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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

JAMES P. O'BOYLE (DOB:1/16/1930) and JOAN O'BOYLE (DOB:9/17/1932), his wife, Plaintiffs, v. A.W. CHESTERTON COMPANY, et al., Defendants.	CASE NUMBER CL 106817

Durham, North Carolina
Thursday, April 16, 2009

Videotaped deposition of:

VICTOR L. ROGGLI, M.D.,

a witness called in the above-entitled action, before BESS A. AVERY, RMR, a notary public in and for the State of North Carolina, taken at the Pathology Department at Duke University Medical Center, Education Library, Room 209M beginning at 9:14 a.m., when were present:

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A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFFS:
CHRISTIAN HARTLEY, ESQUIRE
HARTLEY LAW, LLC
Post Office Box 2492
Mount Pleasant, South Carolina 29465-2492
(843) 647-2431

ON BEHALF OF DEFENDANT CERTAINTEED CORPORATION, FMC and TRANE:
MARGARET M. CHAPLINSKY, ESQUIRE
KALINOSKI & CHAPLINSKY
100 Court Avenue, Suite 205
Des Moines, Iowa 50309
(515) 246-8800
(Appearing telephonically)

ON BEHALF OF DEFENDANT GREENE TWEED & COMPANY:
WILLIAM R. HUGHES, JR., ESQUIRE
STUART TINLEY LAW FIRM LLP
310 W. Kanesville Boulevard, 2nd Floor
Council Bluffs, Iowa 51502
(712) 322-4033
(Appearing telephonically)

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A P P E A R A N C E S (CONTINUED)

and chlorine come out which can screw up looking at a filter.

And once you are done preparing the filter that way then you let the filter dry, you mount it on a disc with this colloidal paste which glues it down. Then they use some sort of a coating material. In our lab we typically use platinum coater to coat it so that electrons don't build up and it degrades the image, so it's basically a conducting material that allows electrons to run off.

And then you put it in the scanning electron microscope. We typically count -- with a screen magnification of 1300X -- count a hundred fields, separate fields, or 200 fibers, whichever comes first. These days it's mostly a hundred fields before you get to, long before you get to 200 fibers. Although, we still see a case. I saw one the other day that had 200 fibers in seven fields.

Q What kind of case was that? I'm sorry? What kind of exposure was that?

A It turned out it was fibrous talc. This guy had talc in his lungs that looked just like noncommercial amphibole fibers, and it was an amazing case. Anyway --

Q Sorry, carry on. I apologize.

A And then we calculate the asbestos content of the tissue. We count the fibers, both coated and uncoated types, measure the fiber types, and then do calculations to report the number of fibers per filter, on the whole filter, and then relate that to the amount of tissue that went into it so you can calculate how many are present per gram of tissue.

For paraffin you have to use a correction factor because the tissue has, once it's been paraffin embedded and then removed from paraffin, you have less tissue than you started with because paraffin removed the lipids, all the fats, from the tissue, so it takes about 30 percent of lung tissue out of it when you paraffinize it, so we use a correction factor of .7 for that.

Q Okay. Is that what you are doing when you are not here? Do you do these things, or does someone else do this stuff?

A The preparation technique is done by laboratory members under my supervision. I do the actual counting part on the filter.

Q Is it important to make sure that the counting is done by the same person every time?

A Well, it helps. If you don't do that what you need to do is have a training process, I think Dr. Abraham has done this, you have to have a

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training process where you and the person who is doing the counting look at and do the same cases independently for a period of time to make sure that the other person is doing things the same way you would. And at that point in time then you can allow the other person to do it. I did that in my laboratory with five different trainees that I've had that have gone through.
Q Okay. So that is to say, then, that sometimes in the samples that are being analyzed in your lab you are not actually the one doing the counting, right, that you've got trainees, at least -- do you have one or all five right now who are doing this?
A No, I just had one for a year in the past starting in, I think it was in 1997 with Tom Sporn. Dr. Tom Sporn was the first one.
Q Nowadays is there anybody else in your lab who does the counting besides you?
A No.
Q But there was a period of time where some of the counts that come out of your laboratory that go into your work were done by Dr. Sporn and not by you. True?
A Yes, in part. I think that in all of the
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cases with my trainees that I at least sat down at the beginning with them to see what was on the filter and what they were counting and finding so I had an idea so when I saw their final number I would know whether it made sense or that it didn't based on what we had looked at initially together.
Q When you say all your trainees, maybe I misunderstood, I thought that we had established that in terms of what is reported in your published work that you or Dr. Sporn were the only people that counted the fibers?
A No. I had five people in my lab. Dr. Sporn was the first. Dr. Oury was the second. Dr. Anu Sharma, who is at the Pittsburgh V.A. was the third. Dr. Kelly Butner at Vermont was the fourth. And Dr. Annabelle Mahar was the fifth. Of those, the only one who is actively doing counting that I know of is Dr. Tim Oury.
Q Still doing counting in your lab you mean or actively anywhere?
A Not in my lab but in their lab.
Q Okay. It doesn't sound very glamorous so I'm not surprised that they are not doing it.
A It's tedious.
Q So that it's fair to say that that
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process, although you've taken some steps to try to

eliminate it, there's some subjectivity to the counting?
A Yes.
Q And that's because -- well, what are the sources of the subjectivity in the counting?
A The most subjective is how to define a fiber. And the fiber definition that is used, we use the NIOSH definition which has to have at least a 3 to 1 aspect ratio with roughly parallel sides. And there are some structures you'll run across where it's really debatable. Are these roughly parallel sides or not? How far can you deviate from parallel and still be roughly parallel?
Fortunately, almost all of the structures that are debatable in that regard are not asbestos, they are the nonasbestos middle fibers. The asbestos ones, they pretty much follow right down the line of that criteria of 3 to 1 at least and parallel sides.
Q You mentioned talc, for instance, a minute ago and there was a case where you thought there was asbestos but it turned out to be talc. So talc is one of those minerals where you have an issue with counting where you might counting talc and thinking

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it's asbestos? Is that -- or is talc like that asbestos?
A No and no. It's not an issue that you think you are counting asbestos, but we try to count all the fibers that meet the regulatory definition of a fiber. And what I'm saying is the ones that are borderline or where they meet the definition are usually nonasbestos anyway. So we really don't care. If you get a case that one day you might call it a fiber, the next day not, it doesn't make any difference because it's not asbestos anyway.
And the second part of that, was the talc in that case asbestos? Not by definition. It doesn't fit under the mineralogic definition of asbestos, but its morphology would be such that you would expect it to behave very much like asbestos.
Q And the miner -- I was going to mineralogy because I was corrected by Arthur Langer once that it's not mineralogy. I'll say mineralogy, because you do. The mineralogy of talc, is there some talc that's asbestos and some talc that's not? I don't understand that.
A No, but we use -- we say the word mineral, so mineral, so mineralogy is okay.
Q I'm on your team on that one. I just --

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A You'll have to fight with Dr. Langer on that issue.
There is fibrous forms of talc. There's

platy forms of talc and there's granular forms of talc. The fibrous forms in some instances can have aspect ratio and other morphologic features that overlap substantially with asbestos, particularly the noncommercial amphiboles.

Q Did the talc that you saw in that count where you saw so many that you, I think it was eight fields, did that cause the mesothelioma that you were looking at?

A It wasn't a mesothelioma case.

Q Oh, okay. Lung cancer?

A Lung cancer.

Q Did it cause the lung cancer?

A I think so.

Q So it didn't matter whether it was asbestos or not, the fibers that were there caused the cancer?

A I think so in that case, yes.

Q Now, in terms of your numbers of controls that you have identified -- 25?

A Twenty.

Q Twenty. In the 20 controls that you

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identified did you run blanks with those?

A We did run blanks, we didn't necessarily run blanks with every case.

Q Which ones did you run blanks with, if you know?

A I don't recall, I don't know.

Q Is that reported in the paper?

A I don't think so. I think what is reported in the paper is that we did run blanks.

Q It is? Okay.

A I think so.

Q It would be important to run blanks with your controls so that you know that what's in your controls is not the subject -- is not the source of contamination. True?

A Yes. And particularly if you are finding differences from one control case to the next. For example, if you run a blank and you find no fibers and you do your control and you find X number of tremolite fibers, and you run your next control without a blank but you are finding X number of tremolite fibers, very similar to the one, unless you are getting something you weren't expecting, then I don't think it's necessarily that you would require blanks every time.

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Other labs might do it differently. I think Dodson's lab typically runs a blank with every specimen. At least that's the information I get from his report.

Q Okay. In terms of that, you'd be better