

CERTIFIED COPY

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

* * *

VICKIE WARREN,)	
)	
Plaintiff,)	CIVIL NO. 070911933 AS
)	
vs.)	<u>JURY TRIAL</u>
)	
ASBESTOS CORPORATION)	April 21, 2010
LIMITED, et al.,)	
)	Volume XI
Defendants.)	
)	

* * *

Reporter's Certified Transcript of the testimony
of Dr. Victor Roggli and Kenneth Cohen

Held in the Third Judicial District Court
before the Honorable Glenn K. Iwasaki

* * *

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EXCERPT

1 hygienist --

2 MR. PURCELL: It's not been asked and
3 answered.

4 THE COURT: That last question will remain.
5 That's the last answer.

6 THE WITNESS: Yes.

7 THE COURT: Do you have the question? The
8 answer is "yes"?

9 THE WITNESS: Yes, your Honor.

10 THE COURT: Thank you. Mr. Bicks?

11 CROSS EXAMINATION

12 BY MR. BICKS:

13 Q Mr. Cohen, tell us when it is, sir, that
14 you retired.

15 A I retired from Cal OSHA in 1998. I retired
16 my certifications in 2003.

17 Q And since 1998, is it the case that 90
18 percent of your time has been spent on litigation
19 matters?

20 A Of my paid-for time, yes, sir.

21 Q Right. And can you tell us, then, since
22 1998 how much you've been paid?

23 A I have no idea.

24 Q You can't even give us an estimate?

25 A I'd say, since 1998, a couple hundred

1 thousand dollars. That would be my best estimate. I
2 don't know.

3 Q You've been -- spent 90 percent of your
4 time in litigation since 1998, so for the last 12
5 years -- and tell us again how much money you've been
6 paid.

7 A I've been semi-retired since that point. I
8 do not spend a hundred percent of my time or 90
9 percent of my time as an expert litigator --
10 litigation person.

11 Q Well, tell us, then -- just give us an
12 estimate, of all your time in litigation, how much
13 money you've been paid. Just an estimate.

14 A I did.

15 Q The whole time you've been in litigation?

16 A I don't know. I'm just giving you an
17 estimate.

18 Q One thing you've been working on is you
19 wrote a book about expert witnessing and testimony,
20 didn't you?

21 A Thank you for purchasing it.

22 Q It was actually given to me free.

23 A Not by me.

24 MR. PURCELL: Your Honor, I insist that he
25 pay the cost of the book right now.

1 Q (BY MR. BICKS) One of the topics in here
2 is the author's personal advice and tips on the
3 business of expert witnessing.

4 A Yes, sir.

5 Q And you even have a chapter in here on
6 skeletons in the closet?

7 A Yes, sir. We all have them.

8 Q We'll come back to that.

9 You were asked a little bit about exposure
10 of the plaintiff to asbestos products at Tulip Tree.
11 Do you remember that?

12 A Yes, sir.

13 Q Are you aware -- and I think you were
14 suggesting that -- whether it was, what, brick,
15 or --

16 A Refractory brick.

17 Q Refractory brick that may not have
18 significant exposure to asbestos? Is that what you
19 were suggesting?

20 A I wasn't suggesting it. I stated it as a
21 fact, because I've tested it.

22 Q Do you know, actually, that the plaintiff
23 in this case filed a workers' compensation claim
24 where she said the only thing that she was exposed to
25 was asbestos at Tulip Tree?

1 A Then you should give my card to the
2 defendant in that case.

3 Q Do you know the plaintiff actually did
4 that?

5 A I didn't know that.

6 MR. PURCELL: Objection, your Honor. It's
7 vague as to "that." That's exposure not from the
8 kiln brick. That's from other --

9 THE COURT: Objection overruled. That was
10 explained. Go ahead, Mr. Bicks.

11 Q (BY MR. BICKS) Now, let's -- I'm going to
12 come back to this, but do you know when it was that
13 you were actually provided information in this case?

14 A Last year sometime. I don't have the
15 exact --

16 Q Let me show you Exhibit 37.

17 MR. BICKS: If I can approach, your Honor.

18 Q Just to help you out here --

19 THE COURT: Union Carbide 37?

20 MR. BICKS: This is a Hamilton 37. It's
21 got their exhibit number on it, just to move things
22 along.

23 THE WITNESS: It would have been before
24 this letter's date of 2008, yes, sir.

25 Q (BY MR. BICKS) And the date of this

1 letter, this is July 16th, 2008?

2 A Yes. That was for, I believe, scheduling
3 the deposition.

4 Q Uh-huh. And it also actually -- is this
5 the first time that you were provided any information
6 about Ms. Warren?

7 A No. As I indicated, I believe it was
8 before this, because I was being asked to do a
9 deposition, which would mean that I typically had
10 information before that.

11 Q Well, let's look at the letter, because the
12 letter says that it's attached for your review as a
13 designation of your expert witness, outlining your
14 trial testimony, along with Ms. Warren's Exhibit A.
15 Do you see that?

16 A I read it, yes.

17 Q Yeah. Had you been provided -- is this the
18 first time that you got this Exhibit A, or had you
19 been given that beforehand?

20 A I don't know, sir.

21 Q Is this -- to your knowledge, you received
22 information before July 16th, 2008 about the
23 substance of the case, or was it a call to just tell
24 you your deposition might be taken?

25 A No. My best recollection is that there may

1 have been some information communicated by e-mail
2 prior to this. That's my custom and practice. But I
3 don't know whether that date is the first date that I
4 received any information.

5 Q Okay. As you sit here today testifying to
6 the jury, can you identify any information that you
7 received prior to July 16th, 2008 about the substance
8 of this case?

9 A If I could, I would, but I can't.

10 Q Okay. Do you know that you were actually
11 designated as a witness in this case in February of
12 2008, half of a year before this letter was sent to
13 you?

14 A Is there a question? Do I know?

15 Q Did you know that you were designated in
16 February 2008 as an expert to come into this
17 courtroom six months before this letter was sent to
18 you?

19 MR. PURCELL: Objection, your Honor. No
20 foundation about court procedural requirements and
21 deadlines with the witness.

22 THE COURT: Restate the question, but the
23 area for inquiry is proper.

24 Q (BY MR. BICKS) Let me show you Exhibit 38.

25 THE COURT: Defendants' 38?

1 MR. BICKS: Yes. Hamilton 38, Defendants'
2 38.

3 Q Have you ever seen this before?

4 A Yes.

5 Q Great. So let me come back to my question,
6 which was -- you're with me on this July 16th letter,
7 which sent you Warren Exhibit A, right?

8 A Yes.

9 Q And my question was, were you aware that on
10 February 7th of 2008 -- do you see it at the bottom
11 there, sir?

12 A Yes.

13 Q -- that you were designated in this case as
14 an expert witness?

15 MR. PURCELL: Objection, your Honor. No
16 foundation. Irrelevant. The court procedures are
17 the court procedures.

18 THE COURT: The question is, does he know,
19 and it's to his knowledge. I'll allow the question.
20 Do you have an answer, sir?

21 THE WITNESS: I don't know what the
22 question is, your Honor.

23 THE COURT: The question was, did you know
24 that on February 7th you were designated as an expert
25 witness, six months before the letter that was 37 or

1 35?

2 MR. BICKS: Right.

3 THE WITNESS: I was sent this document. I
4 don't know when I was sent it, but I do know this
5 document, but I don't know the date which it was
6 sent.

7 Q (BY MR. BICKS) This says on February 7th
8 of 2008 -- we can agree that it's well prior to July
9 of 2008 -- that you were already identified as
10 somebody here who was going to testify that, at the
11 construction sites that Vickie Warren was present,
12 that when certain materials were cut, sanded, ripped,
13 and otherwise used, that those contained asbestos,
14 released fibers into the environment, right?

15 A Are you suggesting I wrote this document?
16 I didn't.

17 Q I'm asking you, did you know that you were
18 identified to testify about Ms. Warren when you
19 hadn't even been provided any materials until July of
20 2008?

21 MR. PURCELL: Objection, your Honor.
22 Objection. Assumes facts, misstates the facts, and
23 counsel knows it. I need to be heard on this.
24 That's not true.

25 MR. BICKS: Your Honor --

1 MR. PURCELL: There's no foundation for the
2 witness, anyway.

3 THE COURT: A couple of things that we're
4 going to take up in your absence, members of the
5 jury, so as you go to your brief last break, remember
6 my admonitions. Do not discuss this matter with
7 anyone. Do not allow anyone to discuss it with you.
8 Please do not form or express any opinions on the
9 matter. Do not do any independent research, and
10 don't allow anyone to approach you as a juror.

11 The jury will be excused until further
12 notice, and the rest of us will remain in session.

13 (Jury exits.)

14 THE COURT: You may be seated. The record
15 will reflect that we remain in session outside of the
16 presence of the jury.

17 Mr. Bicks, where are you going with this?

18 MR. BICKS: The point of the cross
19 examination, your Honor, is that this witness had
20 been designated as an expert to talk about
21 Ms. Warren, and he didn't know anything about her at
22 the time. He hadn't been provided any information.
23 He was provided information in July.

24 MR. PURCELL: That's not true.

25 MR. BICKS: Six months later.

1 THE COURT: Let him finish.

2 MR. BICKS: And that was the point of the
3 cross examination.

4 THE COURT: All right.

5 MR. PURCELL: The testimony is not
6 consistent with what he's assuming and just plowing
7 through. The witness said, "I don't know when I
8 first received any information." He's familiar with
9 the designation, and you know, your Honor, that there
10 are informal discussions with witnesses when we're
11 required to disclose, by a deadline, our experts.
12 The same could be said for every one of their experts
13 if we wanted to go through all of this.

14 We're required to designate experts, and at
15 that point in time, we go through materials with
16 them. This witness doesn't know when that first
17 happened. He's assuming and cannot prove that's
18 before any of these documents. And the relevancy of
19 this is remote, anyway. What's it got to do with
20 anything? Nothing. So it is more time consuming, a
21 waste of time. We have time deadlines. And counsel
22 is just ignoring the responses and stating whatever
23 he wants to, and that's not proper.

24 MR. BICKS: Your Honor, what he's doing is
25 delaying my ability to cross examine the witness.

1 This witness testified at his deposition. The
2 question was: "Going back to the July 16th letter,
3 which is Exhibit 1, it begins with the following
4 language, and the question was: 'In fact, this was
5 the first you heard about this case? Answer: That's
6 the first that I recall.'"

7 MR. PURCELL: So what? His recollection in
8 2008 does not establish anything that Mr. Bicks'
9 questions assume. Absolutely does not. It's not
10 proper. It's absolute bunk. It's not true, and he
11 can't prove what he's even inferring. If that's all
12 he's got, he's got nothing.

13 THE COURT: Well, what he has is he's got a
14 designation, shown by Exhibit 37, of a July letter --
15 well, a July letter indicating that the witness
16 received information. He's got a designation of a
17 witness -- expert witness in February, which is 38,
18 and the point being, Mr. Bicks, that you're just
19 saying that at the time he was designated, he didn't
20 have the requisite knowledge to be designated?

21 MR. BICKS: He was designated to talk about
22 Ms. Warren and the facts of this case when he hadn't
23 been provided anything until July.

24 MR. PURCELL: That's not true.

25 MR. BICKS: And that's what he said at his

1 deposition.

2 MR. PURCELL: That's not what he said in
3 his deposition. I don't know how Mr. Bicks can stand
4 in front of you and say that's what he said in his
5 depo in 2008.

6 MR. BICKS: It's right here.

7 MR. PURCELL: He said, "I don't recall."
8 That's not what happened. We can call Mr. Bills as
9 an expert on this very topic. It belies the facts.
10 I'm not impeding his cross examination. I let him
11 show exhibits. But to make these whopper allegations
12 and put two and two together and get 20 is improper.
13 He has no basis to make this question.

14 THE COURT: All right. Your points are
15 made that there was a February letter and there was a
16 July letter. The objection is sustained. You can
17 argue whatever you want. The inference is out on
18 that, but that will be the end of this examination on
19 this point.

20 Now, Mr. Scully, you're objecting to 15 A
21 and 105 on the basis that they were not provided to
22 you in the discovery, correct?

23 MR. SCULLY: That's correct, your Honor.

24 THE COURT: Mr. Purcell, were they or were
25 they not supplied during discovery?

1 MR. PURCELL: Yes.

2 THE COURT: And discovery in this case, not
3 in the other cases in which you all are more familiar
4 than I, but in this case.

5 MR. PURCELL: Yes.

6 THE COURT: Where do you have -- where is
7 the proof that it was supplied?

8 MR. PURCELL: 15 A was. Let's take them up
9 one by one. Where's the proof they weren't? I mean,
10 I've got to dig it out that they were. I've got a
11 witness I can call who says they were.

12 MS. LEON: I hand delivered them.

13 MS. VENTI: Your Honor, they were on the
14 exhibit list. This is the same issue that we had
15 before. They were on the exhibit list. We had
16 the -- you know, we have the 900 exhibit list. The
17 objection that is before is that these were not
18 previously disclosed in discovery. That's what we're
19 talking about.

20 MR. PURCELL: Your Honor, it's the same
21 issue with Dr. Roggli. I could have objected to the
22 multiple exhibits that they used with Dr. Roggli.
23 They didn't give us those copies. They never have.
24 It's an absolute nonsense objection. Mr. Scully's
25 office has probably this as wallpaper in the restroom

1 of their office.

2 THE COURT: And, see, that's the advantage
3 that you all have over me.

4 MR. PURCELL: And he's not denying it.

5 THE COURT: Well, that's the advantage that
6 you all have over me. I'm trying one case and what's
7 before me, and I don't have the background, as you
8 all do, to search other cases. This is the case that
9 I'm presiding over.

10 As to 15 A, the testimony was already in on
11 that matter and the Court is going to sustain the
12 objection. And as to 150 -- 105?

13 MR. PURCELL: Same stuff, your Honor. It's
14 the same issue.

15 THE COURT: And the Court sustains the
16 objection, but the testimony is in on both those
17 exhibits.

18 We're in a ten-minute recess. We'll resume
19 at 20 to.

20 (Recess.)

21 THE COURT: The record will show that we
22 are back in session. Counsel is present. The jury
23 is present and seated. Mr. Cohen is on the stand
24 under oath subject to further cross examination by
25 Mr. Bicks. Go ahead.

1 Q (BY MR. BICKS) Mr. Cohen, I have before
2 you what's Exhibit 1 A, which was provided to you by
3 Mr. Purcell's firm, correct?

4 A Yes, sir.

5 Q And this was an exhibit that was discussed
6 at your deposition in this case where you shared with
7 us your opinions about the case, right?

8 A Yes, sir.

9 Q And at the time that you gave your
10 deposition, this was the information that you were
11 provided with about this case; is that fair?

12 A As far as I recall, yes, sir.

13 Q And do you know who prepared this?

14 A Just the Brayton law firm.

15 Q And would you agree with me that if there
16 are mistakes in this, right, and you rely on this
17 information to give your opinions, there could be
18 some potential mistakes with your opinions?

19 A Anything is possible.

20 Q All right. I want to just go through this.
21 You see this is Exhibit A. It's Vickie Warren versus
22 the asbestos defendants, and it's got a series of
23 initials down there at the bottom. Do you see that?

24 A There is a file location on the left side.

25 Q You see what I have highlighted there,

1 initials that it's updated, revised, and things like
2 that?

3 A Right.

4 Q Do you know who that refers to?

5 A No.

6 Q Okay. And this talks about, here,
7 exposures at the Utah -- the State of Utah
8 Development Center. Do you see that?

9 A The Tulip Tree, yeah.

10 Q Right. And it talks about exposures that
11 took place from 1978 to present. Are you aware of
12 that?

13 A Yes.

14 Q And are you aware that in this case the
15 plaintiff has said that she's been exposed from 1978
16 to present from things at the Tulip Tree? Do you see
17 that? Are you aware of that?

18 A That's what the document says.

19 Q And then it talks here about
20 asbestos-containing powder paints, asbestos gloves,
21 asbestos-containing pottery clays, and things of that
22 nature. Is it your opinion as an industrial
23 hygienist that these exposures were substantial
24 contributions to the plaintiff's disease here?

25 A Your question has many parts to it with

1 regard to the items. I would have no doubts that the
2 asbestos gloves contributed as a component of
3 Ms. Warren's overall exposure, but I can't say that
4 the other materials have a verifiable level of
5 asbestos in their content. I know asbestos gloves
6 do, but as to the other items, I can't say.

7 Q And is it your view that the utilization of
8 these in concert would have constituted a substantial
9 exposure?

10 A The use of the asbestos gloves would have
11 constituted a substantial exposure to her, yes.

12 Q What about the ceramics, the powder paints,
13 and the kiln insulation?

14 A Well, of all the kilns I've inspected, they
15 use Fiberfax, which is a fiberglass material. I've
16 already explained that, based upon my testing and
17 experience, refractory brick, after being fired and
18 used in the construction of a kiln, would no longer
19 present an asbestos risk, but handling the materials
20 with the asbestos gloves, that's a definite exposure,
21 yes.

22 Q Well, let me look at your -- take a look at
23 your deposition, line seven to 15, page 65.

24 A Yes.

25 Q And at your deposition, were you asked the

1 question here at line seven, "And taken individually,
2 is it your opinion -- and by 'individually,' I mean
3 ceramics, powder paints, kiln insulation, and
4 asbestos gloves. Individually, would each one of
5 those constitute a substantial exposure to asbestos?"

6 And your answer was, "The utilization of
7 all of those in concert would have constituted a
8 substantial exposure. Any one of them could have
9 constituted a substantial exposure if they were used
10 by her, yes."

11 Was that testimony that you gave?

12 A Absolutely.

13 Q All right.

14 A As I gave today.

15 Q Now, let's go on, and I've got some other
16 questions about this for you. Do you see, at the
17 bottom here, that there's an indication of an
18 employer called Golden Corral Corporation?

19 A Yes.

20 Q And the location of the exposure, it says
21 "Golden Corral Corp, unknown location," and the job
22 title is waitress, and the exposure dates are 1984.
23 Do you see that?

24 A Yes.

25 Q Is it your understanding that Ms. Warren

1 was employed by Golden Corral Corporation in Raleigh,
2 North Carolina?

3 MR. PURCELL: Objection, your Honor. That
4 misreads the document. It's the home base of the
5 parent company.

6 MR. BICKS: Your Honor, these are speaking
7 objections.

8 MR. PURCELL: It mischaracterizes what's on
9 the board.

10 THE COURT: Objection is overruled, but
11 rephrase the question and be specific as to what's on
12 the document.

13 MR. BICKS: Yeah.

14 Q Do you see this document? It says the
15 plaintiff worked as a waitress.

16 A Yes, sir.

17 Q And are you under the impression that
18 Ms. Warren was employed by Golden Corral Corporation,
19 care of George Pfeiffer in Raleigh, North Carolina?

20 MR. PURCELL: Objection. No foundation.

21 THE COURT: Well, he's asking if he's aware
22 of it. He can say yes or no.

23 THE WITNESS: I'm aware of it from reading
24 it.

25 Q (BY MR. BICKS) And you were told and you

1 were under the impression that, in 1984, that
2 Ms. Warren was exposed and was a waitress employed by
3 a company called Golden Corral Corporation?

4 MR. PURCELL: Objection, your Honor.
5 "Exposed" is argumentative and misstates the
6 document. Exposure date category is the date of
7 employment. The sentence below says "unaware if she
8 was exposed." Mischaracterizes the document.

9 Q (BY MR. BICKS) Sir, simple question.

10 THE COURT: The objection is overruled.

11 THE WITNESS: I was not told, as your
12 question asked. I gleaned from this document that
13 there was employment in 1984 at the Golden Corral
14 Corporation, and that's all I understood from this.

15 Q (BY MR. BICKS) Did you know, sir, as a
16 matter of fact, that Ms. Warren was working at the
17 Tulip Tree Center in Utah at that time?

18 A I don't know.

19 Q Turn to the next page, if you will, sir.

20 A Page three?

21 Q Uh-huh. And you see where we're talking
22 about an employer called Rise in Mesa, Arizona, and
23 the location of exposure is in Rise, Inc., Mesa,
24 Arizona, and it says that the plaintiff performed
25 administrative paperwork and quality assurance for

1 Rise. Were you under the impression that Ms. Warren
2 performed administrative paperwork and quality
3 assurance for Rise, the company, in Mesa, Arizona?

4 MR. PURCELL: Objection, your Honor.
5 Assumes facts not in evidence. It's not what the
6 document says.

7 Q (BY MR. BICKS) Was that your impression?

8 THE COURT: Objection overruled. It's a
9 question as to whether or not he was aware of it.
10 That's all the question is.

11 THE WITNESS: I'm aware of it from reading
12 it.

13 Q (BY MR. BICKS) And this is 2005, 2006.
14 You see these exposure dates referenced there? Do
15 you know, sir, at that time that Ms. Warren was
16 working in Utah at the Utah State Development Center?
17 Do you know that?

18 A I don't know that, except from page one.
19 It says 1978 to the present, so it's a reasonable
20 conclusion to draw.

21 Q Do you see here the reference to U.S. Steel
22 on page four?

23 A What page are you on, sir?

24 Q Page four.

25 A Geneva Steel, yes, sir.

1 Q And then the exposure date, it was 1950 to
2 1973, and then it got crossed out to 1952. Do you
3 know why that was done?

4 A No.

5 Q Do you know how long, in fact, Mr. Warren's
6 father actually worked at U.S. Steel?

7 A Mrs. Warren's father?

8 Q Yeah.

9 A 1952 is what it says here.

10 Q Do you know, as a matter of fact, that he
11 worked there from the early 1950s through the early
12 1970s?

13 A I know what it says on the document. It
14 says 1952.

15 Q And this was the information that you were
16 provided right before your deposition when you shared
17 with us your opinions, true, sir?

18 A Yes. Which page?

19 Q Page five. Marathon Oil Company, do you
20 see that?

21 A Yes.

22 Q Findlay, Ohio. And the exposure dates, you
23 see there, are 1953 to 1973. Do you see that?

24 A Yes.

25 Q Can you tell us how Marathon Oil

1 Corporation of Findlay, Ohio fits into this case?

2 A I didn't suggest that it did. I don't know
3 that it does.

4 Q Well, was this information that was
5 provided to you?

6 A Absolutely.

7 Q Now, one of the things that was provided to
8 you was a statement here that "Johns Manville was a
9 brand of water main transite used during this work.
10 Plaintiff was present for the cutting of
11 asbestos-containing cement pipe." Was that one of
12 the things that you looked at as part of giving your
13 opinion in this case?

14 A Yes.

15 Q And you put up this chart here that talks
16 about cement pipes, right?

17 A Yes.

18 Q And it says here 15 to 90 percent, most
19 contain that amount of asbestos in that range?

20 A That's thermal insulation.

21 Q All right. Which are the -- I'm looking
22 here at the cement pipes. How much is asbestos in
23 the cement pipes?

24 A Twenty to 40 percent.

25 Q Okay. I'm sorry. Twenty to 40 percent

1 down there. And tell me, what kind of asbestos is in
2 those cement pipes?

3 A Serpentine and amphibole.

4 Q What kind of amphibole asbestos?

5 A Amosite and crocidolite.

6 Q And do you know how long the plaintiff was
7 present for the cutting of asbestos-containing cement
8 pipe?

9 A No.

10 Q And do you see here how these dates got
11 changed from 1960 to '73 to 1970 in information that
12 was provided to you?

13 A Yes.

14 Q Do you know why that was changed?

15 A No.

16 Q You, yourself, sir, have actually done
17 studies on the release of asbestos from Johns
18 Manville pipes, haven't you, those transite pipes?

19 A Yes.

20 Q And can you tell us, sir, what kind of
21 exposure levels you saw from the study that you did?

22 A From multiple studies, levels as high as a
23 thousand fibers per cc.

24 Q Let's stop right there. 1,000 fibers per
25 cc. And do you know -- again, I'm sorry to ask you

1 this, but, in studying the record of this case, do
2 you know how long that Ms. Warren was around that
3 asbestos-containing cement pipe?

4 A No.

5 Q Have you taken any steps to find that out,
6 sir?

7 A I don't know what steps you're referring
8 to.

9 Q Well, have you asked Ms. Warren?

10 A No, but I asked her brothers.

11 Q Okay. Well, then can you tell us, sir, how
12 many years she was around that?

13 A No, because they didn't have a quantitative
14 estimate for me.

15 Q Well, when you say a thousand fibers per
16 cc, compare that to what an insulator might be
17 around. How much more in magnitude is that than an
18 insulator, somebody who spends their time and their
19 life working around asbestos? Compare the thousand
20 fibers per cc to some of the data you know about
21 that.

22 A Well, first of all, you have to look at the
23 thousand fibers per cc like an accountant takes a
24 slice of time. That's a one-time exposure
25 measurement. Insulators that I have measured have

1 generally ranged between five and 100 fibers per cc,
2 so it could be as high as ten times what the maximum
3 that an insulator would receive.

4 Q Five to 100. And tell us what the
5 permissible exposure levels were that were set by
6 OSHA in 1972.

7 A Five fibers per cc. That's a PEL.

8 Q That thousand fibers per cc, that's a very
9 substantial level of exposure, isn't it?

10 A Absolutely.

11 Q And you've also told us that there were
12 amphibole asbestos in what other kinds of products?

13 A The chart is there. Wherever there's an A
14 or a CR.

15 Q What product were you referring to besides
16 the cement pipes that contain amphibole asbestos?

17 A Packing, gaskets.

18 Q And do you know --

19 A Thermal insulation.

20 Q And do you know in this case that the
21 plaintiff has claimed that she was exposed to those
22 products?

23 A Can you refer me to a place where that's
24 evidenced?

25 Q Have you looked at the proofs of claim that

1 have been filed in this case?

2 A What's a proof of claim, sir?

3 Q The claims that were filed with trusts to
4 get money. Have you been shown any of those?

5 A I don't even know what they are.

6 Q Well, I'm asking you, sir, have you been
7 shown any of them?

8 A No.

9 Q Okay. Have you asked to see the different
10 companies and products that the plaintiff has claimed
11 that she was exposed to, beyond looking at this
12 exhibit?

13 A No.

14 Q Well, you don't doubt, sir, that the
15 plaintiff was present for the cutting of
16 asbestos-containing cement pipe that contained this
17 amphibole asbestos, do you, sir?

18 A It says that family members were.

19 Q You were asked, I think, some questions
20 about exposure to brake work. Do you remember that?

21 A Yes, sir. Or no. Brake composition.

22 Q Right.

23 A Not brake work.

24 Q Well, look at this friction. Was this
25 information that you were provided that says from

1 approximately 1950 to 1972 that the plaintiff's
2 deceased father had performed brake work? Were you
3 aware of that?

4 A It says it.

5 Q Do you actually know where that brake work
6 was performed?

7 A No. I'm not a percipient witness.

8 Q And I'm glad you say you're not a
9 percipient witness, because when you say you're not a
10 percipient witness, you actually don't know what went
11 on on a particular site, do you?

12 A I was not present --

13 Q Right.

14 A -- on any of the employment sites or
15 exposure sites that Ms. Warren was, that I'm aware
16 of.

17 Q And you weren't out on any of those
18 duplexes or anything? You weren't there at the time,
19 were you, sir?

20 A I was not.

21 Q And people in your field, you have
22 abilities to do tests, don't you, to determine if
23 asbestos is present in a given location?

24 A Yes.

25 Q And, as an example, you could go to one of

1 those duplexes and determine whether or not there's
2 asbestos there, couldn't you?

3 A Yes.

4 Q Have you done that?

5 A No.

6 Q Do you know where these duplexes are
7 located in relation to this courtroom?

8 A No.

9 Q You have no idea?

10 A I don't.

11 Q You know that they're probably 30 minutes
12 away from here? Do you know where Orem is?

13 A No.

14 Q But so we're clear, you have the ability,
15 as an industrial hygienist, to go into a location, do
16 a test, and see if there's asbestos there, don't you?

17 A I did. I don't any longer.

18 Q Because you have been out of the business
19 for, what, 12 years?

20 A No. Since 2003. Seven years.

21 Q And when did your certification lapse?

22 A I voluntarily retired my certification in
23 2003.

24 Q Now, were you aware here about this, that
25 plaintiff recalls her father using compressed air to

1 clean the brake and clutch assemblies?

2 A That's what it says.

3 Q And if you use kind of compressed air, what
4 could that do to the level of asbestos, this --

5 A It aerosolizes it.

6 Q And what does that mean?

7 A It means it puts it into the air.

8 Q And how does that impact what somebody
9 could be exposed to?

10 A If somebody was around it or within a
11 structure where it took place, they would be exposed.

12 Q And do you see here that the plaintiff is
13 saying that that took place from 1950 to 1972, for 22
14 years?

15 A That's a range of when it happened, is what
16 I understood, yes.

17 Q Well, do you know how long it did happen,
18 sir?

19 A How long what happened?

20 Q How long that the plaintiff -- when she
21 says she was present many times when her father did
22 brake work, can you give us an estimate of how many
23 times?

24 A No. I wasn't there.

25 Q Have you taken any steps to find out how

1 many times?

2 A No.

3 Q Okay. Have you gone down and actually
4 visited the sites where any of these things took
5 place? Did you go down and actually look at these
6 duplexes?

7 A No.

8 Q Was there anything preventing you from
9 doing that?

10 A I was not asked to.

11 Q Did you ever suggest, "Maybe I should go
12 down and actually look and do a test to see if there
13 was actually asbestos in the tape joint compound that
14 the plaintiff contends she used"?

15 A I no longer do tests.

16 Q Okay. Did you ask somebody else to do
17 that?

18 A No.

19 Q And when you put up here on the chart that
20 showed compounds 2 to 14 percent, there were actually
21 some asbestos-containing products in the mid 1970s,
22 particularly in the tape joint business, that didn't
23 have any asbestos in them; isn't that a fact?

24 A Not if they were asbestos-containing, as
25 you said.

1 Q There were tape joint compound products
2 used during the mid 1970s that didn't have asbestos
3 in them. Did you know that?

4 A No.

5 Q You haven't ever looked at any discovery
6 responses or documents which talk about when certain
7 companies started using asbestos-free products?

8 A Yes, I have.

9 Q And one of the ways to determine whether or
10 not asbestos was actually in a product was you could
11 go do a test and determine that, right?

12 A I did many tests.

13 Q But you didn't do it in this case, and you
14 didn't have somebody do it, did you, sir?

15 A No, I didn't.

16 Q All right. And would you -- are you of the
17 view that these exposures from 1950 to 1972 of this
18 brake work -- and it says here that the plaintiff
19 would do cleanup in her father's garage and recalls
20 dust getting on her clothes and inhaling the dust.
21 Do you believe that that's a substantial contribution
22 to what happened to Ms. Warren?

23 A I believe that all of her asbestos
24 exposures were components of her overall exposure,
25 and they would have been substantial and significant.

1 Q And have you seen data which shows what the
2 exposure might be in context where somebody is doing
3 cleanup work and dust is getting all over their
4 clothes and she's inhaling the dust when she's
5 present many times when her father is doing brake and
6 clutch work, and her father is using compressed air
7 to clean the brake? Have you seen data that shows
8 how high those exposures can be?

9 A Not that I can recall.

10 Q Have you made any effort to go find that
11 data before you came here today?

12 A No.

13 Q Now, I had asked you before about whether
14 or not you were shown certain materials, and I asked
15 you if you were aware that the plaintiff in this case
16 filed a workers' compensation claim against the Utah
17 State Development Center, and you were not aware of
18 that, were you?

19 A Not that I recall.

20 Q And were you aware that the plaintiff, in
21 her workers' compensation form, said that exposure at
22 the Tulip was the only possible cause that she could
23 think of for her asbestos exposure? Did you know
24 that?

25 MR. PURCELL: Objection. It misstates the

1 testimony.

2 THE COURT: Read what it says.

3 Q (BY MR. BICKS) "I now have terminal cancer
4 caused by asbestos exposure, which working at Tulip
5 is the only possible cause I could think of." Had
6 you ever seen this document before?

7 A No.

8 Q Had you ever been provided with the record
9 of a Dr. Kanner in this case?

10 A No.

11 Q And do you know that a report was created
12 by a Dr. Kanner in February of 2008 that was months
13 before you were deposed in the case?

14 A I don't know a Dr. Kanner. I've never seen
15 a report from Dr. Kanner.

16 Q Did you ever ask to see what the plaintiff
17 told medical professionals about what she was exposed
18 to or what she wasn't?

19 A No.

20 Q Because, sir, what you relied on was this
21 Exhibit A, right?

22 A Yes.

23 Q And that was prepared by lawyers
24 representing the plaintiff. You know that, don't
25 you, sir?

1 A Yes.

2 Q I want you to assume for a minute that the
3 plaintiff wasn't ever a waitress at Golden Corral
4 Corporation.

5 A I'm assuming that.

6 Q Plaintiff never had any connection to any
7 company called Rise in Mesa, Arizona.

8 A I would further assume that.

9 Q Do you -- have you ever taken any steps,
10 sir, to see how many mistakes are in the document
11 that was provided to you?

12 MR. PURCELL: Objection, your Honor. No
13 foundation, and assumes the fact that those are at
14 all mistakes, and they're not.

15 THE COURT: Sustained.

16 Q (BY MR. BICKS) Let me ask you, sir -- I
17 take it -- let me show you -- I know you said you
18 haven't seen it, but let me see if this maybe
19 refreshes your recollection of Dr. Kanner's report.

20 MR. PURCELL: Objection, your Honor. It's
21 unintelligible.

22 THE COURT: He's just asking him to see if
23 it refreshes his recollection.

24 THE WITNESS: I don't recall seeing it.

25 Q (BY MR. BICKS) Would you be interested to

1 know, in coming here to talk to this jury, that
2 Dr. Kanner met with the plaintiff and then prepared
3 this report, and there was no mention of any exposure
4 to tape joint compound?

5 A Would I be surprised?

6 Q Yes.

7 A No.

8 Q Is that the kind of information that, as an
9 expert, when you're trying to come talk to a jury
10 about different asbestos products -- would you want
11 to know that a doctor from the University of Utah who
12 personally interviewed the plaintiff, prepared a
13 report that included what she was exposed to and said
14 nothing about --

15 MR. PURCELL: Objection, your Honor.
16 Misstates the document. Sorry to interrupt, but that
17 mischaracterizes the Court's purpose and the purpose
18 of the document. Counsel knows that. I object.
19 Misstates the evidence. No foundation with the
20 witness as to this report and its purpose.

21 THE COURT: Restate your question as to
22 what the document states.

23 Q (BY MR. BICKS) Well, I'll put it up here.

24 MR. PURCELL: Well, objection, your Honor.

25 MR. BICKS: It's in evidence, your Honor.

1 MR. PURCELL: And no foundation with this
2 witness about it.

3 THE COURT: Objection overruled. I'll
4 allow him to establish the foundation.

5 Q (BY MR. BICKS) Do you see this, sir, that
6 this is a report dated February 2nd, 2008? And you
7 know that's before your deposition, right?

8 A Yes.

9 Q And it says that "I've completed my
10 evaluation of your client, Ms. Vickie Warren." Do
11 you see that?

12 A Yes.

13 Q And it's on the University of Utah
14 letterhead, and it's signed by the professor of
15 medicine, Richard E. Kanner, MD, professor of
16 medicine, who, I add, concludes, "Thank you for
17 asking me to see this delightful but unfortunate
18 lady." You've never seen this before?

19 A I told you no.

20 Q Right. And what I'm asking you, sir, is --
21 and in this letter he reports on the exposure that
22 the plaintiff informed him about, and do you see down
23 here where it says "When she was very young, she did
24 her father's laundry when he came home from Geneva
25 Steel, and it is possible that asbestos fibers were

1 on his clothes. Also, as a teenager, she cleaned up
2 the buildings and apartments after her father
3 constructed them and swept up a lot of insulation
4 materials"? Do you see that?

5 A Uh-huh.

6 Q And, again, this case was filed in August
7 2007, and here's a report, February 22nd, 2008, over
8 half a year later, and it wasn't provided to you, was
9 it?

10 A No.

11 Q And what I asked you, then, before was --
12 and I showed you this now to see if we could get some
13 context, is, as an expert who is coming here to talk
14 to the jury about various asbestos products, would it
15 be interesting for you to know that a doctor, after
16 this case got filed, met with the plaintiff, had
17 discussions about what she was exposed to, and there
18 was no mention of anything having to do with tape
19 joint compound?

20 MR. PURCELL: Objection, your Honor.

21 THE WITNESS: It does.

22 MR. PURCELL: Assumes facts about
23 Dr. Kanner's intent, background, nomenclature. No
24 foundation with the witness.

25 THE COURT: Objection overruled. The

1 answer is in. What was your answer?

2 THE WITNESS: It does refer to -- I'm
3 sorry.

4 THE COURT: Yeah, your answer. You had
5 stated your answer.

6 THE WITNESS: Yes.

7 THE COURT: I overruled the objection.
8 What was your answer?

9 THE WITNESS: It does say that.

10 Q (BY MR. BICKS) Oh. Where does it mention
11 tape joint compound in this letter?

12 A That's construction materials. She cleaned
13 up the construction materials after the apartments
14 were being built.

15 Q And swept up a lot of insulation materials.
16 Isn't that what it says?

17 A She's not an industrial hygienist. I don't
18 know if she knows what to call the materials. I
19 would interpret that as construction materials, and
20 it would reinforce -- if I had seen this, it would
21 reinforce the information on the Exhibit A.

22 Q Have you ever asked Dr. Kanner about this?

23 A If I knew who Dr. Kanner was before your
24 question, I would have.

25 Q And, sir, you know in here, this doesn't

1 mention that she was exposed to tape joint compound.
2 It says "insulation," right?

3 MR. PURCELL: Objection, your Honor. It
4 misstates the document.

5 THE COURT: Well, the document is -- it's
6 in evidence, and to be perfectly fair and complete,
7 Mr. Bicks, it does not contain any specific reference
8 to joint tape compound, does it?

9 MR. BICKS: Thank you.

10 THE COURT: Thank you.

11 THE WITNESS: It does not.

12 Q (BY MR. BICKS) Let me just go back a
13 little bit from the tape compound questions for a
14 moment. Would you agree with me, Mr. Cohen, that the
15 amount of asbestos that somebody could be exposed to
16 could be influenced by the nature of the work
17 practices that are used at a particular location at a
18 particular time?

19 A Absolutely.

20 Q And that there's steps that can actually be
21 taken to reduce the levels of dust that somebody
22 might be exposed to?

23 A As I previously described, yes, sir.

24 Q And you talked about that. You can use
25 wet-down methods, right?

1 A Not with drywall mud.

2 Q You can use ventilation and things like
3 that?

4 A Ventilation you can use. HEPA vacuums you
5 can use. But if you wet the dust from drywall
6 sanding, you've got mud on the floor, you've got mud
7 everywhere, and it's almost impossible to clean up.

8 Q You wouldn't want to do that.

9 A Construction personnel that I've observed
10 don't want to do that.

11 Q And since you weren't a percipient witness,
12 you don't actually know what the work practices were
13 at a particular location, do you?

14 A I do from the conversations I had with
15 Ms. Warren's brothers, yes.

16 Q But when you gave your deposition in the
17 case where we asked about your opinions, you didn't
18 know that, did you?

19 A No.

20 Q And you hadn't talked to anybody prior to
21 the time that you shared your opinions with us at
22 your deposition, had you, sir?

23 A You're correct. I didn't.

24 Q All right. Now, let me ask you a little
25 bit about your credentials. I should have done that

1 at the beginning, but I didn't. Does an industrial
2 hygienist have to take certain exams?

3 A Yes.

4 Q And is one of those called a core exam?

5 A Yes.

6 Q And is one called a comprehensive exam?

7 A I took them both.

8 Q And what's the difference between a core
9 and comprehensive exam?

10 A Core is the general industrial hygiene
11 information, and comprehensive is a specialty exam.

12 Q And did you have a hard time, in fact,
13 passing that comprehensive exam?

14 A Yeah. I had to take it two or three times,
15 and I had to take the -- no. The core I had to take
16 a couple -- two, three times, and the comprehensive I
17 think I may have taken six or seven times, and I
18 finally passed.

19 Q So you failed the comprehensive exam to be
20 an industrial hygienist six times?

21 A Yeah.

22 Q And then you failed the core exam one time?

23 A Yeah. It's like taking the bar exam. Some
24 people fail it occasionally. And I did, but I
25 finally passed it. And I was a practicing industrial

1 hygienist who was certified for 25 years.

2 Q And you failed the exam in the spring of
3 '76, the fall of '76, the spring of '77, the fall of
4 '77, the spring of '78, the fall of '78, and then you
5 passed it in the spring of 1979?

6 A Thank you for reading that. Yes, sir.

7 Q But is that true?

8 A You're reading from a document that appears
9 to be true.

10 Q And walk us through a little bit about your
11 college education. You started at Santa Monica City
12 College?

13 A Yes, sir.

14 Q And then you transferred to UCLA?

15 A Yes.

16 Q And did you flunk out of UCLA?

17 A I was asked to leave on probationary
18 status, yes.

19 Q And then you went to San Jose State; is
20 that right?

21 A Yes.

22 Q And you took an introduction to a hygiene
23 class, and you ended up getting an incomplete?

24 A I left the program. I didn't know what I
25 wanted. That was in my youth.

1 Q And you dropped out of San Jose State?

2 A Yes, sir.

3 Q When you say it was in your youth,
4 actually, how old were you at that time?

5 A I don't know. It was before I joined the
6 Navy, married a good woman, and then went back to
7 school, got in on probation, ended up with a Bachelor
8 of Science degree with a 2.0000 average. Went into
9 the master's program at San Diego State. Went in for
10 two years of master's work. Had to drop out to
11 support my family. And then about seven or eight
12 years later, I went back to see if I could get some
13 closure by getting an off-campus PhD degree for the
14 coursework that I had taken in the master's program.

15 Q I got it. So let me make sure that I got
16 it. You dropped out of San Jose, and then you went
17 to a place called Grossmont Junior College?

18 A That was after the Navy. That was in San
19 Diego.

20 Q Okay. And then did you drop out of there,
21 too?

22 A No. I transferred to San Diego State.

23 Q I see.

24 A And got a Bachelor of Science degree from
25 San Diego State University in microbiology.

1 Q And so you went for a master's at San Diego
2 State in biology, and that was with an emphasis on
3 electron microscopy and virology?

4 A Yes, sir.

5 Q And you did a thesis, and was that rejected
6 three times?

7 A Well, the spelling corrections in my first
8 chapter were, and I couldn't continue on because they
9 wouldn't give me teaching assistant positions, and I
10 had to support my family, so I dropped out of the
11 program.

12 Q And one of the things you did, right, was
13 when you applied to -- was it Cal Western? I think
14 you've probably seen this before, so --

15 A It's old news. Yes, sir.

16 Q Yeah. You've been asked about this before.
17 This is something you filled out. You kind of said
18 you were in your youth. You were actually 38 at this
19 time, right?

20 A At the time of California Western, yes.

21 Q And this is something that you actually
22 filled out. This is your handwriting. And at the
23 bottom, is that your signature right there, the
24 applicant's signature?

25 A That's mine.

1 Q And you were asked here to list the
2 colleges and the universities that you attended, and
3 you listed San Diego State University. But you wrote
4 that?

5 A Yes.

6 Q And then it says "Degrees received," and
7 you listed this "MS," but you didn't, in fact, have
8 an MS degree, did you?

9 A I did not. That was a mistake. I thought
10 it was programs that I was in, and I put "BS and MS
11 program," but I included a transcript, which clearly
12 stated I did not have a master's degree.

13 Q And then you got a PhD in occupational
14 health, but -- at Cal Western, but did that school
15 actually have a department of occupational health?

16 A No. It was an off-campus degree.

17 Q And you actually didn't take any courses in
18 occupational health, did you?

19 A They gave me credit for all the coursework
20 I had taken at San Diego State in the master's
21 program.

22 Q But did you actually take any courses in
23 occupational health?

24 A No, I didn't.

25 Q All right. And you got your PhD in nine

1 months, but you never went to any classes at the
2 school?

3 A I just said they gave me credit for the
4 coursework and classes I'd taken in the master's
5 program at San Diego State.

6 MR. PURCELL: Your Honor, can I be
7 reminding counsel of the time imperative that we're
8 operating under?

9 THE COURT: So reminded.

10 MR. BICKS: Yeah.

11 Q And I think when you wrote in your book the
12 chapter about skeletons in the closet, I didn't see
13 any mention of this.

14 A You didn't see any mention of what, sir?

15 MR. PURCELL: Objection. Vague and
16 ambiguous and overbroad.

17 THE COURT: Sustained.

18 MR. BICKS: I don't have anything further.
19 Thank you, sir.

20 THE COURT: Thank you. Any, Mr. Scully?

21 MR. SCULLY: Yes. Just one area, quickly,
22 your Honor.

23 CROSS EXAMINATION

24 BY MR. SCULLY:

25 Q Mr. Cohen, I'm going to put up a document

1 we've marked Exhibit 40. This was actually your
2 letter to the Cal Western University, which is where
3 you applied for your PhD; is that correct, sir?

4 A Yes.

5 Q And it says here, "Enclosed please find my
6 resume and a transcript from SDSU," correct, sir?

7 A Yes.

8 Q And, again, the date is October 12, 1975,
9 and you attached your resume, which is right here,
10 correct, sir?

11 A Yes.

12 Q Now, it says "Synopsis of confidential
13 resume." Why did you put down "confidential," sir?

14 A Because that's the way it -- it was the
15 style at that time.

16 Q Now, Mr. Bicks showed you the application
17 in which you indicated that you had gotten a master's
18 degree from San Diego State, correct, sir?

19 A That was my error on that, filling it out,
20 but it clearly says here "Programs."

21 Q Right. And what you're saying here under
22 education is "Upper division and graduate work
23 completed," so what you're saying in this resume is
24 that you completed your graduate work at San Diego
25 State University, correct, sir?

1 A I did. I was advanced a candidacy. All of
2 the coursework in the master's program was completed,
3 the only thing outstanding was the thesis.

4 Q So where it says "Graduate work completed
5 at San Diego State University," both the bachelor's
6 and master's programs, is it true, Mr. Cohen, that
7 what you were intending to convey was the fact that
8 you had completed your master's program at San Diego
9 State?

10 A I completed the graduate classes required
11 for the master's program. I was advanced a
12 candidacy. Yes, that part of the program was
13 completed.

14 Q Were you trying to tell the reader that you
15 had completed your full master's program at San Diego
16 State?

17 A No. The transcript was associated with it
18 as well.

19 Q I notice --

20 MR. PURCELL: Your Honor, the time. I'm
21 trying to be accommodating here. They've already
22 exceeded what they said they would.

23 Q (BY MR. SCULLY) I noticed in your current
24 resume --

25 MR. PURCELL: Excuse me, your Honor. I

1 need time for redirect.

2 THE COURT: I understand. Wrap it up,
3 Mr. Scully.

4 MR. SCULLY: Thank you.

5 Q I notice in your current resume you've
6 deleted a portion, and the jury can see it for
7 themselves, where you put down "Graduate work
8 completed." You have, in your current CV, "Upper
9 division and graduate work at San Diego State,"
10 correct, sir?

11 A Correct.

12 Q And one last question about your master's
13 program, sir. Is it correct, sir, that you had
14 submitted your master's thesis at San Diego State on
15 three separate occasions, and on three separate
16 occasions it was returned for grammatical errors?

17 A Yes, spelling and grammar.

18 Q So you turned it in once for spelling
19 errors; it was returned to you. You turned it in
20 again; it was returned to you. And you turned it in
21 a third time, and it was returned to you again, all
22 for spelling errors?

23 A I had a very unhappy major professor.

24 Q And is it correct, sir, that you'd been
25 working on that master's thesis for two years --

1 MR. PURCELL: Your Honor, objection. It's
2 irrelevant.

3 THE COURT: It's the last question. State
4 it and let's get on.

5 Q (BY MR. SCULLY) Is it true, Mr. Cohen,
6 that your master's thesis that you had been working
7 on for two years you elected not to finish because
8 you weren't able to complete it because of spelling
9 errors?

10 A I had to go to work. I couldn't work on it
11 any longer. You are correct.

12 THE COURT: Mr. Bailey?

13 MR. BAILEY: I have no questions.

14 THE COURT: Thank you, Mr. Bailey.

15 REDIRECT EXAMINATION

16 BY MR. PURCELL:

17 Q Mr. Cohen, I'm going to only ask you a few
18 follow-up questions in the limited time I've got.

19 Is there anything about the joint
20 compounds, if you went down and tested them, that
21 would allow you to compare them to product formulas
22 from Mr. Bailey's client or Mr. Scully's client and
23 determine that it's Georgia-Pacific or Hamilton's
24 joint compound?

25 A Not after it's in place.

1 Q Okay. So other than confirming the
2 asbestos content of it, which they admit, what would
3 going down there and testing accomplish?

4 MR. BICKS: Objection, your Honor, as to
5 "they admit."

6 THE COURT: Sustained.

7 Q (BY MR. PURCELL) Well, you haven't seen
8 the discovery responses they provided about the
9 content of their products, have you?

10 A I have not.

11 Q And the defendants could hire industrial
12 hygienists as well that could go down there and test
13 the duplexes, if they wished, right?

14 A Absolutely. If they're still practicing.

15 Q Do you need to go do that testing to know
16 that Vickie Warren suffered substantial exposure to
17 joint compound asbestos back in the '70s, as she's
18 described?

19 A No, not based on the descriptions of her
20 brothers and the descriptions in the Exhibit A
21 document.

22 Q Now, the Dr. Kanner report, you don't know
23 his background or his intent, whether he intended to
24 comprehensively detail exposures? You don't know the
25 purpose of that letter, do you?

1 A No, I don't.

2 Q You don't know how it fits into securing a
3 trial date with the court in Utah, do you?

4 MR. BICKS: Again, objection, your Honor.
5 Leading.

6 THE COURT: I'll allow him to answer if he
7 knows.

8 THE WITNESS: I don't know.

9 THE COURT: Thank you.

10 Q (BY MR. PURCELL) The questions that you
11 were asked about the Exhibit A, do you have an
12 understanding that that is updated as depositions
13 occur in a case and testimony is secured and
14 verified?

15 A Yes, sir, and it's generally part of the
16 interrogatory responses that are first filed.

17 Q So as people are deposed and questions get
18 asked and information is unearthed, that gets updated
19 periodically, right?

20 A And corrected, yes, sir.

21 Q And do you understand that the purpose of
22 Exhibit A is a requirement that we list every place
23 we can think of that she may have ever worked in her
24 life?

25 MR. BICKS: Your Honor, this is leading.

1 THE COURT: It is leading.

2 Q (BY MR. PURCELL) What's the purpose of
3 Exhibit A?

4 A It's a work history.

5 Q Now, do you know that if somebody works at
6 7-Eleven over here, if you take their Social Security
7 records, what it will describe, where they worked?

8 A If they work in a Utah 7-Eleven, the Social
9 Security record, more likely than not, will say
10 "Southland Corporation, San Diego, California."

11 Q Okay. And when it comes to Marathon Oil,
12 for example, you don't know what information was
13 determined about brothers, coworkers, or her family
14 that may themselves have worked for Marathon while
15 she was in their vicinity? Do you know anything
16 about that?

17 A I don't.

18 Q The same question about the Rise Company
19 that she worked as an administrative assistant. Do
20 you know how long, how frequent, where, any of the
21 information about that?

22 A No, sir.

23 Q And doesn't the document say she's unaware
24 of any asbestos exposure, whatever it is?

25 MR. BICKS: Objection, your Honor. The

1 document --

2 MR. PURCELL: It does.

3 THE COURT: Well, he's asking if that's
4 what the document says. Is that what it says?

5 THE WITNESS: That's what I recall it
6 saying, yes, your Honor.

7 Q (BY MR. PURCELL) Golden Corral. Do you
8 know how long she was a waitress or what parent
9 company is associated or even what local outfit
10 that's related to?

11 A No, sir.

12 Q And that would also indicate "no exposure"
13 in the document, that she knows about?

14 A Yes, sir.

15 Q The claim with Utah State, that doesn't
16 talk about a claim specific to a kiln only at the
17 Tulip Tree building, does it?

18 A I didn't read it in any detail, so I don't
19 know.

20 Q Based on your experience with these
21 materials and your knowledge as an industrial
22 hygienist, more likely than not she was exposed to
23 asbestos at the Tulip Tree building from the
24 information you've been provided, right?

25 A From the gloves, yes, sir.

1 Q And then there was a veiled reference to a
2 bankruptcy -- some bankruptcy claims --

3 MR. BICKS: Your Honor, objection to
4 "veiled reference."

5 THE COURT: Sustained.

6 Q (BY MR. PURCELL) There was an overt
7 reference to them, and do you know a single
8 bankruptcy claim that had anything to do with gaskets
9 and packing?

10 A I don't know what a bankruptcy claim is.

11 Q All right. Do you know that -- do you know
12 of any inconsistency whatsoever about the bankruptcy
13 claim information and what they require for the
14 products that she was exposed to in her entire
15 history from 1950 through para-occupational exposure
16 all the way up to the present? Do you know anything
17 about it?

18 A No.

19 MR. BICKS: Objection, your Honor.

20 THE COURT: Objection sustained.

21 Q (BY MR. PURCELL) You were asked a bunch of
22 questions about documents and letters and
23 designations. Do you know anything about the
24 procedural requirements under Utah law as to the
25 timing of pleadings and expert discovery pretrial?

1 A No, sir.

2 Q You were asked about a thousand fibers per
3 cc. Is that a time-weighted average?

4 A No. It's a peak value.

5 Q Okay. And the five to a hundred, is that
6 time-weighted average?

7 A Yes. Over a consistent period of
8 employment, it would range from five to 100,
9 depending on the activities that were performed.

10 Q So these numbers are apples and oranges?
11 These don't belong on the same page?

12 A No. They're different materials.

13 Q This is a peak exposure during the cutting
14 when it's happening for however many minutes it
15 happens, right?

16 A Correct.

17 Q So if that was the only thing someone did,
18 and then they got out of their work clothes and they
19 had no other exposure, you'd dilute that over eight
20 hours? Say it was for five minutes. You'd dilute
21 that multiple times to get down to a comparison
22 number to insulators, right?

23 A Yes.

24 MR. BICKS: Objection, your Honor.

25 Leading.

1 THE COURT: Yeah, it is, but I'll allow it.

2 THE WITNESS: Yes, sir.

3 Q (BY MR. PURCELL) Okay. What is the
4 time-weighted average that you would put to someone's
5 exposure, let's say to 15 minutes of being around
6 someone cutting transite pipe that you could verify
7 was asbestos-containing transite?

8 A Probably a hundred to 200 fibers per cc.

9 Q What kind of things would determine that?

10 A All of the procedures, the Carbide saw
11 blade, gas power, the activity, the speed at which
12 the worker cut the pipe. There are just a million
13 variables. It has to be tested.

14 Q And without the benefit of contemporaneous
15 air measurements -- by the way, are you aware of any
16 contemporaneous air measurements that ever existed in
17 the entire history of Vickie Warren?

18 A No, sir.

19 Q You'd be surprised if there were any data,
20 wouldn't you?

21 A No one took measurements, that I could see.

22 Q And does that make it difficult to be very
23 exact in determining levels and dose and
24 concentrations of asbestos?

25 A It's impossible to calculate a dose from

1 the information that's been provided on Ms. Warren.
2 The only thing that a competent industrial hygienist
3 could say is that it was a substantial and
4 significant exposure when she worked with
5 asbestos-containing materials.

6 MR. PURCELL: Thank you, Mr. Cohen. Thank
7 you, your Honor.

8 THE COURT: Mr. Bicks, you have a couple
9 minutes.

10 RECROSS EXAMINATION

11 BY MR. BICKS:

12 Q I want to ask you about this substantial
13 exposure, because that's the first question that was
14 asked by plaintiff's counsel to you of that. Are you
15 of the view that exposure to a burnt French fry would
16 be a substantial exposure?

17 MR. PURCELL: Objection, your Honor. It's
18 unintelligible. Exposure to what?

19 MR. BICKS: To a carcinogenic substance.

20 THE COURT: With that explanation, do you
21 have an answer?

22 THE WITNESS: Yes, your Honor. I have
23 testified in the past that one burnt French fry is
24 possibly a source of increased carcinogen risk, and I
25 can explain that if you'd like.

1 Q (BY MR. BICKS) I'm okay, just as long
2 as -- just wanted to get the answer.

3 MR. PURCELL: Excuse me, your Honor. I'd
4 like to have him explain what that is.

5 MR. BICKS: You can ask him.

6 MR. PURCELL: No. To complete his answer.

7 MR. BICKS: I asked him if that was his
8 view. He told me.

9 THE COURT: The objection is overruled.

10 MR. BICKS: I want to get the jury out of
11 here, your Honor.

12 THE COURT: Right. Let's go.

13 Q (BY MR. BICKS) Exhibit 1 A, you were shown
14 this, you remember, and you said that it gets updated
15 from time to time as discovery changes?

16 A Yes, sir.

17 Q Were you ever given an updated version of
18 this?

19 A That's the version I was given.

20 Q I said were you ever given an updated
21 version?

22 MR. PURCELL: Objection, your Honor. It is
23 an updated version. Unintelligible as phrased.

24 THE COURT: Were you given anything other
25 than the one that's right before you on the screen?

1 THE WITNESS: No, your Honor.

2 THE COURT: Thank you.

3 MR. BICKS: Thank you.

4 THE COURT: Any questions by anyone else?

5 RECROSS EXAMINATION

6 BY MR. SCULLY:

7 Q Mr. Cohen, just so we're clear, you were
8 never provided with any depositions in this case,
9 correct?

10 A Correct.

11 Q Vickie Warren's? Any of her brothers'?

12 THE COURT: He's answered. He hasn't
13 gotten any depositions, so don't go through all the
14 ones that he hasn't gotten.

15 REREDIRECT EXAMINATION

16 BY MR. PURCELL:

17 Q You spoke to the brothers about the
18 exposures, specifically?

19 A The two brothers, the two Stubbs brothers,
20 about her activities when she was cleaning up at the
21 construction sites.

22 Q And the Exhibit A you were just shown, that
23 is the updated one. It's got the interlineations and
24 updated information, doesn't it?

25 MR. BICKS: Your Honor, objection.

1 THE COURT: Objection is sustained as to
2 semantics and is subject to argument. The witness's
3 statement is his statement. If your point is,
4 Mr. Purcell, that there was interlineations on the
5 document of Exhibit A, they were there, but the
6 question was whether or not this witness had any
7 updates, even from that one, and so the witness's
8 answer was that this was the only document he's
9 received.

10 Q (BY MR. PURCELL) And this included
11 references to being updated?

12 A Yes, sir.

13 Q And it has corrections in it that we saw,
14 like E. Leon to J. Earl?

15 A Yes, sir.

16 Q And other dates. Okay. And tell us about
17 the French fry, and I'm done.

18 A I have testified that a burnt French fry
19 can, in fact, produce an increased risk of developing
20 cancer. There are companies, fast food companies,
21 who, in the past, have added animal products to their
22 oils to give them increased flavor of the French
23 fries. When those animal products, the amino acids,
24 burn, they produce something called a benzopyrene,
25 which is a carcinogen.

1 Now, if it were a Utah restaurant, they
2 certainly wouldn't have added the animal products
3 and, therefore, it wouldn't have been an increased
4 risk.

5 THE COURT: Anything from anybody?

6 MR. BICKS: One -- no.

7 THE COURT: Thank you.

8 Members of the jury, as you go home this
9 evening, remember my admonitions, the long form. Do
10 not discuss this matter with anyone, including
11 family, friends, strangers, or each other. Do not
12 allow anyone to discuss it with you. Do not form or
13 express any opinion on the matter until it's
14 submitted to you for your decision. Do not allow
15 anyone to approach you as a juror in this matter. If
16 they do, report that immediately to the Court. Do
17 not do any independent investigation of any of the
18 issues in this case by any means whatsoever.

19 I think that both counsel -- all counsel
20 are to be applauded by the way that they handled the
21 scheduling issues and got these witnesses on and off,
22 and I appreciate it, and I'm sure you all do, too.

23 We'll be in recess until 8:30 tomorrow
24 morning.

25 THE WITNESS: May I be excused, your Honor?

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THE COURT: And thank you very much for
your attendance, and you are excused, Mr. Cohen.
Thank you.

(Recess, 2:31 p.m.)

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