

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-MIDDLESEX COUNTY
DOCKET NUMBER MID-L-5633-13AS

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IN RE: ASBESTOS LITIGATION	:	
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LINDA FISHBAIN, et al.,	:	PROCEEDINGS
	:	VOLUME V
Plaintiffs,	:	
	:	
v.	:	
	:	
Colgate-Palmolive COMPANY	:	
et al.,	:	
	:	
Defendants.	:	
	:	
	:	
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BEFORE: The Honorable Ana C. Viscomi

TRANSCRIPT of proceedings as taken
by and before PATRICIA MULLIGAN CARRUTHERS (License
No. XI00780), a Certified Court Reporter and Notary
Public of the State of New Jersey and Notary Public
of the State of New York, at the MIDDLESEX COUNTY
COURTHOUSE, 56 Paterson Street, New Brunswick, New
Jersey, on Wednesday, July 29, 2015, commencing at
9:14 in the forenoon.

Job No. NJ2106164

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1 in the cohort studies or RTV miners and millers."
 2 Do you see that?
 3 A. Yes, sir.
 4 Q. And is that something that, in your
 5 work for Vanderbilt in litigation, you've come to
 6 learn, or the people at Vanderbilt have told you?
 7 A. It may have been told to me; but as I
 8 think you've probably heard me say on more than one
 9 occasion, I try to concentrate on my efforts in
 10 mineralogy, characterizing these deposits.
 11 Q. Understood. And we'll get to that in a
 12 seconds; I just want to know if that was something
 13 that was told to you by the Vanderbilt people?
 14 A. I don't know.
 15 Q. Okay. Go about halfway down. It says,
 16 "NIOSH has recently received unpublished reports
 17 additional cases of pleural mesothelioma among
 18 workers at RTV and its predecessor, International
 19 Talc;" and it cites to two obscure people, Abrams
 20 and Maimon.
 21 Do you see that?
 22 A. Yes.
 23 Q. Now, you have looked -- you can put
 24 this away?
 25 A. I'm just curious if that was you?

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1 Q. It was.
 2 A. Okay.
 3 Q. You have looked, I think you said, at
 4 samples of R. T. Vanderbilt products, talc products;
 5 correct?
 6 A. Yes.
 7 Q. Approximately how many samples of RTV
 8 talc products have you or people working on your
 9 behalf analyzed?
 10 A. When you say "talc products," you mean
 11 nytal and others like those various -- I think there
 12 were 22 or 20 -- I don't remember the exact number.
 13 Q. Okay. Those would be products. How
 14 many samples over the years have you looked at, of
 15 finished product?
 16 A. Oh, finished product. Again, I get --
 17 Q. Nytal, IT, whatever you want to call
 18 it?
 19 A. I was trying to answer that as 22, 23?
 20 I don't know the exact number.
 21 Q. I'm saying you might have the same
 22 product, and you get multiple samples of it and
 23 looked at it at different times. I'm trying to be
 24 more specific in that regard.
 25 A. Sorry. I think we had multiple samples

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1 of Nytal 100, 400 and Modine (phonetic).
 2 Q. So can you give us an estimate of how
 3 many samples of Vanderbilt products, talc products,
 4 you've looked at in your career?
 5 A. It would probably be 25 to 30ish now.
 6 Q. In addition to that, through
 7 coordination with Vanderbilt and also its counsel,
 8 you have gone to the mines where they mined the talc
 9 that sourced the samples that you looked at;
 10 correct?
 11 A. Yes, sir.
 12 Q. And you took samples of the ore;
 13 correct?
 14 A. Yes.
 15 Q. About how many of those samples have
 16 you looked at?
 17 A. I don't know the number off the top of
 18 my head.
 19 Q. Can you give an estimate?
 20 A. Ten, 15. It's in published papers; in
 21 the learned treatise called Microscope. You've
 22 heard of that.
 23 Q. The -- in all of the samples of
 24 Vanderbilt product and Vanderbilt ore that you've
 25 looked at, you have never seen what you would define

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1 as asbestos. Is that correct?
 2 A. That's correct.
 3 Q. I've put in front of you, Dr. Gunter,
 4 an article by Murray Finkelstein, Ph.D. in the
 5 American Journal of Industrial Medicine published in
 6 2012. Do you see that?
 7 A. Yes.
 8 Q. And if you look at Dr. Finkelstein --
 9 it's an article entitled, "Malignant Mesothelioma
 10 Incidence Among Talc Miners and Millers in New York
 11 State." Correct?
 12 A. Yes.
 13 Q. In the Background section, he talks
 14 about the Honda published study which we found
 15 referenced in the road map. Is that correct?
 16 A. I don't know. Again, when I'm handed
 17 an article, with two or three hours to review it is
 18 what I would normally take to understand it.
 19 Direct me to where you're talking?
 20 Q. Sure. Well, let's do it this way.
 21 Under "Results," Do you see that?
 22 A. What page?
 23 Q. I'm in the abstract?
 24 A. Okay. Yes.
 25 Q. Under "Method," it says, "Data

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1 concerning additional cases of mesothelioma in the
2 cohort have been posted NIOSH. I used information
3 from the NIOSH website and the Honda report to
4 analyze the incidence of mesothelioma during the
5 years 1990 through 2007."
6 Did I read that correctly?
7 A. Yes.
8 Q. In the Results, it says, "There were at
9 least five new cases of mesothelioma in the cohort,
10 and mesothelioma incidence rates were at least five
11 times the rate in the general population."
12 Did I read that correctly?
13 A. That's what it says.
14 Q. Under Conclusions, he says, "I conclude
15 that mesothelioma has been diagnosed among members
16 of the cohort at a rate in excess of that in the
17 general population; two, fibers of tremolite and
18 anthrophyllite have been detected in dust in the
19 lungs of talc workers; and three, these fibers are
20 known causes of mesothelioma. It is prudent on the
21 balance of probabilities to conclude that dust from
22 New York State talc ores are capable of causing
23 mesothelioma in exposed individuals."
24 Did I read that correctly?
25 A. Yes.

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1 Q. If Dr. Finkelstein is right, and "it is
2 prudent on the balance of probabilities to conclude
3 that dust from New York State talc ores are capable
4 of causing mesothelioma in exposed individuals,"
5 then would you agree with me that either your
6 definition of what's in there as being non asbestos
7 is incorrect; or what you're not calling asbestos is
8 actually causing mesothelioma?
9 A. Oh, that was long. If I have to agree
10 with something, I would agree with the latter. I
11 just was looking at the part where the disclosure
12 statement is, "I acted as a consultant for
13 plaintiffs' attorneys in asbestos litigation."
14 Q. And that's proper to do; right?
15 A. Yes.
16 Q. Thank you.
17 A. You're welcome.
18 Q. Do you have the stimuli in front of
19 you? I tried to get it ready.
20 THE COURT: For the record, this is
21 P-4.
22 Q. We noted yesterday that one of the
23 members of the expert panel was Gregory P. Meeker.
24 Right?
25 A. Yes.

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1 Q. Can you just describe for us who
2 Mr. Meeker is?
3 A. Mr. Meeker is a retired geologist/
4 microscopist who mainly ran the electron microprobe
5 for the USGS in Denver, Colorado.
6 Q. And he is a geologist, such as
7 yourself. Correct?
8 A. Maybe not such as myself. I wouldn't
9 agree with that.
10 Q. Well, you're a geologist, he's a
11 geologist; right?
12 A. His degrees are in -- his bachelor's
13 and master's degrees are in geology.
14 Q. And he is someone who is respected in
15 the geological community; correct?
16 A. I respect Greg, yes.
17 Q. And even though you have a healthy
18 debate with Mr. Meeker at times, just because you
19 debate something or disagree about something, you
20 respect his opinion; correct?
21 A. I said I respect Greg, yes --
22 Mr. Meeker.
23 Q. And again, the -- you have no qualms
24 about him being qualified to be on this expert
25 panel, do you?

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1 A. He would be a very good person on the
2 expert panel to give a precise analytical
3 composition of these minerals by using electron
4 microscopy.
5 I don't believe he's ever published
6 articles -- I'm not sure if he's experienced in
7 talc, per se, but he understands analytical methods.
8 Q. And analytical methods for the
9 detection of asbestos; right?
10 A. Less so than than precise compositional
11 analysis an electron microprobe. That's his main
12 area of expertise.
13 Q. Well, when you use the term "electron
14 microprobe," is that different from an electron
15 microscope?
16 A. In general, I would use the term
17 electron microscope; or I typically would shorten it
18 to "E beam instrument" to classify an entire series
19 of instruments. One is the transmission electron
20 microscope; one is the scanning electron microscope;
21 and one is often called an electron microprobe. It
22 has some other names.
23 They all have the same source,
24 electrons, that hit a sample, and then things
25 happen. So the electron microprobe is something