he's the R.T. Vanderbilt consultant, correct?
- (7) **A. Correct.**
- (8) **Q.** And, in fact, has Dr. Boehlecke
- (9) reviewed every single one of these claims on
- (10) this list, to your knowledge?
- (11) **A. He's aware of them. I don't know**
- (12) **that I would say reviewed them. He's a**
- (13) **pulmonary consultant and I was working with**
- (14) **Dr. Baylik to try to -- to work with a**
- (15) **pathologist that would be would be familiar,**
- (16) **more familiar with mesothelioma than he might**
- (17) **be.**
- (18) **MS. ABRAMS:** I'm sorry. Could you
- (19) read the answer back, please?
- (20) **(Whereupon, the court reporter read**
- (21) **back the previous answer.)**
- (22) **BY MS. ABRAMS:**
- (23) **Q.** So it's your testimony that
- (24) Dr. Boehlecke is not that familiar with
- (25) mesothelioma?

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- (1) **MR. RADCLIFFE:** Objection,
- (2) argumentative. Assumes facts not in
- (3) evidence.
- (4) **A. I don't know how familiar he is or**
- (5) **he's obviously more familiar with it than I**
- (6) **am, but you'd have to talk to him to know how**
- (7) **familiar.**
- (8) **Q.** Well, do you consult with -- strike
- (9) that. Do you consult with Dr. Boehlecke for
- (10) other reasons, other than in mesothelioma
- (11) cases?
- (12) **A. Yes.**
- (13) **Q.** What types of cases do you believe
- (14) that you consult with him on?
- (15) **A. Well, we consult with him because**
- (16) **he's our pulmonary consultant that we have**
- (17) **used since 1985 or 1984 to review our**
- (18) **pulmonary surveillance data from the plants.**
- (19) **It's not a case issue, it's more the status of**
- (20) **the pulmonary condition of our talc workers**
- (21) **that he has reviewed every two years since**
- (22) **1985.**
- (23) **Q.** So he looks at company annual or
- (24) bi-annual medical surveillance information; is
- (25) that right?

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- (1) **A. The pulmonary aspect of that, yes.**
- (2) **Q.** How often is that data collected?
- (3) **A. Every two years.**
- (4) **Q.** Every two years, what other
- (5) physicians do you consult with to interpret
- (6) that data for you, other than Dr. Boehlecke?
- (7) **A. The way the surveillance program is**
- (8) **set up, each employee has a chest x-ray and**
- (9) **which is read very shortly after it's taken by**
- (10) **the hospital radiologist and that's done**
- (11) **during a clinical. If there are issues then**
- (12) **you need to immediately act on those.**
- (13) **And then at some point subsequent to that,**
- (14) **it could be several weeks, it could be a month**
- (15) **or so, Dr. Baylik will also look at the chest**
- (16) **x-rays independently and that's with some of**
- (17) **the chest x-rays. There's also pulmonary**
- (18) **function tests that we take every two years**
- (19) **and those are interpreted by the pulmonary**
- (20) **function technician and Dr. Baylik will look**
- (21) **at those when he also looks at the chest**
- (22) **x-rays. And that's how that works.**
- (23) **Q.** Where does R.T. Vanderbilt
- (24) Corporation have its employees go to have
- (25) their medical screenings done?

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- (1) **A. It's been done, there's a hospital**
- (2) **in Gouverneur, New York, E.J. Noble**
- (3) **Hospital, I think that's the name of the**
- (4) **hospital.**
- (5) **Q.** And is that the hospital that R.T.
- (6) Vanderbilt Corporation has used for its
- (7) medical screenings since at least the time you
- (8) got there?
- (9) **A. For its x-rays, pulmonary**
- (10) **function, hearing tests, yes.**
- (11) **Q.** Do you know how long R.T.
- (12) Vanderbilt has been using the Noble hospital?
- (13) **A. I don't know the exact date that**
- (14) **they started. They were using E.J. Noble**
- (15) **Hospital for those types of tests prior to my**
- (16) **arrival, but exactly when they started, I'm**
- (17) **not sure.**
- (18) **Q.** Do you know how much share of stock
- (19) that the R.T. Vanderbilt Corporation currently
- (20) owns in E.J. Noble Hospital?
- (21) **MR. RADCLIFFE:** Objection,
- (22) argumentative, assumes facts not in
- (23) evidence.
- (24) **A. I have no idea.**
- (25) **MR. RADCLIFFE:** You have to wait

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(1) until I finish my objection before you
(2) talk.

(3) **THE WITNESS:** I'm sorry.

(4) **BY MS. ABRAMS:**

(5) **Q.** Go ahead and answer the question.

(6) **A.** I have no idea.

(7) **Q.** You're not aware that they own any
(8) stock in the hospital?

(9) **A.** I'm not.

(10) **Q.** Do you know -- are you aware that
(11) the International Talc company owned a hundred
(12) percent of the stock of the E.J. Noble
(13) Hospital at one point in time?

(14) **A.** No.

(15) **Q.** Do you know whether the R.T.
(16) Vanderbilt Company, when it acquired
(17) International Talc, whether it acquired any
(18) ownership in the E.J. Noble Hospital?

(19) **A.** I have no idea.

(20) **Q.** Do you know any of the people who
(21) are members of board of the E.J. Noble
(22) Hospital?

(23) **A.** I think Dana Putman, the current
(24) plant manager, is a member of that board.

(25) **Q.** Anyone else that you know of?

(1) I don't believe it's in your record. it's
(2) not a Bates stamped document. It may be in
(3) the records, but I don't have it as a Bates
(4) stamped document so I'm kind of at a loss
(5) of how to say it's yours when you didn't
(6) Bates stamp it if you gave it to me, but it
(7) did not come with you today, Mr. Kelse? I
(8) had it in my own files and it's not one of
(9) the two files or the workers' compensation
(10) claims that were produced in the last two
(11) productions. Whether it exists on the
(12) three disks that you gave me that we have
(13) not been given hard copies of, I have no
(14) idea. You can search it. It's a September
(15) 30th, 1994 letter.

(16) **MR. RADCLIFFE:** For which plant?

(17) **MS. ABRAMS:** Here, you can keep your
(18) hands on it for a few minutes so that you
(19) can find it.

(20) **BY MS. ABRAMS:**

(21) **Q.** Now, let's go back on the record and
(22) just ask you while we're talking about workers'
(23) compensation claims is it your testimony,
(24) sir, that Mr. Malbeuf, Mr. Evans, Mr. Rice and
(25) Mr. LaBow are the only mesothelioma cases that

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(1) **A.** That's the only one that I know.

(2) **Q.** Do you know prior to Mr. Putman's
(3) joining the board of the E.J. Noble Hospital
(4) any other R.T. Vanderbilt employees that were
(5) members of the board of the E.J. Noble
(6) Hospital?

(7) **MR. RADCLIFFE:** Objection, asked and
(8) answered.

(9) **A.** I'm not aware of any others.

(10) **Q.** Are you aware that Mr. Erdman
(11) served on the board of E.J. Noble Hospital?

(12) **MR. RADCLIFFE:** Objection, asked and
(13) answered.

(14) **A.** No, not one way or the other.

(15) **MS. ABRAMS:** I just want to state for
(16) the record that because we're marking
(17) exhibits that Mr. Kelse brought, I want to
(18) just be clear that Exhibit 11 is not an
(19) exhibit that Mr. Kelse brought, it's
(20) something that I have added to the record.

(21) **MR. RADCLIFFE:** I'm not sure I agree
(22) with that. Are you making the affirmative
(23) statement that that document is not in the
(24) records that we provided to you?

(25) **MS. ABRAMS:** Yeah, it's in my files.

(1) you know of that came out of the R.T.
(2) Vanderbilt mines or concerns in Upstate New
(3) York?

(4) **MR. RADCLIFFE:** Objection to the
(5) form, vague, argumentative.

(6) **A.** They're the only workman's comp
(7) cases that I'm aware of.

(8) **Q.** Are you aware of other people who
(9) have died from mesothelioma that had prior
(10) occupational employment at R.T. Vanderbilt or
(11) International Talc?

(12) **A.** Yes.

(13) **Q.** How are you aware of those cases?

(14) **A.** They were recorded as you would
(15) expect they would be in the mortality studies
(16) that were done of Upstate New York Talc
(17) workers, the most recent being the Honda
(18) paper. So up until 1990 which was the vital
(19) status cutoff for that study, there were two
(20) mesothelioma cases recorded in that study.

(21) **Q.** And what were their names?

(22) **A.** I don't -- I don't know.

(23) **Q.** Do you have the death certificates
(24) for those cases?

(25) **A.** I don't believe so. I do know we

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- (1) **copied the -- what base data we had from that**
 (2) **study, but I don't know whether those were**
 (3) **there or not.**
 (4) **Q.** Did you -- and you provided that
 (5) data to us recently, in the production you
 (6) gave us, the data from the Honda study?
 (7) **A. What I had, yes**
 (8) **Q.** So any information you have about
 (9) those mesotheliomas we would now have in our
 (10) possession, so far as you know.
 (11) **A. As far as I know.**
 (12) **Q.** So in addition to the four
 (13) mesotheliomas, Mr. Evans, Mr. LaBow, Mr. Rice,
 (14) and Mr. Malbeuf, you're aware of two
 (15) additional cases prior to 1990, correct?
 (16) **A. That's correct.**
 (17) **Q.** What about cases after 1990, are
 (18) you aware of any of those?
 (19) **A. There was one that we were**
 (20) **presented with during a case in New Jersey and**
 (21) **that was a couple of years ago that we had had**
 (22) **no record of.**
 (23) **Q.** There was a case in New Jersey of a
 (24) New York State Talc worker that you had no
 (25) record of, what case was that?

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- (1) **A. The legal case?**
 (2) **Q.** I'm sorry?
 (3) **A. That was the Hersh case.**
 (4) **Q.** So Mr. Hersh died of mesothelioma?
 (5) **MR. RADCLIFFE:** Object, vague and
 (6) ambiguous. I think you're not talking
 (7) about the same case or --
 (8) **BY MS. ABRAMS:**
 (9) **Q.** Are we talking about the Hersh case
 (10) right now?
 (11) **A. I mentioned it because during that**
 (12) **case, we were presented with a death**
 (13) **certificate from a talc worker.**
 (14) **Q.** I'm sorry, so in the course of the
 (15) Hersh case in New Jersey you learned of a talc
 (16) worker's death from mesothelioma in Upstate
 (17) New York that you didn't know about before?
 (18) **A. That's correct.**
 (19) **Q.** Do you remember that person's name?
 (20) **A. I don't have it.**
 (21) **Q.** Do you remember the date of his
 (22) death?
 (23) **A. I believe it was 1994.**
 (24) **Q.** Was that Mr. Bickford?
 (25) **A. I believe that's correct, yes.**

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- (1) **Q.** And where did Mr. Bickford work,
 (2) was that for Gouverneur Talc, if you recall?
 (3) **A. He did, yes.**
 (4) **Q.** Are you aware of any other
 (5) mesothelioma deaths where there's an
 (6) allegation that someone worked at either
 (7) Gouverneur Talc or International Talc owned
 (8) mining facilities?
 (9) **A. Allegation or fact?**
 (10) **Q.** Either one. What do you know of
 (11) that may lead you to believe that someone may
 (12) have worked at one of the Gouverneur Talc
 (13) facilities or the International Talc who is
 (14) now alleging they have mesothelioma?
 (15) **A. I would have to say none.**
 (16) **Q.** So there's no other cases that
 (17) you're aware of?
 (18) **A. From Gouverneur Talc, no.**
 (19) **Q.** Or International Talc or any
 (20) International Talc held facilities, are you
 (21) aware of any mesotheliomas?
 (22) **A. I'm not aware of any from --**
 (23) **specifically from International Talc, no.**
 (24) **Q.** Do you know of a Mr. Donald Lozo?
 (25) **A. No.**

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- (1) **Q.** You've never heard of Mr. Lozo?
 (2) **A. No.**
 (3) **Q.** And you never heard that he died of
 (4) mesothelioma in August of 2005?
 (5) **A. No.**
 (6) **Q.** Do you know where the Carbola talc
 (7) mine is?
 (8) **A. No.**
 (9) **Q.** Do you know that that's a -- that
 (10) was an International Talc owned mine?
 (11) **A. No.**
 (12) **Q.** And are you aware that that
 (13) potentially is the same as Mine 3?
 (14) **MR. RADCLIFFE:** Objection to form,
 (15) argumentative, assumes facts not in
 (16) evidence.
 (17) **A. No.**
 (18) **Q.** And you've never heard of Mr. Lozo?
 (19) **A. No, I've not.**
 (20) **Q.** And you've not heard that
 (21) Mr. Lozo's sister also died of mesothelioma?
 (22) **A. No.**
 (23) **Q.** And his mother died of
 (24) mesothelioma?
 (25) **A. No.**

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(1) **Q.** You never heard that. Have you --
 (2) are you aware of any spouses or family members
 (3) of workers at International Talc or Gouverneur
 (4) Talc that died of mesothelioma that may not
 (5) have filed workers' compensation claims?

(6) **A.** No, I'm not aware of any.

(7) **Q.** Are you aware of a worker who died
 (8) of mesothelioma -- strike that. Are you aware
 (9) of a worker who died of a quote, unquote
 (10) pleural tumor in May of 2001 who filed a
 (11) workers' compensation claim against the R.T.
 (12) Vanderbilt Company?

(13) **A.** I would need a little more
 (14) information. I would need a name and so
 (15) forth.

(16) **Q.** I would love to give you a name,
 (17) but I don't have one to give you because I
 (18) have a redacted document. Did you ever hear
 (19) of anyone in 2001 dying of a pleural tumor?
 (20) We know from the Honda study, for example,
 (21) that someone died of a pleural tumor before
 (22) 1990, correct?

(23) **A.** I would have to look if that's what
 (24) it says.

(25) **Q.** And then, but you have not counted

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(1) in your list anyone who died of a pleural
 (2) tumor in 2001 as a mesothelioma, correct?

(3) **A.** I don't think pleural tumor
 (4) necessarily means mesothelioma. I mean,
 (5) you'd have to ask a medical expert, but that's
 (6) my understanding.

(7) **Q.** And this was a pleural tumor
 (8) secondary to talcum exposure on the death
 (9) certificate, just for the record.

(10) **MR. RADCLIFFE:** Object, move to
 (11) strike.

(12) **BY MS. ABRAMS:**

(13) **Q.** Mr. Kelse, have you ever heard the
 (14) name Brent Gale?

(15) **A.** I have heard the name, but it's a
 (16) name I've heard. I can't -- you'll have to
 (17) help me.

(18) **Q.** Is Brent Gale someone who died of
 (19) mesothelioma in 2007?

(20) **A.** Not that I'm aware of.

(21) **Q.** You're not aware of Mr. Gale's
 (22) workers' compensation case?

(23) **A.** I don't recall any other workman's
 (24) compensation case that involved mesothelioma.

(25) **Q.** And you're not aware that

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(1) Mr. Gale's father also died from lung related
 (2) injury from working with the Gouverneur Talc
 (3) Company?

(4) **MR. RADCLIFFE:** Objection, assumes
 (5) facts not in evidence.

(6) **A.** No.

(7) **Q.** How about Lynn Charter, do you know
 (8) that name?

(9) **A.** No, that's not familiar to me.

(10) **Q.** So in terms of your analysis that
 (11) the R.T. Vanderbilt talc in Upstate New York
 (12) does not cause mesothelioma, you have taken
 (13) into account four workers' comp claims filed
 (14) against R.T. Vanderbilt, correct?

(15) **MR. RADCLIFFE:**
 (16) Objection, argumentative, assumes facts not
 (17) in evidence, misstates prior testimony.

(18) **A.** They exist.

(19) **Q.** And two comp claims -- strike
 (20) that. And two mesotheliomas that were part of
 (21) the Honda study, so for a total of six
 (22) mesotheliomas, it's your testimony that based
 (23) on that understanding you do not have any
 (24) doubt in your mind that the material that came
 (25) out of the ground from International Talc or

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(1) R.T. Vanderbilt Talc mines, you have no doubt
 (2) that that does not cause mesothelioma; is that
 (3) correct?

(4) **MR. RADCLIFFE:** Same objection.

(5) **A.** That's correct. I believe that's
 (6) correct.

(7) **Q.** And that would include Mine No. 3,
 (8) correct?

(9) **A.** I have no evidence of anything from
 (10) Mine No. 3.

(11) **Q.** Well, we know it contained
 (12) asbestiform talc, but it's your testimony here
 (13) today that any mesothelioma that came from
 (14) exposure to asbestiform talc from the
 (15) International Talc mines would not be caused
 (16) by that exposure, correct?

(17) **A.** All the data that I have that speak
 (18) to talc fibers, some of which is asbestiform
 (19) would say it doesn't.

(20) **Q.** So that's a correct statement then,
 (21) correct?

(22) **A.** That would be, yes.

(23) **Q.** And even if 20 mesotheliomas were
 (24) reported out of the Gouverneur Talc and
 (25) International Talc mines, that would still be

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- (1) your determination, correct?
- (2) **MR. RADCLIFFE:** Same objections.
- (3) **A.** It would depend on the
- (4) characteristics of each case. If they were
- (5) reasonably linked, if there was a question
- (6) about the link, if it was a reasonable
- (7) association, I would be very concerned about
- (8) it.
- (9) **Q.** Mr. Kelse, has there ever been a
- (10) case that you've seen where you believe that
- (11) there was a reasonable interpretation that any
- (12) fiber that came from either an International
- (13) Talc mine or an R.T. Vanderbilt Gouverneur
- (14) Talc mine caused or contributed to that
- (15) mesothelioma?
- (16) **A.** Not based on the health studies
- (17) that I'm familiar with.
- (18) **Q.** That's not what I asked you, sir.
- (19) Could you read the question back?
- (20) (Whereupon, the court reporter read
- (21) back the previous question.)
- (22) **A.** I think the answer that I said was
- (23) no.
- (24) **Q.** And if you saw 20 more
- (25) mesotheliomas coming out of the mines, your

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- (1) answer wouldn't change, would it?
- (2) **A.** It would depend on the
- (3) characteristics of each case. If the
- (4) characteristics of case were such that it was
- (5) reasonably linked to that exposure I would be
- (6) very concerned. I've not seen that.
- (7) **Q.** And what, in your mind, would
- (8) reasonably link an exposure to a mine worker
- (9) who mined for a period of time and then got
- (10) mesothelioma, what would you need to see?
- (11) **MR. RADCLIFFE:** Objection, calls for
- (12) speculation, argumentative.
- (13) **A.** Well, there are basically four
- (14) things. Number one, you'd have to feel very
- (15) reasonably secure that the diagnosis was
- (16) correct in the first place, particularly
- (17) diagnoses that are more than 10 or 15 years
- (18) old. There are papers written on the
- (19) reliability of that diagnosis have become much
- (20) better in more recent years, my understanding,
- (21) but that's number one.
- (22) So that's one of the reasons why we ask
- (23) for tissue samples and additional information
- (24) so that we could confirm whether these were
- (25) properly diagnosed in the first place. That's

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- (1) not unreasonable to do because very often
- (2) there has been, especially in the past that's
- (3) been a problem. So you need to cross that off
- (4) first.
- (5) The second thing you have to obviously
- (6) look to see is whether or not the person
- (7) actually had exposure to your material. In
- (8) all these cases since they worked for the talc
- (9) company, that would have been met, they did
- (10) have that exposure.
- (11) The third thing that you would need to
- (12) look for is the latency, is the latency
- (13) consistent with what you would expect for a
- (14) causal association from the time of exposure
- (15) to the time of manifestation of the disease.
- (16) An example of that would be mesothelioma
- (17) case that was first actually reported by NIOSH
- (18) who discounted that mesothelioma case as being
- (19) causally linked to the talc exposure because
- (20) latency was too short. So while you would
- (21) count that as one, researchers did not, for
- (22) that reason.
- (23) And fourth, very importantly, you would
- (24) have to also look at the person's entire work
- (25) history, all of his exposures, and if other

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- (1) work sites, other exposures did for certain or
- (2) likely included exposure to asbestos, that
- (3) would be very important to understand because
- (4) the talc has been tested against asbestos and
- (5) it doesn't act in the same way on pleural
- (6) tissue. And it's not present in the product
- (7) in the first place. So those are the
- (8) considerations that you would make.
- (9) **Q.** Well, if it's not present in the
- (10) product then what difference does it makes if
- (11) there are 30 40 mesotheliomas coming out of
- (12) the mine?
- (13) **MR. RADCLIFFE:** Objection,
- (14) argumentative, assumes facts not in
- (15) evidence, calls for speculation.
- (16) **BY MS. ABRAMS:**
- (17) **Q.** Does it make any difference?
- (18) **MR. RADCLIFFE:** Same objections.
- (19) **A.** It doesn't -- whatever a disease
- (20) end point is, you want to make -- you want to
- (21) do a causal association to figure out what it
- (22) is that produced that disease end point,
- (23) sometimes it's not one thing, sometimes it may
- (24) be combinations of things. It's very
- (25) difficult to tease out, but there are certain

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(1) basic principles that researchers follow to
 (2) try to determine whether an end point disease
 (3) is reasonably associated with an exposure or
 (4) not.

(5) When I look at those general principles
 (6) and rules and compare them against the
 (7) experience that we have here, I feel that
 (8) those mesotheliomas don't meet those four
 (9) criteria that I described to you. Several of
 (10) the cases we felt were probably not diagnosed
 (11) correctly, people could argue that, but the
 (12) evidence that we have would suggest to us that
 (13) it wasn't.

(14) In almost every of the four comp claims
 (15) there were also competing risks where it was
 (16) either likely or known that an individual
 (17) actually did have asbestos exposure. And then
 (18) that type of biologic end point is totally
 (19) inconsistent with all of the research that's
 (20) been done on the talc, the animal studies, the
 (21) cell study, even the lung cancers epi studies
 (22) is inconsistent with it.

(23) Q. I move to strike as nonresponsive.
 (24) Could you read the question back, please?
 (25) (Whereupon, the court reporter read

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(1) numbers go up, it's more and more likely that
 (2) there's causal association.
 (3) But what we're talking about here, you
 (4) know, you look at these individual cases and
 (5) not one of them meet all four of those
 (6) criteria that I mentioned to you. And even
 (7) though you may say it's unresponsive, exposure
 (8) to that dust has been tested for just that
 (9) type of potential and it doesn't act that --
 (10) so the biologic plausibility isn't there and
 (11) it doesn't contain asbestos.

(12) So when you've got those things, if you
 (13) had asbestos in a material and people were
 (14) exposed to it for sure, you had an appropriate
 (15) latency, you had a mesothelioma that was
 (16) reasonably confirmed to exist, if you had all
 (17) that going for you, you could then say that
 (18) mesothelioma was in all likelihood caused by
 (19) that exposure. Not in one case can you say
 (20) that about this talc.

(21) THE VIDEOGRAPHER: Zero minutes left.

(22) MS. ABRAMS: I guess it's time to
 (23) change the tape.

(24) THE VIDEOGRAPHER: Off the
 (25) record, 2:58.

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(1) back the previous question.)

(2) MR. RADCLIFFE: Same objections.

(3) A. Well, you're drawing -- there's a
 (4) difference between numbers and causal
 (5) association and I don't know how to have this
 (6) discussion with you. If causal association to
 (7) you is simply numbers, then we can't discuss
 (8) it.

(9) Q. Is there any point at which you
 (10) would see so many mesotheliomas coming out of
 (11) the mines that it might actually indicate to
 (12) you that there was some causal relationship?
 (13) Would that be 50 or a hundred or how many
 (14) would that be?

(15) MR. RADCLIFFE: Objection,
 (16) argumentative.

(17) BY MS. ABRAMS:

(18) Q. If you know.

(19) MR. RADCLIFFE: Objection,
 (20) argumentative, calls for speculation,
 (21) assumes facts not in evidence.

(22) A. I wouldn't use numbers to do that,
 (23) I would say the more numbers, the more higher
 (24) the indication is that there may be a causal
 (25) association, I'll grant you that. As the

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(1) (A brief recess was taken.)

(2) THE VIDEOGRAPHER: This is the
 (3) beginning of Tape Number three. We're back
 (4) on at 3:03.

(5) MS. ABRAMS: Move to strike as
 (6) nonresponsive from the point of, and you
 (7) may say this is unresponsive but --
 (8) continuing. And I'm not ready to go off
 (9) the record yet. I just have a few more
 (10) questions and then we can go off the
 (11) record.

(12) THE VIDEOGRAPHER: It will take about
 (13) three minutes.

(14) MS. ABRAMS: That's fine.

(15) MR. RADCLIFFE: Well, we're off the
 (16) record.

(17) MS. ABRAMS: No, we're not.

(18) (A brief recess was taken.)

(19) THE VIDEOGRAPHER: This is the
 (20) beginning of Tape Number 3. We're back on
 (21) the record at 3:03.

(22) BY MS. ABRAMS:

(23) Q. Mr. Kelse, let's just continue for
 (24) just a few more minutes before we take a
 (25) break. You mentioned latency and your

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- (1) understanding is that you need a 15-year
 (2) latency, is that your idea of a latency for
 (3) mesothelioma?
 (4) **MR. RADCLIFFE:** Objection, beyond the
 (5) scope.
 (6) **A. I don't believe that's what I**
 (7) **said. I think I said that that case in the**
 (8) **NIOSH study reported a 15-year latency which**
 (9) **they felt was inadequate. It was too short.**
 (10) **Q.** Did that worker have prior exposure
 (11) at New York State Talc mines that were not
 (12) Gouverneur talc mines?
 (13) **A. I don't recall.**
 (14) **Q.** You don't recall?
 (15) **A. No.**
 (16) **Q.** Did Vanderbilt supply the
 (17) employment information and years of employment
 (18) to NIOSH for their study?
 (19) **A. They would have, yes.**
 (20) **Q.** And they supplied only the years of
 (21) employment for Gouverneur Talc, is that right?
 (22) **MR. RADCLIFFE:** Objection,
 (23) argumentative, assumes facts not in
 (24) evidence.
 (25) **A. I am not familiar with all the**

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- (1) **information that was provided to NIOSH during**
 (2) **the first effort. So I don't know exactly how**
 (3) **complete and thorough the information was in**
 (4) **the files.**
 (5) **Q.** Are there files on that in your
 (6) office?
 (7) **A. No, there are not.**
 (8) **Q.** Those don't exist anymore so far as
 (9) you know?
 (10) **A. As far as I know.**
 (11) **Q.** You mentioned that their work
 (12) history at other sites has to be looked at to
 (13) see if there's asbestos exposure at other
 (14) sites, correct? You said that?
 (15) **A. That's correct. I can give you an**
 (16) **example.**
 (17) **Q.** Just yes or no.
 (18) **A. Yes.**
 (19) **Q.** And in some cases you've written on
 (20) Exhibit 9 that some of these people had
 (21) possible exposure to brakes, correct?
 (22) **A. That's indicated on their**
 (23) **application forms in terms of their prior work**
 (24) **history.**
 (25) **Q.** And your understanding is that

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- (1) exposure to brake dust is an asbestos
 (2) exposure, is that what you're stating here
 (3) today?
 (4) **A. It could be.**
 (5) **Q.** Well, do you know one way or the
 (6) other?
 (7) **A. No.**
 (8) **Q.** And so you've written that down
 (9) here, but you don't really know that that's a
 (10) possible exposure, correct?
 (11) **MR. RADCLIFFE:** Objection, calls for
 (12) speculation.
 (13) **A. I know it's possible.**
 (14) **Q.** Have you talked to any experts
 (15) about whether exposure to brake dust is an
 (16) exposure to asbestos?
 (17) **A. I've read some articles and I know**
 (18) **there's some controversy about it.**
 (19) **Q.** And whose articles have you read
 (20) about that?
 (21) **A. I don't know the -- I'm not someone**
 (22) **who memorizes every author's name and title,**
 (23) **but I can get you a couple, if you'd like.**
 (24) **Q.** Well, I want know what's in your
 (25) files, the people that you rely on that you

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- (1) look to for this information. Do you have
 (2) information in your files about whether or not
 (3) exposure to brake dust causes mesothelioma?
 (4) **A. I have articles that discusses**
 (5) **various types of asbestos, chrysotile being**
 (6) **one, and whether -- in the course of many of**
 (7) **those discussions they do discuss brake pads**
 (8) **and epi studies done on mechanics and things**
 (9) **of that nature.**
 (10) **Q.** Are those in a file?
 (11) **A. I have a file of reference**
 (12) **materials.**
 (13) **Q.** What's the title of the file?
 (14) **A. Well, it would be generally**
 (15) **reference materials, but it would be broken**
 (16) **down into -- I have one on smoking and things**
 (17) **of that nature.**
 (18) **Q.** And you have one on brakes?
 (19) **A. No, not brakes.**
 (20) **Q.** What is the one with the brake
 (21) information called?
 (22) **A. It would be general asbestos linked**
 (23) **articles and papers.**
 (24) **Q.** Did you produce that file?
 (25) **A. I didn't produce reference**

(1) materials.

(2) Q. I ask that you produce that file to

(3) your attorneys.

(4) MR. RADCLIFFE: I object. I don't

(5) think you've requested it.

(6) MS. ABRAMS: I think we did.

(7) MR. RADCLIFFE: If you can point out

(8) to me --

(9) MS. ABRAMS: I'm sure we can find it

(10) somewhere on our hundreds of --

(11) MR. RADCLIFFE: It's not a matter of

(12) trying to find it --

(13) MS. ABRAMS: We'll meet and confer

(14) with you. I'm asking you to produce it to

(15) your lawyer and then he can decide whether

(16) to give it to us or not.

(17) MR. RADCLIFFE: Again, I object to

(18) that request. Mr. Kelse is under no

(19) obligation to produce that file. Go ahead.

(20) BY MS. ABRAMS:

(21) Q. Mr. Kelse, you mentioned that --

(22) you started to talk about the study showed

(23) with respect to talc that it doesn't act that

(24) way, right? Do you remember that testimony,

(25) it doesn't act like asbestos? Just do you

(1) Q. Do you have those all in a file

(2) called human studies or something to that

(3) effect?

(4) A. I do.

(5) Q. What's the file called?

(6) A. It's called Human Studies Specific

(7) to Vanderbilt Talc.

(8) Q. Do you have anything else in that

(9) file besides those studies?

(10) A. Those are human studies, then

(11) there's a section for animal studies.

(12) Q. What animal studies do you have?

(13) A. The animal studies include

(14) Stanton, 72 materials, Smith, those are the

(15) two animal studies.

(16) Q. Okay.

(17) A. And then there's a cell study.

(18) Q. Cell, C-E-L-L?

(19) A. C-E-L-L, correct, and that's the

(20) Wylie Mossman.

(21) Q. Is that the only one in that?

(22) A. Only cell study, yes.

(23) Q. Are those all the studies that you

(24) rely on for the statement that talc doesn't

(25) act the same way as asbestos?

(1) remember that testimony?

(2) A. That's right.

(3) Q. Now, can you tell me exactly, not

(4) everything in the studies or the whole thing

(5) about what they say, I'm just going to ask you

(6) can you tell me the names of the studies or

(7) the authors of every study that you rely on to

(8) determine that talc doesn't act the same way,

(9) just the author or the names?

(10) A. Okay, and I'll preface that with

(11) and I saw the papers in the document.

(12) Q. I knew you couldn't do it.

(13) A. I can't help myself. It's human

(14) animal cell, human studies would be the

(15) epidemiologic study, the most recent being the

(16) Honda study. And then the Gamble case control

(17) study and then the -- there are two studies by

(18) Steve Lamm, one Vermont-New York comparison

(19) and another one entitled short-term worker

(20) exposure. Another study by Tabishaw and then

(21) of course the very first, the NIOSH 1980

(22) Technical Report for which they did a short

(23) update, I think, in 1997 or something of that

(24) sort. So I think that's a total of seven

(25) human studies specific to Vanderbilt talc.

(1) A. Those are the studies that I

(2) partially rely on that the mineral

(3) composition --

(4) Q. Other than mineral composition,

(5) that's fine.

(6) A. Okay, because there are other

(7) studies that involve the same type of minerals

(8) that also speak to this.

(9) Q. We'll get to that after the break.

(10) A. But it's not exactly out of

(11) Vanderbilt's mine.

(12) Q. We'll get to that after the break,

(13) but just in terms of the human, animal and

(14) cell studies, have you given us all of that

(15) information?

(16) A. I saw them in your -- and they were

(17) copied last week.

(18) Q. Are there any other studies in your

(19) files regarding human, animal or cell studies

(20) that you haven't told us about?

(21) A. That are specific to Vanderbilt

(22) talc?

(23) Q. Yes.

(24) A. The answer is no.

(25) Q. Are there studies that are not

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- (1) specific to Vanderbilt talc in that category?
- (2) **A. The answer is yes.**
- (3) **Q. And what is that?**
- (4) **A. In terms of human studies there's**
- (5) **two studies of gold miners in North Dakota**
- (6) **Homestake Mine, one study by NIOSH Harlan**
- (7) **Amandus.**
- (8) **Q. The gold miners in North Dakota,**
- (9) **what's the name of that study or author?**
- (10) **A. Homestake.**
- (11) **Q. Okay.**
- (12) **A. And the second one was done by**
- (13) **McDonald.**
- (14) **Q. Okay.**
- (15) **A. Those are two human epidemiology**
- (16) **studies of gold miners.**
- (17) **Q. Did you produce those to us?**
- (18) **A. Yes, I saw those in your stack and**
- (19) **they were copied last week again.**
- (20) **Q. What else do you have?**
- (21) **A. Then there was epidemiology**
- (22) **studies, human studies of Taganite workers,**
- (23) **iron ore workers, Mesabi Range in Minnesota.**
- (24) **Q. Do you know the name of that study**
- (25) **or the author?**

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- (1) **A. There were, I believe, three of**
- (2) **those studies; Cooper did two, Clark Cooper.**
- (3) **I don't know who did the third. We can look**
- (4) **that up. You do have them in the papers.**
- (5) **Q. Okay. Any others?**
- (6) **A. Those are the two human studies**
- (7) **dealing with non speciform amphiboles, that's**
- (8) **the link.**
- (9) **Q. Any other animal studies?**
- (10) **A. Animal studies, there's a study by**
- (11) **Addison Davis, don't know the date. It's in**
- (12) **the part of your file that was copied last**
- (13) **week as well that dealt with testing three**
- (14) **tremolite asbestos samples against three non**
- (15) **asbestiform or prismatic tremolite materials**
- (16) **of different -- three prismatic tremolite**
- (17) **samples were of somewhat different**
- (18) **morphologies from granular to acicular.**
- (19) **Q. Let's try not get into the details,**
- (20) **okay?**
- (21) **A. Heaven forbid.**
- (22) **Q. Just try to get a list. So there's**
- (23) **a Addison Davis study of tremolite, is that a**
- (24) **good way to summarize that?**
- (25) **A. Yes.**

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- (1) **Q. And are there any other animal**
- (2) **studies?**
- (3) **A. There are -- there's a study by**
- (4) **Wagner, don't ask me for the date. I know you**
- (5) **have copies of this.**
- (6) **Q. Okay.**
- (7) **A. There's studies by Pott, P-O-T-T.**
- (8) **Again, they would be in the file. This is a**
- (9) **good memory quiz for me.**
- (10) **Q. Terrific memory.**
- (11) **A. I think there may be one or two**
- (12) **more that do escape me at the moment, but they**
- (13) **are in my file.**
- (14) **Q. And what about cell studies, are**
- (15) **there others?**
- (16) **A. There are three or four that I put**
- (17) **in the file, yeah. The majority of them**
- (18) **actually were produced by Brooke Mossman or**
- (19) **her students. Palakar I think is**
- (20) **one, P-A-K-A-L-A-R.**
- (21) **Q. Okay. Does that pretty much**
- (22) **summarize the information that you used other**
- (23) **than the mineral studies to determine that**
- (24) **talc acts differently than asbestos?**
- (25) **A. The minerals in our mixed talc**

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- (1) **product act differently. If you say talc**
- (2) **there's a whole other army of -- a whole other**
- (3) **range of studies that deal with just talc, the**
- (4) **mineral talc itself.**
- (5) **Q. Can we say that those are the**
- (6) **studies you rely on to say that Vanderbilt**
- (7) **talc and International talc, including talc**
- (8) **from Mine 3 that was Mouldene talc do not**
- (9) **cause mesothelioma or act the same way as**
- (10) **asbestos, can we say it that way?**
- (11) **MR. RADCLIFFE: Objection, vague and**
- (12) **ambiguous.**
- (13) **A. I would qualify it just a little.**
- (14) **I can only speak for Vanderbilt talc which is**
- (15) **the talc that Vanderbilt was responsible for,**
- (16) **and to the extent that it included talc from**
- (17) **Talcville, which was owned by International at**
- (18) **one time, I would say the same for that**
- (19) **because the mineral composition was tested in**
- (20) **these studies or linked to them. Beyond any**
- (21) **other talc mines that International may have**
- (22) **operated that Vanderbilt did not operate, for**
- (23) **which I don't know what the mineral**
- (24) **composition is, I cannot speak for that.**
- (25) **Q. Vanderbilt operated and was**

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(1) responsible for Mine No. 3 at one point in
(2) time that produced Mouldene, correct?

(3) **A. That's correct.**

(4) **MR. RADCLIFFE:** Objection, vague and
(5) ambiguous.

(6) **BY MS. ABRAMS:**

(7) **Q.** Is it your testimony that the
(8) Mouldene that was produced by Vanderbilt from
(9) Mine No. 3 does not cause mesothelioma, based
(10) on all of the studies that you just told us
(11) about?

(12) **A. Yes.**

(13) **Q.** And other than the mineral studies,
(14) are there any other studies that you rely on
(15) to make that representation?

(16) **A. Help me -- what do you mean by
(17) mineral studies? You mean the two things --
(18) mineralogy, is there asbestos there, yes or
(19) no, or health, which are you talking about?**

(20) **Q.** Well, I'm just talking about the
(21) animal cell and epidemiological studies, are
(22) there any others that you rely on for that
(23) representation other than the ones that you've
(24) told us about?

(25) **A. That I just gave you, off the top**

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(1) **of my head, no.**

(2) **Q.** And is it fair to say that not one
(3) of those studies specifically tested Mouldene
(4) talc, is that fair?

(5) **A. Yes.**

(6) **Q.** That's correct?

(7) **A. Well, I hesitate. There's a reason
(8) I hesitate. I gave you the cell study,
(9) that's a talc fiber concentrate. We talked
(10) about this at the last deposition. That's
(11) reason I brought it with me.**

(12) **Q.** You believe the Wylie Mossman cell
(13) study was testing Mouldene?

(14) **A. It's the closest you would come.
(15) It's very, very close because it is the fiber
(16) concentrate from that mine and there was
(17) actually another sample, it was an
(18) intermediate. There was FD-4 which was a
(19) typical talc product generated from, not from
(20) Talcville like a Nytal. Then there was an
(21) intermediate fiber tested and that was
(22) fibercal which also was another grade from
(23) Talcville. And then there was a fiber
(24) concentrate which was as the name implies a
(25) concentration of talc fiber extracted from the**

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(1) **ore from that same mine. So to the extent
(2) that that's where Mouldene came from, it is
(3) very close, if not the same.**

(4) **Q.** Well, it's your testimony that the
(5) cell study that Wylie Mossman did tested or
(6) used fiber from Mine No. 3, is that what
(7) you're saying?

(8) **A. For certain.**

(9) **Q.** Okay. Other than that study, all
(10) the other studies that you're relying on do
(11) not address the specific fiber from Mine No.
(12) 3; is that right?

(13) **A. Actually, that's not right. To the
(14) extent that the other studies involve talc
(15) from the other mines and that talc also
(16) contained the same type of talc fiber, then
(17) that talc fiber was tested in those tests as
(18) well.**

(19) **Q.** Which other mines --

(20) **A. I can give you an example.**

(21) **Q.** Which other mines contain the same
(22) talc fiber as Mine No. 3 that Gouverneur Talc
(23) was mining?

(24) **MR. RADCLIFFE:** Objection. He didn't
(25) finish his answer.

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(1) **BY MS. ABRAMS:**

(2) **Q.** I'm sorry, I didn't mean to
(3) interrupt you.

(4) **A. No, that's okay.**

(5) **Q.** Were you finished?

(6) **A. No, I wasn't.**

(7) **Q.** Please finish your answer. Do you
(8) want to finish your answer or do you want to
(9) move on and answer my question?

(10) **A. Well, maybe what we might do is why
(11) don't you ask read back your question because
(12) I do tend to ramble.**

(13) **MR. RADCLIFFE:** Well, you were saying
(14) I will give you an example.

(15) **MS. ABRAMS:** Thank you. Could you
(16) read the question back, please?

(17) **(Whereupon, the court reporter read back the
(18) previous question.**

(19) **BY MS. ABRAMS:**

(20) **Q.** I'll ask it again. Which other
(21) Gouverneur Talc mines contain the same fiber
(22) as International Talc Mine No. 3?

(23) **MR. RADCLIFFE:** Objection, vague and
(24) ambiguous, assumes facts not in evidence.
(25) Go ahead.

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- (1) **A. My understanding that you will find**
 (2) **the same type of talc fiber, but to a much**
 (3) **lesser extent in the Arnold pit mine.**
 (4) **Q. Okay. Now, I want to let you take**
 (5) **a break because I've been keeping you way too**
 (6) **long. I just want to make sure I'm finished**
 (7) **with that topic.**
 (8) **Let me just ask you this: In your files**
 (9) **do you have any studies that don't support**
 (10) **your position that the talc operates the same**
 (11) **way -- doesn't operate the same way as**
 (12) **asbestos, animal studies, cell studies,**
 (13) **epidemiological studies, do you have any of**
 (14) **those in your file?**
 (15) **MR. RADCLIFFE: Objection, compound,**
 (16) **vague and ambiguous, including double**
 (17) **negatives.**
 (18) **A. The health studies that I have,**
 (19) **the ones that I listed to you, do not feel a**
 (20) **single one shows that same effect.**
 (21) **Q. Okay, I asked a bad question, let**
 (22) **me ask it again. I understand that --**
 (23) **MR. RADCLIFFE: Objection sustained**
 (24) **then.**
 (25) **BY MS. ABRAMS:**

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- (1) **Q. Exactly. You have provided for us**
 (2) **the studies that you have that support your**
 (3) **position and R.T. Vanderbilt's position that**
 (4) **talc doesn't operate the same way as**
 (5) **asbestos. What I'm asking you now is do you**
 (6) **have studies that do support the position that**
 (7) **asbestos and talc have similarities and do act**
 (8) **the same way with respect to human health, and**
 (9) **that would be epidemiological studies, animal**
 (10) **studies or cell studies?**
 (11) **MR. RADCLIFFE: Objection, compound,**
 (12) **vague, ambiguous.**
 (13) **BY MS. ABRAMS:**
 (14) **Q. Whether or not you personally**
 (15) **believe that -- the conclusions of the**
 (16) **studies. And all I want to know is yes or no,**
 (17) **do you have such a thing?**
 (18) **MR. RADCLIFFE: Same objection.**
 (19) **BY MS. ABRAMS:**
 (20) **Q. Yes or no.**
 (21) **A. I don't -- I'm not going to say yes**
 (22) **or no. I'm going to tell you flat out the**
 (23) **studies that I listed to you are all the**
 (24) **studies that are available that speak to**
 (25) **Vanderbilt talc, period. Good, bad and**

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- (1) **indifferent, they all tell us it doesn't act**
 (2) **in the same way.**
 (3) **MR. RADCLIFFE: Does that mean no,**
 (4) **you don't have any studies that are the**
 (5) **opposite?**
 (6) **BY MS. ABRAMS:**
 (7) **Q. I didn't say the opposite, but that**
 (8) **don't support that position. Do you have**
 (9) **anything in your files?**
 (10) **A. The NIOSH study suggested that the**
 (11) **excess lung cancer that they recorded was**
 (12) **causally associated with exposure to the talc.**
 (13) **Q. Any others?**
 (14) **A. No.**
 (15) **Q. Are there any researchers that you**
 (16) **know of that don't agree with you and do**
 (17) **believe that there is a relationship between**
 (18) **talc exposure and mesothelioma?**
 (19) **MR. RADCLIFFE: Objection, calls for**
 (20) **speculation, beyond the scope --**
 (21) **BY MS. ABRAMS:**
 (22) **Q. If you know.**
 (23) **MR. RADCLIFFE: Beyond the scope of**
 (24) **the designated testimony.**
 (25) **A. I don't know what researchers think**

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- (1) **now. I don't know the people who helped**
 (2) **create the original NIOSH technical report**
 (3) **which now has a disclaimer on it that says**
 (4) **we're not responsible or don't stand by this**
 (5) **anymore. So I don't know if that can be**
 (6) **interpreted as NIOSH no longer feels that way**
 (7) **or not.**
 (8) **It would suggest to me that they don't or**
 (9) **they have questions about it. Other than**
 (10) **that, there has been nobody else that has**
 (11) **studied Vanderbilt talc specifically that**
 (12) **concluded the way NIOSH did. Everyone else in**
 (13) **every other study and all the other**
 (14) **evaluations and analysis of that data suggests**
 (15) **other than what NIOSH suggested in 1980.**
 (16) **Q. Move to strike to the extent it's**
 (17) **nonresponsive. With respect to talc**
 (18) **generally, are you aware of studies or**
 (19) **scientists that believe that talc acts like**
 (20) **asbestos and causes mesothelioma?**
 (21) **MR. RADCLIFFE: Same objections.**
 (22) **A. I assume when you say talc you're**
 (23) **talking about --**
 (24) **MR. RADCLIFFE: No assumptions, don't**
 (25) **speculate.**

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- (1) **BY MR. ABRAMS:**
- (2) **Q.** Do you understand the question?
- (3) **A.** Well, you said talc.
- (4) **Q.** Do you understand the question? I
- (5) can rephrase it.
- (6) **A.** Yeah, I don't think I can answer
- (7) it, actually.
- (8) **Q.** You can't answer whether there are
- (9) scientists that actually support the idea that
- (10) exposure to talc contributes to the
- (11) development of mesothelioma?
- (12) **MR. RADCLIFFE:** Same objections.
- (13) **A.** Well, I can tell you that there has
- (14) been studies of talc, IARC has a monograph on
- (15) talc. And they do not consider talc as a
- (16) carcinogen or as capable of causing
- (17) mesothelioma.
- (18) **Q.** Mr. Kelse, I'm not asking you for
- (19) other studies that support your position.
- (20) What I'm asking you is whether you are aware
- (21) of scientists or studies that support the
- (22) alternative, that talc, exposure to talc, does
- (23) contribute to the development of
- (24) mesothelioma? Are you aware of any scientists
- (25) or studies that support that position?

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- (1) **MR. RADCLIFFE:** Same objections,
- (2) asked and answered and compound.
- (3) **BY MS. ABRAMS:**
- (4) **Q.** And if you don't know of
- (5) any, that's fine, just say so.
- (6) **MR. RADCLIFFE:** Same objection.
- (7) **A.** I would have to -- I know there
- (8) are, there have been a couple of researchers
- (9) who feel that there is a possible association.
- (10) **Q.** Who are they?
- (11) **A.** There was New York State, Vienna
- (12) was the head of the New York State Health
- (13) Department that looked at mesothelioma rates
- (14) in New York State published on that.
- (15) **Q.** Is there a study that's published?
- (16) **A.** Yeah, an old study.
- (17) **Q.** Do you know what year that was?
- (18) **A.** No, I can get that for you.
- (19) **Q.** Do you have that study?
- (20) **A.** I do.
- (21) **Q.** Did you produce it to us?
- (22) **A.** No, because it's a general New York
- (23) State type study, it's not Vanderbilt talc
- (24) miners or anything.
- (25) **Q.** So in other words, you did not

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- (1) produce to us any general studies, only
- (2) studies about specifically Vanderbilt talc, is
- (3) that a fair statement?
- (4) **MR. RADCLIFFE:** Objection, assumes
- (5) facts not in evidence, argumentative.
- (6) **BY MS. ABRAMS:**
- (7) **Q.** Is that true?
- (8) **A.** Well, we actually just talked about
- (9) studies that are specific to Vanderbilt talc
- (10) and then we talked about studies that were
- (11) linked to that issue because of the
- (12) commonality of the mineral issue and --
- (13) **Q.** So you did produce to us the
- (14) studies that you believe support the position
- (15) that talc is not associated with the
- (16) development of mesothelioma, but you did not
- (17) produce studies or scientists or research that
- (18) doesn't support that position, correct?
- (19) **A.** I'm sorry, actually in that file
- (20) and this was copied last week, in that file I
- (21) also had a study by Kleinfeld and there was
- (22) also there was a case study, it was called the
- (23) Hull paper.
- (24) **Q.** The Hull paper?
- (25) **A.** Right, and that was in the file as

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- (1) not specific to Vanderbilt, but that has some
- (2) linkage.
- (3) **Q.** But you didn't produce the Vienna
- (4) study?
- (5) **A.** You know what, I think that's in
- (6) there too, but I will check. If it's not,
- (7) you're welcome to it.
- (8) **Q.** Thank you. Would you give that to
- (9) your attorney, if you would?
- (10) **A.** Sure.
- (11) **Q.** So there's Vienna, there's
- (12) Kleinfeld and there's Hull, are there any
- (13) other studies?
- (14) **MR. RADCLIFFE:** Objection, asked and
- (15) answered.
- (16) **A.** Not that I'm aware of.
- (17) **Q.** Are you aware of Dr. Abraham's
- (18) work?
- (19) **A.** Yes.
- (20) **Q.** Do you have his study?
- (21) **A.** Well, I think that's the Hull
- (22) paper.
- (23) **Q.** Okay. That's the same as the Hull
- (24) paper. How about Dr. Stopford, never heard of
- (25) him?

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- (1) **A. He's in North Carolina. I think**
 (2) **he's a toxicologist.**
 (3) **Q. Do you have his studies in your**
 (4) **file?**
 (5) **A. I'm not aware that he produced any**
 (6) **studies.**
 (7) **Q. How do you know about him?**
 (8) **A. He is a consultant for I think the**
 (9) **Arts and Crafts Institute, so he would be**
 (10) **asked by his association to comment on various**
 (11) **materials that arts and crafts people might**
 (12) **use.**
 (13) **Q. So in answer to my question about**
 (14) **researchers who have an alternate opinion from**
 (15) **yours and believe that there is a relationship**
 (16) **between exposure to talc and the development**
 (17) **of mesothelioma, you would answer potentially**
 (18) **to look at Dr. Vienna, Dr. Kleinfeld, Stopford**
 (19) **and Hull, Abraham? Are there any others,**
 (20) **whether or not they have published are of that**
 (21) **opinion?**
 (22) **MR. RADCLIFFE:** Objection, asked and
 (23) answered. Compound, assumes facts not in
 (24) evidence. Argumentative.
 (25) **A. Well, I'll be happy to give you**

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- (1) **what paper I have on Dr. Stopford because I**
 (2) **don't think that's how he concluded.**
 (3) **Q. Are there others that do conclude**
 (4) **that, that you know of?**
 (5) **A. I'm trying to think, not off the**
 (6) **top of my head. The ones I mentioned are the**
 (7) **ones that come to mind.**
 (8) **MR. RADCLIFFE:** I think it's now
 (9) about 10 minutes after you said we would
 (10) take a break.
 (11) **MS. ABRAMS:** Let's take a break.
 (12) **MR. RADCLIFFE:** It's been way too
 (13) long.
 (14) **THE VIDEOGRAPHER:** Off the record at
 (15) 3:32.
 (16) **(A brief recess was taken.)**
 (17) **THE VIDEOGRAPHER:** We're back on the
 (18) record at 3:52.
 (19) **BY MS. ABRAMS:**
 (20) **Q. Mr. Kelse, I'm looking at what**
 (21) **we've marked as Exhibit 9. The first page is**
 (22) **the workers' comp mesothelioma deaths claimed**
 (23) **or the WC, that's workers' comp, right?**
 (24) **A. Yes.**
 (25) **Q. The next page of that at the top**

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- (1) says WC Non Malignant Pulmonary Claims GTC,
 (2) and these span from 1992 until 2009. Do you
 (3) have that document in front of you?
 (4) **A. Yes, and this is attached to it so**
 (5) **it actually expands from about 1970 or '65**
 (6) **through 2009.**
 (7) **Q. And you've redacted the names of**
 (8) **all these claimants; is that right?**
 (9) **A. I did, yes.**
 (10) **Q. The first two pages -- the pages,**
 (11) **the claims filed on the last two pages range**
 (12) **from 1962 to 1980, correct?**
 (13) **A. File dates, yes, looks like 1980 is**
 (14) **it.**
 (15) **Q. Can you tell me, the first three**
 (16) **pages of this set have injury date**
 (17) **information, is that the claim date, the file**
 (18) **date?**
 (19) **A. Yeah, that's the date that on the**
 (20) **form it says date of injury so.**
 (21) **Q. That's the file date, so these**
 (22) **range from 1986 all the way up to 2009 and**
 (23) **then it says See continuing list as of 5-85**
 (24) **and 10-82, where is that continuing list?**
 (25) **MR. RADCLIFFE:** Objection,

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- (1) compound, misstates prior testimony,
 (2) assumes facts not in evidence. Also the
 (3) predicate is not a part of the question.
 (4) **BY MS. ABRAMS:**
 (5) **Q. Do you see that statement?**
 (6) **A. Yes, I do.**
 (7) **Q. That list is not here, is it?**
 (8) **A. I'm confused by that. I think what**
 (9) **I meant by typing that in was trying to refer**
 (10) **to the continuing list, continuing going back**
 (11) **in time rather than forward, but it's**
 (12) **confusing because I typed in 5-31-85.**
 (13) **Q. This last two pages refer to cases**
 (14) **1962 through 1980, correct?**
 (15) **A. That's -- yes, that's right.**
 (16) **Q. And these next three pages in front**
 (17) **ago from 1986 to 2009, correct?**
 (18) **A. Yes.**
 (19) **Q. So we don't have claims from 1980**
 (20) **to 1986 reflected in these documents, is that**
 (21) **fair?**
 (22) **A. Not reflected, but I don't know**
 (23) **whether that's because there were no claims**
 (24) **that I had a record of or for those years or**
 (25) **whether there were claims, but I just didn't**

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(1) **have the records for them.**

(2) **Q.** Okay. And what file did you get
(3) these documents out of?

(4) **MR. RADCLIFFE:** Objection, asked and
(5) answered.

(6) **BY MS. ABRAMS:**

(7) **Q.** Let me just say, would you look
(8) back in that file and see if that information
(9) is included in your file and give it to your
(10) attorney if it is?

(11) **MR. RADCLIFFE:** Objection, it's been
(12) provided. If we have it, it's in the file
(13) that you have, on mine it is at least.

(14) **BY MS. ABRAMS:**

(15) **Q.** Would you do that, sir?

(16) **A.** I'll check again. I remember how I
(17) put this together, though, and they were from
(18) the available data that was in the file so if
(19) there's a three, four, five year gap, it's
(20) either because I don't have the data or there
(21) were no claims, no pulmonary claims for those
(22) years.

(23) **Q.** If you would look at the page
(24) that -- the second page of the set, it says WC
(25) Non Malignant Pulmonary Claims. If you look

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(1) under claim descriptions in that column there
(2) are several entries that say none?

(3) **A.** None, that's right.

(4) **Q.** Does that mean you have no
(5) information about what the allegation for
(6) disease was?

(7) **A.** It means that there was no claim
(8) description that would suggest that there was
(9) a pulmonary claim for that year. There were
(10) certainly comp claims, but none of them
(11) involved pulmonary claims.

(12) **Q.** So you included comp claims, but
(13) also if they were not pulmonary, you didn't
(14) put in here what they were?

(15) **A.** This list is for non malignant
(16) pulmonary claims, so that would be any claim
(17) for a pulmonary injury that was not lung
(18) cancer or mesothelioma.

(19) **Q.** So under 2007 where it says none,
(20) that's some pulmonary injury, but you don't
(21) know what it is, is that fair?

(22) **A.** No, it's just none recorded for
(23) that year, no one filed a claim.

(24) **Q.** I see. There were no claims?

(25) **A.** Exactly.

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(1) **Q.** Thank you for clarifying that.

(2) Now, for the cancers you have listed cancers
(3) of the pulmonary tract claims, 1972, 1996,
(4) 1993, 1995, 1995, 2001 and 2005. The last
(5) four entries are the same cases that you've
(6) reflected on the first page of mesotheliomas,
(7) correct?

(8) **A.** That's correct.

(9) **Q.** So is it your information, sir,
(10) that there were only three cancer claims with
(11) respect to all Gouverneur Talc workers ever?

(12) **A.** According to my records. I was
(13) looking at them actually yesterday, and I was
(14) having a hard time actually even knowing
(15) whether to put them in because they were
(16) actually talcosis claims, but then the
(17) individual eventually died of lung cancer and
(18) there was discussion of linkage between
(19) talcosis contributing to lung cancer, which I
(20) don't quite see what that is, but whatever
(21) that link is, somehow or other it ended up
(22) getting an award. So I didn't really know
(23) quite how, but it did deal with a lung cancer
(24) so I listed it.

(25) **MR. RADCLIFFE:** I object to vague and

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(1) ambiguous, misstates prior testimony.

(2) **BY MS. ABRAMS:**

(3) **Q.** Did you include lung cancer claims
(4) where talcosis was not also claimed?

(5) **A.** I include the claims that-- where
(6) lung cancer was part of the claim information.

(7) **Q.** Did you need to see talcosis claim
(8) to include it in this list is my question?

(9) **A.** No.

(10) **Q.** And so it's your testimony that so
(11) far as you know, there have only been three
(12) lung cancer workers' comp claims out of the
(13) Gouverneur Talc Mines?

(14) **A.** As far as I know, yes.

(15) **Q.** And these records reflect
(16) Gouverneur Talc and not International Talc,
(17) correct?

(18) **A.** That's correct.

(19) **Q.** And in previous submissions in the
(20) production, did you notice that there were 67
(21) workers' comp claims by International Talc
(22) workers at the time that that facility was
(23) purchased by R.T. Vanderbilt?

(24) **MR. RADCLIFFE:** Objection, assumes
(25) facts not in evidence, calls for

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- (1) speculation.
- (2) **A. I did not see those records.**
- (3) **Q.** The next group of documents is a --
- (4) which I'll mark as Exhibit 12 is a three-page
- (5) document called note to file. Did you prepare
- (6) that document?
- (7) **A. Yes, I did.**
- (8) **Q.** Can you tell us what this is?
- (9) **A. During our last deposition, you**
- (10) **asked for a number of documents and you asked**
- (11) **for did I check this file or that file and so**
- (12) **forth. So in response to that, I did want to**
- (13) **follow up. I was sure that what I reported**
- (14) **was accurate, but I thought I would go ahead**
- (15) **and follow up anyway and that's what this is,**
- (16) **is a note to the file that essentially**
- (17) **addresses what I believed you were asking me**
- (18) **at the last deposition and I had to say no, I**
- (19) **didn't check this or I didn't check that so**
- (20) **this was an effort to in good faith to check**
- (21) **these things.**
- (22) **Q.** So you called Dana Putman, the
- (23) plant manager at Gouverneur Talc; is that
- (24) correct?
- (25) **A. That's correct.**

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- (1) **Q.** And I notice that you asked him
- (2) about various kinds of files. Did you ask him
- (3) if anywhere at the -- at the old International
- (4) Talc facility that is now currently owned by
- (5) Gouverneur Talc, R.T. Vanderbilt, whether they
- (6) had any historical International Talc
- (7) records?
- (8) **A. I did. I think I made a note to**
- (9) **that effect at the very bottom.**
- (10) **Q.** And would you read that note to us?
- (11) **A. I also confirmed the absence of IT,**
- (12) **International records pertaining to dust data**
- (13) **or insurance in their records, meaning**
- (14) **Gouverneur Talc's records.**
- (15) **Q.** Other than dust data or insurance
- (16) records, did you ask if they had any other
- (17) historical records for International Talc?
- (18) **A. No.**
- (19) **Q.** Did you ask Mr. Putman, sir, if
- (20) they had any International Talc historical
- (21) records at the plant?
- (22) **A. No.**
- (23) **MR. RADCLIFFE:** Objection, asked and
- (24) answered.
- (25) **A. No, I asked for these records**

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- (1) **because they're risk linked, that's what I do.**
- (2) **Q.** So the only records that you asked
- (3) him to look for were dust data or insurance
- (4) records of International Talc Company,
- (5) correct?
- (6) **A. That's correct.**
- (7) **Q.** You went to Dr. Thompson's lab
- (8) files, does Dr. Thompson maintain a lab at the
- (9) R.T. Vanderbilt facility?
- (10) **A. No, he doesn't.**
- (11) **Q.** So this was an old lab that he used
- (12) to use; is that correct?
- (13) **A. That's correct.**
- (14) **Q.** Is that someone else's lab right
- (15) now?
- (16) **A. Yes, it is.**
- (17) **Q.** Whose lab is that?
- (18) **A. Peter Cuillo.**
- (19) **Q.** Could you spell that name?
- (20) **A. C-U-I-L-L-O.**
- (21) **Q.** And when you say you did a random
- (22) search in your notes for Dr. Thompson's lab
- (23) files, what did you look for?
- (24) **A. I went to his file cabinet that**
- (25) **was -- I knew was there from his days, opened**

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- (1) **the drawers to get a sense of what records he**
- (2) **had, whether those records were familiar to me**
- (3) **or different than what I had already**
- (4) **maintained in my centralized repository of**
- (5) **documents. And paging through the files, I**
- (6) **saw nothing that I didn't already have or that**
- (7) **wasn't pertinent to the issue of risk or the**
- (8) **composition of New York State talc.**
- (9) **Q.** What was in -- what kind of files
- (10) did he have?
- (11) **A. Actually, he did have files where**
- (12) **there were copies of analytical reports, but**
- (13) **they were the same ones that I had in my**
- (14) **chronological lists that were copied by the**
- (15) **attorneys.**
- (16) **Q.** What other types of files did he
- (17) have?
- (18) **A. He had some records of sending**
- (19) **samples out which also were the same as those**
- (20) **that appear in my analytical folders.**
- (21) **Q.** Did he have any files from
- (22) International Talc?
- (23) **A. I didn't see any.**
- (24) **Q.** Did you look in all of his file
- (25) cabinets?

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- (1) **A. I looked through, I pulled the**
 (2) **drawer.**
 (3) **Q. So it's only one drawer?**
 (4) **A. No, I pulled a couple.**
 (5) **Q. How many drawers did he have in**
 (6) **there?**
 (7) **A. I don't know, it was just one**
 (8) **cabinet and maybe three.**
 (9) **Q. Did he have a file on Mouldene**
 (10) **talco?**
 (11) **A. I didn't see that.**
 (12) **Q. Do you know whether or not he has a**
 (13) **file on Mouldene talc?**
 (14) **MR. RADCLIFFE: Don't speculate.**
 (15) **A. I didn't see it. You can ask him.**
 (16) **Q. Well, he doesn't have -- I'm asking**
 (17) **you what's in the filing cabinet of the R.T.**
 (18) **Vanderbilt Company. Are you certain that**
 (19) **there was not a file in that, in his files**
 (20) **that said Mouldene talc on it?**
 (21) **MR. RADCLIFFE: Objection, asked and**
 (22) **answered.**
 (23) **A. I don't know one way or another, I**
 (24) **didn't see it.**
 (25) **Q. Did you look for it?**

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- (1) **A. I looked for anything that I**
 (2) **thought was pertinent to this and I didn't see**
 (3) **anything that was. That would have been one**
 (4) **that would have been. I do know they have --**
 (5) **and I mentioned this at the last deposition,**
 (6) **there is -- that's where the sample came**
 (7) **from. It's still held in that laboratory, the**
 (8) **material itself.**
 (9) **Q. You mentioned a can that had a**
 (10) **wrapping on it?**
 (11) **A. Right.**
 (12) **Q. And I believe you said it said**
 (13) **Mouldene on it?**
 (14) **A. It did, yes.**
 (15) **Q. Did you find that can?**
 (16) **A. I know where it is, yes, it's in**
 (17) **that lab.**
 (18) **Q. Did you take a sample from that can**
 (19) **to produce to us today?**
 (20) **A. Yes.**
 (21) **Q. And does that -- what does that say**
 (22) **on it for identification purposes?**
 (23) **A. It says Mouldene and it's S-158 or**
 (24) **I'll -- whatever the number is that's on the**
 (25) **tag. It's the same as the material that was**

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- (1) **sent to Dr. Wylie for analysis, that one-sheet**
 (2) **analysis that we discussed.**
 (3) **Q. So was that can sealed?**
 (4) **A. Yes.**
 (5) **Q. Did you open the can?**
 (6) **A. I opened it to take a sample months**
 (7) **and months ago. I haven't opened it in**
 (8) **months, just for that sample.**
 (9) **Q. So Mr. Kelse, is it your testimony**
 (10) **today that months and months ago you took a**
 (11) **sample of the material that was in the**
 (12) **Mouldene can out of the can?**
 (13) **MR. RADCLIFFE: Objection,**
 (14) **argumentative, assumes facts not in**
 (15) **evidence, misstates the prior testimony.**
 (16) **A. It was not months and months, it**
 (17) **was at least a month and a half, two months**
 (18) **ago I believe I took the sample.**
 (19) **Q. What did you do with it?**
 (20) **A. I labeled it and kept it.**
 (21) **Q. Did you send it out for testing?**
 (22) **A. I send it to Hawkins & Parnell.**
 (23) **Q. Did they send it out for testing?**
 (24) **A. I'm not sure.**
 (25) **Q. Have you ever seen the results of**

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- (1) **any testing from that sample of Mouldene talc?**
 (2) **A. No, I have not.**
 (3) **Q. Did you reopen that can and get**
 (4) **another sample to bring with you for this**
 (5) **deposition?**
 (6) **A. No, I took a cut of that. I always**
 (7) **keep a retained sample of anything that I**
 (8) **send.**
 (9) **Q. So please explain to me again**
 (10) **exactly what you did. You took material out**
 (11) **of the can several months ago and what did you**
 (12) **do with it?**
 (13) **A. Sent it to Hawkins & Parnell.**
 (14) **Q. All of it?**
 (15) **A. No, I took a cut and I kept a**
 (16) **sample.**
 (17) **Q. How did you take a cut?**
 (18) **A. I had two bags, took it out of the**
 (19) **primary container. I put one in one bag and**
 (20) **then I took out of the primary container and**
 (21) **put it in the second bag, label them the same**
 (22) **way and I made a notation on the bag that I**
 (23) **kept that this was a cut of the sample that**
 (24) **was sent to Hawkins & Parnell.**
 (25) **Q. Where did you put that bag, the one**

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- (1) you kept?
- (2) **A. I have it, it's in my office.**
- (3) **Q. So this was a powdery material,**
- (4) **not a rock?**
- (5) **A. No, it was the product.**
- (6) **Q. It's a powder material?**
- (7) **A. Sure, yes.**
- (8) **Q. And is it your testimony that you**
- (9) **do not know from any source the results of the**
- (10) **testing of the sample of that Mouldene that**
- (11) **was sent to Hawkins & Parnell?**
- (12) **A. No, I don't.**
- (13) **Q. How did you seal that material up?**
- (14) **A. The original container or the**
- (15) **samples?**
- (16) **Q. Both.**
- (17) **A. Well, the original container is in**
- (18) **a metal box and so the lid is metal, so I**
- (19) **pressed that back down. The sample bags are**
- (20) **typical plastic sample bags. We tear the top**
- (21) **off and then there's little tabs that you roll**
- (22) **down and fold over.**
- (23) **Q. And sealed?**
- (24) **A. Yes, it's a sample bag specifically**
- (25) **made for that type of sample.**

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- (1) **Q. Did you wear any protective**
- (2) **equipment when you opened the tin and put the**
- (3) **sample in the bag?**
- (4) **A. For a tiny little scoopful, no.**
- (5) **Q. For any reason, did you wear any**
- (6) **gloves?**
- (7) **A. Did I wear any gloves, no. What I**
- (8) **did was I took a piece -- this is the way I do**
- (9) **it, tear it off, it was clean, fold it, scoop**
- (10) **it, drop it, throw that away. If it's another**
- (11) **sample or another material, you use another**
- (12) **sheet, fold it, take it, drop it, throw it**
- (13) **away.**
- (14) **Q. Did you use the same sheet to get**
- (15) **the two scoops out of the can, if you recall?**
- (16) **A. No, actually I used two, two slips**
- (17) **of paper. Arguably, I didn't need to do that,**
- (18) **but I did.**
- (19) **Q. And did you wear any face**
- (20) **protection when you got the material?**
- (21) **A. I'm an industrial hygienist. I**
- (22) **don't think that that would have been an**
- (23) **exposure that would have put me into any**
- (24) **jeopardy, so I did not.**
- (25) **Q. So that physical sample is labeled**

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- (1) S-1 --
- (2) **A. -- 57 or 58. I would have to --**
- (3) **Q. All right. You mentioned that you**
- (4) **also had a sample from the 1992 abatement that**
- (5) **was done in, I believe, Upstate New York, do**
- (6) **you remember that testimony?**
- (7) **A. That's correct.**
- (8) **Q. Did you do anything with that**
- (9) **sample to bring any of that material?**
- (10) **A. What I did was -- I don't know if**
- (11) **you have this or not.**
- (12) **Q. What are you looking at, sir?**
- (13) **A. What this is, is --**
- (14) **Q. Can you show me?**
- (15) **A. Sure. Is during the last**
- (16) **deposition you wanted samples, not only that,**
- (17) **but I think you even asked for any other**
- (18) **materials that have been sent out for testing**
- (19) **or something of that nature. And I do, as I**
- (20) **just said, I retain samples of material that I**
- (21) **send out and so the attorneys asked me to go**
- (22) **into my -- into the file drawer where I**
- (23) **maintain those cut samples and to basically go**
- (24) **through them and put a collection together of**
- (25) **all the samples I had and list what those**

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- (1) **samples were and who they were sent to and**
- (2) **what product grade and so forth. And I**
- (3) **included in that the Mouldene sample that**
- (4) **Dr. Wylie looked at and the reason I was**
- (5) **looking at that, I was wondering if I took any**
- (6) **of the material from that other, that removal**
- (7) **project that we talked about in 19 -- whenever**
- (8) **that was, '82 or '88 or something.**
- (9) **MS. ABRAMS: This document,**
- (10) **Mr. Radcliffe, are you producing this**
- (11) **because I didn't have this in mine?**
- (12) **MR. RADCLIFFE: I didn't have it this**
- (13) **morning so I didn't make a copy of it.**
- (14) **You're welcome to a copy of it.**
- (15) **MS. ABRAMS: Let's mark this as the**
- (16) **next exhibit.**
- (17) **(Exhibit Number 12 was marked for**
- (18) **identification.)**
- (19) **(Exhibit Number 13 was marked for**
- (20) **identification.)**
- (21) **BY MS. ABRAMS:**
- (22) **Q. Now, let's go back to the 1992**
- (23) **abatement where you had written a note to the**
- (24) **file and we asked you about that last time and**
- (25) **you brought the note to the file, but you**

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- (1) didn't produce the file. Did you produce the
 (2) entire abatement file to your attorneys?
 (3) **A. I did.**
 (4) **Q. Did they --**
 (5) **A. You can have another copy of it,**
 (6) **but I know they copied it and sent it to you,**
 (7) **but here's yet other.**
 (8) **MR. RADCLIFFE:** The only caveat to
 (9) that is I'll note that I have a color
 (10) photocopy of the picture which that's black
 (11) and white, you can read it, but I have a
 (12) color one that I still have to send to you.
 (13) **BY MS. ABRAMS:**
 (14) **Q. Thank you. You had several**
 (15) **pictures that you talked to us about?**
 (16) **A. It's on that one page, if you**
 (17) **notice.**
 (18) **Q. All of them are on the page?**
 (19) **A. Yeah, I lined them up.**
 (20) **Q. So we'll mark this as the next in**
 (21) **order which is Note to File and then there are**
 (22) **several pages after that.**
 (23) **(Exhibit Number 14 was marked for**
 (24) **identification.)**
 (25) **BY MS. ABRAMS:**

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- (1) **Q. Do you know where -- you had this**
 (2) **material in your file, correct?**
 (3) **A. The Mouldene file, correct.**
 (4) **Q. And you had a baggie in that same**
 (5) **file?**
 (6) **A. Yes.**
 (7) **Q. Prior to last week, had that ever**
 (8) **been tested by you? Did you send it out to**
 (9) **anyone or give it to your attorneys?**
 (10) **A. No, I did not.**
 (11) **Q. What did you do with that baggie?**
 (12) **A. It's still in the file.**
 (13) **Q. Did you take a sample to give to**
 (14) **us?**
 (15) **A. I did not, if it's not on that**
 (16) **list, that's why I was looking at it, I was**
 (17) **trying to remember whether I took a sample of**
 (18) **that or not. It would say so. I don't**
 (19) **believe that's the case.**
 (20) **Q. This two page list, when did you**
 (21) **create this list that's Exhibit 13?**
 (22) **A. Right, at some point last week, I**
 (23) **think it was Wednesday or Thursday.**
 (24) **Q. How did you create it? What did**
 (25) **you use to compile it?**

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- (1) **Q. Mr. Kelse, is this the entire**
 (2) **content of your file regarding the 1992**
 (3) **abatement?**
 (4) **A. It's the 12, 13 pages that I**
 (5) **mentioned that I had not provided to you**
 (6) **originally because I mistakenly thought it**
 (7) **wasn't pertinent, but --**
 (8) **Q. This material cost \$7,500 to**
 (9) **transport and dispose of, correct?**
 (10) **A. Correct.**
 (11) **Q. And that was taken from -- where**
 (12) **was this? Where did this occur?**
 (13) **A. The plant, there was a plant in**
 (14) **Syracuse.**
 (15) **Q. In New York?**
 (16) **A. Yes.**
 (17) **Q. And the disposal, they took it all**
 (18) **the way to West Virginia to dispose of it, to**
 (19) **put it into a hazardous waste dump; is that**
 (20) **right?**
 (21) **A. That's what it says.**
 (22) **Q. Okay. And this waste transporter**
 (23) **permit says that they were transporting**
 (24) **asbestos containing waste, is that correct?**
 (25) **A. That's what it says.**

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- (1) **A. At the request of the attorneys I**
 (2) **pulled the file drawer where I have my**
 (3) **retained samples and I've many retained**
 (4) **samples, not just talc, but from other mineral**
 (5) **products as well, but I pulled all the talc**
 (6) **ones, took them into my office and made cuts**
 (7) **so that I would have a sample for each of**
 (8) **these. And on the labels, whenever I sent**
 (9) **these samples to anyone and the date, I**
 (10) **reflected it on the cover so as I did it, I**
 (11) **typed in the information so that it would be a**
 (12) **complete package.**
 (13) **Q. So where did you get the**
 (14) **information that the Mouldene sample, the**
 (15) **origin date was 1975?**
 (16) **A. It was on the container. I**
 (17) **couldn't think of any other place where I**
 (18) **would get that. It was on the container.**
 (19) **Q. And it says in 1998 part of that**
 (20) **was sent to Ann Wylie, correct?**
 (21) **A. That's correct.**
 (22) **Q. And in July 2009 what is HPP York?**
 (23) **A. It's Hawkins & Parnell.**
 (24) **Q. In August 2009, M. Gunter, what**
 (25) **does that mean?**

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- (1) **A. That means I gave a sample of that**
 (2) **material to a mineralogist by the name of**
 (3) **Mickey Gunter.**
 (4) **Q. Which you just gave to him**
 (5) **recently?**
 (6) **A. Yes.**
 (7) **Q. When did you give it to him?**
 (8) **A. I think about a week and a half**
 (9) **ago, two weeks ago.**
 (10) **Q. Before your deposition?**
 (11) **A. I have to remember. I'll have to**
 (12) **look up when he visited, it may have been**
 (13) **before the deposition.**
 (14) **Q. And even though we had talked at**
 (15) **your last deposition about that sample of**
 (16) **Mouldene talc from the 1992 abatement, you did**
 (17) **not bring any of that material or put it into**
 (18) **a sample bag to give to us, correct?**
 (19) **MR. RADCLIFFE: Objection,**
 (20) **argumentative.**
 (21) **A. That's correct.**
 (22) **Q. And is it fair to say that the**
 (23) **samples that you did bring or gave to your**
 (24) **attorney in sample bags, those are all listed**
 (25) **on Exhibit 13?**

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- (1) **A. That's correct.**
 (2) **Q. And they involve many different**
 (3) **kinds of R.T. Vanderbilt talc other than**
 (4) **Mouldene talc, correct?**
 (5) **MR. RADCLIFFE: Objection,**
 (6) **argumentative, vague and ambiguous.**
 (7) **BY MS. ABRAMS:**
 (8) **Q. Is that correct?**
 (9) **A. That's right.**
 (10) **Q. And there's only one entry for**
 (11) **Mouldene, correct, the subject of this**
 (12) **litigation?**
 (13) **A. That's all I had.**
 (14) **Q. Is that all you had?**
 (15) **A. That one container in**
 (16) **Dr. Thompson's office, that's the only source**
 (17) **of that product that I'm aware of.**
 (18) **Q. What about the baggie in your --**
 (19) **hold on -- let me ask my question -- what**
 (20) **about the baggie in your file that was part of**
 (21) **the 1992 abatement?**
 (22) **A. That would be another sample, yes.**
 (23) **Q. You don't know whether that's**
 (24) **Mouldene though, do you?**
 (25) **A. To the extent that it came out of a**

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- (1) **bag that said Mouldene, that's all I can say.**
 (2) **Q. The next document that I want to**
 (3) **mark as Exhibit 15 is a letter to Terry Losee**
 (4) **from Allan Harvey, did you bring that with**
 (5) **you? Your attorney gave that to me, I**
 (6) **believe.**
 (7) **A. 1983, this would have been one of**
 (8) **those documents that would have appeared in my**
 (9) **product correspondence file that we**
 (10) **discussed. We did go through that product**
 (11) **correspondence file for the names of the**
 (12) **companies that you gave me.**
 (13) **Q. And this is a letter from -- to**
 (14) **Georgia-Pacific from Mr. Harvey; is that**
 (15) **correct?**
 (16) **A. Yes, that's what it says.**
 (17) **Q. Let's mark that.**
 (18) **(Exhibit Number 15 was marked for**
 (19) **identification.)**
 (20) **BY MS. ABRAMS:**
 (21) **Q. Is that the only other document you**
 (22) **found in a Georgia-Pacific file?**
 (23) **A. Yes, it was.**
 (24) **Q. That was all? Was that in a file**
 (25) **that said Georgia-Pacific?**

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- (1) **A. It was in the file that I described**
 (2) **at the last deposition which is I have all of**
 (3) **the correspondence with customers asking about**
 (4) **the composition of talc by -- in chronological**
 (5) **order so everything prior to -- so each folder**
 (6) **is a year. So we looked in every folder that**
 (7) **was earlier than 1990 for any correspondence**
 (8) **linked to Georgia-Pacific, that's what we**
 (9) **found.**
 (10) **Q. And then I believe that the rest of**
 (11) **these documents pertain to information you got**
 (12) **out of a file about DAP, can you take a look**
 (13) **and just confirm that for me?**
 (14) **A. Same file.**
 (15) **MR. RADCLIFFE: Look at them all,**
 (16) **don't just assume.**
 (17) **A. Okay. These would be in my file.**
 (18) **Q. And those are the business records**
 (19) **of R.T. Vanderbilt Corporation?**
 (20) **A. Yes.**
 (21) **Q. You -- do you maintain files from**
 (22) **customers where there have been OSHA**
 (23) **citations?**
 (24) **A. If they're sent to us and we're**
 (25) **made aware of them, I would keep those types**

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- (1) of records, yes.
- (2) Q. Do you have other files other than
- (3) this DAP file where there have been OSHA
- (4) citations for R.T. Vanderbilt product
- (5) constituents?
- (6) MR. RADCLIFFE: Objection, calls for
- (7) speculation.
- (8) A. There's one that comes to mind. It
- (9) had to do with a company by the name of Borg
- (10) Warner, I think.
- (11) Q. Where was that?
- (12) A. Well, before my time, Borg Werner.
- (13) Q. Do you know where, though?
- (14) A. Where it was, no, I don't.
- (15) Q. Do you know of any other OSHA
- (16) citations other than Borg Warner and the DAP
- (17) citation?
- (18) A. No, I don't.
- (19) Q. And who would keep those records,
- (20) if they existed?
- (21) A. I would have them. I would be -- I
- (22) inherited those types of records from my
- (23) predecessor.
- (24) Q. This exhibit, let's mark it as 16,
- (25) the DAP documents. Let's mark as 17 a

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- (1) document with a handwritten note at the top,
- (2) Status as I understand it, Watson versus RTV.
- (3) Would you mark that, please.
- (4) (Exhibit Number 16 was marked for
- (5) identification.)
- (6) (Exhibit Number 17 was marked for
- (7) identification.)
- (8) Q. Do you have this two-page document
- (9) in front of you, that's now Exhibit 17?
- (10) A. Yes, I do.
- (11) Q. Are these your handwritten notes?
- (12) A. Yes.
- (13) Q. And whose typewritten notes are
- (14) these?
- (15) A. They're mine as well.
- (16) Q. Why did you put this together?
- (17) A. When I read through the draft
- (18) deposition from a couple of weeks ago, as I
- (19) read through I wrote down the requests that
- (20) you made, what you had asked me. And then
- (21) I -- from that those notes, I typed this out
- (22) and then my -- this was actually an action
- (23) plan to try to address each of the issues that
- (24) you raised.
- (25) Q. Okay. So the first issue is the

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- (1) talc analytical reports and check for any
- (2) additional in Dr. Thompson's files and you
- (3) mentioned that you did that?
- (4) A. Yes.
- (5) Q. Second is all underlying data
- (6) pertaining to the Honda study, that's
- (7) something that you provided?
- (8) A. Yes.
- (9) Q. The R.T. Vanderbilt talc health
- (10) files maintained by Kelse, what are those?
- (11) A. The ones we earlier discussed,
- (12) those that are specific to Vanderbilt, non RTV
- (13) specific, but linked, and what we didn't
- (14) discuss, any formal overviews of the health
- (15) science base as it pertains to these issues,
- (16) but those were copied and provided to you.
- (17) Q. Have you finished your answer?
- (18) A. Yeah.
- (19) Q. Available maps, did you provide any
- (20) more available maps?
- (21) A. I don't know what was provided. I
- (22) did have this available which I thought was
- (23) quite good. It's a single page and I think
- (24) really gives you a good sense of where these
- (25) various mines are located. And with this map

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- (1) which was in a file with some records and
- (2) maps, there was also these two pages which I
- (3) thought were also helpful. I showed them to
- (4) our attorney who informed me that they had
- (5) also found these same two and provided them,
- (6) but you're welcome to them.
- (7) Q. Are these copies that you're able
- (8) to give us and we're able to attach as an
- (9) exhibit or we can try to make copies of them?
- (10) MR. RADCLIFFE: You have a copy of
- (11) them yesterday from Dr. Thompson, same
- (12) documents. They were marked as an exhibit
- (13) to the deposition although you marked them
- (14) as two different exhibits, they actually
- (15) are one.
- (16) BY MS. ABRAMS:
- (17) Q. These are documents that are kept
- (18) in the regular course of R.T. Vanderbilt
- (19) business?
- (20) A. Sure, yes.
- (21) Q. And if I knew the exhibit numbers I
- (22) wouldn't have a problem, but I don't, so --
- (23) A. You're welcome to those. I think I
- (24) can find other copies.
- (25) Q. I'm just going to mark all this as

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- (1) Exhibit 18.
 (2) **(Exhibit Number 18 was marked for**
 (3) **identification.)**
 (4) **BY MS. ABRAMS:**
 (5) **Q.** The next --
 (6) **MR. RADCLIFFE:** Excuse me. Since we
 (7) had some discussion off the record I just
 (8) want to indicate on the record that
 (9) Mr. Kelse indicated to me that he can stay
 (10) until five o'clock.
 (11) **BY MS. ABRAMS:**
 (12) **Q.** The next is, number five is
 (13) Dr. Thompson to Mr. Fiederlein memo, includes
 (14) reference to his Talcville analysis. What did
 (15) you bring there or what did you do for that?
 (16) **A.** I believe this was also provided
 (17) through the attorneys, but I have an extra
 (18) copy. This is the paper for some reason I
 (19) couldn't find at the last deposition. It
 (20) includes a reference to Talcville, item three
 (21) or four.
 (22) **Q.** Let's just mark this as number 19.
 (23) **(Exhibit Number 19 was marked for**
 (24) **identification.)**
 (25) **BY MS. ABRAMS:**

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- (1) **Q.** Exhibit 19 is also a document dated
 (2) May 31st, 1990, Mr. G.L. Fiederlein from C.S.
 (3) Thompson and this is a document that you kept
 (4) in the regular course of business for R.T.
 (5) Vanderbilt?
 (6) **A.** Yes.
 (7) **Q.** And it was created at or around the
 (8) time of the date on the document?
 (9) **A.** Yes.
 (10) **Q.** You -- the next was the remaining
 (11) Mouldene bag removal disposal project in 1992
 (12) and sample of that Mouldene KJ-200 and you
 (13) have a notation that you copied -- documents
 (14) copied, including improved copy of bag label
 (15) photo. This says the sample also, doesn't it?
 (16) **A.** It does list that.
 (17) **Q.** And you didn't produce the sample,
 (18) did you?
 (19) **MR. RADCLIFFE:** We haven't produced
 (20) any samples yet, although we're willing to
 (21) do so.
 (22) **BY MS. ABRAMS:**
 (23) **Q.** Are you -- Mr. Kelse, will you
 (24) provide for us a copy -- strike that.
 (25) Mr. Kelse, will you provide for us a

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- (1) sample of the material that you have in your
 (2) office K-100 Mouldene?
 (3) **MR. RADCLIFFE:** I'm going to object
 (4) to that request. I need to make sure it's
 (5) an appropriate sample to provide from a
 (6) legal standpoint. So whether Mr. Kelse is
 (7) willing to do so or not, I don't want it to
 (8) be taken as a binding agreement on behalf
 (9) of the company.
 (10) **BY MS. ABRAMS:**
 (11) **Q.** Well, let's just clarify. To your
 (12) knowledge, that's one of only two existing
 (13) samples of Mouldene talc that R.T. Vanderbilt
 (14) has in its possession, correct?
 (15) **A.** To my knowledge.
 (16) **Q.** And as far as you know, there
 (17) aren't any others?
 (18) **A.** As far as I know.
 (19) **Q.** And they come from different time
 (20) periods and different material or bags?
 (21) **MR. RADCLIFFE:** Objection, compound,
 (22) assumes facts not in evidence.
 (23) **A.** I don't recall, unless the
 (24) documents indicate, but I don't recall seeing
 (25) it. Doesn't mean it's not there, but I don't

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- (1) **know the age of the bags that were removed**
 (2) **from that plant. I don't know at what time**
 (3) **they -- how long they sat in their warehouse**
 (4) **or from what year they came.**
 (5) **Q.** The next entry on Exhibit 17 is
 (6) check GTC for any asbestos analytical reports
 (7) pertaining to Mouldene and confirm the nature
 (8) of the files at GTC relative to dust
 (9) risks, and did you do that?
 (10) **A.** I did, and we discussed that a
 (11) little earlier in respect to the note to the
 (12) file.
 (13) **Q.** You checked the quality department
 (14) to confirm that their files don't contain
 (15) records of talc risk customer injuries not in
 (16) your file already?
 (17) **A.** I did.
 (18) **Q.** Did you look for files regarding NL
 (19) Industries?
 (20) **A.** No, I did not.
 (21) **Q.** Were you asked to look for files
 (22) regarding NL Industries?
 (23) **A.** I don't recall. If you did, I
 (24) don't remember.
 (25) **Q.** Do you have files regarding NL

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- (1) Industries?
 (2) **A. I don't know, I would have to look.**
 (3) **Q.** We would ask that you look as that
 (4) was part of the request and provide that to
 (5) your attorney.
 (6) **MR. RADCLIFFE:** We're going to object
 (7) on the grounds that you're assuming he
 (8) didn't look for it.
 (9) **MS. ABRAMS:** I'm sorry, he just said
 (10) he didn't look for it.
 (11) **BY MS. ABRAMS:**
 (12) **Q.** Did you look for NL Industries,
 (13) sir? You've testified that you didn't look
 (14) for NL Industries and your list on number nine
 (15) does not reflect NL Industries.
 (16) **A. That's right, that's why I**
 (17) **hesitate. These were the companies that I**
 (18) **asked my secretary to look in the file and**
 (19) **pull out and show to me.**
 (20) **Q.** So your secretary looked for the
 (21) files.
 (22) **A. She did, I did as well.**
 (23) **Q.** And you have not asked anyone to
 (24) look for NL Industries, correct?
 (25) **A. When I looked through the -- I must**

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- (1) **have missed it from the deposition, I didn't**
 (2) **pick up that request.**
 (3) **Q.** Okay. So again, I ask that you
 (4) look for that and provide that information to
 (5) your attorney.
 (6) **A. And that would be pre 1990?**
 (7) **Q.** No, that's NL Industries, no date.
 (8) And did you only produce pre 1990 information?
 (9) **A. That was what was indicated in the**
 (10) **deposition, I believe.**
 (11) **Q.** The notice asked for some
 (12) information pre 1990 and other information
 (13) that was not limited to time. Did you only
 (14) limit all of the information to 1990 or
 (15) before?
 (16) **A. I did, I took it from the**
 (17) **deposition.**
 (18) **Q.** For all of the entities listed in
 (19) number nine, do you believe that you have in
 (20) your files information that post dates 1990
 (21) that you did not produce?
 (22) **A. I know for DAP.**
 (23) **Q.** Okay. And are there any others
 (24) that you believe that you may have
 (25) information, for example, Georgia-Pacific?

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- (1) **A. I don't know.**
 (2) **Q.** United States Gypsum.
 (3) **A. There may be, but I have to check.**
 (4) **I know for certain DAP, maybe Gypsum. The**
 (5) **others, I don't know.**
 (6) **Q.** I ask that you look for that
 (7) information as it was requested and give that
 (8) information to your attorney, sir.
 (9) Next category is internal RTV memoranda
 (10) regarding the first OSHA asbestos standard in
 (11) 1972. Why did you list that?
 (12) **A. We discussed it in respect to what**
 (13) **was Vanderbilt's -- something along the lines**
 (14) **of what was Vanderbilt's position on the**
 (15) **asbestos standard or something of that sort**
 (16) **and I think I recall saying or as I read in**
 (17) **the deposition that based on the files that I**
 (18) **have seen, the first discussion on the**
 (19) **asbestos standard, there was no earlier**
 (20) **discussion than 1972 and that discussion**
 (21) **reflected to me a recognition by R.T.**
 (22) **Vanderbilt that there was something, you know,**
 (23) **that they objected to the standard and**
 (24) **wondered if the standard applied to them, they**
 (25) **didn't think it did. They were somewhat**

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- (1) **confused by it and intended to look into it.**
 (2) **And these were internal memoranda that**
 (3) **spoke to that impression that we discussed at**
 (4) **the deposition. And I know that those were**
 (5) **copied from a file that was entitled Talc**
 (6) **Documents 1984 back or key documents 1984**
 (7) **back, and so when you go to 1972, you'll see a**
 (8) **number of documents that were submitted to you**
 (9) **that reflect what I described in that**
 (10) **deposition.**
 (11) **Q.** Did you have your entire key talc
 (12) documents file copied and produced?
 (13) **A. Yes.**
 (14) **Q.** Now, I'd like to go back to what's
 (15) been marked as Exhibit 12, which is your note
 (16) to the file on the work that you did and talk
 (17) about the next entry, 8-24-09. You apparently
 (18) talked to Konrad Rieger; is that right?
 (19) **A. That's correct.**
 (20) **Q.** And where does Mr. Rieger, where is
 (21) his office?
 (22) **A. Right over -- he's on the next**
 (23) **floor over me.**
 (24) **Q.** What is CPS-183 that you mention in
 (25) the first paragraph?

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- (1) **A. That's the designation of that**
 (2) **sample, the fiber concentrate.**
 (3) **Q. Do you have CPS-183?**
 (4) **A. Yes, I think it's listed fiber**
 (5) **concentrate. It was the one that was used in**
 (6) **the Wylie Mossman study.**
 (7) **Q. So on Exhibit 13, L fiber**
 (8) **concentrate 1996, that's CPS-183?**
 (9) **A. Yeah, I think it should say that,**
 (10) **if I'm not mistaken.**
 (11) **Q. Why don't you look at that.**
 (12) **A. It doesn't say that, but that's**
 (13) **what it is.**
 (14) **Q. Are you certain of that?**
 (15) **A. Yes.**
 (16) **Q. Would you mark that on there and**
 (17) **write CPS-183?**
 (18) **A. (Witness writing).**
 (19) **Q. And Mr. Rieger reported some**
 (20) **uncertainty to you about what that sample**
 (21) **contained, didn't he?**
 (22) **A. No, he reported some uncertainty**
 (23) **about its origin. In other words, was it from**
 (24) **an outcrop material on the soil or did they**
 (25) **concentrate it from an actual product from**

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- (1) **Talcville, like say a fibercal or even a**
 (2) **Mouldene.**
 (3) **Q. He didn't know the answer to that**
 (4) **dilemma, did he?**
 (5) **MR. RADCLIFFE: Object,**
 (6) **argumentative, vague and ambiguous.**
 (7) **A. He didn't know for certain.**
 (8) **Q. Okay. And he didn't have any**
 (9) **record of what that was either, correct?**
 (10) **A. No, he didn't.**
 (11) **Q. So the particular material that**
 (12) **Dr. Wylie used in her cell study, was that**
 (13) **CPS-183?**
 (14) **A. Yes.**
 (15) **Q. And it's correct that as far as**
 (16) **Mr. Rieger described to you, he could not for**
 (17) **sure say exactly how that sample originated?**
 (18) **A. As I indicated here, he felt it was**
 (19) **more likely, contrary to what I thought, he**
 (20) **felt it was more likely a concentrate from one**
 (21) **of the high fiber products from that mine**
 (22) **because it's a lot easier to concentrate it**
 (23) **once it's already a powder than to take**
 (24) **something and then break it down from there**
 (25) **and they were used to doing that type of**

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- (1) **concentration so he felt that's the more**
 (2) **likely scenario.**
 (3) **Q. Move to strike as nonresponsive.**
 (4) **Could you read the question back, please?**
 (5) **(Whereupon, the court reporter read**
 (6) **back the previous question.)**
 (7) **A. Well, directly I'd have to say no.**
 (8) **Q. You talked to the quality**
 (9) **department?**
 (10) **A. Yes, I did.**
 (11) **Q. And you provided for us a graph on**
 (12) **the next page, Notifications August '08 to**
 (13) **August '09. Why did you pick August '08 to**
 (14) **August '09?**
 (15) **A. Well, I asked them for a sampling**
 (16) **of a graph that they routinely put together**
 (17) **which essentially reflects the number of**
 (18) **customer communications. And the reason I**
 (19) **asked for it is it breaks it down into**
 (20) **categories of information that that department**
 (21) **would maintain files on. And as I described**
 (22) **to you in the last deposition, quality**
 (23) **department is as the name implies, it's after**
 (24) **you know damaged goods, out of spec, bag**
 (25) **ripped, that type of thing and those are the**

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- (1) **types of files that they maintain. They would**
 (2) **not maintain risk files.**
 (3) **Q. Do you know, sir, if under the**
 (4) **category customer request that would include**
 (5) **customer complaints?**
 (6) **A. Well, I asked him specifically if**
 (7) **they had ever seen or -- and I looked in the**
 (8) **file where they maintain the customer**
 (9) **inquiries, and if they ever recall ever seeing**
 (10) **anyone asking about the risk of New York State**
 (11) **talc or the composition of New York State in**
 (12) **regard to whether it contained asbestos or not**
 (13) **and they just looked at me and said why would**
 (14) **-- of course not.**
 (15) **Q. Move to strike as nonresponsive.**
 (16) **Could you read the question back and while**
 (17) **you're reading the question back we can change**
 (18) **the tape.**
 (19) **THE VIDEOGRAPHER: Off the record,**
 (20) **4:47.**
 (21) **(A brief recess was taken.)**
 (22) **THE VIDEOGRAPHER: It's the beginning**
 (23) **of Tape Number 4. We're back on the record**
 (24) **at 4:50.**
 (25) **MS. ABRAMS: Could you read the**

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- (1) question back, please?
- (2) **(Whereupon, the court reporter read**
- (3) **back the previous question.)**
- (4) **BY MS. ABRAMS:**
- (5) **Q.** Do you know?
- (6) **A.** No, I don't know exactly what that
- (7) **would entail.**
- (8) **Q.** Does R.T. Vanderbilt keep a record
- (9) and chart the extent of customer complaints
- (10) for a particular product, to your knowledge?
- (11) **A.** I've seen this graph and it's --
- (12) **and I've seen graphs with various products**
- (13) **listed so that's the extent of my knowledge**
- (14) **that I must keep some records along that line**
- (15) **by product type.**
- (16) **Q.** Did you ever see a graph about
- (17) Mouldene?
- (18) **A.** No.
- (19) **Q.** Did you see one about Nytal?
- (20) **A.** No.
- (21) **Q.** How about IT 3X?
- (22) **A.** No.
- (23) **Q.** How about any talc products from
- (24) Upstate New York?
- (25) **A.** None that I recall.

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- (1) **Q.** What types of files do they keep
- (2) that you have seen?
- (3) **A.** They're listed on the graph.
- (4) **Actually have tabs that are broken down in**
- (5) **those same categories.**
- (6) **Q.** I'm sorry, let me rephrase the
- (7) question, not what's on that graph. Have you
- (8) seen graphs or information about customer
- (9) complaints about any R.T. Vanderbilt talc
- (10) products?
- (11) **A.** No.
- (12) **Q.** And do you know whether R.T.
- (13) Vanderbilt compiles that information in any
- (14) form?
- (15) **A.** For the quality department a bag
- (16) **broke or something like that, yes, that's what**
- (17) **that department does.**
- (18) **Q.** Do they chart that out in a form
- (19) that's called customer complaints? Is there
- (20) somewhere that they register customer
- (21) complaints for the talc products that are
- (22) created out of Upstate New York?
- (23) **MR. RADCLIFFE:** Objection, assumes
- (24) facts not in evidence.
- (25) **A.** The type graph I'm used to seeing

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- (1) **which they present once a month at a staff**
- (2) **meeting is a reflection of what I produced to**
- (3) **you by type of complaint. Over the years on a**
- (4) **couple of occasions quality managers had a**
- (5) **graph in which he's broken down product areas**
- (6) **because they're interested in which products**
- (7) **are seem to be presenting the biggest**
- (8) **transportation issues or container breakage or**
- (9) **shelf life or spec changes, things of that**
- (10) **sort. I don't recall ever seeing any mention**
- (11) **of talc on any on those. How they produce**
- (12) **those, I have no idea.**
- (13) **Q.** Sir, could you find the E-Tek
- (14) report that's dated 1984 in your -- let me
- (15) find it for you. This was in the documents
- (16) that you provided to us today and it's in
- (17) this -- in Exhibit 16. The document is headed
- (18) June 4th, 1984. It's a letter to Mr. Donald
- (19) Miller from general manager DAP, Inc.
- (20) regarding sample results, from C-Tek and it
- (21) starts on October 17, 1984 C-Tek performed a
- (22) general industrial hygiene survey at your
- (23) location. Could you read the paragraph
- (24) starting The main concern up until Sample
- (25) results, please, sir? just read that for all

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- (1) of us.
- (2) **A.** "The main concern is with the
- (3) **health hazard potential associated with the**
- (4) **Vanderbilt IT 3X talc. Although not strictly**
- (5) **an asbestos containing product, it is largely**
- (6) **an asbestiform product and highly fibrous.**
- (7) **At the present time, the significance of**
- (8) **that distinction is in dispute in the**
- (9) **scientific community. From an insurance**
- (10) **standpoint, it is C-Tek's opinion that both**
- (11) **asbestos and asbestiform talc should be**
- (12) **handled with equal care in the workplace**
- (13) **because none of the DAP products using IT 3X**
- (14) **talc are friable in finished form. The**
- (15) **potential for cancer related product liability**
- (16) **claims is nil."**
- (17) **Q.** Were you at the Hartford during the
- (18) time this was written in 1984?
- (19) **A.** I was.
- (20) **Q.** And was it your position at the
- (21) Hartford that from an insurance standpoint as
- (22) with C-Tek both asbestos and asbestiform talc
- (23) should be handled with equal care in the
- (24) workplace?
- (25) **MR. RADCLIFFE:** Objection,

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- (1) argumentative.
- (2) **BY MS. ABRAMS:**
- (3) **Q.** Did you have that opinion?
- (4) **A.** **We did not take a position on that**
- (5) **other than what I described to you at the last**
- (6) **deposition which was we were not going to**
- (7) **comment on that issue because the science was**
- (8) **beyond us.**
- (9) **Q.** Sir, I'll try to quickly move
- (10) through some other matters. I want to just
- (11) follow up from when you were here at your last
- (12) deposition. You mentioned that you had
- (13) extensive files relating to mineral analysis
- (14) and composition of Vanderbilt talc, including
- (15) a mineral file used in prior cases that
- (16) contains all of Vanderbilt's analytical
- (17) reports in chronological order. Did you
- (18) supply that to us now?
- (19) **A.** **Yes.**
- (20) **Q.** And did you supply them as you had
- (21) them in chronological order, to the best of
- (22) your knowledge?
- (23) **A.** **I know it was done last week**
- (24) **because they copied it in exactly the order it**
- (25) **was in my file.**

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- (1) **Q.** And you described that as large
- (2) enough to fill the drawer of a file cabinet?
- (3) **MR. RADCLIFFE:** Objection,
- (4) argumentative, misstates the prior
- (5) testimony.
- (6) **BY MS. ABRAMS:**
- (7) **Q.** Is that basically what you
- (8) supplied?
- (9) **A.** **If I said that, that was overblown.**
- (10) **It's about as high as that stack so that**
- (11) **wouldn't be a file cabinet. I kept it in a**
- (12) **file cabinet with data, but also with health**
- (13) **data which we already discussed so --**
- (14) **Q.** Whatever was in that file drawer
- (15) you did produce?
- (16) **A.** **Oh, yes.**
- (17) **Q.** You mentioned that the file had
- (18) summaries and CVs of those who wrote summaries
- (19) and observations from the reports. Did you
- (20) provide CVs, if you had them?
- (21) **A.** **Where they were available, where**
- (22) **they were appended to a study, they would have**
- (23) **been copied and provided to you.**
- (24) **Q.** And you provided the 2001 Mine
- (25) Safety Health Administration report?

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- (1) **A.** **Yes.**
- (2) **Q.** Just bear with me, I'm just going
- (3) through my notes from your last deposition for
- (4) a minute.
- (5) You mentioned regarding International
- (6) Talc's insurance coverage that Jim McDonald
- (7) might know, did you talk to Mr. McDonald?
- (8) **A.** **No.**
- (9) **Q.** Did you make any attempt to
- (10) determine whether R.T. Vanderbilt has
- (11) insurance coverage for International Talc as
- (12) on your list of things to do?
- (13) **A.** **No.**
- (14) **Q.** And do you believe Mr. McDonald
- (15) would be the best person to ask of that -- for
- (16) that information?
- (17) **A.** **I believe so, but I could be wrong.**
- (18) **Q.** Regarding the sample that you
- (19) discussed with Mr. Rieger, would you agree
- (20) with me that Mr. Rieger is the person who
- (21) would be most knowledgeable and qualified to
- (22) discuss about that sample specifically?
- (23) **MR. RADCLIFFE:** Objection, calls for
- (24) speculation, assumes facts not in
- (25) evidence, argumentative.

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- (1) **A.** **Again, I don't know. I reported**
- (2) **what he reported to me so.**
- (3) **Q.** He's the one with the first-hand
- (4) knowledge of that?
- (5) **A.** **That's why I spoke to him.**
- (6) **Q.** But he's the one with the first-
- (7) hand knowledge with respect to what happened
- (8) with that sample as far as you know?
- (9) **MR. RADCLIFFE:** Same objections.
- (10) **BY MS. ABRAMS:**
- (11) **Q.** Correct?
- (12) **A.** **He would be the one with first-hand**
- (13) **information?**
- (14) **Q.** Yes.
- (15) **A.** **As he did the concentrate, yes.**
- (16) **Q.** Now, Mouldene was discontinued as a
- (17) product as of sometime in 1976 or
- (18) '77, correct, as far as you know?
- (19) **A.** **That's what I understand.**
- (20) **Q.** And R.T. Vanderbilt never produced
- (21) that product again; is that correct?
- (22) **A.** **That's my understanding.**
- (23) **Q.** And R.T. Vanderbilt closed Mine No.
- (24) 3, correct?
- (25) **A.** **Yes.**

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- (1) Q. They don't mine out of there
 (2) anymore?
 (3) A. That's correct.
 (4) Q. They didn't mine out of there in
 (5) 1985, correct, when you went and joined the
 (6) company?
 (7) A. That's right.
 (8) Q. They didn't mine out of there in
 (9) 1987?
 (10) A. Not that I was aware of.
 (11) Q. They didn't mine out of there in
 (12) 1989; is that right?
 (13) A. I know they didn't produce any
 (14) products from that mine, that's my
 (15) understanding.
 (16) MR. RADCLIFFE: My computer is
 (17) telling me that it's one minute after
 (18) five.
 (19) BY MS. ABRAMS:
 (20) Q. So far as you know, was there any
 (21) reason to sample test or otherwise evaluate
 (22) the constituent elements of Mouldene talc
 (23) after 1977 with respect to the R.T. Vanderbilt
 (24) Corporation?
 (25) MR. RADCLIFFE: Objection,

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- (1) argumentative, misstates prior testimony.
 (2) A. Not that I would be aware of.
 (3) Q. With your indulgence, why don't I
 (4) get through what we did at the last deposition
 (5) which shouldn't take more than five or ten
 (6) minutes, then we can go.
 (7) MR. RADCLIFFE: If it's going to be
 (8) 10 minutes by everybody's clock, that's
 (9) fine.
 (10) MS. ABRAMS: I'll do my very best.
 (11) MR. RADCLIFFE: Very best and ten
 (12) minutes are not --
 (13) MS. ABRAMS: You can be the judge,
 (14) how's that?
 (15) MR. RADCLIFFE: Good, case dismissed.
 (16) BY MS. ABRAMS:
 (17) Q. We talked about the Fiederlein
 (18) memo.
 (19) MR. RADCLIFFE: Which has been
 (20) provided.
 (21) BY MS. ABRAMS:
 (22) Q. Yes. You talked to Dr. Thompson,
 (23) according to your testimony, before you had
 (24) your deposition, do you recall that testimony?
 (25) A. I recall talking to Dr. Thompson.

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- (1) Q. Did you meet with Dr. Thompson?
 (2) MR. RADCLIFFE: Objection, vague and
 (3) ambiguous.
 (4) A. I met with Dr. Thompson many times.
 (5) Q. Did you meet with Dr. Thompson
 (6) prior to your testifying in this case and
 (7) discuss the issues of Vanderbilt talc with
 (8) Dr. Thompson prior to your deposition?
 (9) A. Certainly.
 (10) Q. How long did you meet with
 (11) Dr. Thompson?
 (12) A. I met with Dr. Thompson many
 (13) times, many periods of time.
 (14) Q. When was the most recent time you
 (15) met with Dr. Thompson?
 (16) A. It's probably been a week.
 (17) Q. What did you talk about at that
 (18) meeting?
 (19) A. We're working on -- I'm working on
 (20) a paper on analytical issues and so I speak
 (21) with him about the content of that, look for
 (22) his advice and I want to be sure it's
 (23) technically accurate and so forth, so it's
 (24) kind of a project that's a work in progress.
 (25) Q. What is the paper about?

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- (1) A. It's a document on analytical
 (2) issues, essentially why is it that people have
 (3) mischaracterized the minerals in Vanderbilt
 (4) talc as asbestos, why is that, what's the
 (5) issue, what are the strengths and weaknesses,
 (6) the various analytical protocols relative to
 (7) that error.
 (8) Q. Did you ever talk to Dr. Thompson
 (9) about this case, particularly about Mouldene?
 (10) A. I did talk to him about the memo
 (11) that he wrote to Paul Vanderbilt in which he
 (12) described his analysis of those five talcs
 (13) from IT. Essentially it was is this you know
 (14) your recollection. I did that because I
 (15) thought I would be asked about it.
 (16) Q. Did you talk to him about anything
 (17) else at that meeting?
 (18) A. No, just his recollection of what
 (19) he described in that memo and how accurate he
 (20) felt that it was.
 (21) Q. And that was the only thing you
 (22) discussed at that entire meeting?
 (23) A. Well, that and the project that I
 (24) mentioned before.
 (25) Q. Did you in your customer -- in the

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(1) customer files you -- did you specifically
 (2) look to see if National Gypsum, Georgia-
 (3) Pacific, DAP or anyone else had asked for a
 (4) confirmation that there was no asbestos in the
 (5) talc, regardless of time period?

(6) **A. Well, unfortunately, I did it from**
 (7) **1990 back thinking that that -- I don't know**
 (8) **why I had that stuck in my head.**

(9) **Q.** Just to let you know, I think that
 (10) was a reasonable mistake on your part, sir,
 (11) because there were several categories and some
 (12) of them were limited to 1990 and others
 (13) weren't, so if that was ambiguous or unclear,
 (14) then that's probably what happened there. So
 (15) I hear you that you only looked to 1990. So
 (16) you wouldn't know, as you sit here, whether
 (17) there was anything after 1990?

(18) **A. Other than what I just mentioned.**
 (19) **I know there's DAP and that's the only one I'm**
 (20) **certain of. I would have to look.**

(21) **Q.** Did you look in -- do you have a
 (22) Johns Manville file?

(23) **A. Another by year, I would have to**
 (24) **look.**

(25) **Q.** So in order to find anything about

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(1) any discussions, you would have to go to every
 (2) yearly file and look for the individual's, the
 (3) individual entity per year, in that year?

(4) **A. Yeah, whatever correspondence**
 (5) **ensued during that year, a copy of that**
 (6) **correspondence would be in the file and some**
 (7) **years there's hardly anything in it, and other**
 (8) **years there's a lot, so they're not all --**
 (9) **they're quite variable.**

(10) **Q.** How far back do those files go?

(11) **A. They go back to when I started 1985**
 (12) **and then I do have a file that says pre '85 in**
 (13) **which I put whatever I inherited from my**
 (14) **predecessor which is where I think the**
 (15) **documents came from for, was it Georgia-**
 (16) **Pacific, or I forget, it was 1984. So that**
 (17) **would have come from that older file.**

(18) **Q.** DAP.

(19) **A.** DAP.

(20) **Q.** So sir, from pre 1985 all the way
 (21) up through 1990, you have researched all the
 (22) names with the exception NL and Johns Manville
 (23) which you didn't know to look for; is that
 (24) right?

(25) **A. That's correct, as I indicated.**

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(1) **Q.** And then from 1990 forward in those
 (2) years you didn't look for those for anything?

(3) **A. Correct.**

(4) **Q.** And do you have, sir, in your own
 (5) files any file, not in date order, but a file
 (6) that has information about Johns Manville
 (7) other than what might be in those
 (8) chronological files?

(9) **A. I have -- I don't.**

(10) **Q.** Did you -- when you looked in
 (11) Mr. Thompson's lab, look for a file that had
 (12) to do with Johns Manville?

(13) **A. Oh, I'm sorry, there are so many**
 (14) **files and so many papers. I mentioned a file**
 (15) **that said key talc documents, 1984 back. And**
 (16) **I know that there was an interchange with**
 (17) **Johns Manville before my time and I believe**
 (18) **material relative to that interchange in a**
 (19) **meeting, I guess, and some correspondence back**
 (20) **and forth is in that file and that file was**
 (21) **produced.**

(22) **Q.** Okay. Did you look in under
 (23) Thompson's files for files regarding Johns
 (24) Manville?

(25) **A. I didn't. I didn't see any.**

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(1) **Q.** You would have noticed if it was
 (2) there?

(3) **A. Yeah, if there was something that**
 (4) **said Johns Manville, they would have caught my**
 (5) **eye, but then I would have checked to see if**
 (6) **it was what I already had.**

(7) **Q.** And that didn't happen because it
 (8) wasn't there, right?

(9) **A. Right.**

(10) **Q.** Are you aware that the R.T.
 (11) Vanderbilt Company is no longer mining talc
 (12) from the Arnold pit and the Gouverneur mines?

(13) **A. Yes.**

(14) **Q.** When did they stop mining talc?

(15) **A. At the end of -- I think it was the**
 (16) **end of 2007 or no, it was the end of 2008.**

(17) **Q.** In the documents that you provided
 (18) for us in the surveys and assessments
 (19) regarding the Arnold pit, there's information
 (20) that says that there are reserves of ore in
 (21) the Arnold pit that can last for hundreds of
 (22) years, are you aware of that?

(23) **A. I've heard something along that**
 (24) **line, but I have no direct recollection of any**
 (25) **document that said that. I've heard people**

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- (1) **say the ore was pretty extensive.**
- (2) **Q.** So it's correct that mining didn't
- (3) stop in the Arnold pit because the ore was
- (4) depleted there, that's right, isn't it?
- (5) **A. That's my understanding, yes.**
- (6) **Q.** But the R.T. Vanderbilt company
- (7) closed up shop in the Gouverneur area and no
- (8) longer mines there; is that right?
- (9) **MR. RADCLIFFE:**
- (10) Objection, argumentative, misstates prior
- (11) testimony.
- (12) **A. No longer mines talc there.**
- (13) **Q.** That's right. They continue to
- (14) mine the product that -- whose name I have a
- (15) real problem with, it's called Wollastonite,
- (16) correct?
- (17) **A. Yes, that's right.**
- (18) **Q.** And that's a product that has a
- (19) different mineralogical makeup than the Nyltal
- (20) products, correct?
- (21) **A. Completely different.**
- (22) **Q.** And it's completely different than
- (23) Mouldene, isn't it?
- (24) **A. Absolutely.**
- (25) **Q.** And in fact, it doesn't have fibers

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- (1) in it, does it?
- (2) **MR. RADCLIFFE:** Objection, calls for
- (3) speculation.
- (4) **A. Do you mean -- what do you mean**
- (5) **by -- I'm sorry to do this. What do you mean**
- (6) **by fiber, three to one, longer than five, is**
- (7) **that what you're calling fiber or anything**
- (8) **that's elongated?**
- (9) **Q.** Let me ask you then, does it have
- (10) any material in it that is longer than five
- (11) microns with a greater than a three to one
- (12) aspect ratio, to your knowledge?
- (13) **A. Well, I sample it, so Wollastonite**
- (14) **is a circular material, it's very circular.**
- (15) **It's needle-like. So when you grind it up you**
- (16) **will get aerosol particulate, some of which**
- (17) **will be, have a three to one, some of which**
- (18) **not too much would be longer than five, but**
- (19) **they're pretty thick.**
- (20) **Q.** What's the percentage?
- (21) **A. All -- I don't know, probably 5 to**
- (22) **10 percent, if that.**
- (23) **Q.** And that material does not have any
- (24) asbestiform talc in it, isn't that correct?
- (25) **A. Not to my knowledge. I've never**

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- (1) **seen it.**
- (2) **Q.** And does it have any anthophyllite?
- (3) **A. Not to my knowledge, I've never had**
- (4) **that reported, never saw it.**
- (5) **Q.** Does it have any tremolite?
- (6) **A. I've never seen that reported in it**
- (7) **either.**
- (8) **Q.** And it doesn't have any fibrous
- (9) talc in it, does it?
- (10) **A. No, it's from another area miles**
- (11) **and miles from that talc belt.**
- (12) **Q.** Have you seen any studies, animal,
- (13) cell or epidemiological on that material
- (14) showing that it causes cancer?
- (15) **MR. RADCLIFFE:** Objection, asked and
- (16) answered, vague, ambiguous.
- (17) **A. There are a number of studies on**
- (18) **Wollastonite. Every single one demonstrates**
- (19) **that it has no greater risk than a nuisance**
- (20) **dust and the reason for that is it's very**
- (21) **soluble, it has a half life in the body of**
- (22) **about two weeks.**
- (23) **MR. RADCLIFFE:** It's 5:14.
- (24) **MS. ABRAMS:** You gave me four extra
- (25) minutes. So let me state for the record,

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- (1) sir, that I believe we've gotten through
- (2) quite a lot of your person most qualified C
- (3) COR deposition.
- (4) We do probably need to ask you
- (5) additional questions because I haven't
- (6) finished today with the material that I
- (7) brought regarding all the documents that
- (8) you produced. I don't think I have a whole
- (9) lot more on that part of the deposition,
- (10) but I do reserve my right to continue the
- (11) deposition and I do believe that your
- (12) attorney had a few questions as well.
- (13) And with respect to the three disks
- (14) of I don't know how many thousands of
- (15) documents that may pertain to your
- (16) custodial or person most qualified role, it
- (17) remains to be seen whether we have
- (18) questions and how many those would be. So
- (19) with that, I would conclude for the day and
- (20) note that the deposition will be continued
- (21) at a later time that is mutually convenient
- (22) to the parties.
- (23) **MR. RADCLIFFE:** I'll just say that
- (24) there's no agreement that the deposition
- (25) will be continued, although I do agree that

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(1) it is not finished because I have not been
 (2) provided an opportunity to ask my
 (3) questions.
 (4) **MS. ABRAMS:** And I will state, for
 (5) the record, that it is 5:15. I'm prepared
 (6) to stay here until midnight, if necessary,
 (7) to finish my portion of what I have in
 (8) front of me, but I understand that the
 (9) witness needs to leave and so we will leave
 (10) for the day.
 (11) **THE VIDEOGRAPHER:** Off the record,
 (12) 5:16.
 (13) **(Whereupon, the deposition was suspended at**
 (14) **5:16 p.m.)**
 (15)
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 (21)
 (22)
 (23)
 (24)
 (25)

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(1) TRANSCRIPT CORRECTIONS
 (2) **REPORTER:** MARIAN E. CUMMINGS, LSR
 (3) **CASE NUMBER:** RG 08-426405
 (4) **CASE STYLE:**
 (5) ERIC WESTON
 (6) VS.
 (7) ASBESTOS CORPORATION LIMITED, ET AL.
 (8) PAGE LINE CORRECTION REASON
 (9) _____
 (10) _____
 (11) _____
 (12) _____
 (13) _____
 (14) _____
 (15) _____
 (16) _____
 (17) _____
 (18) _____
 (19) _____
 (20) _____
 (21) _____
 (22) _____
 (23) _____
 (24) **NAME:** _____
 (25) **DATE:** _____

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(1) **JURAT**
 (2)
 (3) I, JOHN KELSE, do hereby certify that the foregoing
 (4) testimony given by me on August 26, 2009, is true and
 (5) accurate, including any corrections noted on the
 (6) corrections page, to the best of my knowledge and
 (7) belief.
 (8)
 (9)
 (10) _____
 (11) JOHN KELSE
 (12) At _____ in said County of
 (13) _____, this ___ day of _____, 2009,
 (14) personally appeared JOHN KELSE, and he/she made oath
 (15) to the truth of the foregoing corrections by him/her
 (16) subscribed.
 (17) Before me, _____ Notary Public.
 (18) My Commission Expires: _____
 (19)
 (20)
 (21)
 (22)
 (23)
 (24)
 (25)

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(1) **CERTIFICATE**
 (2) **STATE OF CONNECTICUT**
 (3) I, MARIAN E. CUMMINGS, a Licensed Shorthand
 (4) Reporter/Notary Public within and for the State of
 (5) Connecticut, do hereby certify that I reported the
 (6) deposition of JOHN KELSE on August 26, 2009, at the
 (7) Marriott Stamford, 243 Tresser Boulevard, Stamford,
 (8) Connecticut 06901.
 (9) I further certify that the above-named deponent was by
 (10) me first duly sworn to testify to the truth, the whole
 (11) truth and nothing but the truth concerning his/her
 (12) knowledge in the matter of the case of ERIC WESTON vs.
 (13) ASBESTOS CORPORATION LIMITED, ET AL., now pending in
 (14) the SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND
 (15) FOR THE COUNTY OF ALAMEDA.
 (16) I further certify that the within testimony was taken
 (17) by me stenographically and reduced to typewritten form
 (18) under my direction by means of COMPUTER ASSISTED
 (19) TRANSCRIPTION; and I further certify that said
 (20) deposition is a true record of the testimony given by
 (21) said witness.
 (22) I further certify that I am neither counsel for,
 (23) related to, nor employed by any of the parties to the
 (24) action in which this deposition was taken; and
 (25) further, that I am not a relative or employee of any
 attorney or counsel employed by the parties hereto,
 nor financially or otherwise interested in the outcome
 of the action.
 WITNESS my hand and seal this _____ day of
 _____, 2009.

 Marian E. Cummings, LSR
 Notary Public
 My Commission Expires: December 31, 2010
 License Registration Number: 472
 24

Concordance Report

Unique Words: **2,084**
 Total Occurrences: **10,878**
 Noise Words: **384**
 Total Words In File:
31,157

Single File Concordance
 Case Insensitive

Noise Word List(s):
NOISE.NOI

Cover Pages = **0**

Includes **ALL** Text
 Occurrences

Dates **ON**

Includes Pure Numbers

Possessive Forms **ON**

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