

1 CAUSE NO. 2007-76322  
2 Donald A. Young and ) IN THE DISTRICT COURT OF  
wife, Wanda Young )  
3 Plaintiffs )  
) )  
4 VS. ) HARRIS COUNTY, TEXAS  
) )  
5 LORILLARD TOBACCO CO., )  
et al. )  
6 Defendants. ) 11TH JUDICIAL DISTRICT  
7 (transferred from)

8 CAUSE NO. 2007CI15853  
9 Donald A. Young and ) IN THE DISTRICT COURT OF  
wife, Wanda Young )  
10 Plaintiffs, )  
) )  
11 VS. ) BEXAR COUNTY, TEXAS  
) )  
12 LORILLARD TOBACCO CO., )  
et al. )  
13 Defendants. ) 285TH JUDICIAL DISTRICT  
14  
15

16 \*\*\*\*\*

17 THE ORAL AND VIDEO DEPOSITION OF  
18 ALLEN ROBERT GIBBS  
19 SEPTEMBER 4, 2008  
20 DUPLICATE

21 \*\*\*\*\*

22  
23 THE ORAL AND VIDEO DEPOSITION OF  
24 ALLEN ROBERT GIBBS, produced as a witness at the  
25 instance of the Defendant, and duly sworn, was taken

1 in the above-styled and numbered cause on the 4th  
 2 day of September, 2008 from 9:54 a.m. to 1:57 p.m.,  
 3 before JULIE VERASTEGUI, CSR in and for the State of  
 4 Texas, reported by stenographic and computer-aided  
 5 transcription at the law office of Davis Cedillo &  
 6 Mendoza, 755 East Mulberry, Suite 500, San Antonio,  
 7 Texas 78212, pursuant to the Texas Rules of Civil  
 8 Procedure and the provisions stated on the record or  
 9 attached hereto.

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S-T-I-P-U-L-A-T-I-O-N-S

It is further stipulated and agreed  
 by and between counsel for the respective parties  
 hereto that the original of the deposition of ALLEN  
 ROBERT GIBBS shall be sent to MR. JAMES E. BERGER at  
 his address for the purpose of obtaining the  
 signature of the witness thereon before any notary  
 public.

A P P E A R A N C E S

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ALSO PRESENT:

RON POSEY,  
The Videographer;

ALLEN ROBERT GIBBS,  
The Witness; and  
JULIE VERASTEGUI,

Certified Court Reporter.

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I-N-D-E-X

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1                   MR. BERGER: Good morning. My name  
2 is Jim Berger. I represent Lorillard Tobacco  
3 Company. I just wanted to to place a note on the  
4 record that we are here today preserving the  
5 testimony of Dr. Allen Gibbs pursuant to an  
6 agreement between the parties for use in the trial  
7 in this matter.

8                   We're going to attempt to move  
9 through this as quickly as -- as possible. Counsel  
10 for the plaintiff and I have discussed the witness  
11 has scheduling problems, and we are going to attempt  
12 to be done -- The witness needs to be done by 2:30  
13 to make a flight today.

14                   MR. MISMAS: John Mismas on behalf  
15 of the plaintiffs, Don and Wanda Young. I just  
16 wanted to put on the record that this deposition is  
17 being taken pursuant to the Texas Rules of Civil  
18 Procedure.

19                   MS. NGUYEN: Can I just add, this  
20 is Thi Nguyen for Guard-Line. Can I add that one  
21 objection is good for all defendants? Is that okay?  
22 That's how we usually do it.

23                   MR. BERGER: That's fine with me.

24                   THE VIDEOGRAPHER: We're on the  
25 video record on September 4th, 2008, 9:54 a.m.

1                   ALLEN ROBERT GIBBS,  
2   having been first duly sworn, testified as follows:

3                   EXAMINATION

4   BY MR. BERGER:

5         Q.   All right.  Good morning, Dr. Gibbs.

6         A.   Good morning.

7         Q.   Will you please state your full name for  
8   the record?

9         A.   Yes.  Allen Robert Gibbs.

10        Q.   And, Doctor, how are you employed?

11        A.   I'm employed by the National Health Service  
12   in the UK, so I work in a hospital.

13        Q.   Okay.  And what is your profession?

14        A.   I am a medical doctor, and I am --  
15   specialize in pathology.

16        Q.   Okay.  And how long have you been employed  
17   as a pathologist?

18        A.   37 years now.

19        Q.   Okay.  And -- And where in the UK is the  
20   hospital that you practice at?

21        A.   It's in South Wales in a place -- The  
22   nearest -- The capital of Wales is Cardiff.  And  
23   it's just on the outskirts of Cardiff.

24        Q.   Okay.  Now, you're from the UK, correct?

25        A.   Yes.

1 Q. Where are we today?

2 A. We're in San Antonio, Texas.

3 Q. Okay. And you understand that we're  
4 preserving your testimony on videotape today, right?

5 A. Yes, I do.

6 Q. And did you come to San Antonio to present  
7 your testimony in this case to the Court and the  
8 jury?

9 A. Yes.

10 MR. MISMAS: Objection; leading.

11 Q. (By Mr. Berger) Okay. Dr. Gibbs, why did  
12 you come to San Antonio?

13 A. In order to give evidence at the trial of  
14 Mr. Young.

15 Q. And -- And -- And why are we videotaping  
16 your testimony instead of presenting it live in  
17 court?

18 A. Because there have been -- there are  
19 scheduling problems with the timing of the  
20 testimony.

21 Q. All right. Will you please explain for us  
22 in laymen -- in a layperson's term what a  
23 pathologist does?

24 A. Yes. I'm a tissue pathologist, so I look  
25 at biopsies from various organs of the body, the

1 skin, the lung, the gastrointestinal tract, et  
2 cetera, I look at those tissues and look at sections  
3 from those tissues under the microscope. In  
4 addition, I carry out autopsies.

5 Q. Okay. And have you developed a specialty  
6 in lung-related pathology?

7 MR. MISMAS: Objection; leading.

8 THE WITNESS: Yes. I've been  
9 interested in lung pathology for over 30 years now,  
10 and that's where I've developed my special interest.

11 Q. (By Mr. Berger) Within the field of lung  
12 pathology, do you have any special areas of  
13 expertise?

14 MR. MISMAS: Objection; leading.

15 THE WITNESS: Yes. I --  
16 Particularly occupational lung pathology I focused  
17 on. I actually look at a lot of lung pathology in  
18 general, but my main research and diagnostic  
19 interests have been in occupational lung pathology.

20 Q. (By Mr. Berger) Okay. And would that  
21 include research into asbestos-related diseases?

22 A. Yes.

23 Q. Okay. Does the hospital at which you work  
24 have a history of research in this area?

25 MR. MISMAS: Objection; form,

1 foundation, speculation.

2 THE WITNESS: Yes. It has a  
3 history insofar as that shortly after the Second  
4 World War, a unit was established in my hospital by  
5 the Medical Research Council specifically to look at  
6 pneumoconiosis. It initially was set up to look at  
7 coal worker diseases, because South Wales had a lot  
8 of coal mines, and there were diseases in coal  
9 miners that were recognized in South Wales.

10 And it was -- That unit primarily  
11 started off looking at those responses in terms of  
12 coal worker exposures. Then as other particles  
13 became of interest, it -- including asbestos, there  
14 was a lot of research in a multidisciplinary way  
15 into various asbestos-related diseases.

16 And a former colleague of mine, now  
17 deceased, Dr. Chris Wagner, headed the Pathology  
18 Unit at the M- -- MRC Pneumoconiosis Research Unit,  
19 and he was one of the two main pathologists that  
20 made me interested in lung pathology and  
21 occupational lung pathology.

22 Q. (By Mr. Berger) When did you begin your  
23 research into lung pathology and occupational  
24 diseases?

25 A. Really in the mid 1970s.

1 Q. Okay. And how did you get involved in that  
2 type of research?

3 A. Well, Llandough Hospital had a lot of lung  
4 pathology going through it. The MRC Unit, Medical  
5 Research Unit -- Pneumoconiosis Research Unit  
6 received a lot of lung tissue samples from different  
7 places for study, in particular -- related  
8 particularly to different entries. And I was  
9 involved in looking at some of that material, and my  
10 interest expanded on that, and I became regularly  
11 involved with examining those cases.

12 Q. Okay. You mentioned Dr. Wagner. Did you  
13 work with him professionally before he passed away?

14 A. Yes.

15 Q. And historically, what was Dr. Wagner's  
16 role in the research of the asbestos and disease?

17 MR. MISMAS: Objection; hearsay.

18 THE WITNESS: His main claim to  
19 fame was that he actually recognized the association  
20 between exposure to asbestos, particul- --  
21 specifically crocidolite, and the development of  
22 mesothelioma. And his paper, "Subjects Have Been  
23 Exposed at the Northwest Cape South African  
24 Crocidolite Mine," was, I think, probably the most  
25 quoted in the occupational medicine literature. And

1 that was really the first strong indicator that  
2 asbestos could be a cause of mesothelioma.

3 Q. (By Mr. Berger) And when was that study  
4 published?

5 A. That was 1960.

6 Q. Doctor, have you yourself conducted  
7 research and published your results regarding the  
8 diagnosis and cause of asbestos-related disease?

9 A. Yes, I have.

10 Q. And have you conducted and published  
11 research about the levels of asbestos exposure in  
12 the lung and the resulting production of disease?

13 MR. MISMAS: Objection; leading.

14 THE WITNESS: Yes, I have.

15 Q. (By Mr. Berger) Okay. Doctor, have you  
16 published -- Strike that.

17 Doctor, have you conducted and  
18 published research about the levels of asbestos  
19 fibers found in lung tissue?

20 MR. MISMAS: Objection; leading.

21 THE WITNESS: Yes. I have  
22 published and done studies on -- on several areas  
23 where lung tissue levels have been correlated with  
24 disease.

25 Q. (By Mr. Berger) Let me ask it this way,

1 Doctor -- Well, strike that.

2 Doctor, can you give us a general  
3 description of the types of topics on which you have  
4 researched and published papers?

5 A. Yes. My major focus in terms of  
6 asbestos -- And it's not confined to asbestos  
7 because I'm interested in other mineral causes and  
8 how they cause disease as well. But in terms of  
9 asbestos, it's, first of all, diagnosis. We've done  
10 quite a lot of work on diagnosis of malignant  
11 mesothelioma particularly and how to differentiate  
12 it from other tumors.

13 And I also work with a  
14 mineralogist, Professor Fred Pooley, who does a lot  
15 of mineral fiber analysis on lung tissues. And I've  
16 worked with him now for over 20 years, looking at  
17 lung tissue samples and how they correlate with and  
18 without disease. We've probably conducted several  
19 thousand fiber burden analyses of lung tissues over  
20 the years.

21 Q. And have these papers been published in  
22 peer reviewed journals?

23 MR. MISMAS: Objection; leading.

24 THE WITNESS: Yes, they have.

25 Q. (By Mr. Berger) Okay. You used a term just

1 a minute ago, "a fiber burden analysis." Could you  
2 please explain what that is?

3 A. Yes. There are a number of ways to do it,  
4 but basically it involves taking samples of the lung  
5 tissue, breaking down that lung tissue by using  
6 alk- -- strong alkalies, and that leaves you the  
7 resid -- particles that were there. And you can  
8 look at the fibrous particles. You can look at  
9 other particles as well.

10 But basically, asbestos fibers are  
11 durable within that procedure, so you can take those  
12 fibers, and you can examine them under various  
13 microscopes. We use, generally, the transmission  
14 electron microscope, which magnifies the fibers at  
15 about 20,000, which means it's very sensitive. And  
16 we can also break down the fibers into individual  
17 types, because there's a component to the electron  
18 microscope which will give you a clin- -- a chemical  
19 spectrum by which you can identify the fiber,  
20 because the identification is usually through  
21 morphology, that is, the shape of the particular  
22 fiber, and the chemistry of the fiber.

23 And then occasionally, with certain  
24 fibers, where there may be difficulties in  
25 identification, you have to use some other

1 techniques to help that.

2 Q. And have your studies been published in  
3 journals around the world?

4 MR. MISMAS: Objection; leading.

5 THE WITNESS: Yes, they have.

6 Q. (By Mr. Berger) And have your studies been  
7 published in journals in the United States?

8 A. Yes.

9 MR. MISMAS: Objection; leading.

10 THE WITNESS: Yes, they have.

11 Q. (By Mr. Berger) Okay. Have you ever served  
12 as the editor for any scientific journal?

13 MR. MISMAS: Objection; leading.

14 THE WITNESS: I've been an  
15 associate editor of Thorax, and I'm a present  
16 section editor of Archives of Pathology.  
17 Particularly, I'm involved with the occupational  
18 side.

19 Q. (By Mr. Berger) Have you ever written any  
20 chapters in medical textbooks?

21 MR. MISMAS: Objection; leading.

22 THE WITNESS: I've written  
23 chapters, and I've edited a textbook as well.

24 Q. (By Mr. Berger) Okay. On what kinds of  
25 topics have you written textbooks or chapters?

1           A.    Mostly occupational lung pathology, but  
2           sometimes diagnostic lung pathology that's not  
3           specifically related to occupation.

4           Q.    Okay.  And are these textbooks that are  
5           used in medical schools?

6           A.    Yes.

7           Q.    Can you tell us a little bit about your  
8           formal education that you had before you became a  
9           pathologist?

10          A.    Yes.  I went to the local -- We call them  
11          infants and junior schools.  We had an exam at  
12          age -- around the 11th birthday called the 11th --  
13          11 plus, which if you pass that exam, you went to  
14          grammar school, which is where I went.

15                         And then I went through the various  
16          examinations to go to university, and I went to  
17          university at 17 to Newcastle Upon Tyne northeast of  
18          England where I studied medicine.  After five years,  
19          I got my medical degree.  I then had a year where I  
20          did the equivalent of internships in hospital.

21                         Then the -- I did a further year as  
22          a resident in general medicine.  And then after  
23          that, I went into training in pathology.  And after  
24          five to six years, I obtained my full  
25          qualifications.  We call them membership of the

1 research -- membership of the Royal College of  
2 Pathologists, which means I could then apply for  
3 what we call consultant posts or senior -- or in my  
4 case, I actually initially took a senior lecturer  
5 post, which is directly employed by the university,  
6 in 1978.

7 I worked in pathology as a senior  
8 lecturer there until 1985. And then I transferred  
9 to Llandough Hospital as a consultant because that  
10 was a national health service post as opposed to a  
11 university post, although they were very closely  
12 tied together, because the medical school and the  
13 hospital side is closely interlinked. And I've been  
14 there ever since.

15 Q. Okay. And do you continue to teach medical  
16 students?

17 A. Yes.

18 MR. MISMAS: Objection; leading.

19 Q. (By Mr. Berger) Okay. What is the Royal  
20 College of Pathologists?

21 A. It's basically our professional body that  
22 is responsible for the training of pathologists and  
23 setting out the examinations for qualification of  
24 pathologists, and then it -- it organizes  
25 educational activities for once you have actually

1 obtained the equivalent of boards.

2 Q. All right. Is that comparable to board  
3 certification in the United States?

4 MR. MISMAS: Objection; leading.

5 THE WITNESS: Yes, it is.

6 Q. (By Mr. Berger) Okay. Are you the  
7 member -- Excuse me. Strike that.

8 Are you a member of any NIOSH  
9 committees?

10 MR. MISMAS: Objection; leading.

11 THE WITNESS: I was -- I was a  
12 member of the -- the NIOSH committee in the 1980s  
13 for a few years, which was specifically tasked to  
14 produce a monograph on silica- and silicate-induced  
15 lung disease. There was a panel of about eight or  
16 ten of us which produced this monograph with what  
17 was meant to provide the state-of-the-art knowledge  
18 on the pathology of those particular diseases.

19 Q. (By Mr. Berger) Okay. What is the U- --  
20 the European Mesothelioma Panel?

21 A. The European Mesothelioma Panel is a group  
22 of pathologists who have a special interest in  
23 mesothelioma from different countries in Europe.  
24 Meets about once every two years, and usually is  
25 involved with education and organizing courses for

1 other pathologists.

2                   It used to act as a reference panel  
3 up until about eight, nine, ten years ago; that is,  
4 cases were submitted, and then they would be  
5 reported back and the results sent back. But that  
6 ceased because the -- the -- the panel actually  
7 ceased for a couple of years. And then it started  
8 up again, main -- mainly with an educational remit.

9           Q. All right. Are you a member of the  
10 European Mesothelioma Panel?

11                   MR. MISMAS: Objection; leading.

12                   THE WITNESS: Yes. I'm actually  
13 chairman of it at the moment.

14           Q. (By Mr. Berger) Okay. And what is the  
15 U.S./Canadian Mesothelioma Panel?

16           A. That's a panel that is made up of about --  
17 I think it's 10, 11 pathologists from different  
18 institutions who have a special interest in  
19 mesothelioma. I think you -- Dr. Hammar is one  
20 member on that panel. Dr. Churg is another.

21                   And that panel receives cases from  
22 pathologists in usually different parts of the  
23 North America for a diagnosis. And members of the  
24 panel look at the slides and then independently send  
25 in a diagnosis to Dr. Churg who actually organizes

1 the panel. And then he collects those opinions and  
2 then sends the referring pathologist a summary of  
3 what we've all said.

4 Q. Okay. Are you a member of that panel?

5 A. Yes.

6 MR. MISMAS: Objection; leading.

7 Q. (By Mr. Berger) Are you the only member  
8 who's not actually from the United States or Canada?

9 MR. MISMAS: Objection; leading.

10 THE WITNESS: Yes, I am.

11 Q. (By Mr. Berger) Okay. Dr. Gibbs, you've  
12 given lectures on asbestos and disease at medical  
13 conferences around the world?

14 A. Yes, I have.

15 MR. MISMAS: Objection; leading.

16 Q. (By Mr. Berger) All right. And have you  
17 conducted medical research sponsored by the British  
18 Government?

19 MR. MISMAS: Objection; leading.

20 THE WITNESS: Yes.

21 Q. (By Mr. Berger) Okay. In your specialty of  
22 lung pathology, how do you determine pathologically  
23 what caused a particular cancer?

24 A. Well, first of all, you have to identify  
25 the particular cancer, what kind of cancer is it.

1 And then when you've done that -- It depends on what  
2 that cancer is -- there will be certain questions  
3 you will ask yourself, or looking at the medical  
4 records, or there may be radiological information  
5 that may be useful.

6 If we're talking specifically about  
7 mesothelioma, one thing is, we -- we look to see  
8 what the occupational history is and any other  
9 history that may be relevant from household members,  
10 for example. We look at the radiological findings  
11 to see if there's any evidence of pleural plaques,  
12 for instance.

13 If there's pathology, then we --  
14 Well, there will be in terms of a pathologist. If  
15 there's any background lung to examine for asbestos  
16 bodies or the changes of asbestosis, we may need to  
17 carry out fiber burden studies on the lung tissue to  
18 help with attribution.

19 Q. Okay. And in your practice as a  
20 pathologist, do you sometimes consult with the  
21 treating physician or other doctors treating a  
22 patient?

23 MR. MISMAS: Objection; leading.

24 THE WITNESS: Almost every day.

25 MR. BERGER: Okay. At this time,

1 Lorillard offers Dr. Gibbs as an expert in the  
2 fields of pathology and asbestos-related diseases.

3 Q. (By Mr. Berger) Dr. Gibbs, let's talk about  
4 mesothelioma. Where is it found in the body?

5 MR. MISMAS: Objection; leading.

6 THE WITNESS: It occurs on what  
7 they call the serosal surfaces. Most common site is  
8 the pleura, but there are other areas that it can  
9 occur in, for example, the peritoneum, which is  
10 similar to the pleura, but it lines the abdominal  
11 organs, and pericardium is another one. And there  
12 are also some other ones besides. But the most  
13 frequent site is the pleura.

14 Q. (By Mr. Berger) okay. How many  
15 mesothelioma cases do you review on average every  
16 year?

17 A. A few hundred.

18 Q. Okay. Doctor, are all mesotheliomas caused  
19 by asbestos?

20 A. No.

21 Q. Okay. Is asbestos one cause of  
22 mesothelioma?

23 A. Yes.

24 MR. MISMAS: Objection; leading.

25 Q. (By Mr. Berger) All right. Are there other

1 causes -- other known causes -- Strike that.

2 Are there other known causes for  
3 mesothelioma besides asbestos?

4 MR. MISMAS: Objection; leading.

5 THE WITNESS: Yes. There's  
6 reasonable evidence now that radiation treatment to  
7 serosum -- to tumors that -- and that radiation  
8 treatments involves serosal surfaces, can result in  
9 mesothelioma several years later.

10 There's -- In certain parts of the  
11 world, there are other mineral fibers which are not  
12 asbestos, namely erionite, specifically in Turkey,  
13 which has resulted in a high rate of mesothelioma.  
14 There's some limited evidence that chronic serosal  
15 inflammation over many years can sometimes be  
16 complicated by mesothelioma. And there's a group of  
17 which we do not know what the cause is.

18 Q. (By Mr. Berger) Okay. Is there a term used  
19 to describe those meso- -- mesotheliomas for which  
20 you don't know the cause?

21 MR. MISMAS: Objection; leading.

22 THE WITNESS: Yes. The usual term  
23 is idiopathic.

24 Q. (By Mr. Berger) Okay. Dr. Gibbs, does  
25 tobacco smoke cause mesothelioma?

1 MR. MISMAS: Objection; leading.

2 THE WITNESS: No.

3 Q. (By Mr. Berger) Okay. And do smokers have  
4 a higher incidence of mesothelioma than nonsmokers?

5 MR. MISMAS: Objection; leading.

6 THE WITNESS: No.

7 Q. (By Mr. Berger) Are there certain  
8 circumstances that need to be present for asbestos  
9 fibers to cause mesothelioma?

10 MR. MISMAS: Objection; leading.

11 THE WITNESS: Mesothelioma, in  
12 terms of asbestos exposure, is related to cumulative  
13 exposure and fiber type.

14 Q. (By Mr. Berger) Okay. And does the size of  
15 the fibers play a factor -- play a role in that?

16 A. Yes.

17 Q. Okay. What do you mean by "cumulative  
18 exposure"?

19 A. Well, we have to -- we -- When we talk  
20 about cumulative exposure, the rele- -- the relevant  
21 exposure is to respirable fibers, that is, fibers of  
22 a size that can actually get into the lung. And  
23 it -- The cumulative exposure is the -- that  
24 numb- -- if you, like, add, any one time, the number  
25 of the fibers times the time over which those fibers

1 were inhaled. So it's a reflection of dose and  
2 time -- duration of exposure.

3 Q. Okay. Are you familiar with the term  
4 "latency" in the context of mesothelioma?

5 A. Yes, I am.

6 MR. MISMAS: Objection; form --

7 Q. (By Mr. Berger) Okay.

8 MR. MISMAS: -- relevance --

9 Q. (By Mr. Berger) And what does the term --

10 MR. MISMAS: -- leading.

11 Q. (By Mr. Berger) -- "latency" mean?

12 A. Latency, in terms of mesothelioma, is the  
13 period between first exposure to the -- a -- the --  
14 the type of asbestos that's caused the mesothelioma  
15 and death from mesothelioma.

16 Q. Okay. And -- And -- And -- And is there a  
17 particular time that is the general latency period  
18 that you just described between exposure and -- and  
19 death?

20 MR. MISMAS: Objection; leading.

21 THE WITNESS: Yes. In my view, I  
22 think the minimum latency that I've been comfortable  
23 with has been 15 years, but the average latency of  
24 mesothelioma is of the order of 30 to 40 years. And  
25 a 95 percent plus are over 20 years mesotheliomas

1 when they're asbestos-related.

2 Q. (By Mr. Berger) Okay. But couldn't  
3 asbestos exposure ten years prior to the  
4 manifestation of a tumor have contributed to cause  
5 the disease?

6 MR. MISMAS: Objection; leading.

7 THE WITNESS: The general evidence  
8 is that exposures up to a period of ten years before  
9 death from the mesothelioma may be relevant.

10 Q. (By Mr. Berger) Okay. With respect to men  
11 that have mesothelioma, what percentage of those men  
12 have developed the mesothelioma that was caused by  
13 occupational exposure to asbestos?

14 A. If -- If we're talking about the USA, USA  
15 male is -- about 90 percent of the mesotheliomas are  
16 related to asbestos exposure.

17 Q. Okay. And in your experience, what's the  
18 typical survival time for a person from their  
19 manifestation of mesothelioma until they pass away?

20 A. It does vary to an extent with histological  
21 type, but it's usually of the order of about 8 to  
22 12 months.

23 Q. Okay. Dr. Gibbs, we -- you testified a  
24 little bit ago about things that you look at when  
25 you're determining the cause of a -- of a cancer or

1 a mesothelioma. Do you recall that?

2 A. Yes.

3 Q. Okay. Is a patient's history and their  
4 description of asbestos exposure a factor to  
5 consider in determining whether asbestos caused a  
6 mesothelioma?

7 MR. MISMAS: Objection; leading.

8 THE WITNESS: Yes. It would be one  
9 factor that you would take into account.

10 Q. (By Mr. Berger) Let me re-ask that. When  
11 you're attempting to determine whether a patient's  
12 mesothelioma is -- has been caused by asbestos  
13 exposure, what are some factors that you look at in  
14 making that determination?

15 A. The -- The factors I would -- would look at  
16 would be history, the robustness of the occupational  
17 or domestic exposure -- if that's -- domestic  
18 exposure is how clear-cut is the exposure data,  
19 because sometimes you see variations in -- over  
20 periods of time of the descriptions of what the  
21 exposure was -- was or -- or the exposures were.

22 Then to look for the markers such  
23 as pleural plaques. And also to -- then to look at  
24 the lung tissue for asbestos bodies and -- and maybe  
25 a fiber analysis.

1 Q. Okay. And is this the analysis that you --  
2 Or strike that.

3 Is this the type of evaluation that  
4 you normally do in your practice as a pathologist?

5 MR. MISMAS: Objection; leading.

6 THE WITNESS: Yes, it is.

7 Q. (By Mr. Berger) Okay. This isn't something  
8 that you just do for litigation?

9 MR. MISMAS: Objection; leading.

10 THE WITNESS: No. I -- I carry out  
11 personally about ten or more mesothelioma autopsies  
12 per year. That is the process that I would go in  
13 terms of -- I -- I -- I basically have to  
14 provide the coroner, who would instruct me to do the  
15 autopsy -- provide the information to the coroner to  
16 say whether I think it's asbestos-induced or not.

17 Q. (By Mr. Berger) All right. Based on your  
18 experience, what are some examples of occupations  
19 that -- in the United States that historically had  
20 high rates of mesothelioma?

21 MR. MISMAS: Objection;  
22 speculation, hearsay, relevance.

23 THE WITNESS: In- -- Insulators,  
24 dockyard workers -- or shipyard workers, asbestos  
25 manufacturing plants would be ones with high

1 exposures.

2 Q. (By Mr. Berger) Okay. Are you familiar  
3 with a term -- Well, strike that.

4 Can people be exposed to asbestos  
5 if they're not directly working with it?

6 MR. MISMAS: Objection; leading.

7 THE WITNESS: Yes, they can. It --

8 Q. (By Mr. Berger) And --

9 A. In fact, exposures -- There is a system of  
10 classification for asbestos exposure, and it's  
11 called the Zielhuis Classification. And basically a  
12 Zielhuis 1A is a direct exposure; 1B is an indirect  
13 exposure. And what they mean by that, somebody gets  
14 exposed to asbestos by working alongside somebody  
15 else who's actually handling the asbestos, but they  
16 aren't personally doing it.

17 And then the 2 is the so-called  
18 domestic exposure, where the typical history is that  
19 of a man who comes home with dirty working clothes  
20 which are contaminated by asbestos; his wife shakes  
21 them out and launders them.

22 Q. Okay. Is there a term that's used to  
23 describe these indirect exposures that you  
24 mentioned?

25 MR. MISMAS: Objection; leading.

1                   THE WITNESS:  Sometimes the term  
2    "bystander" is used.

3           Q.    (By Mr. Berger) Okay.  And how do bystander  
4    exposures sometimes compare with respect to their  
5    intensity to the exposure of somebody who's working  
6    directly with an asbestos-containing product?

7                   MR. MISMAS:  Objection; relevance,  
8    hearsay, speculation.

9                   THE WITNESS:  The -- The -- The  
10   bystander exposure will relate to the activity of  
11   the person directly involved.  For example, if  
12   the -- the bystander is in an area where somebody's  
13   spraying asbestos, they will get high exposures, not  
14   as much as the sprayer, but still very high.

15                   If the person doing the work is,  
16   say, a carpenter who's cutting up asbestos sheets,  
17   then the bystander will get a -- still get a  
18   substantial exposure, but it will be less than the  
19   carpenter cutting up the sheets.

20           Q.    (By Mr. Berger) Okay.  Dr. Gibbs, I want to  
21   change gears for a minute.  Based on your education,  
22   training and review of the applicable literature,  
23   what was the state of knowledge concerning the risk  
24   of disease from asbestos exposure in the 1950s?

25           A.    The -- In terms of mesothelioma, it was not

1 recognized in the 1950s. It was 1960 before  
2 mesothelioma was understood. It was -- The major  
3 thrust of trying to prevent asbestos-related disease  
4 was to prevent asbestosis, and that's why the -- the  
5 limit values that -- were related to asbestosis, not  
6 mesothelioma. It was later realized that  
7 mesothelioma occurred with a lower dose than you  
8 needed for asbestosis, and so then they changed the  
9 limits on a regular basis.

10 Q. Okay. Dr. Gibbs, can people who don't work  
11 with asbestos be exposed to it in the course of  
12 their everyday life?

13 MR. MISMAS: Objection; leading.

14 THE WITNESS: Yes. There's a  
15 so-called background level of asbestos exposure.

16 Q. (By Mr. Berger) And -- And -- And what does  
17 the background -- what do you mean by the term,  
18 "background level"?

19 A. It means that it's in the general air.  
20 It's in -- It can be in buildings, both inside  
21 buildings and outside -- outdoors. It's  
22 unavoidable. Certain cities will have higher  
23 backgrounds than others.

24 But -- For example, they dug ice  
25 samples out of the Antarctic icecap from millions of

1 years ago, and you can find asbestos fibers in them.  
2 So it's something that you can't actually avoid.  
3 It's a natural mineral that is ubiquitous.

4 Q. What are the sources of the asbestos fibers  
5 that are in the -- the background air that you  
6 mentioned?

7 A. Well, it can be from national geographic  
8 outcrops. They can be from industry and uses of  
9 asbestos in various locations.

10 Q. Okay. And -- And just a note, can you try  
11 to keep your voice up with the air conditioner  
12 running? I want to make sure --

13 A. Yes.

14 Q. -- everybody can hear. Thank you.

15 A. Okay.

16 Q. Is there a difference in the -- between the  
17 terms "background exposure" and "environmental  
18 exposure"?

19 MR. MISMAS: Objection; leading.

20 THE WITNESS: Well, the background  
21 exposure is if you're like part of the environmental  
22 exposure. But the environmental, it depends on  
23 which area of -- where the environment is. So the  
24 environment can also include some other types of  
25 ex- -- exposure.

1                   For example, if you had an asbestos  
2 mine and you lived in the vicinity of it, that could  
3 be -- you didn't actually work in the mine, but  
4 there could be some environmental exposure to that,  
5 which would be above general background in the --  
6 say, the -- the region.

7           Q.    (By Mr. Berger) Okay. Have you studied the  
8 lung tissue of people who are not occupationally  
9 exposed to asbestos to determine if asbestos fibers  
10 are present?

11                   MR. MISMAS:  Objection; leading.

12                   THE WITNESS:  Yes, we have.

13           Q.    (By Mr. Berger) Okay. And those are people  
14 who would have -- Are -- Are those people who would  
15 have only had an exposure to this background level  
16 of asbestos?

17                   MR. MISMAS:  Objection; leading.

18                   THE WITNESS:  Yes. We've looked at  
19 so-called control lungs of over 600 different  
20 locations, looked -- and quantified the asbestos  
21 content and -- in subjects who weren't exposed to  
22 asbestos --

23           Q.    (By Mr. Berger) Okay.

24           A.    -- or at least not exposed occupationally  
25 or domestically and so forth. I mean, in a sense,

1       everybody gets exposed because you can't avoid it,  
2       but looking at the general person who's not involved  
3       with asbestos-related work, what is in their lungs.

4           Q.    Okay.  And based on your work -- Well,  
5       strike that.

6                       And have you looked at the lung  
7       tissue from people from the United States who have  
8       only had background exposures?

9                       MR. MISMAS:  Objection; leading.

10                      THE WITNESS:  I haven't  
11       specifically, but my colleague Professor Pooley has.

12           Q.    (By Mr. Berger) Okay.  And have other  
13       researchers looked at lung tissue from people from  
14       the United States who have only had background  
15       exposures and published those results?

16                      MR. MISMAS:  Objection; leading.

17                      THE WITNESS:  Yes, a number of  
18       authors.

19           Q.    (By Mr. Berger) And are you familiar with  
20       those studies?

21                      MR. MISMAS:  Objection; leading.

22                      THE WITNESS:  Yes.  The main ones  
23       would be Churg, Dodson, Roggli and Case.

24           Q.    (By Mr. Berger) Okay.  And are all asbestos  
25       fiber types found in the background air --

1 MR. MISMAS: Objection; leading.

2 Q. (By Mr. Berger) -- in the United States?

3 MR. MISMAS: Objection; leading.

4 Q. (By Mr. Berger) Strike that. In the United  
5 States, what asbestos fiber types are found in the  
6 background air?

7 A. Generally, in the background air, they --  
8 they find mainly chrysotile. But if you look at the  
9 lung tissues from subjects who haven't had  
10 occupational exposure to asbestos, they turn up some  
11 amphiboles. That's commercial amphiboles,  
12 crocidolite and amosite --

13 Q. Okay.

14 A. -- low levels, but nevertheless, there, and  
15 some tremolite.

16 Q. Okay. Is the amount of air -- Strike that.

17 Is the amount of asbestos found in  
18 the air today higher or lower than what might have  
19 been found in the air in the past?

20 A. It would be lower than present in the -- in  
21 the past --

22 Q. Okay.

23 A. -- at least in urban environments.

24 THE COURT REPORTER: I'm sorry?

25 THE WITNESS: At least in urban

1 environments.

2 Q. (By Mr. Berger) Okay. Dr. Gibbs, do  
3 background or ambient levels of asbestos fibers  
4 cause disease?

5 A. There's no evidence that they -- that they  
6 do.

7 Q. Okay. Can you give us maybe an example of  
8 the levels of asbestos concentration in background  
9 or the ambient air in the United States?

10 MR. MISMAS: Objection;  
11 speculation, hearsay, relevance, vague.

12 THE WITNESS: No. It's usually of  
13 the order of .3 or 4 zeros 1, 2, something like that  
14 nowadays, but they have described, in the '50s and  
15 '60s, up to about 0.15 CC.

16 Q. (By Mr. Berger) Okay. So it -- If a person  
17 was just walking around breathing the background  
18 air, how many fibers a day might they be exposed to?

19 A. Be about 20- or 30,000 fibers a day.

20 Q. Okay. And -- And, Dr. Gibbs, how much air  
21 do you assume an ordinary person breathes in a -- in  
22 a day?

23 A. 1 cubic meter per day, which is a million  
24 CCs, or a million MLs, whichever you -- whichever  
25 you prefer.

1 Q. In an entire day?

2 A. Yes.

3 Q. In doing calculations, do you have a number  
4 that you ordinarily assume that a person breathes in  
5 a 24-hour period?

6 MR. MISMAS: Objection; leading.

7 THE WITNESS: Sorry. Can you  
8 say -- say that again?

9 Q. (By Mr. Berger) When you're -- When you're  
10 looking at how much air a person ordinarily breathes  
11 in a 24-hour day, is there a number that you  
12 generally assume as the basis for your calculations?

13 MR. MISMAS: Objection; leading.

14 THE WITNESS: Yes, 1 million CCs.

15 Q. (By Mr. Berger) Okay. Dr. Gibbs, do you  
16 sometimes assume that an ordinary person breathes  
17 20 cubic meters in a day?

18 MR. MISMAS: Objection; assuming  
19 and leading.

20 THE WITNESS: Sorry. As -- 10 --  
21 10 or 20 cubic meters.

22 Q. (By Mr. Berger) Okay. Dr. Gibbs, I want to  
23 touch on the topic of respirability for a minute.  
24 What size fibers are generally considered  
25 respirable?

1 MR. MISMAS: Objection; leading.

2 THE WITNESS: It would usually take  
3 up to 1 micron in diameter, but it's -- in practical  
4 terms, it's unusual to see in lungs anything above  
5 0.7 microns.

6 Q. (By Mr. Berger) Okay. And does the size  
7 and shape of a fiber or dust particle affect its  
8 ability to get into lung tissue?

9 MR. MISMAS: Objection; leading.

10 THE WITNESS: Yes. In terms of  
11 fibers, it's strongly dependent on diameter.

12 Q. (By Mr. Berger) Okay. And you mentioned  
13 the fiber that might be on the diameter of  
14 0.7 microns to 1 micron. Is -- Is -- Is that  
15 visible to the naked eye?

16 MR. MISMAS: Objection; leading.

17 THE WITNESS: No.

18 Q. (By Mr. Berger) Okay. How would a fiber of  
19 that size compare to a human hair, for example?

20 A. Oh, it -- it would be orders of magnitude  
21 smaller.

22 Q. Okay. And why is the concept of  
23 respirability of fibers important to disease  
24 causation?

25 A. Because you can have lots of particles up

1 in the air that you might think will -- potentially  
2 dangerous to the lungs, but if they can't get down  
3 into the lung, then they're really irrelevant to  
4 what goes on in the lung.

5 Q. Okay. Does the body have certain defense  
6 mechanisms to protect itself from particles or  
7 fibers getting into the lungs?

8 A. Yes. Both the nose, mouth, particles will  
9 be taken out of these in what's called the  
10 mucociliary blanket that lines the airways where  
11 fibers or other particles may stick on, and then  
12 this so-called escalator will just take it out, and  
13 you cough it out.

14 MR. MISMAS: I'm going to object to  
15 that last question as leading.

16 THE WITNESS: And then there's --  
17 macrophages will tend to attempt to remove fibers in  
18 the lung as well, or particles.

19 Q. (By Mr. Berger) Now, Dr. Gibbs, when you're  
20 counting fibers to evaluate asbestos exposure and  
21 the potential to cause disease, what kinds of fibers  
22 do you count?

23 A. In terms of air samples, it's fibers that  
24 are greater than 5 microns in length.

25 Q. Okay. And why fibers greater than

1 5 microns in length?

2 A. Well, partly it's due to the way they  
3 started out to measure things. And secondly, the  
4 experiments that have been done indicate that  
5 it's fibers over 5 microns that you should be  
6 concerned with.

7 Q. Okay. I want to go back to your discussion  
8 of looking at the lung tissue of people who have not  
9 had an occupation exposure to asbestos. Okay?

10 A. Yes.

11 Q. We're talking about people who only had  
12 exposure to background levels of asbestos from  
13 breathing the air. Do you understand what I'm going  
14 to ask?

15 A. Yes. Yes.

16 Q. Okay. Now, can you look at the lung tissue  
17 of those people and actually count how many asbestos  
18 fibers are present in their lung tissue?

19 MR. MISMAS: Objection; leading.

20 THE WITNESS: Yes, you can.

21 Q. (By Mr. Berger) And would that be done by  
22 doing a fiber burden, as you described earlier?

23 MR. MISMAS: Objection; leading.

24 THE WITNESS: Yes, it would.

25 Q. (By Mr. Berger) Okay. When you're counting

1 fibers in lung tissues, is there something known as  
2 a dry gram of lung tissue?

3 A. Yes.

4 Q. Can you explain that, please?

5 A. Yes. It -- When you take a lung, there's a  
6 lot of fluid in it after -- or at autopsy. And the  
7 average weight of so-called wet lung to dry lung is  
8 about a ten to one ratio. So if you sort of have a  
9 lung at autopsy that's 4- to 500 grams in weight,  
10 that actually equates to about 40 to 50 grams dry  
11 weight.

12 And the -- If you like the constant  
13 basis, the constant denominator to use is the dry  
14 weight rather than the wet weight, because the wet  
15 weight is -- is variable. So the -- the constant is  
16 the dry weight. And you can count fibers per gram  
17 of dry lung. And then, if you want to, you can  
18 multiply that up to tell you how much is in a whole  
19 lung.

20 Q. (By Mr. Berger) Okay. And how many lungs  
21 do people have?

22 A. Two, usually.

23 Q. So if -- if a single lung weighs 40 to  
24 50 dry grams, what would two lungs weigh?

25 A. Would be 80 to 100.

1 Q. And am I correct that you've looked at the  
2 lung tissues of people who have only had a  
3 background exposure --

4 MR. MISMAS: Objection; leading.

5 Q. (By Mr. Berger) -- in your work with  
6 Professor Pooley?

7 MR. MISMAS: Objection; leading.

8 THE WITNESS: Yes.

9 Q. (By Mr. Berger) Okay. And how many fibers  
10 per dry gram of asbestos have you found in the lung  
11 tissues of people who have only had a background  
12 exposure?

13 A. We've -- Per gram a dry lung, we've --  
14 we've seen up to 1 million amphibole fibers and up  
15 to 15 million chrysotile fibers.

16 Q. Okay. And have these levels of asbestos  
17 exposure been shown to cause disease?

18 A. No.

19 MR. MISMAS: Objection; leading.

20 THE WITNESS: No.

21 Q. (By Mr. Berger) All right. Dr. Gibbs, the  
22 jury's heard about different kinds of asbestos, but  
23 perhaps you could take a moment and just explain the  
24 different types of asbestos fibers that exist.

25 A. Yes. There's several different types. And

1 maybe just for today, the -- it would be practical  
2 to just talk about the commercial amphiboles and  
3 chrysotile.

4 Q. Please do.

5 A. The chrysotile is a so-called serpentine  
6 type of asbestos, and it has a different shape  
7 morphology than the amphiboles, which are rigid,  
8 straight structures. They have different  
9 chemistries. In terms of mesothelioma and potency,  
10 amphiboles have a much greater potency for  
11 mesothelioma than chrysotile.

12 Q. Okay. Now, Dr. Gibbs, if -- are there  
13 different types of amphibole fibers?

14 A. Yes. In terms of commercial amphiboles,  
15 there's so-called crocidolite or blue asbestos, and  
16 amosite, otherwise known as brown asbestos.

17 Q. Okay. Is there another type of commonly  
18 found amphibole?

19 A. Yes.

20 MR. MISMAS: Objection; leading.

21 THE WITNESS: That's a  
22 noncommercial type of asbestos, because it wasn't  
23 mined or used for products generally. And that's  
24 so-called tremolite asbestos. And there's another  
25 one called anthophyllite as well.

1 Q. (By Mr. Berger) Okay. And have you found  
2 tremolite and anthophyllite in -- in the lungs of  
3 people that you've examined?

4 MR. MISMAS: Objection; leading.

5 THE WITNESS: Do you mean in terms  
6 of background or commercial -- exposed  
7 occupationally?

8 Q. (By Mr. Berger) Persons who have been  
9 exposed occupationally.

10 MR. MISMAS: Same objection.

11 THE WITNESS: Sometimes  
12 anthophyllite is rele- -- very uncommon. We see  
13 tremolite regularly, but usually in low dose -- low  
14 levels.

15 Q. (By Mr. Berger) Okay. Dr. Gibbs, can --  
16 can tremolite be found in talc?

17 MR. MISMAS: Objection; leading.

18 THE WITNESS: It can.

19 Q. (By Mr. Berger) Okay. Now, Dr. Gibbs, if I  
20 had a pound of crocidolite asbestos and a pound of  
21 amosite asbestos and I milled it down into fibers,  
22 which type of asbestos would produce more fibers?

23 A. The crocidolite.

24 Q. Okay. Now, if you have amphibole fibers  
25 that are of the same size and shape present in lung

1 tissue, what is their comparable potential to cause  
2 disease?

3 A. I -- I think it's the same, if -- if you  
4 look at the fibers within the lung and they're the  
5 same -- basically the same size and shape and  
6 dimensions.

7 Q. Okay. What is the concept of threshold as  
8 it relates to lung disease, particularly  
9 mesothelioma?

10 A. Well, with any dust, they try to establish,  
11 as best they can, a level at which they think no  
12 disease will occur. So a threshold dose is a level  
13 at which -- above which you will expect there to be  
14 a risk of disease. In -- In terms of mesothelioma,  
15 it will be a level of fiber that would be considered  
16 to materially increase the risk of the development  
17 of the mesothelioma.

18 Q. Okay. And can you compare the idea of a  
19 threshold with respect to asbestos to an everyday  
20 item like aspirin?

21 A. Yes. If -- If -- You can take a certain  
22 number of aspirin. In fact, it appears that  
23 low-level aspirin can have beneficial effects in  
24 various ways, particularly on the cardiovascular  
25 system. But if you take an excess of aspirin above

1 a certain level, it can cause severe illness and  
2 even, if it's at a greater level again, death.

3 Q. Okay. Dr. Gibbs, someone exposed to  
4 asbestos at levels below the threshold, do those  
5 exposures have the potential to cause disease?

6 MR. MISMAS: Objection; leading.

7 THE WITNESS: If they're below the  
8 level, then they won't cause disease.

9 MR. BERGER: All right. Let's go  
10 off the record and take a quick break.

11 THE VIDEOGRAPHER: Off the record,  
12 10:42 a.m.

13 (Off the record.)

14 THE VIDEOGRAPHER: We're on the  
15 record, 10:49 a.m.

16 Q. (By Mr. Berger) Okay. Dr. Gibbs, let's  
17 discuss some of the specific issues in this case.  
18 Now, do you understand that this involves  
19 Lorillard's original Kent cigarette filter, which  
20 contained crocidolite in it between March of 1952  
21 and May of 1956?

22 A. Yes.

23 Q. Okay. And do you also understand that the  
24 plaintiffs are claiming that asbestos from the  
25 original Kent filter caused Mr. Young's

1 mesothelioma?

2 MR. MISMAS: Objection; leading.

3 THE WITNESS: Yes.

4 Q. (By Mr. Berger) Okay. Now, did I ask you  
5 to review some materials in connection with this  
6 case?

7 A. Yes.

8 MR. MISMAS: Objection; leading.

9 Q. (By Mr. Berger) What materials have you  
10 reviewed in connection with this case?

11 A. They're all listed on the report. Can I  
12 refer to them rather than try and remember them? Or  
13 do you want me to just try to remember them?

14 Q. Can you first try to tell me generally what  
15 you recall --

16 A. Okay.

17 Q. -- reviewing in this case?

18 A. Medical records, various sets of  
19 interrogatories, I think a declaration against  
20 Western Asbestos Trust, a deposition by Dr. Hammar,  
21 report by Mr. Ewing and a deposition by Mr. Erin.

22 There was a -- a written statement  
23 by Mr. Young's friend. I can't remember. Fagio or  
24 Sergio. The name, I can't remember. And I read  
25 some coworker depositions --

1 Q. Okay. Dr. Gibbs --

2 A. -- and a -- and a deposition of Mr. Young  
3 himself.

4 Q. Okay.

5 MR. MISMAS: I don't -- I don't  
6 care if he refers to his report that he has in front  
7 of him, if you want him to look at it.

8 MR. BERGER: Okay.

9 Q. (By Mr. Berger) All right. Dr. Gibbs,  
10 would you like to refer to your report --

11 A. Yes, in case I've forgotten something.

12 Q. -- and refresh your memory and make sure  
13 you didn't forget anything?

14 A. Plaintiffs' Original Petition.

15 Q. Okay.

16 A. And a -- Depositions of Mr. Pribyla,  
17 Burns -- Brynes. I'm not sure how you pronounce it.  
18 Pike. Mr. Savageau was the -- the -- the  
19 handwritten statement.

20 Q. Okay.

21 A. Oh, and an expert report of Dr. Fuhrman.

22 Q. Okay. Have you reviewed Mr. Young's  
23 pathology samples?

24 A. Yes.

25 Q. And when did you review Mr. Young's

1 pathology slides?

2 A. Tuesday.

3 Q. Okay. And they -- Did they substantively  
4 change your opinions in this case in any way?

5 MR. MISMAS: Objection; form.

6 THE WITNESS: No. I thought they  
7 showed a malignant mesothelioma.

8 Q. (By Mr. Berger) All right. Are you  
9 familiar with and have you reviewed what we  
10 generally call "Dr. Longo's MAS experiments"?

11 A. Yes.

12 Q. And -- And does that include both his  
13 syringe experiment and his smoking machine  
14 experiment?

15 MR. MISMAS: Objection; leading.

16 THE WITNESS: Yes. I have reviewed  
17 those.

18 Q. (By Mr. Berger) Okay. Which of Dr. Longo's  
19 experiments are you familiar with?

20 A. He had -- He's done a syringe experiment,  
21 and he's done an experiment using a smoking machine.

22 Q. Okay. And are you generally familiar with  
23 the work done by the Armour Research Foundation on  
24 Kent cigarettes for Lorillard in the 1950s?

25 MR. MISMAS: Objection; leading.

1 THE WITNESS: I've seen some of the  
2 reports.

3 Q. (By Mr. Berger) Okay. Dr. Gibbs, have you  
4 reviewed certain radiology reports in this case?

5 A. Yes.

6 Q. Have you reviewed a report by a  
7 NIOSH-certified B reader, Dr. Fuhrman?

8 A. Yes.

9 MR. MISMAS: Objection. Move to  
10 strike that. Dr. Fuhrman's been excluded from this  
11 case.

12 I'll just give you a running  
13 objection to all Dr. Fuhrman questions.

14 MR. BERGER: Will do.

15 MR. MISMAS: Thank you.

16 Q. (By Mr. Berger) Okay. Dr. Gibbs -- Strike  
17 that.

18 Okay. Dr. Gibbs, was there  
19 anything significant that you found upon your review  
20 of the radiology reports from Mr. Young?

21 A. Yes. The -- The -- Surprisingly, a mass  
22 was present in 2002, and there was further radiology  
23 reports the following year describing the mass  
24 again, but it wasn't until 2007, I think, that the  
25 biopsy was done.

1 Q. Okay. Now, Dr. Gibbs, I'm going to hand  
2 you some documents that are from LTC Exhibit 1317.

3 MR. MISMAS: Thank you.

4 Q. (By Mr. Berger) Let's strike that and try  
5 it again.

6 Dr. Gibbs, I'm handing you  
7 documents from Exhibit LTC 1317, and I'd like you to  
8 take a look at those and -- and tell me if you've  
9 reviewed these before.

10 A. Yes. I've seen them.

11 Q. Okay. And looking at the top document  
12 there, can you please tell us what that is?

13 A. Yes. This is a report of a radiological  
14 examination of the -- actually done of the abdomen  
15 and pelvis.

16 Q. And -- And what's the date on that report,  
17 please?

18 A. And the report is 19th of February, 2002.

19 Q. Okay. And, Dr. Gibbs, if I could ask you  
20 to direct your attention to the third paragraph, can  
21 you read the -- what information you found -- Strike  
22 that.

23 Dr. Gibbs, please direct your  
24 attention to the third paragraph. And -- And will  
25 you please read the first sentence into the record?

1           A.    Yes.  It says, "Impression 1:  A 2.5  
2           centimeter pleural-based mass in the right lower  
3           chest.  Suggest three-month follow-up if no tissue  
4           diagnosis obtained."

5           Q.    Okay.  Dr. Gibbs, I'd like to ask you to  
6           turn to the next page.  And will you please identify  
7           this second report for us?

8           A.    Yes.  This is a chest x-ray taken on the  
9           7th of March, 2002.

10          Q.    Okay.  And did you review this report in  
11          forming your opinions in this case?

12          A.    Yes, I did.

13          Q.    Okay.  And -- And can you please read to me  
14          the relevant language that you saw upon your review  
15          of that report?

16          A.    Yes.  It says, "Impression:  Known right  
17          lower lung pleural-based mass, worrisome for  
18          malignancy.  Chest CT is apparently planned.  May  
19          well be helpful.  Linear scarring, left lung base."

20          Q.    Okay.  And in the paragraph above that,  
21          does it -- is there any description of what the  
22          radiologist saw on --

23          A.    Yes.

24          Q.    -- the films?

25          A.    He saw a 4.5 centimeter peripheral-based

1 mass, right lower lung posteriorly.

2 Q. Okay. And finally, Dr. Gibbs, would you  
3 please turn to the next page? And can you tell us  
4 what we are looking at here?

5 A. This is CT, abdomen and pelvis, which  
6 examination date was the 13th of March, 2002.

7 Q. And did you review and rely upon this  
8 radiology report in forming your opinions in this  
9 case?

10 MR. MISMAS: Objection.

11 THE WITNESS: Yes.

12 Q. (By Mr. Berger) Okay. And will you please  
13 go to the section marked "Findings" --

14 A. Yes.

15 Q. -- the first paragraph? And -- And will  
16 you please read the first sentence for us,  
17 Dr. Gibbs?

18 A. "CT scan of the chest and upper abdomen  
19 with IV contrast shows a 1.3 centimeter times 1." --  
20 "1.8 centimeter soft-tissue mass abutting the 9th  
21 right posterior rib."

22 Q. Okay. Thank you, Doctor. Dr. Gibbs, do  
23 you have an opinion whether the nodule described in  
24 these radiology reports in 2002 was Mr. Young's  
25 mesothelioma?

1 MR. MISMAS: Objection; leading --

2 THE WITNESS: I think it likely to  
3 be.

4 MR. MISMAS: -- hearsay,  
5 speculation. Go ahead.

6 Q. (By Mr. Berger) Dr. Gibbs, is this  
7 nodule -- in your opinion, is this nodule described  
8 in the 2002 radiology reports the mesothelioma that  
9 Mr. Young was diagnosed with in 2007?

10 MR. MISMAS: Objection.

11 THE WITNESS: Well, it's a mass.  
12 It's the same location, so I think it likely to be.

13 Q. (By Mr. Berger) Okay. And do you hold this  
14 opinion to a reasonable degree of medical certainty?

15 A. Yes.

16 MR. MISMAS: Objection; leading.

17 Q. (By Mr. Berger) Okay. If Mr. Young had a  
18 mesothelioma that was visible in 2002 -- Well,  
19 strike that.

20 Dr. Gibbs, are you still aware that  
21 Mr. Young is fortunately still alive in -- as we sit  
22 here today in 2008?

23 MR. MISMAS: Objection; leading.

24 THE WITNESS: Yes.

25 Q. (By Mr. Berger) Okay. And if his

1 mesothelioma was -- Strike that.

2 Dr. Gibbs, if this visible nodule  
3 was a mesothelioma in 2002, how would you describe  
4 the length of his clinical course?

5 A. It's a long clinical course.

6 Q. Okay. Is this unusual?

7 A. Yes. It's unusual, but not unknown.

8 Q. Okay. Now, based upon your review of the  
9 medical records, did Mr. Young's tumor spread from  
10 this initial nodule?

11 A. Only locally.

12 Q. Okay. And is there any significance to the  
13 fact that this tumor only spread locally?

14 MR. MISMAS: Objection; leading.

15 THE WITNESS: Yes. It does not --  
16 Even though it -- there's evidence that there was  
17 something there for several years, it has not  
18 evolved, so far, into a diffused pleural-based mass  
19 as far as I can see.

20 Q. (By Mr. Berger) Okay. Are there a  
21 particular type of mesothel- -- mesotheliomas known  
22 as localized pleural mesotheliomas?

23 MR. MISMAS: Objection; leading.

24 THE WITNESS: Yes. There -- There  
25 are ones des- -- so designated.

1 Q. (By Mr. Berger) Have you published a paper  
2 on these types of mesotheliomas?

3 A. I co- --

4 MR. MISMAS: Objection; leading.

5 THE WITNESS: I coauthored a paper,  
6 yes.

7 Q. (By Mr. Berger) Okay. And are these types  
8 of mesotheliomas related to asbestos?

9 MR. MISMAS: Objection; leading.

10 THE WITNESS: Some, but some were  
11 not. And the -- There seems to be a much less clear  
12 relationship to asbestos exposure with a localized  
13 form than the diffuse form.

14 Q. (By Mr. Berger) Okay. Well, Dr. Gibbs, did  
15 you review any material relevant to Mr. Young's  
16 occupational exposure to asbestos?

17 MR. MISMAS: Objection; leading.

18 THE WITNESS: Yes, I have.

19 Q. (By Mr. Berger) And -- And what kind of  
20 materials do you remember reviewing?

21 A. I remember the interrogatories. There was  
22 the -- the Western -- I'm not sure. It's not an  
23 affidavit. I think it's a claim report or -- I've  
24 forgotten the exact title on it. The Western  
25 Asbestos document, anyway; call it that. Medical

1 records and -- and deposition.

2 Q. Okay. And -- And, Dr. Gibbs, I'm going to  
3 show you for identi- -- what's marked for  
4 identification Exhibit LTC 1342. Is this the  
5 Western Asbestos claim form that you reviewed?

6 A. Yes.

7 Q. Okay.

8 MR. MISMAS: I'm going to object to  
9 that coming into evidence.

10 Q. (By Mr. Berger) Okay. You can hand that  
11 back to me. Now, Dr. Gibbs, from Exhibit LTC 1342  
12 from the Western Asbestos form, do you recall  
13 reviewing the document that I just handed you?

14 MR. MISMAS: Objection; leading.

15 THE WITNESS: Yes.

16 Q. (By Mr. Berger) Okay. And will you  
17 identify for the record the document that you're  
18 holding?

19 A. Yes. It says, "Declaration in Support of  
20 Western Asbestos Trust Claim," and it's dated  
21 October 22, 2007.

22 Q. Is there a signature on that page?

23 A. Yes, Donald Young.

24 Q. Okay. And what, if anything, does that  
25 declaration say about Mr. Young's exposure to

1 asbestos?

2 A. Well, I think the relevant paragraph is  
3 No. 5, where it says, "While I was serving at Travis  
4 Air Force Base, I lived in the barracks and saw  
5 insulation disturbed during this time. I observed  
6 activities with and around insulation materials,  
7 including but not limited to pipe insulation. I  
8 also worked around other tradesmen, including  
9 insulators, pipefitters, boilmakers and other  
10 outside personnel.

11 "These other tradesmen were  
12 installing and tearing out asbestos-containing  
13 products, including, but not limited to, pipe  
14 insulation."

15 Q. Okay. And is this the type of document  
16 that you ordinarily review when you're attempting to  
17 determine a patient's potential asbestos exposures?

18 MR. MISMAS: Objection; leading,  
19 relevance, speculation.

20 THE WITNESS: If there is such a  
21 document, but often there aren't.

22 Q. (By Mr. Berger) Okay. Dr. Gibbs, I'd like  
23 to hand you additional records from LTC --

24 (Sotto voce discussion between  
25 Mr. Berger and Mr. Cotton.)

1 Q. (By Mr. Berger) Okay. Strike that.

2 Dr. Gibbs, I'm handing you a record from Exhibit  
3 LTC 1315. Did you review this document --

4 MR. MISMAS: Objection; leading.

5 Q. (By Mr. Berger) -- in the --

6 MR. BERGER: I haven't finished my  
7 question, Counsel.

8 MR. MISMAS: Sorry about that.

9 Q. (By Mr. Berger) All right. You reviewed  
10 this document before?

11 MR. MISMAS: Objection; leading.

12 THE WITNESS: Yes, as part of  
13 the -- the M.D. Anderson medical records.

14 Q. (By Mr. Berger) All right. And can you  
15 tell us what the date on that document is, please?

16 A. 3/14/2007.

17 Q. Okay. And does this document contain any  
18 information regarding Mr. Young's asbestos exposure  
19 that you found relevant?

20 MR. MISMAS: Objection; leading.  
21 And the document speaks for itself.

22 THE WITNESS: Yes. In the third  
23 paragraph, it says -- third sentence, "The patient's  
24 exposure to asbestos likely relates to his  
25 experiences both during the Army and as a sales

1 manager where he was frequently around buildings  
2 that were being demolished.

3 "During the Army at Brooke Army  
4 Medical Center, the patient notes that he was in  
5 proximity to water pipes that were coated with  
6 asbestos insulation and which were frequently  
7 cracked."

8 Q. (By Mr. Berger) Dr. Gibbs, I believe you've  
9 already testified that you reviewed Mr. Young's  
10 deposition, correct?

11 A. Yes.

12 MR. MISMAS: Objection; leading.

13 Q. (By Mr. Berger) Okay. Now, did Mr. Young  
14 testify about possible asbestos exposures that he  
15 may have had during his time in the military and as  
16 a civilian employee?

17 MR. MISMAS: Objection; leading and  
18 hearsay.

19 THE WITNESS: Yes. He described  
20 exposures at --

21 Q. (By Mr. Berger) Dr. Gibbs, let me interrupt  
22 you and re-ask the question due to the objection.

23 Dr. Gibbs, have you reviewed  
24 Mr. Young's deposition testimony?

25 MR. MISMAS: Objection; leading.

1 THE WITNESS: Yes.

2 Q. (By Mr. Berger) Okay. And what do you  
3 recall, if anything, about Mr. Young's description  
4 of his potential asbestos exposures during his  
5 working career?

6 MR. MISMAS: Objection; hearsay.

7 THE WITNESS: He described  
8 exposures at Travis Air Force Base and the Fort Sam  
9 Houston Air Base.

10 Q. (By Mr. Berger) Okay. And what type of  
11 asbestos -- asbestos exposure did Mr. Young describe  
12 at Travis Air Force Base?

13 A. He talked about various types of materials,  
14 insulation materials and -- and -- and so forth at  
15 Travis Air Force Base and visiting people working on  
16 boilers at the Fort Sam Houston.

17 Q. Okay. And what did Mr. Young testify that  
18 he observed, if anything, when he visited or  
19 supervised people who were working on boilers at  
20 Fort Sam Houston?

21 MR. MISMAS: Objection; hearsay.

22 THE WITNESS: He described dust and  
23 that they were working on materials that would have  
24 contained asbestos.

25 Q. (By Mr. Berger) Okay. And when you're

1 reviewing materials to attempt to determine a -- a  
2 patient's asbestos exposure history, is -- is  
3 reviewing a deposition testimony something that you  
4 would ordinarily do?

5 MR. MISMAS: Objection; leading.

6 THE WITNESS: I don't examine  
7 deposition transcripts in every case, but in a  
8 considerable proportion of the cases, I do.

9 Q. (By Mr. Berger) Okay. And if you review a  
10 person's deposition transcript, though, do you  
11 consider their testimony a reliable source of  
12 information regarding their potential asbestos  
13 exposure?

14 A. It's part of the information, and you have  
15 to take it in context with the other documents that  
16 relate to the history and how consistent they all  
17 are.

18 Q. Okay. Dr. Gibbs, I'm going to hand you  
19 something that, for the record, we will identify as  
20 LTC Exhibit -- Strike that.

21 Yeah. Dr. Gibbs, I'm going to hand  
22 you something that, for identification purposes for  
23 the record, we'll identify as coming from  
24 LTC Exhibit 1314. And let me ask if you have  
25 reviewed that document before.

1                   MR. MISMAS: I'm going to object to  
2 this document coming in. It's hearsay. It's un- --  
3 unauthenticated, and it's irrelevant.

4                   THE WITNESS: Yes. I have seen  
5 this.

6           Q.    (By Mr. Berger) And -- And can you tell us  
7 what this document is, please?

8           A.    It comes from basically the military  
9 descriptions of what he was doing in various places.

10          Q.    Okay. And -- And what type of work or --  
11 or equipment is Mr. Young de- -- list -- Or, strike  
12 that.

13                         Is it your understanding that  
14 Mr. Young prepared that list?

15          A.    Well, I -- I assume --

16                         MR. MISMAS: Objection; leading.

17                         THE WITNESS: I assume he did.  
18 I -- I don't know for certain.

19          Q.    (By Mr. Berger) Okay. All right. And --  
20 Okay. Dr. Gibbs, we're going to move on. Strike  
21 that.

22                         All right. Dr. Gibbs, are you  
23 familiar with Occupational Safety and Health  
24 Administration?

25          A.    Yes.

1 Q. And is it sometimes called "OSHA"?

2 A. Yes.

3 Q. And -- And what is OSHA?

4 A. It's basically a government agency that's  
5 concerned with health and safety in the workplace.

6 Q. Okay. Are you -- Are you familiar with the  
7 permissible exposure levels for asbestos set by  
8 OSHA?

9 MR. MISMAS: Objection; relevance.

10 THE WITNESS: Yes.

11 Q. (By Mr. Berger) Okay. And -- And what is  
12 a -- a PEL or permissible exposure level?

13 A. It currently stands at 0.1 fibers per CC.

14 Q. And -- And what is it? How does that  
15 relate to what OSHA's -- to a workplace?

16 A. It means that a person can work some --  
17 well, a workplace can actually have some asbestos  
18 work going on it -- on in it where, as long as they  
19 keep the level below 0.1 fibers per CC, it hasn't  
20 contravened the -- the permissible level.

21 Q. Okay. And what is a CC?

22 A. A CC is a -- is a volume, and it's about  
23 that sort of size.

24 Q. Would you say that's about the size of a  
25 sugar cube?

1 A. Yeah.

2 Q. Okay. And now, .1 fibers per CCs, is that  
3 the same as 1 fibers in 10 CCs?

4 A. Yes.

5 Q. Does OSHA make a distinction between fiber  
6 types when it set the PEL 0.1 fiber per CC?

7 MR. MISMAS: Objection; leading.

8 THE WITNESS: My understanding is  
9 it doesn't distinguish between the fiber types.

10 Q. (By Mr. Berger) Okay. Does the 0.1 fiber  
11 per CC PEL apply to all fiber types?

12 MR. MISMAS: Objection; leading.

13 THE WITNESS: Yes, it does.

14 Q. (By Mr. Berger) Okay. When OSHA is  
15 determining whether the asbestos concentration in  
16 the air is within the PEL, how do they count the  
17 fibers?

18 A. The -- Well, the fiber -- Basically, the  
19 air is sampled, usually membrane filter methods.  
20 And then the fibers are counted on the filter by a  
21 light microscopic technique.

22 Q. Okay. And is there a particular length of  
23 fiber that OSHA counts?

24 MR. MISMAS: Objection --

25 THE WITNESS: Yes. 5 microns or

1 greater.

2 MR. MISMAS: -- leading.

3 Q. (By Mr. Berger) Okay. Dr. Gibbs, how many  
4 CCs of air does an average worker breathe in a day?

5 A. 10 million.

6 Q. So could we figure out how many asbestos  
7 fibers -- Strike that.

8 Since -- If we use that num- --  
9 number as the breathing volume for a worker, could  
10 we figure out how many asbestos fibers OSHA would  
11 permit a worker to be exposed to in a day at the  
12 0.1 fiber per CC PEL.

13 MR. MISMAS: Objection; leading.

14 THE WITNESS: Yes. It would be  
15 1 million fibers per day.

16 Q. (By Mr. Berger) Well, let me -- let me ask  
17 you my next question. How did -- How would you make  
18 that calculation?

19 A. Well, if you have -- if you take in  
20 10 million CCs in a work shift, then .1 fiber per CC  
21 is a tenth of a fiber. So you divide 10 million by  
22 10, and you'll get 1 million.

23 Q. Okay. All right. So a worker who breathes  
24 10 million CCs of air at .1 fibers per CC would  
25 breathe in a million asbestos fibers in a day,

1 correct?

2 A. Yes.

3 MR. MISMAS: Objection; leading.

4 Q. (By Mr. Berger) Okay. Dr. Gibbs, I'm going  
5 to hand you a pen and a piece of paper that we'll  
6 mark for demonstrative purposes as Gibbs 1. Let the  
7 court reporter do that.

8 A. Sorry.

9 Q. That's okay.

10 (Exhibit No. 1 marked.)

11 Q. (By Mr. Berger) Okay. And, Dr. Gibbs, I  
12 want to write down that calculation that you just  
13 testified to. So for the sake of clarity, perhaps  
14 we could put "OSHA" at the top of that sheet of  
15 paper.

16 A. Okay. Do you want me to do this legibly or  
17 illegibly?

18 Q. Legibly, please.

19 A. Okay.

20 Q. Okay. And will you do the calculation for  
21 us again comparing the 0.1 fibers per CC PEL with  
22 the 10 million CCs of air a worker could breathe  
23 during the day?

24 A. (Complying.)

25 Q. All right.

1           A.    Shall I underline that or something?  Would  
2   that be helpful?  Or --

3           Q.    Why don't you hold that up so the camera  
4   can see it and explain to us what you've done here?

5                       MR. MISMAS:  Object.

6           Q.    (By Mr. Berger) Okay.

7           A.    All right.  That's -- The permissible level  
8   is the 0.1 fiber per CC.  Per day -- Per day -- Per  
9   shift, in fact, 10 million CCs are inhaled of air.  
10   So, therefore, if you have .1 in 1 CC, you have to  
11   divide the 10 million by 10 to get the -- the total  
12   number of fibers.  That gives you 1 million.

13          Q.    Okay.  Now, when OSHA's regulating in the  
14   workplace, are they concerned with just the one day  
15   exposure?  Or are they concerned about a person's  
16   working lifetime exposure?

17          A.    No.  It's -- It's -- It's 40 years of a  
18   working week, which is regarded as five days a week  
19   for eight hours a day --

20          Q.    Okay.

21          A.    -- for 50 weeks a year.

22          Q.    Okay.  Could we then take what you've done  
23   and calculate what a permissible exposure would be  
24   over a working lifetime?

25                       MR. MISMAS:  Objection; leading.

1 Q. (By Mr. Berger) Is that possible,  
2 Dr. Gibbs?

3 A. Yes.

4 MR. MISMAS: Objection; leading.

5 Q. (By Mr. Berger) All right.

6 A. So you want me to carry on?

7 Q. Yes. Would you -- Would you do that? And  
8 then ex- -- Once you've done it, again we'll hold it  
9 up and -- and explain it, please.

10 A. So that comes to -- Do you want to get the  
11 calculator just to check this out?

12 Q. If you want a calculator --

13 A. Yes.

14 Q. -- if you'd like to -- There you go,  
15 Dr. Gibbs. Will you hold this up -- that up and  
16 show us what you've done, please?

17 A. Yeah. Working lifetime, we've worked out  
18 1 million per day. Then to get a year, you have to  
19 multiply by 250, because that's five days a week,  
20 50 weeks a year, so that comes to 250 days times  
21 1 million gives you a year. Then over 40 years, you  
22 get, then, the -- the lifetime, and that comes to  
23 10 billion fibers.

24 MR. MISMAS: I'm going to object to  
25 that as irrelevant.

1 Q. (By Mr. Berger) Okay. Now -- And that was  
2 billion with a B, Dr. Gibbs?

3 A. Yes.

4 Q. All right. Dr. Gibbs, are you aware of any  
5 studies showing that exposure to asbestos at that  
6 level causes mesothelioma?

7 MR. MISMAS: Objection; leading.

8 THE WITNESS: No.

9 Q. (By Mr. Berger) Okay. Dr. Gibbs, have --  
10 have you reviewed material regarding tests performed  
11 to determine whether fibers were released from the  
12 original Kent cigarettes when smoked?

13 A. Yes.

14 Q. Have -- Have you reviewed work performed by  
15 the Armour Research Foundation?

16 A. Yes.

17 Q. Have you reviewed Dr. Longo's work?

18 A. Yes.

19 Q. And -- And did you review Mr. Ewing's  
20 report in preparing for your testimony in this case?

21 A. Yes.

22 Q. Okay.

23 MR. MISMAS: Can we take five  
24 minutes? I -- I don't want to keep coughing over  
25 everybody.

1 MR. BERGER: Okay.

2 THE VIDEOGRAPHER: Off the record,  
3 11:19 a.m.

4 (Off the record.)

5 THE VIDEOGRAPHER: We're on the  
6 record, 11:26 a.m.

7 Q. (By Mr. Berger) I'm going to strike my  
8 prior question and just start over again. Okay?

9 Dr. Gibbs, have you reviewed  
10 materials regarding tests performed to determine  
11 whether fibers were released from the original Kent  
12 cigarettes when they were smoked?

13 A. Yes --

14 MR. MISMAS: Objection; leading.

15 THE WITNESS: -- I have.

16 Q. (By Mr. Berger) Have you reviewed reports  
17 from the Armour Research Foundation?

18 MR. MISMAS: Objection; leading.

19 THE WITNESS: Yes.

20 Q. (By Mr. Berger) Have you reviewed -- Have  
21 you reviewed materials regarding the experiments of  
22 Dr. Longo?

23 MR. MISMAS: Objection; leading.

24 THE WITNESS: Yes.

25 Q. (By Mr. Berger) Okay. Have you reviewed

1 the report prepared by Mr. William Ewing?

2 A. Yes.

3 MR. MISMAS: Objection; leading.

4 Q. (By Mr. Berger) Okay.

5 THE COURT REPORTER: I'm sorry.

6 Could you speak up a little bit?

7 MR. MISMAS: I'm sorry.

8 THE COURT REPORTER: I'm missing  
9 your objections.

10 Q. (By Mr. Berger) Mr. Gibbs, based on your  
11 review of these materials and your education,  
12 training and experience, do you have an opinion  
13 regarding whether any asbestos released from the  
14 original Kent filter was a substantial contributing  
15 factor in causing Mr. Young's mesothelioma?

16 MR. MISMAS: Objection; leading.

17 THE WITNESS: Yes. I have an  
18 opinion.

19 Q. (By Mr. Berger) What is your opinion?

20 A. That it was not a substantial contributing  
21 factor.

22 Q. And -- And why were any asbestos fibers  
23 released from the original Kent filter not a  
24 substantial contributing factor in causing  
25 Mr. Young's mesothelioma?

1           A.    Basically the amount of exposure is  
2           extremely low, so well below any threshold.

3           Q.    Okay.  Let's talk about Dr. Longo for a  
4           minute.  Are you familiar with the test performed by  
5           Dr. Longo?

6                         MR. MISMAS:  Objection; leading.

7                         THE WITNESS:  There were two tests  
8           that he carried out.

9           Q.    (By Mr. Berger) Can you describe for us,  
10           generally, the two tests carried out by Dr. Longo?

11           A.    Basically he used a syringe for the one  
12           test and a smoking machine for the other.  The first  
13           test was with a syringe, and he put cig- --  
14           cigarettes in- -- into a syringe, drew air through  
15           them, and basically then looked at the amount of  
16           asbestos fibers that came out of those cigarettes  
17           and looked at them under the electron microscope to  
18           count them.

19           Q.    Okay.

20           A.    In the smoking machine, he put -- he used a  
21           smoking machine which more closely simulates the  
22           human way of smoking, and did a similar sort of  
23           collection and -- and examined -- counted the number  
24           of fibers in a volume of air.

25           Q.    Okay.  What's the difference between

1 asbestos fibers and asbestos structures?

2 A. Asbestos fibers imply single airborne  
3 fibers. Clusters are where you've got clumps of  
4 asbestos. They sometimes call them bundles. And if  
5 they're stuck onto other materials that are  
6 nonasbestos, they may be called matrices.

7 Q. Okay. And are asbestos structures  
8 generally respirable?

9 A. No, because --

10 MR. MISMAS: Objection; leading.

11 THE WITNESS: -- if you get clumps  
12 of fibers, you effectively thicken the diameter, and  
13 the diameter is the main thing that determines  
14 deposition. And they will be too thick to get into  
15 the lung.

16 Q. (By Mr. Berger) And what did Dr. Longo  
17 report finding in his experiments?

18 A. He talked about structures per CC.

19 Q. Okay. Do you think that Dr. Longo's tests  
20 have any methodological problems?

21 A. Yes. There are substantial methodological  
22 problems, I think more so with the syringe than with  
23 the smoking machine. One is the age of the  
24 cigarettes. Two is the -- the way the -- the fibers  
25 were collected. It was an -- an indirect method

1       rather than a direct method, and there are  
2       difficulties with that.

3                       The way the cigarettes were  
4       manipulated and the -- in the syringe test, the fact  
5       that it was vertical rather -- which is not the way  
6       you would normally smoke a cigarette, rather than  
7       horizontal.

8           Q.    Okay.  And how old were the Kent cigarettes  
9       that Dr. Longo was testing?

10                   MR. MISMAS:  Objection; relevance.

11                   THE WITNESS:  They were about  
12       40 years old.

13           Q.    (By Mr. Berger) Okay.  Are -- Are  
14       Dr. Longo's experiments reproducible?

15                   MR. MISMAS:  Objection.

16                   THE WITNESS:  I don't know if  
17       they're reproducible because nobody else has done  
18       them, so we're just basing it on one person's  
19       experiment.  But certainly, they're not reproducible  
20       between the two tests.  The -- The smoking machine  
21       gave values which were much lower than the syringe  
22       test.

23           Q.    (By Mr. Berger) Okay.  All right.  Now,  
24       you've reviewed Dr. Longo's article, right?

25           A.    Yes.

1 Q. Okay. What -- When was that article  
2 published?

3 A. That was 1995.

4 Q. And which test did that article discuss?

5 A. The syringe test.

6 Q. Okay. Did -- Did Dr. Longo's article  
7 mention his smoking machine test?

8 A. No.

9 Q. Had he completed his smoking machine test  
10 by the time the article was published?

11 A. Yes.

12 Q. Okay. Do you know why Dr. Longo didn't  
13 disclose the smoking machine test in his article?

14 A. No.

15 MR. MISMAS: Objection; hearsay.

16 Q. (By Mr. Berger) Okay. Now, Dr. Gibbs, for  
17 the sake of our exercise here, let me ask you this:  
18 What did Dr. Longo report finding in terms of the  
19 structures released from the Kents that he tested in  
20 his syringe experiment?

21 A. He -- He basically found -- He reported an  
22 average of 18,020 structures per cigarette.

23 Q. Okay. Now, I want you to assume for the  
24 sake of our exercise here that his finding was  
25 accurate. If you assume that, can we compare the

1 OSHA standard that we just discussed to the results  
2 of Dr. Longo's syringe experience?

3 MR. MISMAS: Objection; relevance,  
4 leading.

5 Q. (By Mr. Berger) And -- And could we put  
6 that in the context of Mr. Young's smoking history?

7 A. Yes.

8 MR. MISMAS: Objection; leading.

9 Q. (By Mr. Berger) And -- And how would we do  
10 that?

11 A. Shall I take a piece of paper to do that?

12 Q. Could you -- Perhaps you could tell us  
13 first what you're about to do.

14 A. Yes. It's 18,020 structures per cigarette.

15 Q. Uh-huh.

16 A. Mr. Ewing's calculated a total number of  
17 cigarettes that he would have smoked over the two  
18 years, so we would -- to get the total number of  
19 fibers from the cigarettes, we would multiply those  
20 two together.

21 Q. Okay.

22 A. And then to compare them with the OSHA  
23 level, we would divide by the number that you're  
24 allowed over a lifetime with OSHA and multiply that  
25 by 100 to get a percentage.

1 Q. Okay. Let's mark this as Gibbs 2 for  
2 identification.

3 (Exhibit No. 2 marked.)

4 Q. (By Mr. Berger) And -- And, Dr. Gibbs, if  
5 you would take that, please. And since we're  
6 talking about the syringe experiment, perhaps you  
7 could label that at the top, "syringe."

8 A. (Complying.)

9 Q. And why don't we -- Would you first,  
10 please, calculate the number -- And, again, assuming  
11 that Mr. Ewing's calculation of the number of  
12 cigarettes that Mr. Young claims to have smoked --  
13 Strike that.

14 Assuming that Mr. Ewing's  
15 calculation of the number of original Kent  
16 cigarettes that Mr. Young claimed to smoke was  
17 accurate for the purposes of this, would you please  
18 calculate the number of asbestos structures that  
19 Mr. Young might have been exposed to based on  
20 Dr. Longo's syringe data?

21 A. Yes. Well, the total number of cigarettes  
22 was 4,630. So you have to multiply that by 18,020,  
23 which is the total fibers per cigarette. So if  
24 we --

25 Q. And feel free to use the calculator.

1           A.    That comes to 83,432,600.

2                           MR. MISMAS:  Object to relevancy,  
3    hearsay.

4           Q.    (By Mr. Berger) Okay.  And -- And -- And  
5    does that number represent Mr. Young's total fiber  
6    exposure -- total potential fiber exposure from  
7    smoking Kents?

8           A.    Yes.

9           Q.    And -- And how would -- Could you compare  
10   that to -- Strike that.

11                           Could you then compare that to the  
12   total exposure that a worker might breathe under  
13   the -- a lifetime of work under the OSHA PEL?

14                           MR. MISMAS:  Objection; relevance.

15                           THE WITNESS:  That comes to  
16   8.34 percent.

17           Q.    (By Mr. Berger) Okay.  And can you hold  
18   that up or -- so that -- And you don't -- I don't  
19   need you to walk through that again.  Just hold this  
20   up so the jury can see the calculations that you've  
21   just done and described on the record.  Well, strike  
22   that.

23                           Can you briefly show us what you've  
24   written on this demonstrative, Dr. Gibbs?

25           A.    Yes.  Total number of cigarettes smoked

1 times the number of structures per cigarette -- That  
2 actually should say "structures" not "fibers" --  
3 which comes to 83,432,600, which is the total fibers  
4 over two years that he smoked Kents. If you then  
5 divide the 83,432,600 by the total number of fibers  
6 allowed by OSHA --

7 Q. And that's 10 billion?

8 A. Yes -- that comes to 8.34 percent. But  
9 there has been no conversion here to electron  
10 microscopy. Longo's is an electron microscopic  
11 number. The OSHA is a light microscopic number.

12 Q. Can you explain for us -- I'm sorry to  
13 interrupt you. Can you explain for us what you mean  
14 by conversion between light and electron microscopy?

15 A. The general difference is that  
16 electron mi- -- transmission electron microscopy  
17 is -- produces results -- results that are ten times  
18 higher than by conventional microscopy because of  
19 the sensitivity of the analysis.

20 Q. Okay. And -- And Dr. Longo used an  
21 electron microscope, right?

22 A. Yes.

23 Q. And what does OSHA use?

24 A. It uses a light microscopic method.

25 Q. Okay. So if we did conversion, in order to

1 do an apples-to-apples comparison, how would you do  
2 that? And what happens to the percentage that you  
3 generate?

4 MR. MISMAS: Objection.

5 Q. (By Mr. Berger) Strike that. Dr. Gibbs, if  
6 we did that conversion in order to compare electron  
7 microscopic numbers to electron microscopic numbers,  
8 what result do we get?

9 MR. MISMAS: Objection.

10 THE WITNESS: You get a tenfold  
11 reduction in the percentage if you convert to EM so  
12 that it's point -- 0.834 percent.

13 Q. (By Mr. Berger) Okay. All right. Let's  
14 set that aside. Dr. Gibbs, did -- are you familiar  
15 with the results that Dr. Longo obtained from his  
16 smoking machine experiments?

17 A. Yes.

18 Q. And what -- When Dr. Longo smoked the  
19 original Kent cigarettes on a -- a smoking machine,  
20 what results did he get?

21 A. He got an average of 16.5 structures per  
22 CC.

23 Q. And that was structures per CC released  
24 from the Kents when you smoke them on the smoking  
25 machine?

1 A. Yes.

2 Q. Okay. Could we then do -- taking those  
3 results, do a similar calculation as we just did  
4 with the syringe experiment in order to compare  
5 those results to what Mr. Young's total asbestos  
6 exposure may have been from Kent --

7 A. Yes.

8 Q. -- cigarettes?

9 MR. MISMAS: Objection; leading.

10 MR. BERGER: All right. Let me  
11 mark this as Gibbs 3.

12 (Exhibit No. 3 marked.)

13 Q. (By Mr. Berger) And -- All right. And,  
14 Dr. Gibbs, what are you labeling on the top there,  
15 sir?

16 A. "Smoking machine."

17 Q. Okay. Now, how would we cal- -- calculate  
18 the total asbestos exposure from a single cigarette  
19 that you would get using Dr. Longo's results from  
20 the smoking machine experiments?

21 A. It's 16.5 structures per CC. He used  
22 35 CCs of air, so you have to multiply that by 35.

23 Q. Uh-huh.

24 A. And then a cigarette is an average of eight  
25 puffs, so you then have to multiply by eight. So

1 you will get, per cigarette -- That would lead to  
2 4,620 structures per cigarette.

3 Q. All right. And can you hold that up and  
4 show us what you just did?

5 A. That's the average number of structures per  
6 CC, 35 CCs that were used for each puff, and then 8  
7 puffs per cigarette.

8 Q. Okay.

9 MR. MISMAS: I'm going to object to  
10 the relevance, hearsay and assuming facts not in  
11 evidence.

12 Q. (By Mr. Berger) Okay. Now, Dr. Gibbs,  
13 could we then calculate Mr. Young's potential total  
14 exposure from Kent cigarettes using -- if we, again,  
15 used Mr. Ewing's number of Kent cigarettes that  
16 Mr. Young might have smoked?

17 A. Yes. You -- You multiply the number of  
18 cigarettes by the number of structures per  
19 cigarette.

20 Q. Okay.

21 A. So that comes to...

22 Q. Okay. And, again, will you hold that up  
23 and show us what you just did?

24 A. So just multiply the number of structures  
25 per cigarette by the number of cigarettes, which

1 gives you 21 -- over 21 million.

2 Q. Okay. And, again, could we then compare  
3 that to the OSHA -- the exposure to asbestos fibers  
4 a worker would have at the OSHA PEL?

5 A. So...

6 MR. MISMAS: I'm going to object to  
7 that document based on hearsay, assuming facts not  
8 in evidence, relevance and foundation.

9 Q. (By Mr. Berger) Okay. Now, Dr. Gibbs,  
10 before you show that to us, again, Dr. Longo used an  
11 electron microscope, correct?

12 A. Yes.

13 Q. And the OSHA PEL is set based on a light  
14 microscope; is that right?

15 A. Yes.

16 Q. And -- And in order to do the calculation  
17 as you've done before, will you have to apply a  
18 conversion factor?

19 MR. MISMAS: Objection; leading.

20 THE WITNESS: Yes. You would have  
21 to divide by -- again by 10.

22 Q. (By Mr. Berger) All right. Well, would you  
23 please do so and then hold that up and show us what  
24 you've done?

25 A. (Complying.)

1 Q. All right, Dr. Gibbs. Will you hold that  
2 up and show --

3 A. Yes. If you --

4 Q. -- show us what you've done, please?

5 A. -- compare it to OSHA, you divide the total  
6 number of fibers from the Kent cigarettes by the  
7 total number of fibers allowed by OSHA times 100 to  
8 get a percent, and that comes to just over  
9 2 percent. If you then convert by EN, that comes to  
10 0.2 percent.

11 Q. Okay. Now, finally, Dr. Gibbs, have you  
12 reviewed material -- test re- -- Strike that.

13 Dr. Gibbs, what kind of tests did  
14 the Armour Research Foundation do on -- on Kent  
15 cigarettes?

16 A. They, again, did a sort of light  
17 microscopic examination looking at smoking of  
18 cigarettes and encountered a number of fibers per  
19 cigarette.

20 Q. Okay. And when did the Armour Research  
21 Foundation do its work?

22 A. It was about 1950s.

23 Q. Okay. Was it using fresh Kent cigarettes?

24 A. Yes.

25 Q. All right. And did the Armour Research

1 Foundation smoke the cigarettes on a smoking  
2 machine?

3 A. Yes.

4 MR. MISMAS: Objection.

5 Q. (By Mr. Berger) Okay. And what were the  
6 results that the Armour Research Foundation reported  
7 finding when they smoked Kent cigarettes to  
8 determine if they released asbestos fibers?

9 A. They found -- found 3 fibers per cigarette.

10 Q. Okay. And could we then do a similar  
11 exercise of -- based on those fiber-release results  
12 calculating what Mr. Young may have been exposed to?

13 A. Yes.

14 MR. BERGER: All right. Let's mark  
15 this as Gibbs 4.

16 (Exhibit No. 4 marked.)

17 Q. (By Mr. Berger) All right, Dr. Gibbs.

18 Let's label that "ARF" for Armour Research  
19 Foundation. Okay?

20 A. (Complying.) If you multiply the number of  
21 fibers per cigarette times the number of cigarettes,  
22 that comes to 13,890 total fibers.

23 Q. Okay.

24 MR. MISMAS: Same objection as to  
25 the last document.

1 Q. (By Mr. Berger) All right. And could you  
2 hold that up again to make sure -- I think the paper  
3 was bending, Dr. Gibbs. Would you hold that up  
4 again, please, so that the -- to make sure that the  
5 camera got it?

6 A. 3 fibers per cigarette. 3 times 4,630, the  
7 total number of cigarettes equals to 13,890 total  
8 fibers.

9 Q. Okay. And can you then compare that fiber  
10 total to what a worker's lifetime exposure would be  
11 under the OSHA PEL?

12 MR. MISMAS: Objection; relevance.

13 Q. (By Mr. Berger) Now, Dr. Gibbs, before you  
14 show us what you're -- you've done, did you need to  
15 apply a conversion factor in doing this calculation?

16 MR. MISMAS: Objection; leading.

17 THE WITNESS: No, because --

18 Q. (By Mr. Berger) Why not?

19 A. Because this was done by a light  
20 microscopic method.

21 Q. Okay. And will you please hold this up and  
22 show us what you've done, sir?

23 A. So you divide the 13,890 by the 10 billion,  
24 which is the total OSHA, times 100 to get a percent,  
25 and it comes to .0014 percent.

1                   MR. BERGER: All right. At this  
2 time, Gibbs 1, Gibbs 2, Gibbs 3 and Gibbs 4 are  
3 demonstratives, which have previously been marked  
4 for identification, I offer into evidence as  
5 summaries and on other grounds.

6                   MR. MISMAS: I'm going to object  
7 based on all the other reasons I said for those  
8 documents.

9           Q. (By Mr. Berger) Okay. Now, Dr. Gibbs, in  
10 addition to your pathology practice and research, do  
11 you spend some of your time testifying in asbestos  
12 litigation?

13           A. Yes.

14                   MR. MISMAS: Objection; leading.

15           Q. (By Mr. Berger) And like other experts, are  
16 you compensated for your time?

17           A. Yes.

18           Q. And what rate are you charging me for your  
19 review and testimony in this case?

20           A. \$500 per hour for review. And then to  
21 travel and testify, it's \$4,500 per day.

22           Q. Okay. And you've traveled all the way from  
23 the UK to San Antonio to testify today?

24           A. Yes.

25           Q. Okay. What percent of your annual income

1 is derived from your litigation consulting work?

2 A. It's about a third.

3 Q. All right. Dr. Gibbs, let's wrap this up.

4 Based on materials that you've reviewed and your  
5 education, training and experience, do you believe  
6 that the original Kent cigarettes were a substantial  
7 contributing factor in causing Mr. Young's  
8 mesothelioma?

9 MR. MISMAS: Objection; form.

10 THE WITNESS: I don't think they  
11 were a substantial contributing factor.

12 Q. (By Mr. Berger) Okay. And based on the  
13 materials that you've re -- reviewed and your  
14 professional education, training and experience,  
15 what do you believe was the likely cause of  
16 Mr. Young's mesothelioma?

17 MR. MISMAS: Objection;  
18 speculation.

19 THE WITNESS: It's likely to be his  
20 exposures to asbestos while he worked in the  
21 military.

22 Q. (By Mr. Berger) Okay. And based on your  
23 experience, was Mr. Young's occ- -- Or, strike that.

24 Do you hold all the opinions that  
25 you've offered here today to a reasonable degree of

1 medical certainty?

2 A. Yes, I do.

3 Q. And, Dr. Gibbs, if your schedule had  
4 permitted, would you have preferred to testify live  
5 rather than by videotape?

6 A. Yes.

7 Q. Thank you, Doctor.

8 A. Thank you.

9 (11:54 a.m.)

10 EXAMINATION

11 BY MR. MISMAS:

12 Q. Dr. Gibbs, my name's John Mismas, and I  
13 represent the Youngs in this case. I'm feeling a  
14 little under the weather, and my ears are a little  
15 blocked up. So if I start mumbling or anything,  
16 just say, "Hey, John" -- let me know -- let --  
17 "please repeat the question." Okay?

18 A. Yes. Sure.

19 Q. Okay. Thanks. Okay. I'd like to talk to  
20 you a little bit about the -- about the aspirin  
21 analogy that -- that you were asked about earlier.  
22 Okay?

23 A. Yes.

24 Q. Okay. So you said that aspirin taken at  
25 low levels could be beneficial to you?

1 A. Yes, it can be.

2 Q. Okay. And that aspirin in large doses can  
3 kill you, right?

4 A. Yes.

5 Q. Okay. And you were comparing that to  
6 asbestos, right?

7 A. Only just to -- in a -- in a sort of -- to  
8 show different effects of dose response, that it may  
9 not be a linear dose response all the way through.

10 Q. Okay. So you're saying that low levels of  
11 asbestos are beneficial to you?

12 A. No. I'm not saying that.

13 Q. Okay. Okay. I'd like you to look at  
14 what's -- what was marked as LTC 1314. It's --

15 A. Yes.

16 Q. It's this document here.

17 MR. MISMAS: Do you have a copy of  
18 that?

19 Q. (By Mr. Mismas) Can you tell me what this  
20 is?

21 A. I presume it's activities that were  
22 involved while he was working with the military.  
23 But to be honest, I really don't understand this  
24 work history exhibit as such. It -- It -- It  
25 doesn't mean anything much to me.

1 Q. Okay. Do you know what year this was?

2 A. No.

3 Q. Do you know what year any of these boilers  
4 were installed?

5 A. No.

6 Q. Okay. Do you know whether or not any of  
7 these boilers had asbestos in them?

8 A. I'm not an expert on boilers and what they  
9 contain.

10 Q. So you couldn't quantify dose to a  
11 reasonable degree of medical certainty -- that any  
12 of these boilers were substantial contributing  
13 factors to Mr. Young's development of mesothelioma,  
14 can you?

15 MR. BERGER: Objection.

16 THE WITNESS: No.

17 Q. (By Mr. Mismas) Thank you. I'd like you to  
18 look at what was 1317, which were the radio- --  
19 radiology reports.

20 MR. MISMAS: I'll just -- I'll just  
21 give him my copy. Yeah.

22 THE WITNESS: Thanks.

23 Q. (By Mr. Mismas) In any of those radiology  
24 reports, does it say the word "mesothelioma"?

25 A. No.

1 Q. Okay. In any of those pathology reports,  
2 does it diagnose mesothelioma?

3 A. I'm sorry. Did you say "pathology" or  
4 "radiology"?

5 Q. Oh, I'm say- -- In -- In any of those  
6 radiology reports, does it diagnose mesothelioma?

7 A. No.

8 Q. Thanks. Do you know who Alexander Spears  
9 is?

10 A. No.

11 Q. Okay. Are you -- You don't know that he  
12 was an employee of Lorillard Tobacco Company?

13 A. No.

14 Q. And are you aware that Dr. Spears died of  
15 mesothelioma?

16 MR. BERGER: Objection; relevance,  
17 prejudice, speculation, hearsay.

18 THE WITNESS: I don't know  
19 Dr. Spears or what he died of.

20 Q. (By Mr. Mismas) Okay. Do you know if --

21 MR. BERGER: Lack of foundation  
22 also.

23 Q. (By Mr. Mismas) Do you know Dr. -- Do you  
24 know who Harold Knudson is?

25 A. No.

1 Q. Okay. First of all, isn't it true that  
2 you've never done any formal mesothelioma studies in  
3 the United States?

4 MR. BERGER: Objection.

5 THE WITNESS: Yes.

6 Q. (By Mr. Mismas) Okay. And similarly,  
7 you're on the U.S./Canadian Panel that you talked  
8 about, right?

9 A. Yes.

10 Q. Okay. That -- That panel deals with  
11 diagnosing mesothelioma, right?

12 A. Yes.

13 Q. Okay. And your panel does not deal with  
14 figuring out what caused mesothelioma. True?

15 A. No. It's diagnosis.

16 Q. Okay. And Dr. Hammar's on that panel as  
17 well?

18 A. Yes.

19 Q. Okay. Now, by the same token, in the  
20 United States, you've never done any epidemiology  
21 studies on mesothelioma, right?

22 A. Correct.

23 Q. You've never made any presentations to the  
24 Government in the United States on mesothelioma,  
25 correct?

1           A.    Correct.

2           Q.    Okay.  And you've never testified on behalf  
3   of mesothelioma victims in the United States of  
4   America, correct?

5                       MR. BERGER:  Objection.

6                       THE WITNESS:  Correct.

7           Q.    (By Mr. Mismas) Okay.  And you've been  
8   doing this for 18 years, correct?

9                       MR. BERGER:  Objection.

10                      THE WITNESS:  Correct.

11          Q.    (By Mr. Mismas) Testifying on behalf of  
12   asbestos defendants in the United States?

13          A.    Correct.

14          Q.    Your own government in -- in the United  
15   Kingdom, they've banned asbestos, haven't they?

16          A.    Yes.

17          Q.    Okay.  And the European unit has banned  
18   asbestos as well, haven't they?

19                      MR. BERGER:  Objection.

20                      THE WITNESS:  Yes.

21          Q.    (By Mr. Mismas) You familiar with the  
22   Defense Research Institute or DRI?

23          A.    Yes.

24          Q.    Okay.  And it's an institute formed around  
25   defendant companies, right?

1 MR. BERGER: Objection; relevance.

2 THE WITNESS: I -- What I know of  
3 the Defense Research Institute is that it puts on  
4 various seminars -- seminars, I think on an annual  
5 basis, on asbestos. My understanding is that  
6 plaintiffs' lawyers can attend them. I think  
7 they're open to anybody who wants to go. And I have  
8 made, I think, two presentations at the DRI on --  
9 on -- on invitation.

10 Q. (By Mr. Mismas) Okay. This is an institute  
11 that's built around the idea of how to defend  
12 companies in, for example, asbestos litigation,  
13 correct?

14 MR. BERGER: Objection.

15 THE WITNESS: I -- All I do is, I  
16 go and give a talk on various asbes- -- aspects  
17 of what it -- mes- -- mesothelioma, which I talk  
18 to -- about. I don't get involved with the  
19 administration or the strategy or the tactics of the  
20 organization.

21 Q. (By Mr. Mismas) Okay. I want -- I'd like  
22 to talk to you a little bit about crocidolite  
23 asbestos.

24 A. Sure.

25 Q. Okay. Do you believe that crocidolite can

1       cause pleural mesothelioma?

2           A.    Yes.

3           Q.    Okay.  And do you believe that crocidolite  
4       can cause asbestosis?

5           A.    Yes.

6           Q.    And do you believe that crocidolite can  
7       cause lung cancer?

8           A.    Yes.

9           Q.    And do you believe that crocidolite can  
10       cause pleural plaques?

11          A.    Yes.

12          Q.    Okay.  What is a carcinogen?

13          A.    It's a material that, if somebody's exposed  
14       to it, can cause a cancer.

15          Q.    Okay.  Would you agree with me that  
16       crocidolite is the most carcinogenic type of  
17       asbestos?

18                       MR. BERGER:  Objection.

19                       THE WITNESS:  Yes.

20          Q.    (By Mr. Mismas) Okay.  Crocidolite was the  
21       type of asbestos that was used in Kent cigarettes  
22       Micronite filter, correct?

23          A.    Yes.

24          Q.    Okay.  Are certain types of asbestos more  
25       carcinogenic than other types of asbestos?

1 MR. BERGER: Objection.

2 THE WITNESS: Yes.

3 Q. (By Mr. Mismas) Okay. And can you rank  
4 them by how car- -- carcinogenic they are?

5 MR. BERGER: Objection.

6 THE WITNESS: Yes. I think the  
7 Hodgson and Darnton paper has a reasonable estimate  
8 of what the various potencies are. They did not  
9 separate chrysotile out from chrysotile-containing  
10 tremolites, so the chrysotile that they have in the  
11 ratio is -- potentially could have contained  
12 tremolite. And they came to crocidolite being 500  
13 to amosite 100 to chrysotile 1.

14 Q. (By Mr. Mismas) Okay. And that -- And  
15 that's -- Is that a multiplier, 500 times --

16 A. It's -- It's -- Yes. Yes.

17 Q. Okay.

18 A. It's a ratio.

19 Q. And now it's your opinion that chrysotile  
20 asbestos does not cause mesothelioma, correct?

21 A. Yes.

22 Q. Okay. And you are not an industrial  
23 hygienist?

24 A. Correct

25 Q. Okay. And you're not an epidemiologist?

1 A. Correct.

2 Q. And you're not a radiologist?

3 A. Correct.

4 Q. And you're not a pulmonologist?

5 A. Correct.

6 Q. And you're not a certified B reader?

7 A. Correct.

8 Q. Okay. Therefore, you can't give any  
9 testimony regarding the reading of x-rays or CT  
10 scans in this case, correct?

11 MR. BERGER: Objection.

12 THE WITNESS: Only insofar as I can  
13 just say what was described in the reports. I  
14 wouldn't purport to have said, "I've read the -- the  
15 x-rays myself, and this is what they showed." I'm  
16 merely reiterating what's in the reports.

17 Q. (By Mr. Mismas) Okay. Are you -- Are you  
18 familiar with the staining of pleural tissue to  
19 diagnose mesothelioma?

20 A. Yes.

21 Q. Okay. What stains are used to show a  
22 positive diagnosis of mesothelioma?

23 A. Well, different labs use different  
24 batteries of stains, and the number that they use  
25 varies from laboratory to laboratory, but I can tell

1 you what our panel is, if you like.

2 We use a broad spectrum,  
3 cytokeratin, calretinin, cytokeratin 56. We use  
4 MOC31CEA, Ber-EP4, CD 15 and TTF 1 and mesothelia.

5 Q. Okay. Is this the most reliable method for  
6 diagnosing mesothelioma?

7 A. Well, I think that it starts with the --  
8 the -- the -- the hematoxin and the eosin slide.  
9 That's the first thing you look at. You then see  
10 from that slide, which is the conventional stain,  
11 what the differential diagnosis is, is -- is -- this  
12 looks like a lung cancer, or does it look like a  
13 mesothelioma, or does it look like a lymphoma,  
14 whatever.

15 And then you employ the appropriate  
16 panel to try and sort out that partic- -- particular  
17 differential diagnosis.

18 Q. Okay. Would you agree with me that the  
19 gold standard for diagnosing mesothelioma is by  
20 pathological diagnosis?

21 A. Yes.

22 Q. Okay. And would you agree with me that you  
23 cannot diagnose mesothelioma by an x-ray or CT scan?

24 A. Correct.

25 Q. Okay. Now, you've testified as an expert

1 witness for a number of asbestos companies in the  
2 U.S. for the past 18 to 19 years, correct?

3 A. Correct.

4 Q. Okay. You've testified for U.S. Gypsum?

5 A. Yes.

6 Q. Okay. You testi- -- And -- And U.S Gypsum  
7 is an asbestos company, correct?

8 A. Was, I think.

9 Q. And United State- -- States Gypsum produced  
10 asbestos-containing joint pound -- compound to block  
11 insulation, correct?

12 A. I'm not -- I can't remember the precise  
13 materials that they made. But, yes, they made some  
14 products.

15 Q. And you've testified for Eagle Picher?

16 A. That, I don't recall whether I have or not.

17 Q. Okay. And you've testified numerous times  
18 on behalf of Union Carbide Corporation, correct?

19 A. Yes.

20 Q. Okay. And Union Carbide owned an asbestos  
21 mine, didn't they?

22 A. Yes.

23 Q. And Union Carbide sold raw asbestos fiber  
24 from their mine in California, didn't they?

25 A. Yes.

1 Q. Okay. And you've testified on behalf of  
2 Georgia Pacific, correct?

3 A. Yes.

4 Q. Okay. And Georgia Pacific was an asbestos  
5 company?

6 A. I think it was more broadly based than  
7 that, but it's made some asbestos-containing  
8 products.

9 Q. Okay. And Georgia Pacific sold  
10 asbestos-containing joint compound?

11 A. Yes.

12 Q. Okay. And you've testified on behalf of  
13 Bondex?

14 A. Yes.

15 Q. And Bondex was an asbestos company too,  
16 right?

17 A. I'm not sure it was specifically an  
18 asbestos company, but it did make some products  
19 containing asbestos.

20 Q. And is -- Bondex sold asbestos-containing  
21 joint compounds, correct?

22 A. Yes.

23 Q. Okay. And -- And you've testi -- You've  
24 consulted and testified for Pittsburgh Corning  
25 Corporation, correct?

1 A. Yes.

2 Q. Okay. And Pittsburgh Corning Corporation  
3 produces asbestos-containing pipe insulation,  
4 correct?

5 A. Yes.

6 Q. Okay. And that was Unibestos?

7 A. Yes.

8 Q. Okay. And -- And Pittsburgh Corning's pipe  
9 insulation and block insulation containing amosite,  
10 correct?

11 A. Yes.

12 Q. Okay. And that's an amphibole form of  
13 asbestos?

14 A. Yes.

15 Q. Okay. And you testified for Owing --  
16 Owens Corning Fiberglass?

17 A. Yes, I think I did, yes, sir.

18 Q. Okay. And Own- -- Owens Corning Fiberglass  
19 produced asbestos-containing pipe insulation,  
20 correct?

21 A. Yes.

22 Q. And this pipe insulation contained amosite,  
23 correct?

24 A. Yes.

25 Q. And that's an amphibole?

1           A.    It is.

2           Q.    Okay.  You've testified for asbestos glove  
3 manufacturers, haven't you?

4           A.    Yes.

5           Q.    You've testified on behalf of Calaveras,  
6 haven't you?

7           A.    Yes.

8           Q.    Okay.  And Calaveras owned an asbestos  
9 mine?

10          A.    Yes, a chrysotile mine.

11          Q.    Okay.  And -- And Calavera- -- Calaveras  
12 sold raw asbestos fiber from their mine, didn't  
13 they?

14          A.    I believe so.

15          Q.    Okay.  And you've testified on behalf of  
16 Lake Asbestos, haven't you?

17          A.    Yes.

18          Q.    Okay.  And Lake Asbestos owned an asbestos  
19 mine, didn't they?

20          A.    Yes.

21          Q.    And they sold raw asbestos fiber?

22          A.    I think it was, again, chrysotile.

23          Q.    Okay.  You've testified on behalf of U.S.  
24 Steel as well, haven't you?

25          A.    Yes.

1 Q. Okay. Your testimony on behalf of U.S.  
2 Steel, that was -- that was in regard to asbestos,  
3 wasn't it?

4 A. Yes.

5 Q. Okay. And what was the basis of your  
6 testimony on behalf of U.S. Steel in that asbestos  
7 case?

8 MR. BERGER: Objection; form.

9 THE WITNESS: To be honest, I can't  
10 remember now.

11 Q. (By Mr. Mismas) Okay. And you've testified  
12 on behalf of Chrysler, correct?

13 A. Chrysler?

14 Q. Chrysler.

15 A. I don't know. I don't recall. I could  
16 have. I -- I don't recall. Sometimes I'm jointly  
17 retained, and I'm not -- I don't always remember who  
18 the joint-retention people were.

19 Q. Is it true that you've testified for so  
20 many asbestos companies that you can't remember  
21 which ones you've testified for and which ones you  
22 can't?

23 MR. BERGER: Objection.

24 THE WITNESS: I've testified --  
25 I've done, by average, one or two trials per year,

1 and I average about -- now about 10 to 20  
2 depositions a year now. But earlier on, it was much  
3 lower than that.

4 MR. MISMAS: Okay. Objection; move  
5 to strike as unresponsive.

6 Q. (By Mr. Mismas) My question was: You've  
7 testified on behalf of so many asbestos companies  
8 that you can't remember which ones you've testified  
9 on behalf of, correct?

10 A. Well, I mean, I re- --

11 MR. BERGER: Objection; form.

12 THE WITNESS: -- I remember some.  
13 I can't -- I may not remember the totality.

14 Q. (By Mr. Mismas) Okay. So you can't  
15 remember all of them, can you?

16 MR. BERGER: Objection.

17 THE WITNESS: I can't remember all  
18 of them.

19 Q. (By Mr. Mismas) Okay. Thank you. And  
20 you've testified on behalf of Lorillard Tobacco  
21 Company for -- before, correct?

22 A. Yes.

23 Q. Okay. And Lorillard was an asbestos  
24 company; was it not?

25 MR. BERGER: Objection.

1                   THE WITNESS: I'm not sure it was  
2 an asbestos company, sir. I thought it was a  
3 tobacco company.

4           Q.    (By Mr. Mismas) Okay. And Lorillard -- And  
5 Lorillard sold asbestos-containing cigarettes; did  
6 they not?

7                   MR. BERGER: Objection.

8                   THE WITNESS: For a period of time.

9           Q.    (By Mr. Mismas) Okay. And Lorillard's  
10 asbestos-containing Kent cigarettes contained  
11 chrysotile, correct?

12           A.    No. They contained crocidolite.

13           Q.    I'm sorry. I said the wrong thing. They  
14 contained crocidolite. And in regard to the  
15 crocidolite, you already agreed with me that -- that  
16 crocidolite was the most carcinogenic type of  
17 asbestos, correct?

18           A.    Yes.

19                   MR. BERGER: Objection.

20                   THE WITNESS: Yes.

21           Q.    (By Mr. Mismas) And -- And crocidolite is  
22 the most likely to cause mesothelioma, correct?

23                   MR. BERGER: Objection.

24                   THE WITNESS: It depends on the  
25 circumstances of how it's manipulated. But if --

1 if -- if you had, say, crocidolite, amosite and  
2 chrysotile and you led to substantial levels in the  
3 air, then the crocidolite would be more potent than  
4 the others.

5 Q. (By Mr. Mismas) Okay. Now, testifying for  
6 asbestos defendants in the U.S., have you ever  
7 testified that any of the asbestos defendants'  
8 products that you were testifying on behalf of  
9 caused or substantially contributed to causing  
10 anyone's asbestos-related disease?

11 MR. BERGER: Objection.

12 THE WITNESS: No.

13 Q. (By Mr. Mismas) How much money have you  
14 made testifying on behalf of asbestos companies in  
15 the United States over the past 18 to 19 years?

16 MR. BERGER: Objection.

17 THE WITNESS: I don't know what the  
18 total is. I can tell you what I earned annually  
19 over the last couple of years if you -- if that's  
20 any use.

21 Q. (By Mr. Mismas) Sure.

22 A. It's about 120k in the last year or two,  
23 annually.

24 Q. Would you estimate that you've been paid  
25 over a million dollars testifying for asbestos

1 companies?

2 MR. BERGER: Objection.

3 THE WITNESS: When -- When it's  
4 nearly 20 years, probably.

5 Q. (By Mr. Mismas) Or \$2 million?

6 A. I don't know. I'd have to go back through  
7 to find out what I'd earned initially, which would  
8 be much less.

9 Q. How many times have you been retained by  
10 Lorillard Tobacco Company to testify on behalf of  
11 them regarding asbestos-containing Kent cigarettes?

12 MR. BERGER: Objection. Specific  
13 objection that this would violate the Court's ruling  
14 on a motion in limine, actually brought by the  
15 plaintiffs.

16 THE WITNESS: I cannot give you an  
17 exact figure, because I can't remember the exact  
18 figure, but could be seven or eight cases or  
19 something like that.

20 Q. (By Mr. Mismas) Okay. And how much have  
21 you billed in this case so far by -- by Lorillard  
22 Tobacco Company?

23 A. I've billed \$3,500 so far.

24 Q. Okay. And -- And how -- how many days have  
25 you been here?

1           A.    I've been here since Tuesday.

2           Q.    Okay.  And you're leaving today, correct?

3           A.    Today.

4           Q.    So that's Tuesday, Wednesday, Thursday?

5           A.    And half of tomorrow.

6           Q.    Okay.  And so that's \$4,500 a day,

7   correct --

8           A.    Yes.

9           Q.    -- that you've billed?  So that's \$13,500

10   for three days?

11          A.    Yeah.

12          Q.    Okay.  And how much do you anticipate

13   billing Lorillard in total at the conclusion of this

14   case?

15          A.    That --

16                           MR. BERGER:  Objection.

17                           THE WITNESS:  That will be it then.

18          Q.    (By Mr. Mismas) Okay.  What about your

19   time?

20          A.    I'm sorry?

21          Q.    What about your time reviewing the

22   case and --

23          A.    I've already billed for seven hours for

24   that.

25          Q.    Okay.  At \$500 an hour?

1 A. Yes.

2 Q. Okay. So you're around about \$18,000 --

3 A. Yes.

4 Q. -- so far?

5 MR. BERGER: Object.

6 Q. (By Mr. Mismas) Okay. Are you billing  
7 Lorillard for your flight time from England to  
8 San Antonio?

9 A. The -- The day -- daily rate is what I've  
10 just included. That includes the tran- -- tran- --  
11 the travel, et cetera.

12 Q. Okay.

13 THE VIDEOGRAPHER: We're off the  
14 record, 12:12 p.m.

15 (Off the record.)

16 THE VIDEOGRAPHER: We're on the  
17 record, 12:19 p.m.

18 Q. (By Mr. Mismas) Doctor, when were you first  
19 con- -- when were you first contacted about this  
20 case?

21 A. A few months ago, I think.

22 Q. Okay. And who contacted you?

23 A. I think it was Mrs. Merriam.

24 Q. And who is Mrs. Merriam with?

25 A. She's a paralegal that works at Shook,

1 Hardy.

2 Q. Okay. And what -- what did you talk about  
3 with her?

4 A. I think she asked if I was willing to  
5 review a case and to look at the medical records and  
6 various documents and so forth and to assess the  
7 medical records and whether it was likely to be a  
8 mesothelioma and, you know, what was the causation,  
9 et cetera.

10 Q. Okay. And -- And have you had -- had any  
11 other conversations with -- with anyone at -- about  
12 this case?

13 A. Yes. I've spoken with Mr. Berger about it.

14 Q. Okay. And what -- what was the nature of  
15 that conversation?

16 A. Well, we discussed about the testimony  
17 today, and then we've discussed the general- --  
18 general- -- generalities of the case in terms of  
19 what sort of exposures were involved and diagnosis,  
20 et cetera.

21 Q. Okay. And that was -- that was the only  
22 two contacts you had?

23 A. We -- I also had a contact about -- because  
24 there was an urgency about getting the report done.

25 Q. Okay. All right. I want to hand you --

1 I'm going to hand you a stack of depositions that  
2 you've done. I might be asking you some questions  
3 about things that happen- -- that you -- answers  
4 that you've given in these depositions.

5 A. Okay.

6 Q. So I'd like for you to refer to them, if  
7 you -- if you need to.

8 MR. BERGER: Okay. And before we  
9 get going, I'm going to object to this -- object for  
10 the line of questioning and to the, you know,  
11 prejudicial demonstrative of stacking these up in  
12 front of the witness.

13 MR. MISMAS: Okay. You can push  
14 them off to the side, if you like.

15 MR. BERGER: Okay.

16 Q. (By Mr. Mismas) Ready?

17 A. Yes.

18 Q. Okay. Sir -- Or, I'm sorry. Doctor, would  
19 you agree with me that thousands of articles in the  
20 medical lich- -- literature have all stated that  
21 asbestos can cause mesothelioma?

22 A. Yes.

23 Q. Okay. And you would agree with me that  
24 there is not one article in the medical literature  
25 that has stated that mesothelioma is a curable

1 disease?

2 A. Correct.

3 Q. Okay. And with respect to mesothelioma and  
4 its causes in the United States, Doctor, would you  
5 agree with me that you have done no independent  
6 research to determine the causes of mesothelioma in  
7 the United States?

8 MR. BERGER: Objection.

9 THE WITNESS: No, only read  
10 articles.

11 Q. (By Mr. Mismas) Now, a lot of the work that  
12 you've done has been done with a Professor Fred  
13 Pooley; is that correct?

14 A. Yes.

15 Q. Okay. And Dr. Pooley, what are his degrees  
16 in?

17 A. He's a mineralogist.

18 Q. Okay. He's not a medical doctor, is he?

19 A. No.

20 Q. Okay. And if I understand your  
21 relationship with Dr. Pooley, it's that you're the  
22 pathologist, he's the mineralogist and, by and  
23 large, part of the relationship -- or the work that  
24 you do -- you -- you two do together is, he will do  
25 digestion and electron micro- -- microscopy and --

1 and other work with respect to tissue samples, and  
2 then you interpret those results?

3 MR. BERGER: Objection.

4 THE WITNESS: Yes. I also sample  
5 our tissue if it's -- if there's -- Well, I -- I  
6 sample the issue depending on whether it's blocks or  
7 whether it's wet tissue.

8 Q. (By Mr. Mismas) Okay. And there's been no  
9 tissue digestion in this case, has there?

10 A. That's right.

11 Q. Okay. Now, I think you testified in the  
12 past that you're not an expert in asbestos fiber  
13 digestion of tissue, correct?

14 MR. BERGER: Objection.

15 THE WITNESS: That's right.

16 Q. (By Mr. Mismas) Okay. And that's something  
17 you rely -- rely upon Dr. Pooley and others for you  
18 to do?

19 A. Yes.

20 Q. Okay. And with respect to the work that  
21 you and Dr. Pooley have done together, you two have  
22 worked together in litigation cases similar to this  
23 and others where you two are -- are both either  
24 de- -- determined to be or set out as experts for  
25 the companies that are sued and you do work in

1 tandem with respect to the areas we just discussed,  
2 correct?

3 MR. BERGER: Objection; form,  
4 relevance, hearsay, motions in limine.

5 THE WITNESS: I don't know the  
6 extent of what Professor Pooley does in the  
7 medical-legal arena, and he probably doesn't know  
8 what I do exactly, but there are some cases which we  
9 both work on.

10 Q. (By Mr. Mismas) Okay. And do you know,  
11 Doctor, that at one point in time that Dr. Pooley's  
12 laboratory was so contaminated that it had to be  
13 shut down and cleaned up before it could be  
14 recertified in the area of asbestos testing?

15 MR. BERGER: Objection.

16 THE WITNESS: Yes. There was some  
17 contamination, and they took the appropriate  
18 measures to sort that out.

19 Q. (By Mr. Mismas) Okay. And would -- would  
20 you agree with me that for a laboratory to become  
21 contaminated, it doesn't require a significant  
22 amount of asbestos contaminant, but just a little  
23 bit will do it, and you have to shut down, clean up  
24 and do it all over again?

25 THE WITNESS: Yes.

1 Q. (By Mr. Mismas) Okay. In fact, we already  
2 established that your own government has banned the  
3 use of asbestos, correct?

4 MR. BERGER: Objection.

5 THE WITNESS: Yes.

6 Q. (By Mr. Mismas) Okay. And do you speak out  
7 against that ban?

8 MR. BERGER: Objection.

9 THE WITNESS: No. I think the  
10 Government policy is the Government policy. They  
11 have their reasons. I don't get involved in  
12 politics.

13 Q. (By Mr. Mismas) Okay. Were you consulted  
14 by your own government with respect to whether that  
15 ban should be put into place or not?

16 A. No.

17 Q. Okay. So when your own country's  
18 determining the health and safety of its citizens,  
19 they did not call you to help make that  
20 determination with respect to asbestos, correct?

21 MR. BERGER: Objection.

22 THE WITNESS: I wasn't called to  
23 give evidence in that --

24 Q. (By Mr. Mismas) Okay. Would you agree with  
25 me that Alan Feingold is a reputable pathologist

1 that lives in the United States?

2 A. I believe so. I don't actually know him.

3 Q. Okay. Would you agree with me that  
4 John Craighead is a reputable pathologist that lives  
5 in the U.S.?

6 A. Yes.

7 Q. Okay. And would you agree with me that  
8 Samuel Hammar is a reputable pathologist that lives  
9 in the U.S.?

10 A. Yes.

11 Q. And Dr. Samuel -- Samuel Hammar is on the  
12 U.S./Canadian Panel as well, isn't he?

13 A. Yes.

14 Q. Okay. And would you agree with me that  
15 Victor Roggli is a reputable pathologist that lives  
16 in the United States?

17 A. Yes.

18 Q. Okay. And Victor Roggli works with Duke  
19 Medical Center; does he not?

20 A. He's also on the U.S./Canadian Mesothelioma  
21 Panel too.

22 Q. Okay. And you respect Dr. Roggli?

23 A. Yes.

24 Q. Would you agree with me that Dr. Mark is a  
25 reputable -- Dr. Eugene Mark is a reputable

1 pathologist that lives in the United States?

2 A. Yes.

3 Q. Okay. And Dr. Mark works for Harvard  
4 University Medical School; does he not?

5 A. Yes.

6 Q. Okay. And would you agree with me that  
7 Dr. Michael Graham is a reputable pathologist that  
8 lives in the United States?

9 A. Yes.

10 Q. Okay. And Dr. Graham -- that -- he works  
11 for the St. Louis University Medical Center; does he  
12 not?

13 A. Yes. I think he does a lot of forensic  
14 pathology.

15 Q. Uh-huh. He's -- I think he's also the --  
16 the coroner there as well.

17 A. Is he? I don't know.

18 Q. Okay. Okay. Do you remember testifying in  
19 Naughtin Vs. Certainteed in the Superior Court for  
20 the County of Los Angeles?

21 MR. BERGER: Objection.

22 THE WITNESS: Not in detail. I  
23 mean, I vaguely remember it. But is there something  
24 specific you want me to look at?

25 Q. (By Mr. Mismas) Yeah. If you could go

1 through there and find that deposition transcript.

2 MR. BERGER: I'm going to object at  
3 this point. This appears to be improper  
4 impeachment, but we'll see where your line of  
5 questioning goes, Counsel.

6 MR. MISMAS: Okay.

7 THE WITNESS: All right. I've got  
8 it.

9 Q. (By Mr. Mismas) Okay. Could you turn to  
10 Page 172?

11 MR. BERGER: Can I just have a  
12 continuing line of --

13 MR. MISMAS: Yeah, absolutely.

14 MR. BERGER: -- objections to this  
15 line of questions? Do you have extra copies of  
16 these?

17 MR. MISMAS: Yeah. I have them in  
18 my -- in my stack, yeah.

19 MR. BERGER: Can we see that,  
20 please?

21 MR. MISMAS: You want to take a  
22 break for a minute so I can walk around and just  
23 give you the box?

24 MR. BERGER: Yeah.

25 MR. MISMAS: Okay. Can we go off

1 the record for a minute?

2 THE VIDEOGRAPHER: Sure. We're off  
3 the record, 12:29 p.m.

4 (Off the record.)

5 THE VIDEOGRAPHER: We're on the  
6 record, 12:30 p.m.

7 MR. MISMAS: Are we on?

8 Q. (By Mr. Mismas) You see on Page 172 where  
9 it says, "Doctor, you agree with me that there are  
10 many pathologists in the United States?"

11 A. Yeah.

12 Q. Okay. And your answer was yes, correct?

13 A. Yes.

14 Q. And then it asks you, "Do you agree that  
15 there are reputable pathologists in the United  
16 States?" Do you see that?

17 A. Yes.

18 Q. And your answer was, "One or two." So  
19 you still believe there's only one or two reputable  
20 pathologists in the United States?

21 MR. BERGER: Object.

22 THE WITNESS: I think I was using  
23 one or two in a very general sense.

24 Q. (By Mr. Mismas) Okay. But the nine we  
25 talked about in the United States are reputable

1 pathologists, correct?

2 A. Yes. I think you're taking it too  
3 literally. It was meant to be humorous.

4 Q. Oh, okay. I just -- You know, the  
5 transcript reads how it reads.

6 A. Yeah. I can see that, but it -- it's not  
7 in the context of how it was said.

8 Q. Do you remember testifying in a case called  
9 Traverso?

10 A. Yes.

11 Q. Okay.

12 MR. BERGER: Continuing objection,  
13 Counsel?

14 MR. MISMAS: Yeah.

15 MR. BERGER: Okay.

16 THE WITNESS: Are we finished with  
17 Naughtin then?

18 Q. (By Mr. Mismas) Yes, I am. Thank you.  
19 Okay. Are there any published studies that Kent  
20 asbestos Micronite-filtered cigarettes are safe for  
21 mesothelio- -- mesothelioma risk?

22 A. There's no study that states that.

23 Q. Okay.

24 MR. BERGER: Note my objection.

25 Q. (By Mr. Mismas) Has NIOSH, the EPA or -- or

1 any other regulatory agency in the -- in this  
2 country ever adopted a 1 million dry gram -- fiber  
3 per dry gram attribution standard?

4 A. Well, they don't get involved with tissue  
5 standards. The 1 million -- The 1 million fibers  
6 per gram -- per gram dry lung is related to tissues,  
7 not to airborne exposures.

8 Q. Okay. Have you ever been asked to present  
9 to NIOSH on the focus of attribution of mesothelioma  
10 to asbestos?

11 A. No.

12 Q. Okay. Has Dr. Pooley?

13 A. I don't know.

14 Q. Now, you also talked about going from  
15 attribution now to threshold for mesothelioma. Do  
16 you believe, in your opinion, that there is a  
17 threshold exposure that somebody must get in fiber  
18 years before they're at risk for contracting  
19 mesothelioma?

20 A. I think there's reasonable evidence that  
21 suggests that.

22 Q. Okay. And what is that?

23 A. What is what?

24 Q. What is the -- What is the threshold  
25 exposure of fiber years?

1           A.    In fiber years, I think it's somewhere  
2 between 0.5 and 5 fiber CC units.

3           Q.    Okay.  And you've expressed in prior  
4 testimony that as -- as -- five years of chrysotile  
5 is enough to cause mesothelioma, correct?

6           A.    Say --

7           Q.    You -- You --

8                         MR. BERGER:  Objection; it's  
9 improper impeachment.

10          Q.    (By Mr. Mismas) You -- You've -- You've  
11 testified in other cases that 5 -- 5 fiber years of  
12 crocidolite exposure was -- was enough to cause  
13 mesothelioma, correct?

14          A.    Yes.

15          Q.    Okay.  Is that the one that's usually  
16 quoted?

17          A.    As I said, the range is between 0.5 and  
18 5 fiber CC years.  It is a range.

19          Q.    Okay.  You've testified before it would  
20 range from one to ten years?

21          A.    I think if --

22                         MR. BERGER:  Objection to the  
23 improper impeachment.

24                         THE WITNESS:  I think if -- if  
25 you'd like to give me the dates of that.

1 Q. (By Mr. Mismas) Of the deposition?

2 A. Yeah.

3 Q. Oh, sure. It's -- It was in Traverso, and  
4 it is page --

5 A. I don't need the pages or anything. I just  
6 need to sort of -- the year.

7 Q. Oh. I think this was in 2000.

8 A. Yeah. Well, I've slightly modified my  
9 assessment since then with more information.

10 Q. Okay. Have you -- Have you written on that  
11 subject?

12 A. Only in -- I've just coedited a book with  
13 John Craighead on asbestos and disease. I'm not  
14 sure we put down a specific number for thresholds.  
15 I don't think we did.

16 Q. Okay. You're aware that John Craighead is  
17 a -- is a -- is a pathologist, right?

18 A. Yes.

19 Q. Okay. And you're aware that John Craighead  
20 testifies on behalf of asbestos defendants, correct?

21 A. I believe he testifies in asbestos cases.  
22 I don't know precisely what -- what he does.

23 Q. Okay. Do you rely on an article put out by  
24 Dr. Kevin Browne?

25 A. That's one of --

1 MR. BERGER: Objection.

2 THE WITNESS: -- the articles I  
3 read, yes.

4 Q. (By Mr. Mismas) Okay. And that was in  
5 1991?

6 A. Yes.

7 Q. Okay. Do you know who Dr. Kevin Browne is?

8 A. Yes. Dr. Kevin Browne was the medical  
9 officer for Cape.

10 Q. And that's Cape Asbestos, correct?

11 A. Yes.

12 Q. Okay. Have you ever talked to Dr. Kevin  
13 Browne?

14 A. Yes, many times. Dr. Browne was very  
15 helpful in a study we did of one of the Cape  
16 factories in Oxbridge West London where we were  
17 trying to track down tissues which -- where the  
18 predi- -- principle exposure was amosite.

19 Q. Okay. And Cape Asbestos is one of the --  
20 was one of the largest miners of crocidolite  
21 asbestos in the world, correct?

22 A. Yes. And he was very helpful in actually  
23 giving details of the sort of exposures that were  
24 involved and so forth.

25 Q. Did he tell you about the asbestos cancer

1 claims filed against Cape Asbestos in the 1930s in  
2 England?

3 MR. BERGER: Objection; form.

4 THE WITNESS: We didn't discuss  
5 that. We were talking about the amosite factory in  
6 Oxbridge.

7 Q. (By Mr. Mismas) Did anybody from Lorillard  
8 ever tell you about the asbestos cancer claims filed  
9 against Cape Asbestos in the 1930s in England?

10 A. No. I don't recall them saying anything.

11 Q. Okay. Dr. Browne, he came up with the  
12 5 fiber years as a definite threshold, correct?

13 A. I don't know whether he said it was  
14 definite. That was his estimate, I think.

15 Q. Okay. Let me ask you: He's an  
16 epidemiologist, correct?

17 A. Yes.

18 Q. And he did an epidemiologist --  
19 epidemiological study?

20 A. Yes.

21 Q. Okay. Is it correct that in his conclusion  
22 he never stated any figures for threshold; he simply  
23 said that he thought there might be one?

24 A. I can't remember the precise phrasing on  
25 that paper.

1 Q. Okay. And the article is entitled,  
2 "Asbestos-Related Mesothelioma: Evidence for a  
3 Threshold in Animals and Humans," by Ilgren &  
4 Browne?

5 A. Yes.

6 Q. That was published in the Regula- --  
7 Regulatory, Toxicology and Pharmacology in 1991?

8 A. Yeah.

9 Q. Okay. Now, I think you stated that  
10 somebody must get to 5 fiber years before they're at  
11 risk for contracting mesothelioma?

12 A. No. I said the range is 0.5 to 5.

13 Q. Okay. Now, do you have any criticisms of  
14 Dr. Browne's article?

15 A. You can make criticisms of any -- any  
16 article. I'd have to go back to the article to -- I  
17 probably have one or two criticisms of the article.

18 Q. I've got the article if you want to look at  
19 it.

20 A. Yeah.

21 Q. Would you like to look at it?

22 MR. BERGER: Is there a -- is there  
23 a question pending?

24 MR. MISMAS: Yeah. I'm asking him  
25 would he like to look at the article.

1                   THE WITNESS: I have criticisms  
2 insofar as, if you're looking for minimal exposures  
3 and -- when mesothelioma has occurred, there's quite  
4 a lot of problems with trying to do that.

5           Q.    (By Mr. Mismas) Okay.

6           A.    But I think he made a reasonable jump-off.

7           Q.    Okay. Are you familiar John Hod- --  
8 Hodgson and Andrew Darnton?

9           A.    Yes. They both work for the Health and  
10 Safety Executive in the UK.

11          Q.    Okay. And -- And they're pretty  
12 well-respected individuals?

13          A.    Yes.

14          Q.    Okay. Do you know what their educational  
15 background or occupation -- occupations are?

16          A.    They're non-medicalists; basically  
17 statistics in epidemiology.

18          Q.    Okay.

19          A.    I have actually spoken to John Hodgson on  
20 several occasions.

21          Q.    Okay. Are you -- Are you familiar with the  
22 Hodgson and Darnton article called, "The Quanti-" --  
23 "Quantitative Risk of Mesothelioma and Lung Tissue  
24 in Relation to Asbestos Exposure"?

25          A.    Yes.

1 Q. Okay. And that's by Hodgson and Darnton,  
2 correct?

3 A. Yes.

4 Q. And are you -- are you aware that Hodgson  
5 and Dart- -- Darnton called Browne's article that  
6 you rely upon as logical nonsense?

7 A. I know that's what they said.

8 Q. Okay. I'd like to visit with you about  
9 opinions relating to fiber release of Kent  
10 cigarettes. Is that okay?

11 A. Yes.

12 Q. Okay. Is it your opinion that it takes  
13 241,000 packs of cigarettes per day of Kent  
14 Micronite-filtered cigarettes to get your threshold  
15 from mesothelioma?

16 MR. BERGER: Objection.

17 THE WITNESS: I think that was a  
18 calculation that I made in the past.

19 Q. (By Mr. Mismas) Okay. And this -- this  
20 assumes that there is a release of crocidolite  
21 fib- -- fibers from the filter, and it assumes the  
22 5-fiber year threshold?

23 A. Yes.

24 Q. Okay. And this is based on your  
25 interpretation of the Ilgren and Browne article that

1 was written by the former med- -- medical director  
2 of Cape Asbestos?

3 A. Yes.

4 Q. Okay. And I -- I noticed when you did  
5 your calcu- -- your calculations, you did not  
6 consider or use the full test results.

7 A. Well, there is no quantifiable data for --  
8 for them. As far as I know, there were no numbers  
9 given.

10 Q. Okay.

11 A. So I don't know what they were finding per  
12 CC or per cigarette.

13 Q. So you don't think anybody could really  
14 calculate anything off of those, do you?

15 MR. BERGER: Objection.

16 THE WITNESS: There's no numbers,  
17 so I don't know how you calculate anything.

18 Q. (By Mr. Mismas) You couldn't do a PEL  
19 cal- -- calculation that makes any sense?

20 A. No. I don't think so.

21 Q. Okay. So you -- you've reviewed the  
22 studies by William Longo, correct?

23 A. Yes.

24 Q. And you're relying on them in this case?

25 MR. BERGER: Objection; form.

1                   THE WITNESS: Well, rely -- They --  
2     I -- There are criticisms of the studies, but, you  
3     know, that's what we have. That's what we need to  
4     compare with. That's the only real -- apart from  
5     the Armour studies, the only data we've got.

6           Q.     (By Mr. Mismas) Okay. Are you aware what  
7     the legal standard for causation for -- in asbestos  
8     cases is -- is in Texas?

9           A.     I'm not -- I don't know the precise law in  
10    Texas, no.

11          Q.     Okay. So, Dr. Gibbs, isn't it true that  
12    you cannot quantify to a reasonable degree of  
13    medical certainty whether the dose of crocidolite  
14    asbestos from Kent filters was a significant  
15    contributing factor as to Mr. Young's mesothelioma?

16                   MR. BERGER: Objection; form,  
17    speculation, foundation.

18                   THE WITNESS: Well, I think based  
19    on the -- the studies that we have, that's -- And  
20    that's the only information I've got -- then I make  
21    an assessment on those. If there's other studies  
22    that would illuminate, then I could use those. But  
23    those are the only studies that we have, and,  
24    therefore, that is what the calculation's based on.

25          Q.     (By Mr. Mismas) Okay. In your opinion, if

1 Mr. Young inhaled between 709 million and  
2 1.9 billion crocidolite fibers, would that be a  
3 significant dose of asbestos to be a significant  
4 contributing factor in development of Mr. Young's  
5 mesothelioma?

6 A. Sorry. Can you repeat that?

7 Q. Sure. If Mr. Young inhaled between  
8 790 million and 1.93 billion crocidolite fibers,  
9 would that be a significant dose of asbestos to be a  
10 significant contributing factor in the deve- --  
11 development of Mr. Young's mesothelioma?

12 MR. BERGER: Objection.

13 THE WITNESS: Are you saying  
14 totally?

15 Q. (By Mr. Mismas) Uh-huh.

16 A. Total, although however long, 1.93 billion?  
17 I'd have to look at the previous results. 1.93 --

18 Q. You can -- You can -- Do you have an extra  
19 piece of paper that we can --

20 MR. BERGER: Yeah. And note my  
21 continuing objection to the lack of foundation as to  
22 where these numbers are coming from that were stated  
23 in Counsel's question.

24 THE WITNESS: Well, I don't think  
25 they would be significant.

1 Q. (By Mr. Mismas) No?

2 A. No.

3 Q. Okay. Based on what?

4 A. If you take the 10 billion fibers of OSHA,  
5 it's well below.

6 Q. What -- How far below is it?

7 A. It's 1.9, and it's -- Against 10, it's at  
8 least 10 percent.

9 Q. 10 percent below the OSHA standard?

10 A. Yeah.

11 Q. If it's 1.93 billion?

12 A. Well, it's -- Okay. It's 5 -- It's  
13 5 percent below the OSHA standard, yeah.

14 Q. And where did you earn your undergraduate  
15 degree from? Did you -- Did you have an  
16 undergraduate degree?

17 A. No. I did medicine. What we -- we do,  
18 it's different in the UK.

19 Q. Okay. So you just go straight to five  
20 years of medical school?

21 A. Yes.

22 Q. Unlike the United States, where it's seven?

23 A. Yes. I think the reason being is that, in  
24 school -- in grammar school or high school, whatever  
25 you were in, we -- we have two exams, one at 15 or

1 16, and the other at 17, 18, which -- and the 17, 18  
2 is called a levels -- advanced levels. And in that  
3 two years, you fine down the subjects that you're  
4 doing.

5                   And if -- When I did medicine, you  
6 had to do a combination of physics, chemistry and  
7 either biology or zoology and get grades in those to  
8 get to medical school.

9           Q. Did you have to take boards or some other  
10 company test -- competency test in England to get a  
11 license to practice medicine?

12           A. The Membership of the Royal College of  
13 Pathologists is the equivalent of boards. It's done  
14 by exam.

15           Q. Okay. And did you pass that exam the first  
16 time?

17           A. Second time.

18           Q. Okay. So you failed it the first time?

19           A. Yes.

20           Q. Okay. What do you have to do to become a  
21 pathologist?

22           A. I had to do -- In my branch,  
23 histopathology -- Well, the first year, I did  
24 hematology, chemical pathology, microbiology and  
25 histopathology. And at the end of the year, we had

1 the choice of which one of those we want to  
2 specialize in. I decided in -- to go for  
3 histopathology. And then I basically trained doing  
4 surgical biopsies, some research and autopsies over  
5 those years.

6 Q. Okay.

7 A. And then you have an exam which examines  
8 your competency in doing the biopsies and doing the  
9 postmortems.

10 Q. Okay. Do you know what the General Medical  
11 Council is?

12 A. Yes. It's the -- It's the general med- --  
13 It regulates all medical practitioners in the UK.

14 Q. Okay. And you've never had any  
15 disciplinary action in front of the General Medical  
16 Council, have you?

17 A. No.

18 Q. Okay. Did the General Medical Council  
19 issue a li- -- you your license or certificate to  
20 become a doctor or pathologist?

21 A. Yes.

22 Q. Okay.

23 A. And you have to renew it on an annual  
24 basis.

25 Q. Okay. Do they have a -- Does the General

1 Medical Council have a code of ethics?

2 A. Yes.

3 Q. Okay. Can you -- Can you explain what the  
4 code of ethics is?

5 A. Well, I don't know the precise detail of  
6 it. I haven't read it for years. I mean, it's  
7 quite a detailed document. But it means that  
8 doctors should behave in a responsible way when  
9 they're examining patients, they have to spend due  
10 diligence with patients to make diagnoses, issue  
11 appropriate treatment, keep up to date with  
12 training, et cetera.

13 Q. Okay. If you testified on behalf of a  
14 company that sold asbestos-containing cigarettes,  
15 would that violate the code of ethics for the  
16 General Medical Council?

17 A. Not to my knowledge.

18 Q. Okay. Do you smoke?

19 A. No.

20 Q. Have you ever smoked?

21 A. I smoked a few cigarettes when I was about  
22 17 or 18.

23 Q. Would you smoke a cigarette that had an  
24 asbestos-containing filter?

25 A. I wouldn't smoke a cigarette.

1 Q. No. I'm saying, when you smoked, would you  
2 smoke a cigarette that contained an  
3 asbestos-containing filter?

4 MR. BERGER: Objection.

5 THE WITNESS: Not as a choice, but  
6 I wouldn't smoke any cigarette.

7 Q. (By Mr. Mismas) Okay. Would you let your  
8 children smoke a cigarette that had an  
9 asbestos-containing filter?

10 MR. BERGER: Objection.

11 THE WITNESS: Again, I wouldn't  
12 want my children to smoke any cigarette.

13 Q. (By Mr. Mismas) Okay. But what about  
14 one -- Especially one with an asbestos-containing  
15 filter?

16 MR. BERGER: Objection.

17 THE WITNESS: I don't -- wouldn't  
18 differentiate it between any other cigarette.

19 Q. (By Mr. Mismas) Okay. So you don't  
20 differen- -- differentiate a cigarette that has --  
21 that has an asbestos-containing filter versus a  
22 cigarette that doesn't?

23 A. Well, in fact, if -- if anything, the  
24 filter containing the crocidolite actually is more  
25 efficient at filtering out some of the particles

1 from the smoke than other filters. So in terms of  
2 efficiency, my understanding is it -- it was a very  
3 efficient filter.

4 Q. Okay. Even though it released asbestos  
5 fibers?

6 A. It --

7 MR. BERGER: Objection.

8 THE WITNESS: Well, we've discussed  
9 today already, I think, that the release is very  
10 low.

11 Q. (By Mr. Mismas) But it does release  
12 asbestos fibers, correct?

13 MR. BERGER: Objection.

14 THE WITNESS: According to the  
15 studies, yes.

16 Q. (By Mr. Mismas) Okay. Do you believe it's  
17 ethical to sell cigarettes to a -- to a -- to a  
18 minor?

19 MR. BERGER: Objection.

20 THE WITNESS: I -- I thought it was  
21 against the law.

22 Q. (By Mr. Mismas) Okay. Do you -- Do you  
23 believe it's ethical for a company to advertise in  
24 their advertisements selling cigarettes to minors?

25 MR. BERGER: Objection; relevance,

1 prejudice, lack of foundation, outside the scope.

2 THE WITNESS: I wouldn't -- I think  
3 it's unethical to target children, if you like, or  
4 young adults to -- for cigarettes.

5 Q. (By Mr. Mismas) Okay. Have you ever seen  
6 any Kent ads?

7 A. No.

8 Q. Okay. I'm going to talk to you about your  
9 expert report a little bit. Do you have that in  
10 front of you still?

11 A. Yes.

12 Q. You can take a minute and look it over if  
13 you want.

14 MR. BERGER: Okay. Well, we'll --  
15 Yeah. Without getting into, you know -- Are we  
16 going to mark it just for identification?

17 MR. MISMAS: We can mark it if you  
18 want. We can agree to mark it.

19 MR. BERGER: Yeah, without getting  
20 into whether they're admissible or not.

21 MR. MISMAS: Can we go off the  
22 record for a second?

23 THE VIDEOGRAPHER: Off the record,  
24 12:50 p.m.

25 (Off the record.)

1 THE VIDEOGRAPHER: We're on the  
2 record, 12:51 p.m.

3 Q. (By Mr. Mismas) Okay, Dr. -- Dr. Gibbs.  
4 How much time passed between the time you were first  
5 contacted regarding this case and the time you  
6 finished the expert report?

7 A. I think it was a couple of months.

8 Q. A couple of months. Okay. Did -- Did  
9 anyone assist you in preparing this report?

10 A. Yes. I did discuss it because it was done  
11 at the very last minute, and I was --

12 Q. Okay.

13 A. -- I was assisted by --

14 Q. Who -- Who assisted you?

15 A. Mrs. Merriam.

16 Q. And that's counsel -- that's --

17 A. Paralegal.

18 Q. For Lori --

19 A. Yes.

20 Q. That represents Lorillard --

21 A. Yes.

22 Q. -- Tobacco Company?

23 A. Yes.

24 Q. How did she assist you?

25 A. Basically I -- I sent this sort of

1 summation of the facts. She listed the materials  
2 that I had -- had received.

3 Q. Uh-huh.

4 A. We discussed the relevant things that  
5 should go in and that also I'd prepared reports  
6 before in the past and there was some modifi- -- you  
7 know, some -- some of those -- the structure of that  
8 was -- was a patent for the report.

9 Q. Okay. So you used a patent report that  
10 you --

11 A. Yes. So --

12 Q. -- used in the past?

13 A. So she e-mailed me the report, and I made  
14 alterations to it and then sent it -- and then faxed  
15 it back.

16 Q. Okay. So she wrote the report. You made  
17 alterations. Then you faxed it back?

18 A. Yes.

19 Q. Okay. And that's --

20 A. Because the -- the time pressure was great.

21 Q. Okay. And that was a paralegal that worked  
22 for Lorillard, right?

23 A. Yes.

24 MR. BERGER: Objection.

25 Q. (By Mr. Mismas) Did you do the

1 calculations? Or did she do them?

2 A. I think we discussed the calculations, and  
3 she actually did the calculations.

4 Q. Okay. So a paralegal for Lorillard did the  
5 calculations?

6 MR. BERGER: Objection.

7 THE WITNESS: Yes. We did discuss  
8 them.

9 Q. (By Mr. Mismas) I mean, did she do them?  
10 Or did you do them?

11 A. She did them.

12 Q. Okay. So the calculations regarding the  
13 Armour Research Foundation, she did those?

14 A. Yes.

15 Q. Okay. And the calculations regarding  
16 Longo's study, she did those?

17 A. Yes.

18 Q. Okay. Both of them?

19 A. Yes.

20 MR. BERGER: Objection.

21 THE WITNESS: Yes.

22 Q. (By Mr. Mismas) Both Longo studies?

23 A. Yes.

24 Q. Okay. Okay. You're aware that the OSHA  
25 limits that you quote in your expert report are

1 inap- -- -applicable to Mr. Young's case because  
2 this isn't an occupational exposure, correct?

3 MR. BERGER: Objection.

4 THE WITNESS: Yes. It -- OSHA  
5 limits are meant for the workplace; they -- they're  
6 a guideline. So this is just something to compare  
7 the purported Kent crocidolite exposure to, the  
8 yardstick.

9 Q. (By Mr. Mismas) Okay. And is there a safe  
10 level of exposure to asbestos?

11 A. I think there likely is, and we've  
12 discussed it. If -- If you take the threshold of .5  
13 to 5 fiber CC years, then below that should be safe.

14 Q. Okay. Of -- Of any of the fibers?

15 A. Yes.

16 Q. Amphibole or serpentine?

17 A. Yes.

18 Q. Okay. So crocidolite, amosite,  
19 anthophyllite, chrysotile?

20 A. If they're below the 0.5 to 5 fiber CC  
21 years, that would imply they're below the threshold.

22 Q. Do you know what a personal exposure limit  
23 is, or PEL?

24 A. It's what you're allowed to be exposed to  
25 in the workplace.

1 Q. Okay. Is there a difference between a  
2 time-weighted average and a limit for a -- a short  
3 period of time?

4 A. Yes. Over -- Time-weighted average is an  
5 average of eight hours a day during a -- And then  
6 the PEL is what's allowed as a maximum amount at any  
7 one time.

8 Q. Okay. What's the maximum amount --

9 A. I thought it was --

10 Q. -- at any one time?

11 A. I thought it was 0.1 fiber CCs now.

12 Q. And -- And what period of time would that  
13 be?

14 A. And I think the TWA's is similar.

15 Q. I'm saying -- I'm actually -- On the PEL,  
16 what's -- what's the time for the .1 fibers?

17 A. I can't remember what the precise length  
18 of -- period is.

19 Q. Would it effect -- Would it effect your  
20 calculations if you did a -- a PEL study with the  
21 Lorillard cigarettes that released asbestos fiber  
22 rather than a time-weighted average?

23 A. Well, you --

24 MR. BERGER: Objection as to form.

25 THE WITNESS: I think if you -- if

1     you did it PEL, you'd find that the level is well  
2     below the PEL.

3           Q.    (By Mr. Mismas) Okay.  Oh.  And you -- you  
4     had said earlier that the average puffs taken on a  
5     cigarette is eight?

6           A.    Yes.

7           Q.    What's the basis for that?

8           A.    I think there's a -- there has been studies  
9     on smoking of -- of cigarettes, and there is a  
10    protocol, I understand, for smoking cigarettes, for  
11    example, on a smoking machine to mimic the human way  
12    of smoking a cigarette, and eight puffs is the usual  
13    number that is used.

14          Q.    On a smoking machine?

15          A.    Yes.

16          Q.    Okay.  But that -- you don't know if that's  
17    what an average human does too?

18          A.    But a smoking machine is supposed to mimic  
19    the human.  That's why they use a smoking machine  
20    rather than some other means.

21          Q.    But it's not a human, is it?

22          A.    No.

23                         MR. BERGER:  Objection.

24                         THE WITNESS:  It's not a human, but  
25    that's what it's meant to simulate.

1 Q. (By Mr. Mismas) Okay. Is that an  
2 average --

3 MR. BERGER: Objection; form.

4 Q. (By Mr. Mismas) -- that they're using?

5 A. It would be an average of eight puffs per  
6 cigarette.

7 Q. Okay. Okay. You state -- I think it's --  
8 If we go to -- I think it's Page 3 of your report.  
9 Can you take a look at that?

10 A. Yeah.

11 Q. Are you there?

12 A. Yes.

13 Q. Okay. Thanks, Doctor. Okay. It's the  
14 last paragraph. You state in the report that  
15 Mr. Young's exposure to asbestos between October 9,  
16 1963 and July of 1965, that Mr. Young was exposed to  
17 pipe insulation at Travis Air Force Base, correct?

18 A. Well, that -- that's what he said in his  
19 documents.

20 Q. Okay. Did you type that? Or did the  
21 Lorillard paralegal type that?

22 MR. BERGER: Objection.

23 THE WITNESS: Like, I made certain  
24 additions and alterations, and I can't remember  
25 whether that was one of them.

1 Q. (By Mr. Mismas) Okay. And we're referring  
2 to the Western Asbestos claim form, right, when  
3 you -- when you put this in here?

4 A. Yes.

5 Q. Okay. And you can't quantify the dose of  
6 asbestos to a reasonable degree of medical certainty  
7 that Mr. Young may have been exposed to at Travis  
8 Air Force Base, can you?

9 A. No.

10 Q. Okay. And you can't tell the jury what  
11 type of asbestos was in that insulation at Travis  
12 Air Force Base, can you?

13 A. No.

14 Q. Okay. Could have been chrysotile for all  
15 we know, correct?

16 A. Possibly.

17 Q. Okay. And we already established that  
18 chrysotile doesn't cause meso, right?

19 A. Yes.

20 Q. Okay. Doctor, you also state in -- in your  
21 report that Mr. Young also claimed bystander  
22 exposure while at Fort Sam Houston beginning in  
23 1983?

24 A. Yes.

25 Q. Okay. And -- And what is that based on?

1 A. I think it's on interrogatories --

2 Q. Okay. In your report, you said --

3 A. -- and medical records, actually.

4 Q. Okay. So which one was it? Was it in  
5 interrogatories or medical records?

6 A. I'd -- I'd have to go through and check, if  
7 that's what you want.

8 Q. So you don't know?

9 A. I'm -- I'm sure it was in -- I -- I've said  
10 it's in the medical records, so it was in the  
11 medical records. It might well have been in the  
12 interrogatories as well, but I cannot actually say  
13 for definite.

14 Q. Okay. And was that a bystander exposure?

15 A. Yes.

16 Q. Okay. You don't know what type of asbestos  
17 was part of that bystander exposure, do you?

18 A. No, not for certain, no.

19 Q. And if the asbestos from the bystander  
20 exposure was chrysotile asbestos, then it would not  
21 have caused or stay -- substantially contributed to  
22 Mr. Young's mesothelioma, would it?

23 A. Correct.

24 Q. And you can't tell the jury the frequency,  
25 proximity or duration that Mr. Young was exposed to

1 as a bystander at Fort Sam Houston beginning in  
2 1983, correct?

3 MR. BERGER: Objection.

4 THE WITNESS: Correct.

5 Q. (By Mr. Mismas) Okay. And you can't  
6 quantify the dose of asbestos to a reasonable degree  
7 of medical certainty that Mr. Young may have been  
8 exposed to at Fort Sam Houston, correct?

9 A. Correct.

10 Q. Okay. And you can't quantify the dose of  
11 asbestos to a reasonable degree of medical certainty  
12 that Mr. Young may have been exposed to for any  
13 asbestos product, correct?

14 A. Correct.

15 MR. BERGER: Wait. Objection.

16 Move to strike the answer.

17 Q. (By Mr. Mismas) And you can't quantify the  
18 dose of asbestos to a reasonable degree of medical  
19 certainty that Mr. Young may have been exposed to  
20 asbestos at any location, can you?

21 A. Correct.

22 Q. In your expert report, you state -- state  
23 that Dr. Longo's 1991 stud- -- study that was  
24 performed on Kent cigarettes with  
25 asbestos-containing Micronite filters is not

1       reproducible, correct?

2           A.    Yes, because it's not reproducible between  
3       the two studies.

4           Q.    And isn't it true that Lorillard has never  
5       attempted to try to reproduce any studies?

6                   MR. BERGER:  Objection.

7                   THE WITNESS:  As far as I know.

8           Q.    (By Mr. Mismas) Okay.  And isn't it true  
9       that Lorillard could produce studies if they tried?

10                   MR. BERGER:  Objection;  
11       speculation, lack of foundation.

12                   THE WITNESS:  I don't know if there  
13       are any cigarettes available to do the studies with.

14           Q.    (By Mr. Mismas) You know they sell old  
15       packs of Kent cigarettes on EBay, don't you?

16           A.    No.  It's not something I look for,  
17       actually.

18           Q.    Okay.  Well, if -- if they did, Lorillard  
19       could actually buy one, couldn't they?

20                   MR. BERGER:  Objection.

21                   THE WITNESS:  Look, I don't look at  
22       EBay for cigarettes, so I don't know.

23           Q.    (By Mr. Mismas) Okay.  Okay.  Lorillard  
24       also has the patents to Kent cigarettes with the  
25       asbestos-containing Micronite filter, don't they?

1 A. As far as I know, I --

2 Q. Okay. Since they have the patents, could  
3 they make another Kent cigarette with an  
4 asbestos-containing Micronite filter?

5 MR. BERGER: Objection.

6 THE WITNESS: I don't know. I  
7 think there would be a lot of logistical problems.

8 Q. (By Mr. Mismas) Like what?

9 A. Well, you'd have to set up some factory for  
10 actually producing them.

11 Q. Okay. Dr. Gibbs, isn't it a fact that  
12 Lorillard doesn't want to try to repro- -- reproduce  
13 the test because they're afraid what the results  
14 will be?

15 MR. BERGER: Objection;  
16 argumentative, prejudice --

17 THE WITNESS: I -- I --

18 MR. BERGER: -- lack of foundation.

19 THE WITNESS: I -- I don't know  
20 what Lorillard thinks about those things.

21 Q. (By Mr. Mismas) Okay. Have you ever been  
22 asked to do any studies trying to reproduce  
23 Dr. Longo's study?

24 A. No. It wouldn't be something that I would  
25 be doing. It would -- If anybody, it would be

1 Dr. Pooley.

2 Q. Do you know if he's been asked?

3 A. I don't know.

4 Q. Okay. We'll get to ask him on Wednesday, I  
5 think.

6 I'd like to talk about the Armour  
7 Research Foundation's testing of fiber release of  
8 the Kent cigarettes with you for a little bit.

9 A. Yeah.

10 Q. Is that all right? Some of these tests  
11 were performed on human subjects, weren't they?

12 MR. BERGER: Objection.

13 THE WITNESS: Possibly.

14 Q. (By Mr. Mismas) Okay. And -- And the  
15 Armour Research tests did not take into account how  
16 much asbestos fiber was deposited in the human lungs  
17 or in the mouth of the subjects, did they?

18 MR. BERGER: Objection.

19 THE WITNESS: No.

20 Q. (By Mr. Mismas) It only took into account  
21 the number of fibers that were exhaled, correct?

22 A. Yes.

23 MR. BERGER: Objection.

24 Q. (By Mr. Mismas) Okay. So the Armour  
25 Research Foundation documents or tests aren't a real

1 accurate depiction of how many asbestos fibers are  
2 inhaled when you inhale a Kent cigarette with an  
3 asbestos-containing Micronite filter, is it?

4 MR. BERGER: Objection; relevance,  
5 prejudice, speculation, lack of foundation. And if  
6 we're going to talk about -- Armour Research did a  
7 large amount of work. If we're going to talk -- And  
8 there's a number of documents. If we're going to  
9 talk about specific studies, let's --

10 MR. MISMAS: No speaking  
11 objections.

12 MR. BERGER: -- have a document and  
13 talk about it.

14 Fine then. Objection.

15 THE WITNESS: I think with the  
16 technology at the time, it was a reasonable effort  
17 to try and quantify.

18 Q. (By Mr. Mismas) Okay. But I guess what I  
19 was asking you -- asking you is that, you know,  
20 there would be asbestos deposited in the lungs,  
21 correct?

22 A. I don't know. It -- It -- There may be  
23 some, but it may be an extremely small amount.

24 Q. Okay. And there would be some in the  
25 mouth, correct?

1 A. Possibly.

2 Q. Okay. And this wasn't taken into account  
3 in the Armour Research documents?

4 A. No.

5 Q. Okay. In your expert report, you state  
6 that one was the Ar- -- Armour Research Foundation  
7 finding of 3 fibers per cigarette in its -- in its  
8 contemporaneous testing, correct?

9 A. Yes.

10 Q. So you're telling the jury that only  
11 3 fibers were released when a person smokes an  
12 entire Kent cigarette with an asbestos-containing  
13 Micronite filter?

14 A. According to that study, that was the --

15 MR. MISMAS: Okay. Can we mark  
16 this as Plaintiffs -- Plaintiffs 1 for the Gibbs  
17 deposition --

18 MR. BERGER: Oh, okay.

19 MR. MISMAS: -- well, Gibbs 1?

20 MR. BERGER: Well, we've -- we've  
21 got Gibbs 1 through 4. I mean, this is in -- Do we  
22 want to use the exhibit number --

23 MR. MISMAS: Are you going to  
24 object to it?

25 MR. BERGER: No. It's already in

1 evidence.

2 MR. MISMAS: Okay. So we'll just  
3 use --

4 MR. BERGER: For clarity, let's  
5 just use that --

6 MR. MISMAS: Okay. It's --

7 MR. BERGER: -- because I'm not  
8 going to object to it.

9 Q. (By Mr. Mismas) This is LTC 1169. And can  
10 you tell me what this is?

11 A. It's Progress Report No. 11 for  
12 P. Lorillard Company, physical properties of  
13 cigarette smoke, Project No. -- something 593. I  
14 can't --

15 Q. It's a little hard to read, isn't it?

16 A. Yes.

17 Q. Okay. And this is a -- one of the Armour  
18 Research documents?

19 A. Yes.

20 Q. Okay. And do you see the -- the second  
21 sentence after "Introduction"?

22 A. Yes.

23 Q. You see where it says, "The previously  
24 developed technique of weighing the smoke samples  
25 described in PR 10 has now been applied to exhaled

1 smoke from three human smokers"?

2 A. Yes.

3 Q. So they were testing human smokers,  
4 correct?

5 A. Yes.

6 Q. The asbestos-containing cigarettes on human  
7 smokers?

8 MR. BERGER: Objection.

9 THE WITNESS: That's what it says.

10 Q. (By Mr. Mismas) Okay. And then the last  
11 sentence says, "The study on filtration of  
12 atmospheric dust by unlit cigarettes has been  
13 brought to a tentative conclusion," correct?

14 A. Yes.

15 Q. Okay. And if you turn to Page 3. And  
16 under "Filtration of atmospheric dust with a  
17 cigarette," you see that heading there under 3?

18 A. Yes.

19 Q. And the last -- Well, the last --  
20 second-to-last sentence, it says, "In the test,  
21 1500 CCs of air were filtered, and the results of a  
22 typical test are shown in Figures 1, 2 and 3,"  
23 correct?

24 A. Yes.

25 Q. And the next paragraph, it says, "Figures 3

1 shows the pre-" -- "presence of a few asbestos  
2 fibers from the Kent filter. There are long  
3 needlelike particles in the picture." Do you see  
4 that?

5 A. Yes.

6 Q. Then do you see the next sentence that  
7 says, "Up" -- or the next word that says, "Up," on  
8 there?

9 A. Yes.

10 Q. Okay. Now we've got to skip a few pages  
11 because there's the photomicrographs there. Are you  
12 on the next page that has the --

13 A. Yeah.

14 Q. -- writing on there? It says, "Up to 20 or  
15 so fibers were found in 15 CCs" -- "in a 15 CC air  
16 sample."

17 A. 1500 CCs.

18 Q. CC air sample.

19 A. Yes.

20 Q. Okay. And you said earlier that it was  
21 3 fibers for smoking a whole cigarette, didn't you?

22 A. I think that was the average that was  
23 found, and that's probably in a different report.  
24 But it says -- it says, "Subsequent samples from the  
25 same cigarette have hardly any fibers."

1 Q. Okay. Can you go down to where -- at --  
2 after the, "In war" -- "In one case"? After that,  
3 the next sentence starts with, "When the cigarette."

4 A. Yes.

5 Q. Okay. Do you see where it says, "When the  
6 cigarette was smoked just enough to light it,  
7 3 fibers were deposited in a filtration test"?

8 A. Yes.

9 Q. Is that what you're basing on your  
10 3 fibers?

11 A. Yes.

12 Q. Okay. But you earlier testified that  
13 3 fibers from a whole cigarette.

14 A. Yes.

15 Q. Okay. And this says, "When the cigarette  
16 was smoked just enough to light it." So that  
17 wouldn't be a whole cigarette, would it?

18 A. I think the -- the problem was, they didn't  
19 find anything after just lighting -- after this  
20 fir- -- initial 3 fibers.

21 Q. Where does it say that in here?

22 A. I don't know. I thought it was another  
23 report that said something about that.

24 Q. But it doesn't say that --

25 A. That --

1 Q. -- anywhere in here, does it?

2 A. No.

3 Q. Okay.

4 MR. BERGER: Can I direct the  
5 witness' attention? Or do you prefer that I do that  
6 on redirect?

7 MR. MISMAS: You do whatever you  
8 want at redirect.

9 MR. BERGER: Okay.

10 Q. (By Mr. Mismas) Okay. You're not going to  
11 be testifying as a memory expert in this case, are  
12 you?

13 A. I'm sorry. I don't understand.

14 Q. As a memory expert about peoples' memory  
15 and what they remembered when and --

16 A. Oh, no. No. No. No.

17 Q. Okay. And you're not going to try to  
18 refute Mr. Young's recollection of smoking Kent  
19 cigarettes with the asbestos-containing Micronite  
20 filter between 1954 and 1956, are you?

21 A. No.

22 Q. Okay. Good. That makes us be able to skip  
23 a ton of questions.

24 Now, you've testified in the -- in  
25 the past that -- that mesothelioma wasn't known

1 until 1960; is that correct?

2 A. No. Mesothelioma was known before 1960,  
3 but its association with asbestos wasn't recognized  
4 properly before 1960.

5 Q. Are you familiar with the New England  
6 Journal of Medicine?

7 A. I've seen it, yes.

8 Q. Are you -- Are you familiar with the 1947  
9 report that states that a person was occupationally  
10 exposed to asbestos and developed mesothelioma?

11 MR. BERGER: Objection.

12 THE WITNESS: I don't recall that,  
13 no.

14 Q. (By Mr. Mismas) Have you seen that document  
15 before?

16 MR. BERGER: Counsel, can I see  
17 what that is before you ask any questions?

18 MR. MISMAS: I'm trying to -- Yeah.

19 MR. BERGER: Thank you.

20 Q. (By Mr. Mismas) Okay. Can you turn to the  
21 second page? Is yours highlighted?

22 A. Yes.

23 Q. Is your -- Is yours highlighted?

24 A. Yes.

25 Q. Do you see the highlighted portion when it

1 says -- Well, it says, "Differential diagnosis,"  
2 correct?

3 A. Yes.

4 Q. And then it says, "One should comment first  
5 on the occu-" -- "occupation. This man had worked  
6 with asbestos, cutting insulat-" -- "insulating  
7 board. Exposure to asbestos causes lung changes,  
8 but never, in my experience, to the extent was  
9 present in this case," correct?

10 A. That's what it says, yeah.

11 Q. Okay. And can you turn to the next tabbed  
12 page? And do you see where it says, "Anatomical  
13 diagnosis"?

14 A. I'm sorry. Which page?

15 Q. The next tabbed page.

16 A. The next tabbed page.

17 Q. Thank you, Doctor. Is it highlighted there  
18 for you?

19 A. Yes.

20 Q. You see where it says, "Anatomical  
21 diagnosis"?

22 A. Yes.

23 Q. It says, "Mesothelioma of the pleura and  
24 pericardium with metastasis to right lung and" --  
25 "and retroperitoneal lymph nodes," correct?

1 A. Yes.

2 Q. Okay. So this is reporting mesothelioma in  
3 a person who worked with asbestos; is it not?

4 A. Yes, but it's not actually, I don't think,  
5 drawing a conclusion that it was necessarily the  
6 cause of the mesothelioma.

7 Q. Okay. That's fair enough. When were the  
8 hazards of asbestos first known in England?

9 A. There was -- I think around about the  
10 1930s.

11 Q. Okay. I'll hand you this.

12 MR. BERGER: Thank you.

13 Q. (By Mr. Mismas) Here you go. Have you ever  
14 seen this document before?

15 A. No. I've -- The ones I'm familiar with are  
16 the Merriweather Chief Inspector reports, which are  
17 much later than this, I think.

18 Q. Okay. And this is in 1898?

19 A. Yeah.

20 Q. Okay. And this is the annual report of the  
21 chief inspector of factories and workshops, correct?

22 A. Yes.

23 Q. And the -- And -- And on the bottom, it  
24 says, "London. Printed for Her Majesty's stationary  
25 office," correct?

1 A. Yes.

2 Q. Okay. And can you turn to the first tabbed  
3 page?

4 A. Yes.

5 Q. Do you see the highlighted part?

6 A. Yes.

7 Q. It says, "Of all the dusty occupations  
8 which specially came under Observation 1898-3 in  
9 addition to -- to China scouring, stand out on an  
10 account of their easily demonstrated danger to the  
11 health of workers. And because of ascertained cases  
12 of injury to bronchial tubes and lungs medically  
13 attributed to the equipment" -- "employment of the  
14 suffer" -- "sufferers, these occupations were  
15 asbestos sifting and carting, milk [sic] opening and  
16 combining and hemp spinning."

17 MR. BERGER: I think that's "silk."

18 THE WITNESS: I think it's "silk  
19 opening."

20 Q. (By Mr. Mismas) Oh, I'm sorry. Silk. I  
21 said "milk." I apologize. So in 1898 in England,  
22 they were already talking about the hazards of  
23 asbestos; were they not?

24 A. Yes --

25 MR. BERGER: Objection.

1                   THE WITNESS: -- I think in -- in  
2 terms of pneumoconiosis asbestosis.

3           Q.    (By Mr. Mismas) As- -- Asbestosis. Okay.  
4 Can you turn to the next page -- tabbed page? You  
5 see where it states -- Is -- Is yours highlighted,  
6 correct?

7           A.    Yes.

8           Q.    Okay. And it states, "Mean" -- "Ms. Dean  
9 reports on the above of" -- "evidence she has had of  
10 the evil effects of dust." You see that?

11          A.    Yes.

12          Q.    And then it goes on to state, in the next  
13 highlighted section, "The evil effects of asbestos  
14 dust have been attrac-" -- "have also attracted my  
15 attention. A microscopic examination of this  
16 mineral dust, which was made by" --

17          A.    "HM medical inspector."

18          Q.    -- "inspector clearly revealed the sharp  
19 glasslike jagged nature of the particles. And where  
20 they are allowed to rise and" -- "and to remain  
21 suspended in the air of a room in any quantity, the  
22 effects have" --

23          A.    "Been found to be injurious."

24          Q.    -- "been found to be injurious and might  
25 have" --

1 A. "As might have been expected."

2 Q. -- "as might have been expected." So in  
3 1898, it was pretty clear in -- in the literature  
4 that asbestos was harmful to human health, wasn't  
5 it?

6 MR. BERGER: Objection.

7 THE WITNESS: I don't think it was  
8 clear, but it was raised.

9 Q. (By Mr. Mismas) Okay. I mean, it was --  
10 "The evil effects of asbestos dust" --

11 A. Actually, I --

12 Q. -- that doesn't make it clear that -- that  
13 asbestos was harmful?

14 A. I don't know how widespread this --  
15 Sorry -- was in the literature at the time.

16 Q. Okay. Can you just flip that cover page  
17 over? This is the bulletin of the American Society  
18 for the Control of Cancer, Inc., correct?

19 A. Yes.

20 Q. Okay. And this is June 1943?

21 A. Yes.

22 Q. Okay. And are -- are you familiar with  
23 W.C. Hue- -- Hueper?

24 A. I wouldn't say familiar, but I have heard  
25 of Hueper.

1 Q. And what -- And what -- what are you --  
2 what have you heard?

3 A. I think I remember that he was in- --  
4 involved in occupational medicine, but I can't  
5 remember his exact --

6 Q. Okay.

7 A. -- role.

8 Q. Okay. And he was on the forefront of -- of  
9 occupational exposure to asbestos; was he not?

10 A. I think he was one of those who researched  
11 into it, yes.

12 Q. Okay. Can you turn to the -- to the first  
13 tabbed page there? And do you see the highlighted  
14 portion?

15 A. Yeah.

16 Q. It states, "Occupational cancers are listed  
17 by a great variety of chemicals and physical agents  
18 such as arsenic, chromates, nickel, carbinol,  
19 radium, mesothorium, asbestos." So in this article  
20 in 1947, it was reported that occupational cancers  
21 were caused by asbestos; does it not?

22 A. That's what it says.

23 Q. Okay. So it was known in 1947 that  
24 exposure to asbestos could cause cancer?

25 A. It was --

1 MR. BERGER: Objection.

2 THE WITNESS: My understanding was  
3 that there was a lot of debate about it. It -- That  
4 wasn't work con- -- accepted by every person in the  
5 community, and it was really Doll in 1950s that  
6 published this sort of definitive study that showed  
7 that asbestos could cause lung cancer.

8 Q. (By Mr. Mismas) Okay. But it was out  
9 there, and it was available --

10 A. It --

11 Q. -- to the public, right?

12 A. They were thinking about it and discussing  
13 it and so forth.

14 Q. But it was out there, and it was  
15 available -- Information was out there and available  
16 to the public and --

17 A. Yes.

18 Q. -- corporations, correct?

19 MR. BERGER: Objection; form.

20 Objection to form.

21 Q. (By Mr. Mismas) And could you go to the  
22 next tabbed page? And do -- And do you see the  
23 highlighted portion?

24 A. Yes.

25 Q. And it states, "As-" -- "Asbestosis cancer

1 of the lung is the most recent newcomer among the  
2 occupational cancers of the origin. First described  
3 in 1935, there are now 18 cases of this industrial  
4 cancer on record observed among asbestos workers in  
5 England, Germany and the United States. The latter  
6 contri-" -- "contributed five cases inasmuch as the  
7 asbestos injury" -- "industry is most extensively  
8 developed in this country. Asbestosis cancer of the  
9 lung has, for us, special hygienic and" -- "and  
10 sociologic significance."

11 So they're, again, reporting that  
12 cancer causes -- Or, I'm sorry --

13 A. In the same article, yes.

14 Q. Yeah. In the same article, they're talking  
15 again about --

16 A. Asbestosis and cancer.

17 Q. Yeah. That asbestos causes cancer,  
18 correct?

19 MR. BERGER: Objection.

20 THE WITNESS: That's what they say.

21 Q. (By Mr. Mismas) Okay. And this was known  
22 in England, Germany and the United States; there  
23 were cases in all three of those countries, correct?

24 MR. BERGER: Objection.

25 THE WITNESS: That's what it says.

1 Q. (By Mr. Mismas) Okay. That's all the  
2 documents I want to show you.

3 MR. MISMAS: What time you got?

4 MR. BERGER: 1:20.

5 MR. MISMAS: Can we take five  
6 minutes?

7 MR. BERGER: Sure.

8 MR. MISMAS: Thanks.

9 THE VIDEOGRAPHER: We're off the  
10 record, 1:21 p.m.

11 (Off the record.)

12 THE VIDEOGRAPHER: We're on the  
13 record, 1:28 p.m.

14 Q. (By Mr. Mismas) Okay, Dr. Gibbs. We  
15 short-cuttet this by about 40 minutes by me not  
16 having -- having to ask you about memory questions,  
17 so I'm going -- just going to go through a coup- --  
18 some -- a few more questions, and then I will be  
19 done and let -- and let counsel for the defense ask  
20 you whatever he wants on redirect.

21 A. Thank you.

22 Q. Have you ever heard of a --

23 MR. BERGER: Strike the colloquy.

24 MR. MISMAS: That's okay.

25 Q. (By Mr. Mismas) Have you heard of a -- ever

1 heard of a company called 48 Insulations?

2 A. No.

3 Q. Okay. You can't tell me what asbestos  
4 products they manufacture?

5 A. No.

6 Q. You can't tell me what asbestos products,  
7 if any, that Mr. Young was exposed to by 48  
8 Insulations?

9 A. No.

10 Q. Okay. You cannot quantify the dose of  
11 asbestos to a reasonable degree of medical certainty  
12 that Mr. Young may have been exposed to asbestos  
13 from 48 Insulations?

14 A. No.

15 Q. Have you ever heard of a company called  
16 Aalborg, A-A-L-B-O-R-G, Industries?

17 A. No.

18 Q. Okay. You can't tell me what asbestos  
19 products they manufactured?

20 A. No.

21 Q. And you can't tell me what asbestos  
22 products, if any, that Mr. Young was exposed to from  
23 Aalborg Industries, can you?

24 A. No.

25 Q. Okay. And you can't quantify dose to a

1 reasonable degree of medical certainty that  
2 Mr. Young may have been exposed to asbestos from  
3 Aalborg Industry --

4 A. That's correct.

5 Q. -- products, correct?

6 A. Correct.

7 Q. Okay. Are you familiar with a company  
8 called Aanco Holdings -- A-A-N-C-O, Holdings, Inc.?

9 A. No.

10 Q. Okay. You can't tell me what asbestos  
11 products Aanco Holdings, Inc. made, can you?

12 A. No.

13 Q. Okay. And -- And you can't tell me what  
14 products, if any, that Mr. Young was exposed to from  
15 Aanco Holdings, can you?

16 A. No.

17 Q. And you cannot quantify the dose of  
18 asbestos to a reasonable degree of medical certainty  
19 that Mr. Young was exposed to asbestos prod- --  
20 prod- -- products from Aanco Industries, can you?

21 A. Correct.

22 Q. Okay. Have you heard of a company called  
23 ACandS, Inc.?

24 A. I think I've heard of them. But the same  
25 applies; I wouldn't know what products they made.

1 Q. Okay. You don't know what products they  
2 made?

3 A. No.

4 Q. And you can't tell me what products ACandS  
5 would -- would have exposed Mr. Young to?

6 A. No.

7 Q. And you can't quantify the dose of asbestos  
8 to a reasonable degree of medical certainty that  
9 Mr. Young may have been exposed to asbestos from  
10 ACandS' products, correct?

11 A. Correct.

12 Q. Are you familiar with a company called  
13 Advocate Mines?

14 A. No.

15 Q. Okay. And you can't tell me what asbestos  
16 products they manufactured?

17 A. No.

18 Q. Or sold?

19 A. No.

20 Q. And you can't tell me what products, if  
21 any, that Mr. Young was exposed to by Advocate  
22 Mines, can you?

23 A. No.

24 Q. And you cannot quantify the dose of  
25 asbestos to a reasonable degree of medical certainty

1 that Mr. Young may have been exposed to from  
2 Advocate Mines, correct?

3 A. No.

4 Q. How about Amatex? Have you ever heard of  
5 Amatex?

6 A. The same pertains as to the others. I -- I  
7 don't know what they --

8 Q. I just have to keep asking --

9 A. Okay.

10 Q. -- you for the record.

11 A. Okay.

12 Q. You know --

13 A. No.

14 Q. So -- And you can't tell me what asbestos  
15 products Amatex made?

16 A. No.

17 Q. And you can't quantify the -- the dose of  
18 asbestos to a reasonable degree of medical certainty  
19 that Mr. Young may have been exposed to asbestos  
20 from Amatex products, can you?

21 A. Correct.

22 Q. Okay. You ever heard of a company called  
23 A.P. Green?

24 A. Yes.

25 Q. Okay. And can you tell me what asbestos

1 products they manufactured?

2 A. Again, I'm not familiar with the products.

3 Q. Okay. And you can't tell me what asbestos  
4 products, if any, that Mr. Young was exposed to by  
5 A.P. Green, can you?

6 A. Correct.

7 Q. And you can't quantify the dose of asbestos  
8 to a reasonable degree of medical certainty that  
9 Mr. Young may have been exposed to asbestos from  
10 A.P. Green products, can you?

11 A. Correct.

12 Q. Have you ever heard of a company called  
13 Armstrong World Industries?

14 A. Yes.

15 Q. Okay. And how are you familiar with  
16 Armstrong World Industries?

17 A. Well, I've heard of Armstrong World --  
18 World Industries in some of the cases I looked at  
19 early on. I think Armstrong Industries were  
20 involved with, but I'm not precisely sure how the --

21 Q. Okay.

22 A. -- they exactly were.

23 Q. Can you tell me what asbestos products they  
24 produced?

25 A. I don't recall. I'm -- I'm not an expert

1 on products or such.

2 Q. Okay. You can't -- You can't testify as to  
3 any asbestos products manufactured or sold by  
4 Armstrong World Industry that Mr. Young was exposed  
5 to?

6 A. No, I couldn't.

7 Q. Okay. And you cannot quantify the dose of  
8 asbestos to a reasonable degree of medical certainty  
9 that Mr. Young may have been exposed to asbestos  
10 from Armstrong World Industries asbestos products?

11 A. Correct.

12 Q. Are you familiar with a company called  
13 Asbestec Industries?

14 A. No.

15 Q. Okay. And you can't tell me what -- what  
16 products they manufactured, can you?

17 A. No.

18 Q. And you can't -- you can't tell me what  
19 asbestos products, if any, that Mr. Young was  
20 exposed to by Asbe- -- Asbetec [sic] Industries, can  
21 you?

22 A. Correct.

23 Q. And you can't quantify the dose of asbestos  
24 to a reasonable degree of medical certainty that  
25 Mr. Young may have been exposed to asbestos from

1 Asbetec Industries, can you?

2 A. Correct.

3 Q. Have you ever heard of a company called

4 Asbestospray?

5 A. No.

6 Q. Okay. And you can't tell me what asbestos

7 products they manufactured?

8 A. Correct.

9 Q. And you can't tell me what asbestos

10 products, if -- if any, that Mr. Young was exposed

11 to by Asbestospray?

12 A. Correct.

13 Q. And you can't -- cannot quantify the dose

14 of asbestos to a reasonable degree of medical

15 certainty that Mr. Young may have been exposed to

16 from Asbestospray?

17 A. Correct.

18 Q. Have you ever heard of a Artra Group?

19 A. No.

20 Q. You can't tell me what asbestos products

21 they manufactured, can you?

22 A. No.

23 Q. And you can't tell me what asbestos

24 products, if any, that Mr. Young was exposed to by

25 Artra Group, can you?

1 A. Correct.

2 Q. And you cannot quantify the dose of  
3 asbestos to a reasonable degree of medical certainty  
4 that Mr. Young may have been exposed to asbestos  
5 from Artra Group, Inc., can you?

6 A. Correct.

7 Q. Have you ever heard of a company called  
8 Synkaloid?

9 A. No.

10 Q. Okay. And you can't tell me what asbestos  
11 products they manufactured?

12 A. No.

13 Q. And you can't tell me what asbestos  
14 products, if any, that Mr. Young was exposed to by  
15 Synkaloid, can you?

16 A. Correct.

17 Q. Okay. And you can't quantify the dose of  
18 asbestos to a reasonable degree of medical certainty  
19 that Mr. Young may have been exposed to asbestos  
20 from Synkaloid products, can you?

21 A. Correct.

22 Q. Have you ever heard of Babcock & Wilcox?

23 A. Yes.

24 Q. Okay. And what do you know about Babcock &  
25 Wilcox?

1           A.    I think they made boilers, but that's about  
2    all.

3           Q.    Okay.  And you can't tell me what asbestos  
4    products, if any, that Mr. Young was exposed to from  
5    Babcock & Wilcox boilers, can you?

6           A.    No.

7           Q.    And you cannot quantify the dose of  
8    asbestos to a reasonably -- reasonable degree of  
9    medical certainty that Mr. Young may have been  
10   exposed to from Babcock & Wilcox products?

11          A.    Correct.

12          Q.    Have you ever heard of Baldwin Eluret Hill?

13          A.    No.

14          Q.    So you can't tell me what asbestos products  
15   that they may have exposed Mr. Young to?

16          A.    No.

17          Q.    And you can't quantify the dose of asbestos  
18   to a reasonable degree of medical certainty that  
19   Mr. Young may have been exposed to asbestos from  
20   Baldwin Eluret Hill products?

21          A.    Correct.

22          Q.    Have you ever heard of Ehret Magnesia  
23   Manufacturing Company?

24          A.    No.

25          Q.    And you can't tell me what asbestos

1 products they manufactured?

2 A. Correct.

3 Q. And you -- you can't tell me what asbestos  
4 products, if any, that Mr. Young was exposed to by  
5 Ehret Magnesia Manufacturing Company, can you?

6 A. Correct.

7 Q. And you can't quantify the dose of asbestos  
8 to a reasonable degree of medical certainty that  
9 Mr. Young may have been exposed to -- to asbestos  
10 from Ehret Magnesia Manufacturing Company, can you?

11 A. Correct.

12 MR. BERGER: Counsel, could we  
13 maybe go off the record --

14 MR. MISMAS: Sure.

15 MR. BERGER: -- and discuss a  
16 stipulation on this?

17 THE VIDEOGRAPHER: We're off the  
18 record, 1:36 p.m.

19 (Off the record.)

20 THE VIDEOGRAPHER: We're on the  
21 record, 1:38 p.m.

22 Q. (By Mr. Mismas) Dr. Gibbs, I'm going to  
23 read off a long list of alleged asbestos  
24 manufacturing companies. Instead of what we just  
25 went through with each and every single one of those

1 last 16 --

2 A. Yes.

3 Q. -- I'm going to ask you a series of  
4 questions of those --

5 A. Right.

6 Q. -- companies as a group. Okay?

7 A. Yes.

8 Q. And these companies are Brunswick  
9 Fabricators, Burns & Roe, C.E. Thurston, Celotex,  
10 Carey Canada, Philip Carey, Hillsborough Holdings,  
11 Jim Walters, Combustion Engineering, Congoleum  
12 Corporation, Continental Producers, Eagle Picher,  
13 E.J. Bartells, Empire Ace Insulation Manufacturing  
14 Company, Federal Mogul, T&N or Turner and Newel,  
15 Fuller Austin, Gl Holdings.

16 It says "OAF," but it probably  
17 should say "GAF." Gatke Corporation, Halliburton,  
18 Dresser Industries, Kellogg Brown & Root/DII,  
19 MidValley, Harbison Walker, H.K. Porter, Southern  
20 Asbestos, Johns-Manville, J.T. Thorpe, Kaiser  
21 Aluminum, Keene Corporation, Kentile Floors, M.R.  
22 Detrick, Muralo Company (successor to Synkaloid).

23 North American Refractories a/k/a  
24 NARCO, National Gypsum, Anchor Holdings, Nicolet ,  
25 Keasby & Mattison, North American Asbestos, Oglebay

1 Norton, Ferro Engineering, Owens Corning, Fibreboard  
2 Corporation, Pacor, Panacon, Pittsburgh Corning  
3 Corporation, Plibrico Company, Porter Hayden,  
4 Raybar -- Raymark Industries, Raybestos Manhattan,  
5 Raytech, Rock Wool Manufacturing, Rome Wire, Rutland  
6 Fire Clay, Shook & Fletcher, Smith & Kanzier,  
7 Standard Insulations, Inc.

8 Stone & Webster, Unarco, UNR  
9 Industries, USG Corporation, United States Mineral  
10 Products Company, Western MacArthur, W.R. Grace,  
11 Allis Chalmers, Atlas Corporation, Bethlehem Steel,  
12 Cassiar Mines, Delaware Insulation, Eastco  
13 Industrial Safety Corporation, Global Industrial  
14 Technologies, Harnischfeger Corporation, McLean  
15 Industries, Powhatan Mining Company, Presidential  
16 [sic] Lines, Rome Cable Corporation, Skinner Engine  
17 Company, Swan Transportation Company, Wallace and  
18 Gale Company, Washington Group International,  
19 Flintkote.

20 American Standard a/k/a Kewanee  
21 Boiler Division boilers , Rite boilers, National  
22 boilers, American Radiator Company boilers, Ajax  
23 boilers, Weil-McClain boilers, American Standard  
24 boilers, Peerless boilers, Avco Spencer boilers,  
25 Lattner boilers, Fulton boilers, Weil boilers,

1 Cleaver-Brooks boilers, Ruud or Rud boilers, Heil  
2 boilers, Federal boilers, Walsh -- Walsh-Weidner  
3 boilers, Richmond boilers, ABCO boilers, Thermopak  
4 boilers, Milwaukee Reliance boilers, Garlock, Home  
5 Depot wallboard, Adamson Tank Company boilers.

6 Now, with all of those I just read  
7 off --

8 (Drilling sound interrupting.)

9 Q. (By Mr. Mismas) For all those I've read --  
10 just read off, you can't tell me what asbestos  
11 products, if any, that Mr. Young was exposed to by  
12 all those entities I just read off, can you?

13 A. Correct.

14 Q. Okay. And you cannot quantify the dose --  
15 Strike that.

16 Okay. Sorry. You cannot quantify  
17 the dose of asbestos to a reasonable degree of  
18 medical certainty that Mr. Young may have been  
19 exposed to asbestos from all of those -- all of  
20 those companies or parties I just read off, can you?

21 A. Correct.

22 Q. Okay. I have four more questions, and then  
23 I'm done.

24 A. Okay.

25 Q. You can't tell me what asbestos products,

1 if any, that Mr. Young was exposed to while employed  
2 by the United States Army, can you?

3 A. Correct.

4 Q. And you cannot quantify the dose of  
5 asbestos to a reasonable degree of medical certainty  
6 that Mr. Young may have been exposed to asbe- -- You  
7 cannot quantify the dose of as- -- I'm sorry. I  
8 want to make sure the record's clear.

9 You cannot quantify the dose of  
10 asbestos to a reasonable degree of medical certainty  
11 that Mr. Young may have been exposed to asbestos  
12 while in the United States Army, can you?

13 A. Correct.

14 Q. Okay. And you can't tell me what asbestos  
15 products, if any, that Mr. Young was exposed to  
16 while employed by the United States Department of  
17 Defense, can you?

18 A. Correct.

19 Q. And you cannot quantify the dose of  
20 asbestos to a reasonable de- -- If you don't get out  
21 of here on time, blame it on them.

22 And you cannot quantify the dose of  
23 asbestos to a reasonable degree of medical certainty  
24 that Mr. Young may have been exposed to asbestos  
25 while implied -- employed by the United States

1 Department of Defense, can you?

2 A. Correct.

3 Q. Okay. Thanks. That's all I have. Thank  
4 you for your time.

5 A. Thank you.

6 (1:46 p.m.)

7 EXAMINATION

8 BY MR. BERGER:

9 Q. Dr. Gibbs, I have just a few questions for  
10 you. Now, have you published your studies on  
11 asbestos and disease in medical journals all over  
12 the world?

13 A. Yes.

14 MR. MISMAS: Objection.

15 THE WITNESS: Yes.

16 Q. (By Mr. Berger) Okay. And have your -- has  
17 your work -- Okay. Have your studies on asbestos  
18 and disease been published in medical and scientific  
19 journals in the United States?

20 A. Yes.

21 Q. And have scientists in -- in the United  
22 States relied on your published work?

23 MR. MISMAS: Objection; hearsay,  
24 not in evidence --

25 THE WITNESS: I hope so.

1 MR. MISMAS: -- speculation.

2 Q. (By Mr. Berger) Okay. Doctor, do you  
3 recall plaintiffs' counsel asking you some questions  
4 about a ratio of fiber-type potency that was  
5 discussed in the Hodgson and Darnton article?

6 A. Yes.

7 Q. And I believe the language from the  
8 article was that it was a 500-to-100-to-1 ratio?

9 A. Yes.

10 Q. Okay. Can you simplify what the ratio is  
11 between 500 and 100?

12 A. 5 to 1.

13 Q. Okay. And is the higher number for  
14 crocidolite -- Strike that. Why does crocidolite  
15 have a higher number than amosite in that ratio?

16 (Drilling sound interrupting.)

17 MR. MISMAS: I feel like I'm at the  
18 dentist.

19 THE WITNESS: It's to do with  
20 deposition. Crocidolite is more easily deposited  
21 am- -- than amosite.

22 Q. (By Mr. Berger) Okay. But if you had -- if  
23 you were looking at lung tissue and you had a  
24 crocidolite fiber that was the same size and shape  
25 as an amosite fiber, would they have the same

1 potential for causing mesothelioma?

2 A. Yes.

3 MR. MISMAS: Objection;  
4 speculation.

5 Q. (By Mr. Berger) Okay. Dr. Gibbs,  
6 plaintiffs' counsel asked you about your prior  
7 testimony that you've given on behalf -- in asbestos  
8 litigation. Do you recall that line of questioning?

9 A. Yes.

10 Q. And, you know, why have -- Or, strike that.

11 Have you been retained to testify  
12 and offer your opinions in court because you're one  
13 of the world's leading experts on asbestos and  
14 disease?

15 MR. MISMAS: Objection --

16 THE WITNESS: I assume that --

17 MR. MISMAS: -- speculation --

18 THE WITNESS: -- to be the case.

19 MR. MISMAS: -- hearsay --

20 Q. (By Mr. Berger) Okay.

21 MR. MISMAS: -- relevance,  
22 foundation.

23 THE COURT REPORTER: I'm sorry.

24 I'm not hearing any of the --

25 MR. MISMAS: I'm sorry. I just

1 made objection, relevance, foundation, hearsay.

2 Q. (By Mr. Berger) Okay. And today, you are  
3 still researching and publishing on the topic of  
4 asbestos and disease?

5 A. Yes.

6 Q. And are you still teaching at the medical  
7 school in Wales?

8 A. Yes.

9 Q. All right. Doctor, I want to take this  
10 worksheet and mark it as Gibbs 6 -- 5.

11 (Exhibit No. 5 marked.)

12 Q. (By Mr. Berger) If you can look at that.  
13 Do you remember doing that calculation and -- and  
14 testifying that the .19 level was a tenth below the  
15 OSHA level of 10 billion?

16 A. Did I -- That's what I said, was it?

17 Q. Okay. My question is: Doctor, did you  
18 misspeak?

19 A. I -- I -- I thought I said it was below. I  
20 didn't -- I didn't specify the number, I don't  
21 think.

22 Q. Okay. And nine -- Okay. Strike --

23 Thank you, Doctor. Doctor, in the  
24 past, did insulation products used in the United  
25 States contain amphiboles asbestos?

1 MR. MISMAS: Objection;

2 speculation.

3 THE WITNESS: It's my understanding  
4 that they did.

5 Q. (By Mr. Berger) Okay. Doctor, I'd like to  
6 hand you another document that you discussed with  
7 plaintiffs' counsel. This is Progress Report 11  
8 from the Armour Research Foundation.

9 A. Yes.

10 Q. Okay. And if I could direct your attention  
11 to the paragraph that you were reading from before  
12 and ask you to read the sentence beginning on the  
13 fourth line.

14 A. Yes. "When 1 centimeter of a Kent was  
15 smoked and then extinguished, no fibers could be  
16 collected."

17 Q. Thank you. Doctor, did you sign a written  
18 report in this case?

19 A. Yes.

20 Q. And were the statements and opinions  
21 expressed in that report your own?

22 A. Yes.

23 Q. And the testimony that you're giving here  
24 today, these are your own statements and opinions  
25 that you're giving to this jury, correct?

1 A. Yes.

2 Q. Okay. Now, Doctor, based on your review of  
3 the medical records in this case, do you believe  
4 that the tumor nodule that was diagnosed on the  
5 radiology in February and March of 2002 was  
6 Mr. Young's mesothelioma which was subsequently  
7 diagnosed in 2007?

8 MR. MISMAS: Objection.

9 THE WITNESS: I think that's likely  
10 to be the case.

11 Q. (By Mr. Berger) Okay. Doctor, based on the  
12 material you've reviewed and your education,  
13 training and experience, do you believe that Kent  
14 cigarettes and any asbestos fibers that may have  
15 been released from the original Kent cigarettes were  
16 a substantial factor contributing to cause  
17 Mr. Young's mesothelioma?

18 A. In my opinion, they weren't a substantial  
19 contributing factor.

20 Q. All right. And do you hold that opinion to  
21 a reasonable degree of medical certainty?

22 A. Yes, I do.

23 Q. And did anything that counsel for  
24 plaintiffs asked you in the cross-examination today  
25 change any of the opinions that you've testified to?

1 A. No.

2 Q. Okay. Doctor, thank you for your time.

3 A. Thank you.

4 MR. MISMAS: Can I get a couple in?

5 Was that Plaintiffs 1?

6 MR. BERGER: Gibbs 5.

7 MR. MISMAS: Oh, Gibbs 5.

8 (1:52 p.m.)

9 EXAMINATION

10 BY MR. MISMAS:

11 Q. Did I just hear you say that the -- that

12 the time-weighted average or PEL was .19?

13 A. No. No. No. I -- I think what -- you

14 asked me if the 1.93 billion fibers taken in was

15 significant.

16 Q. Okay. And what -- what was your figure

17 there? You can use the calculator if you need to.

18 A. Yeah. It's -- I think it's point -- That

19 would come to .19 percent.

20 Q. .19 percent or .19 fibers per CC?

21 A. No. .19 percent --

22 Q. Of --

23 A. -- of -- of the -- the pound.

24 Q. Okay. The other thing I wanted to ask you

25 was: You said that it was likely to be the case

1 that the nodule on the radiograph -- or on the x-ray  
2 or CT scan was mesothelioma, correct?

3 A. Yes.

4 Q. Okay. But you don't know for sure whether  
5 it was mesothelioma, do you?

6 A. I can't be absolutely sure, but I think --  
7 within a reasonable degree of medical certainty, I  
8 think it's more likely than not that it was a  
9 mesothelioma.

10 Q. Okay. But we already discussed earlier  
11 that you can't diagnose mesothelioma without a  
12 pathological diagnosis, correct?

13 A. Yeah, but you have a pathological diagnosis  
14 five years down the line from a lesion that is  
15 exactly in the same site as that one that was there  
16 in 2002. So I think it reasonable to draw the  
17 conclusion that that was that there then, too.

18 Q. But that's hindsight, isn't it?

19 A. That's hindsight, yes.

20 Q. So there was no way to know, when the --  
21 when the -- when the original x-rays were taken,  
22 that that was mesothelioma, was there?

23 A. No. You wouldn't know in 2002.

24 Q. And you wouldn't know up until 2007 when  
25 the pathological diagnosis was made, would you?

1 A. Yes.

2 Q. Okay. So to a reasonable degree of medical  
3 certainty, there's no way to know between two  
4 thousand and -- until 2007 that that nodule on that  
5 x-ray or CT scan was mesothelioma, was there?

6 MR. BERGER: Objection.

7 THE WITNESS: Not -- Not before  
8 2007.

9 MR. MISMAS: Okay. Thanks.

10 (1:55 p.m.)

11 EXAMINATION

12 BY MR. BERGER:

13 Q. Dr. Gibbs, I -- I think we've already  
14 established that -- And you have reviewed  
15 Mr. Young's deposition testimony, correct?

16 A. Yes.

17 Q. And I'm going to hand you Mr. Young's  
18 deposition and direct your attention to Page 454.  
19 Did you re- -- review Mr. Young's entire deposition?

20 A. Yes.

21 Q. All right. Will you please start at  
22 Line 19 and read in -- Excuse me. If I could look  
23 at this for a second. I want you to start at  
24 Line 19 and read into the record down through  
25 Page -- Line 19 on Page 455.



1 was discovered in 2002, did you associate that mass  
2 to your smoking habit?"

3 Answer: I didn't know what else I  
4 could have gotten it from."

5 Question: "So did you associate  
6 the mass to your smoking habit?"

7 Answer: "Yes."

8 Q. Thank you, Doctor.

9 A. That...

10 MR. MISMAS: I'm going to object to  
11 the deposition transcript being read into the  
12 record.

13 Q. (By Mr. Berger) All right. And, again,  
14 Doctor, do you believe -- Or, strike that.

15 Doctor, if possible, would you have  
16 preferred to have testified live here in  
17 San Antonio?

18 A. Yes.

19 Q. All right. You've been very patient, and  
20 we thank you for your time today.

21 A. Thank you.

22 MR. MISMAS: Thank you, Dr. Gibbs.

23 THE VIDEOGRAPHER: We're off the  
24 record, 1:57 p.m.

25 (Deposition concluded.)



1 I, ALLEN ROBERT GIBBS, have read the  
2 foregoing deposition and hereby affix my signature  
3 that same is true and correct, except as noted  
4 above.

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\_\_\_\_\_  
ALLEN ROBERT GIBBS

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THE STATE OF \_\_\_\_\_ )  
THE COUNTY OF \_\_\_\_\_ )

14 Before me, \_\_\_\_\_,  
15 on this day personally appeared ALLEN ROBERT GIBBS,  
16 known to me to be the person whose name is  
17 subscribed to the foregoing instrument and  
18 acknowledged to me that they executed the same for  
19 the purpose and consideration therein expressed.

20 Given under my hand and seal of  
21 office this \_\_\_\_ day of \_\_\_\_\_, A.D., 2008.

22  
23  
24

\_\_\_\_\_  
Notary Public in and for the

25 State of \_\_\_\_\_

My commission

26 expires: \_\_\_\_\_

1 CAUSE NO. 2007-76322  
2 Donald A. Young and ) IN THE DISTRICT COURT OF  
wife, Wanda Young )  
3 Plaintiffs )  
) )  
4 VS. ) HARRIS COUNTY, TEXAS  
) )  
5 LORILLARD TOBACCO CO., )  
et al. )  
6 Defendants. ) 11TH JUDICIAL DISTRICT  
7 (transferred from)

8 CAUSE NO. 2007CI15853  
9 Donald A. Young and ) IN THE DISTRICT COURT OF  
wife, Wanda Young )  
10 Plaintiffs, )  
) )  
11 VS. ) BEXAR COUNTY, TEXAS  
) )  
12 LORILLARD TOBACCO CO., )  
et al. )  
13 Defendants. ) 285TH JUDICIAL DISTRICT  
14  
15

16 REPORTER'S CERTIFICATION  
DEPOSITION OF ALLEN ROBERT GIBBS  
SEPTEMBER 4, 2008

17  
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24  
25

I, JULIE VERASTEGUI, Certified  
Court Reporter in and for the State of Texas, hereby  
certify to the following:  
That the witness, ALLEN ROBERT  
GIBBS, was duly sworn by the officer and that the  
transcript of the oral deposition is a true record  
of the testimony given by the witness;

1                   That the deposition transcript was  
2 submitted on September \_\_\_\_, 2008, to MR. JAMES E.  
3 BERGER at his address for examination, signature of  
4 the witness, and return to HOFFMAN REPORTING & VIDEO  
5 SERVICE, The Locust Street Professional Building,  
6 206 East Locust Street, San Antonio, Texas 78212 by  
7 the \_\_\_\_ day of \_\_\_\_\_, 2008;

8                   That the amount of time used by  
9 each party at the deposition is as follows:

10  
11 JAMES E. BERGER, 1 hour, 54 minutes used;  
12 JOHN D. MISMAS, 1 hour, 37 minutes used.

13  
14                   That pursuant to information given  
15 to the deposition officer at the time said testimony  
16 was taken, the following includes counsel for all  
17 parties of record;

18  
19                   JOHN D. MISMAS

20                   Attorney for Plaintiff;

21                   JAMES E. BERGER & CHRISTOPHER V. COTTON

22                   Attorneys for Defendant Lorillard Tobacco Co.;

23                   THI T. NGUYEN

24                   Attorney for Guard-Line, Inc.  
25

1                   I further certify that I am neither  
2 counsel for, related to, nor employed by any of the  
3 parties in the action in which this proceeding was  
4 taken, and further that I am not financially or  
5 otherwise interested in the outcome of the action;

6                   Further certification requirements  
7 pursuant to Rule 203 of TRCP will be certified to  
8 after they have occurred.

9                   Certified to by me this 5th day of  
10 September, 2008.

11  
12                   \_\_\_\_\_  
                  JULIE VERASTEGUI, Texas CSR 7637

13                   Expiration Date: 12/31/08

                  Firm Registration No. 93

14                   Hoffman Reporting & Video Service

                  The Locust Street Professional Building

15                   206 East Locust Street

                  San Antonio, Texas 78212

16                   Phone: 210.736.3555

                  Fax: 210.736.6679

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1           FURTHER CERTIFICATION UNDER RULE 203 TRCP

2                           The original deposition of ALLEN  
3 ROBERT GIBBS, was / was not returned to the  
4 deposition officer on \_\_\_\_\_;

5                           If returned, the attached Changes  
6 and Signature page contains any changes and the  
7 reasons therefor;

8                           If returned, the original  
9 deposition was delivered to MR. JAMES E. BERGER, the  
10 Custodial Attorney;

11                           That \$\_\_\_\_\_ is the deposition  
12 officer's charges to the Defendant for preparing the  
13 original deposition transcript and any copies of  
14 exhibits;

15                           That the deposition was delivered  
16 in accordance with Rule 203.3, and that a copy of  
17 this certificate was served on all parties shown  
18 herein on and filed with the Clerk.

19                           Certified to by me this \_\_\_\_\_  
20 day of \_\_\_\_\_, 2008.

21 \_\_\_\_\_

JULIE VERASTEGUI, Texas CSR 7637

22                           Expiration Date: 12/31/08

                          Firm Registration No. 93

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                          The Locust Street Professional Building

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25                           Phone: 210.736.3555

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HOFFMAN REPORTING SERVICE DELIVERY SHEET

CAUSE NO. 2007-76322

Donald A. Young and ) IN THE DISTRICT COURT OF  
wife, Wanda Young )  
Plaintiffs )  
VS. ) HARRIS COUNTY, TEXAS  
LORILLARD TOBACCO CO., )  
et al. )  
Defendants. ) 11TH JUDICIAL DISTRICT

(transferred from)

CAUSE NO. 2007CI15853

Donald A. Young and ) IN THE DISTRICT COURT OF  
wife, Wanda Young )  
Plaintiffs, )  
VS. ) BEXAR COUNTY, TEXAS  
LORILLARD TOBACCO CO., )  
et al. )  
Defendants. ) 285TH JUDICIAL DISTRICT

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