

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

MEMORANDUM

DATE: March 11, 2004

SUBJECT: Additional documentation, EPA Inspector General investigation into failure to prevent consultant conflicts of interest in:

1. External peer review panel for EPA ORD NCEA human health risk assessment for the aftermath of the WTC collapse
2. EPA Region 1 external consultants for risk assessment for asbestos contamination in Brookfield, CT school system
3. EPA and ATSDR external consultants on peer panels for the asbestos fiber size and toxicity reassessments

TO: EPA IG WTC Team: Nikki Tinsley, Chris Dunlap, Sarah Fabirkiewicz, Dana Gilmore, Jim Hatfield, Geoff Pierce, Steve Schanamann

CC: Affected parties and responsible officials

FROM: Cate Jenkins, Ph.D.*
Environmental Scientist, Waste Identification Branch
Hazardous Waste Identification Division (Mail Code 5304W)
Office of Solid Waste

A handwritten signature in black ink that reads "C Jenkins". The signature is written in a cursive, flowing style.

This memorandum supplements the potential Conflict of Interest (COI) allegations provided to the Inspector General's (IG) office on 7/16/03¹ as well as in my 7/4/03 report.² It also brings to the IG's attention an addition COI issue in Region 1's use of consultants for an asbestos contamination problem in Brookfield, CT.

* The conclusions and opinions in this memorandum are those of the author and do not necessarily reflect those of the U.S. Environmental Protection Agency.

On 2/3/04, I was contacted by the IG's office, and informed that they had opened an investigation into the COI concerns I had raised on 7/16/03. I agreed to participate in a conference call interview on 2/4/04 regarding the investigation. As a result of this interview, in early February, I forwarded some new documentation to the IG. During the summer of 2003, I had forwarded other additional documents to the IG.

Additional documents are being supplied, and this memorandum both summarizes these new documents as well as providing explanatory information. This memorandum also reiterates the other documents of which I am aware that relate to the current IG investigation.

These potential COI problems concern EPA's use of outside consultants to advise EPA on asbestos. The three particular EPA asbestos-related efforts, and a summary of the concerns and available documentation are given below. The conclusion section of this memorandum attempts to describe the endemic problem of improper influence on governmental decisions.

1. Peer review panelists, ORD NCEA human health risk assessment for WTC fallout

The composition of an external expert peer review panel for the EPA human health assessment for fallout from the collapse of the World Trade Center (WTC) was addressed in my 7/16/03 charges to the IG office. The EPA document under review by the peer panel is dated October, 2002, a draft by the Office of Research and Development (ORD), National Center for Environmental Assessment (NCEA).³

The new documentation and issues are as follows:

Eric Chatfield, Ph.D. work on behalf of defendants (including WR Grace) being sued by the Port Authority for asbestos contamination inside the World Trade Center before the 9/11/01 disaster

Chatfield's consultancy to Union Carbide (a Dow Chemical Co. subsidiary) whose asbestos products would have been used in the WTC towers, and whose asbestos is similar in composition to that typically found in WTC fallout. UC is defending itself claiming its particular asbestos is safe, and Chatfield has even called the UC asbestos "innocuous" and a "nuisance dust."

The problems with EPA's favoring panelists with other governmental studies on WTC contamination. Documentation that Alan Gerson, a NYC Councilmember, recommended Chatfield and Ilgren to perform the post 9/11 study of two apartments for the Ground Zero Task Force of Elected Officials without proper COI scrutiny, thus rendering invalid EPA's favoritism for those with prior WTC governmental work. This was despite fact Gerson knew of potential COI problems of Chatfield and Ilgren, because Gerson was UC's attorney up until several months before he was elected to the NYC Council. Chatfield and Ilgren were expert witnesses for UC on the same case. Gerson did not alert NYC officials of these potential COI problems either in the early days after 9/11 or to this date, based on my limited inquiry. In past, Gerson worked closely with Union Carbide officials by directing them how to oversee the change of a key death certificate of a Union Carbide employee.

Additional documentation of prejudicial statements by Alison Geyh and Patrick Kinney.

2. EPA Region 1 consultants for asbestos risks in Brookfield, CT public schools

The second COI issue in need of examination by the IG is the consultation by EPA Region 1 of Chatfield for a risk assessment of asbestos that was used in the Brookfield, CT school system. Region 1 apparently circumvented COI procedures in doing so.

Documentation includes a recent 2/10/04 investigation by the Connecticut Attorney General that specifically faults EPA's role in the flawed, biased risk assessment by Region 1/Chatfield/Beard, and the townships rejection of Region 1's unsafe benchmark for asbestos.

3. Peer panels for EPA and ATSDR reassessment of asbestos toxicity

Section U of my 7/4/03 report⁴ brought to the attention of the IG COI issues in two other peer panel participating in both the EPA and ATSDR reassessment of asbestos fiber toxicity. This memorandum supplements the 7/4/03 information with additional documentation of asbestos industry financial ties of the peer panel members.

1.

COI issues - peer panelists for EPA's WTC health risk assessment

EPA published policy on conflicts of interest

Federal Acquisition Regulations (FAR) definitions of COI

The Federal Acquisition Regulations at Section 9.501 define conflicts of interest of governmental contractors as follows:

"...because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage."

EPA guidance on evaluating COI

EPA has issued specific guidance on evaluating and handling post contract award conflict of interest situations.⁵ Specific questions are posed for EPA to inquire of contractors to determine potential conflicts. COI criteria also include EPA evaluations of the sensitivity of the work being performed by the contractor.

EPA ORD Peer Review Handbook requirements

Federal Advisory Committee requirements as described in ORD Peer Review Handbook

The EPA Office of Research and Development has issued specific guidance as well for evaluating experts to review EPA scientific documents. The ORD Peer Review Handbook⁶ states:

2.8 Federal Advisory Committee Act (FACA) Considerations

The Federal Advisory Committee Act, 5 U.S.C. App. 2, imposes certain open meeting (public announcement in the Federal Register), **balanced membership**, and chartering requirements (with the approval of the General Services Administration (GSA)) before the Agency establishes, controls or manages an "advisory committee" for advice or recommendations. Peer review carried out by formal and established (chartered) Federal advisory committees, such as the Science Advisory Board (SAB) or the FIFRA Scientific Advisory Panel (SAP), is always subject to FACA requirements. [p. 49, emphasis added]

As stated in my 7/16/03 memorandum, Chatfield was the only participant with specific expertise on asbestos. There were others, such as the consortium headed by HP

Environmental which also studied asbestos in the interiors of contaminated buildings after 9/11.

Conflicts of Interest (COI) as described in ORD Peer Review Handbook

Independence is freedom from institutional, ideological, or technical bias regarding the issues under review and is necessary for objective, fair, and responsible evaluation of the work product. If a selected reviewer has a particular scientific or technical perspective, it may be desirable to balance the review with peer reviewers with other perspectives. Ideally, peer reviewers should be free of real or perceived conflicts-of-interest or there should be a balancing of interests among peer reviewers. If there are potential conflicts of interest (real or perceived), they should be fully identified to ensure a credible peer review.

The quality of the peer review is dependent on the competence and independence of the reviewers. [p. 22] ...

It is hoped that if the other organization has the work product independently peer reviewed, the peer review will meet the intent of the Agency's Peer Review Policy and EPA's proposed use of the product (i.e., the peer review is basically equivalent to what EPA would do). Agency staff from the appropriate office(s) should examine closely the particulars of the peer review to ensure independence and a conscious effort to incorporate the peer reviewers' comments into the final work product. If there are perceived, or real, conflicts of interest, this may preclude the use of that peer review and, in those instances, another peer review would be needed. [p. 36-7] ...

3.4.6 What Techniques Help Ensure Disclosure and Appropriate Resolution of Conflicts of Interest?

Before finalizing the selection of reviewers, the Peer Review Leader should ascertain whether each potential peer reviewer's involvement in certain activities could pose a conflict of interest (COI) or create the appearance that the peer reviewer lacks impartiality. One way of identifying conflicts is to ask potential reviewers about current and prior work, and prior clients that might create conflicts or the appearance of a lack of impartiality in carrying out peer review activities. This information obtained by the Peer Review Leader becomes part of the peer review record. When the peer review process is being conducted by a contractor, the requirement for addressing peer reviewers' possible conflicts of interest should be highlighted in the Statement of Work of the work ordering instrument (e.g., Work Assignment, Delivery Order, Task Order, etc.) and is a matter that is bound by contractual clauses with the Contracting Officer as the final Decision Maker in contracting matters.

Care must be taken to reduce actual or potential organizational or personal conflicts of interest between the reviewers and the work product under review. Remember, each potential conflict situation is unique and must be treated on a case-by-case basis. The following are considerations that should be addressed in evaluating COI:

- a) attention to the employment, financial, and professional affiliations of the participants;
- b) exploring directly the issue with each of the participants before the review process takes place;
- c) disclosing publicly at the beginning of meetings any previous involvement with the issue; ...

e) in the case of non-Federal peer reviewers, provide them a copy of the peer review COI inquiry (see Appendix F - Useful Forms). This form is sent to each prospective peer reviewer by the Peer Review Leader (or contractor, in the case of contractor-run reviews) to advise them of the need to address COI issues prior to the actual review taking place. A follow-up contact with the Peer Review Leader (or contractor, in the case of contractor-run reviews) is then made to discuss any relevant issues. The Peer Review Leader then documents this effort in the peer review record; this includes a summary provided by the contractor documenting their inquiries and efforts.

The Peer Review Leader needs to ensure that the peer review COI inquiry (see Appendix F - Useful Forms) took place and this appears in the peer review record.

...

Of course, conflicts do not necessarily arise merely because a peer reviewer knows something about the subject matter. In fact, experts with a stake in the outcome – and therefore a potential conflict – may be some of the most knowledgeable and up-to-date experts because they have concrete reasons to maintain their expertise. Such experts could be used provided the potential conflicts of interest are disclosed and the peer review panel or group being used as a whole is balanced. In some cases, however, the conflict may be so direct and substantial as to rule out a particular expert, for instance, a potential peer reviewer who may have a client or employer with a direct financial stake in the particular specific party matter under review ... [pp. 60-1]

Versar reverses its own COI requirements for WTC peer review panel consultants

Versar is the contractor responsible for finding and hiring the consultants who would serve on the expert peer review panel for the EPA ORD NCEA health assessment. Versar has very specific COI mitigation and investigation requirements as part of its contract language.

Evidentiary basis for concluding that Versar ignored and circumvented EPA COI requirements in selection of the peer panel

We know that Versar did not follow the EPA required COI mitigation and investigation procedures because there is physical documentation of this fact obtained through a Freedom of Information Act (FOIA) request.

Ms. Kathleen Roseland-Hulce, a concerned parent in Brookfield, CT where the schools had an asbestos contamination problem and Chatfield was involved as a consultant, submitted a 7/21/03 FOIA to EPA⁷ requesting the following:

I am requesting documents specified below which relate to the selection and screening by EPA and/or Versar, Inc. of members of a peer review panel for a draft EPA document titled: "Exposure and Human Health Evaluation of Airborne Pollution from the World Trade Center Disaster," ...

1. The resumes, biographies, curricula vitae, past work history, conflict of interest information, disclaimers, or certifications submitted by all expert panelists to either EPA or its contracting firm Versar, Inc.

2. Any candidate lists for the peer panel developed by EPA and/or supplied by EPA to Versar or any direction the part of EPA to Versar for members of this peer panel.
3. The criteria either EPA and/or Versar used to select panel members.
4. Any specific questions or other inquires by EPA and/or Versar provided to panel members for their response regarding work histories, conflicts of interest, or associations with potential responsible parties.
5. Any conflict of interest requirements developed by contractor Versar for selection of panel members.

EPA did supply many relevant documents pursuant to this FOIA request. There was no statement in the cover letter from EPA to Ms. Hulce listing any documents that were being withheld. Since under the law, federal agencies must supply all relevant documents, or list and provide a rationale for withholding certain documents, we may assume that the documents provided to Ms. Hulce contain the full record of all of Versar's COI mitigation and investigation into potential peer panelists.

Versar contractual COI investigation and mitigation requirements

The following language is contained in the Versar contractual Conflict of Interest Plan, which requires Versar to consider certain factors in evaluating any COI for either itself or its subcontractors. The members of the peer review panel for the EPA ORD NCEA human health assessment document for the WTC disaster are considered to be subcontractors to Versar. These Versar documents were obtained by the Hulce FOIA discussed above.

4.0 Searching and Identifying Conflict of Interest ...

4.2. The procedures for conducting a conflict of interest search are as follows:

- Pertinent information (as defined below) regarding each task will be input to Versar's conflict of interest data base as described in paragraph 4.4. If analysis of the data indicates actual or potential conflicts, the information will be provided to the COI officer for further review within 24 hours. The search will be documented by the Program Manager completing the Attachment 1 form and retaining it in the project files.
- Subcontractors and consultants must perform similar screening for conflicts of interest and must document the screening and provide it to Versar's Program manager. Subcontractors and consultants must report information on actual or potential conflicts to Versar's COI Officer for further review within 24 hours.
- For Superfund work, the search will include, as a minimum, information on the site where work is or has been performed, type of work performed (e.g., cleanup, emergency response, remedial design, technical/policy support), former and present clients at the site where work is or has been performed (including name and address), and performance period of the work.
- For non-Superfund work, the search will include, as a minimum, type of work performed (e.g., regulatory assistance, permit reviews), former and present clients for that type of work, and performance period of the work. The key element of this search is to identify the nature and type of work that Versar, including its subsidiaries and subcontractors and consultants, is currently or has been involved which may

relate to work that it is proposing on, and to determine whether the proposed work can be performed without resulting in an unfair competitive advantage or without impairing Versar's objectivity. ...

4.3. A cross check of the conflict of interest search will occur by searching according to type of work, site location, client name and performance period. A review of the cross check will be performed by an individual at a level above the Program manager or by the COI Officer. This individual will document the cross check by signing the Attachment 1 form. ...

5.1. All personnel selected for a particular contract or work assignment from EPA must certify on the Attachment 3 form that they have no personal conflicts or interest or they must list all actual or potential conflicts. ...

5.5 Subcontractor personnel must provide certifications identical to that described in this Section 5.0 to the program managers in their respective organizations.

Versar should undoubtedly be applying its COI requirements for Superfund work, as described above. This is because the WTC cleanup and evaluation, including the EPA ORD NCEA health assessment, is pursuant to the National Contingency Plan (NCP), an act enfolded into Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The CERCLA/NCP addresses both Superfund, pre-Superfund, and even cleanups never having any potential to receive funding through the Superfund set-aside funds.

EPA itself uses the terms "Superfund" and "CERCLA" synonymously. On the EPA web site, there are 66 instances where the following phrase occurs: "*Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), commonly known as Superfund*". There are 699 instances on the EPA web site where the following phrase occurs: "*CERCLA, or Superfund*". See my 7/4/03 report to the EPA Inspector General, Section V, for documentation that the WTC cleanup is pursuant to CERCLA and the NCP.⁸

Thus, Versar should have been carefully accounting for past and present works at other CERCLA remediation sites, along with all the other stated COI criteria.

Versar's statements to potential peer review panelists both conflicted with COI requirements and did not convey full scope of COI requirements

In sharp contrast to the COI requirements in the above cited contract document, Versar provided entirely different COI criteria to the potential peer review panelists. The panelists were never given the real criteria for COI, as spelled above in the Versar contractual Conflict of Interest Plan.

Instead, Versar told the potential panelists that past or present work at the WTC was an advantage, not a disadvantage. This is very problematic, since the prior WTC work could be funded by a party with a vested financial in demonstrating that there was no contamination problem.

The panelists also were not asked whether they had taken opposite positions to EPA for similar scientific issues on behalf of defendants where EPA was taking action, as they should have.

The documents from the Hulce FOIA demonstrate that the following was the only descriptions of potential COI that Versar described to the potential panelists. This comes from a 3-page talking points document for what Versar personnel were supposed to say in telephone conversations:

External peer panel review of NCEA report ... [title of Versar talking points document]

Good morning/afternoon, my name is _____. I work for Versar Inc., an environmental consulting firm ... Versar is conducting an external peer panel review of the NCEA report ... I am calling with an invitation for you to join Versar as a 'proposed peer reviewer' ...

[sections on time frame, duties, information about NCEA document, pay] ...

CONFLICT OF INTEREST

1. Before participation you need to confirm that there is no conflict of interest.

Conflict of interest is defined as follow: All experts must be free of vested interest in the outcome of such a review and shall have no conflict of interest with EPA on pending scientific issues pertaining to this project. Generally, a conflict of interest arises when a person is affect by his/her private interests, when he/she or his/her associates would derive benefit from incorporation of their point of view in an EPA product, or when their professional standing and status or the significance of their principal area of work might be affected by the outcome of the peer review.

2. Are you doing other work at the World Trade Center currently? For whom? Other work at the WTC is not necessarily a COI, we just need to be aware and disclose this information. In fact we see it as a potential asset.

3. Are you receiving funding from EPA currently? For what types of projects? Anything else to disclose that might be related to this review?

4. There is a conflict of interest and a confidentiality form that you will be required to sign.

[end of COI talking points section]

Versar let the panelists themselves decide whether or not they had any COI problems. No more information was given to them.

The evidence that the panelists themselves were allowed to decide whether they had any COI problems can be surmised from the results of the Hulce FOIA. No documents were supplied to Hulce other than very brief self-certifications from the panelists. No documents were provided showing that Versar made lists of past and current work of the panelists and examined whether they concerned the same subject matter as the EPA NCEA document under review, etc. No other documents were supplied showing that Versar supplied any other information on COI to the potential panelists.

Versar failed to investigate and/or address potential conflicts of Chatfield

Although Chatfield's COI certification to Versar denied any real or potential conflicts of interest, there was ample information in Chatfield's curriculum vitae to raise concern and warrant investigation by both Versar and EPA.

Furthermore, Versar accepted a verbal claim by Chatfield that his concurrent work for WR Grace did not constitute a COI problem, and performed no further inquiry.

Chatfield's 7/3/03 COI certification failed to list expert consultancy services for asbestos defendants such as WR Grace, Port Authority, or any other potential/actual conflicts

From the Hulce FOIA documents, Chatfield certified no conflicts of interest to EPA on 7/3/03. The conflict of interest certification only stated the following, with no attached list:

The individuals signing below certify that, to the best of their knowledge and belief, they have no personal conflicts of interest with regard to the subject work assignment or they have attached description of any actual or potential conflicts. They also certify that they will report any such conflicts that occur or are discovered at a later date to the Versar Conflict of Interest Officer and that they have read and understand the contract conflict of interest requirements and Versar's conflict of interest management plan and procedures. [There were no attachment from Chatfield listing and real or potential conflicts]

Versar accepted Chatfield claims of no conflicts for work for WR Grace

Versar did speak to Chatfield telephonically, however. There were notes in the record to this effect. Versar appears to have accepted Chatfield's claim that his consultancy for WR Grace, being sued by EPA and DOL for Libby, MT Superfund site, did not constitute a conflict of interest. The following statement was made by Versar in its "Summary of Discussions (or Email Response) with Potential WTC Peer Reviewers on COI" (obtained by the Hulce FOIA):

COI Discussions with Eric Chatfield 4/30/03 (with David Bottimore, Versar Inc.)

I spoke with Eric Chatfield on potentially having him on the peer review panel for EPA's WTC document. He was interested. Discussed the scope of the effort, possible timeline for review and meeting, as well as potential COI issues. He disclosed that he had done limited dust/asbestos sampling in homes near the WTC immediately following the tragedy, but has not been involved since. As an aside, he did note that one person at EPA has been attacking his reputation, on issues related to Libby and other asbestos-related cases, but that they are completely unfounded. He has no COI issues related to WTC.

In the conference call of 2/4/03 between myself and representatives of the IG office (Chris Dunlap, Jim Hatfield, Rick Beusse), I indicated that it was probably me to whom Chatfield was referring, but that I had never made any allegations or statements about Chatfield's work for WR Grace on the Libby site before 4/30/03, but instead had criticized his involvement and the use of his outdated data from a 1983 by the Brookfield, CT school system. See section of this memo.

Versar did not investigate Chatfield's work for defendant companies sued by the Port Authority for pre-9/11 asbestos problem at World Trade Towers

In addition, even though Chatfield's CV indicated it, there was no evidence supplied in the FOIA response that Versar investigated the fact that Chatfield had served as an expert consultant for a company being sued by the Port Authority prior to the 9/11 disaster. The Port Authority owned the World Trade Center towers. Chatfield did report his work for defendants in the Port Authority suit, but did not elaborate on it.

There was no evidence that Versar looked into this pre-9/11 WTC work at all or made any determination regarding its impact on COI issues in the materials obtained by the Hulce FOIA.

A later section explains the relevance of work for the defendants in the suit by the Port Authority to the outcome of any findings and conclusions as to the contamination and risks caused by collapse of the WTC.

Versar failed to investigate other asbestos-related work by Chatfield for asbestos industry defendants

Chatfield's many industrial asbestos defendant clients should have alerted Versar to a potential problem. It appears that Versar undertook no investigation and/or justification/mitigation of this fact.

In particular, Versar failed to investigate fact that Chatfield was up until about October, 2003 an expert consultant for Union Carbide, an asbestos defendant company which is claiming that chrysotile asbestos, similar to that found in WTC fallout, is harmless. If it had investigated, documentation should have been supplied by EPA in response to the Hulce FOIA. There was no such documentation in the FOIA materials provided to Hulce.

Versar failed to investigate prejudicial statements by Chatfield

Although Chatfield's test data for asbestos is not in question in his study of two apartments near Ground Zero after the WTC collapse, his statements and recommendations about cleanup and the hazards of WTC fallout are in question. These statements are prejudicial and not in accordance with the recommendations EPA has made about the cleanup. These statements alone might be considered sufficient for believing Chatfield could not perform an unbiased review of the EPA ORD NCEA human health risk assessment.

Later sections in this report address the prejudicial statements of Chatfield, and the fact that normal COI scrutiny was waived in his selection by the Ground Zero Task Force to perform the post-9/11 study of the two apartments.

Chatfield's curriculum vitae, as submitted to EPA, contains a listing of many publications. In particular, there are three studies co-authored by Chatfield that state that short fiber chrysotile asbestos is "innocuous" and should be treated like "nuisance dust." See a later section of this memorandum for more details.

Chatfield's failure to disclose concurrent Superfund work against EPA for WR Grace at another asbestos residential contamination site in Libby, MT

Chatfield is a paid expert witness for WR Grace & Co., the firm responsible for the asbestos contamination in homes in Libby, Montana, the Superfund site. Litigation has been brought against WR Grace by the U.S. Department of Justice.

A curriculum vitae of Chatfield was submitted to EPA to support his participation in the peer review of EPA's ORD NCEA human health assessment of the WTC. Ms. Kathleen Rossland-Hulce obtained this CV from EPA through her 7/28/03 FOIA request.⁹

Chatfield's CV stated that it was current as of 8/20/02. However, Chatfield prepared an "Expert Report" on behalf of WR Grace for its Libby defense, dated 8/30/02, which mentioned that he had performed work prior to 8/20/02 for WR Grace. Chatfield's expert report for WR Grace was also obtained by Ms. Hulce through a 1/28/03 FOIA request to EPA.¹⁰

In his 8/30/02 expert report,¹¹ Chatfield stated the following:

I have reviewed the action memoranda for the Libby site, the administrative record for the period May 23, 2000 to June 4, 2002, the expert reports of Elizabeth L. Andersen, Ph.D., Richard J. Lee, Ph.D., Gregory P. Meeker, James E. Lockey, MD, MS and James R. Millette, Ph.D. I have also reviewed the ATSDR Health Consultation dated December 12, 2000, a Report to the Community dated August 23, 2001, and a report entitled "Health Risks from Exposure to the Community dated August 23, 2001, and a report entitled "Health Risks from Exposures to Zonolite Home Insulation: Critical Evaluation of the Scientific Evidence Available from the ATSDR Studies in Libby, Montana.

In addition, I have been provide with one compact disk labeled "Meeker", four compact disks labeled U.S. v. Grace, Volpe Center, Disks 4, 5, 6, and 7, received on August 13, 2002, and one compact disk labeled "Greg Meeker, USGS Microbeam Lab, 8/22,2." In view of the extremely short time-frame available, I have been able to only partially review the contents of these compact disks. [Emphasis added.]

Based on my review of the above documentation, I have determined that there are significant deficiencies in the underlying analytical data that form the basis for the risk assessments conducted by EPA ...

The hourly consulting rate for my services is US\$180 per hour, including deposition and trial testimony, and travel time ...

This expert report establishes that Chatfield was an expert witness for WR Grace at least by 8/13/02, one week prior to Chatfield's 8/20/02 CV omitted revealing any work for WR Grace.

From the statements quoted above, Chatfield was probably an expert consultant for WR Grace long before 8/13/02, because he stated that he had reviewed a large number of other documents on their behalf, and had not had a chance to review the additional materials which were only recently received on 8/13/02.

Chatfield's claim that work for WR Grace insignificant and in past

On 7/14/03, at the public peer panel meeting in NYC for the EPA ORD NCEA report, Chatfield is reported as telling the participants that he did not think it was important to mention his work for Grace in his CV, because his work for Grace was minimal and/or in the past. Concerned citizens and environmental activists attending the 7/14/03 public meeting of EPA's peer review panel in NYC had raised questions about Chatfield's COI and WR Grace from the floor as well as in written submissions.¹²

Chatfield's work for Grace is apparently not minimal or in the past. Providing an "expert report" to a defendant in active litigation is just one step in the services provided by an expert witness. In order for the expert report to be of any use to WR Grace, the expert also must make himself available to the Dept. of Justice for deposition. Otherwise, the expert report would not be admissible as evidence. The expert witness would also need to be available to testify at trial.

In fact, Chatfield himself mentions his intention to provide continuing and future services for WR Grace in his 8/3/02 expert report itself. Chatfield states:

The hourly consulting rate for my services is US\$180 per hour, including deposition and trial testimony, and travel time, payable to Chatfield Technical Consulting Limited.

Chatfield's opposition to EPA conclusions on similar issues on behalf of WR Grace in litigation brought by EPA

In his 8/30/02 expert report, Chatfield strongly opposed EPA's analytical evaluation of risks in homes in Libby. His expert report reads in part as follows:

I have reviewed the action memoranda for the Libby site, the administrative record for the period may 23, 2000 to June 4, 2002, the expert reports . . . I have also reviewed the ATSDR Health Consultation dated December 12, 2000, a Report to the Community dated August 23, 2001, and a report entitled "Health Risks from Exposure to Zonolite Home Insulation: Critical Evaluation of the Scientific Evidence Available from the ATSDR Studies in Libby, Montana. . . .

I have determined that there are significant deficiencies in the underlying analytical data that form the basis for the risk assessments conducted by EPA. I have also determined that some analytical methods have not been used in accordance with the specifications of the methods, and that some of the analytical methods used are not capable of providing a reliable foundation for the decisions being made. . . . [Report No. 02C029, Expert Report of Eric J. Chatfield, Ph.D., in the matter of: United States v. W.R. Grace & Co., et al., Civil Action No. 01-72-M-DWM (D.Mont.), 8/30/02]

This also, according to the Versar and EPA criteria, are grounds for excluding him from the peer panel.

WR Grace's interest in outcome of EPA ORD NCEA document on WTC health hazards

Chatfield's business connection with WR Grace is extremely relevant to the WTC investigation. This is because Grace has been using for its legal defense comparisons

between EPA's stringent cleanup standards for homes in Libby compared to the lenient standards EPA has imposed for the WTC cleanup. Grace is also using in its defense the fact that homes in Libby are less contaminated with asbestos than buildings in Manhattan after the WTC collapse.

Thus, Grace has a vested interest in having EPA conclude (by way of the EPA ORD NCEA human health assessment document) that citizens in NYC are not at risk from asbestos exposures. They can then directly use these EPA conclusions to escape responsibility for the contamination in Libby.

The following are excerpts from two letters from Grace to EPA which prove this point. The first letter attempts to gain more lenient cleanup standards for Libby based on the fact that EPA is imposing less stringent asbestos air and dust standards in New York City after the WTC collapse:

The purpose of this letter is to continue Grace's dialogue with EPA regarding Zonolite Attic Insulation ("ZAI"), a home insulation product consisting of expanded vermiculite. For your background, ZAI has been insulating homes for over 60 years and there is no credible reason to believe that ZAI has ever caused an asbestos-related disease in anyone who has used it in his/her home. Nevertheless, EPA Region 8 is requesting that EPA declare, for the first time ever, that a "public health emergency" exists at a (proposed) Superfund site. . . .

Contrasted to Region 8's disregard of established norms, EPA's pronouncements and activities regarding the World Trade Center collapse reaffirm those norms. Thus, EPA's website reiterates that:

- EPA is using the 1% definition of an asbestos-containing material in evaluating dust and bulk samples.
- Air samples are the accurate measure of actual exposure potential, whereas the presence of asbestos in dust is not necessarily a significant health hazard.
- EPA uses the "extremely stringent" standard under AHERA of 70 structures/sq. mm. to evaluate the risk from asbestos in the outdoor and indoor air. That standard was expressly chosen because it is the most stringent and protective, and is based on assumptions of long-term exposure.
- Asbestos exposure becomes a health concern when high concentrations of asbestos fibers are inhaled over a long period of time. The fact that a small percentage of samples exceeded the AHERA standard was not considered to be evidence of a significant health risk.

We believe that sound science dictates that the same peer reviewed methodologies for assessing risks at the WTC should be applied across the board, including in Libby, Montana. . . . [Emphasis in original] [Letter to Christine Todd Whitman, Administrator, EPA, from William M. Corcoran, Vice President, W. R. Grace & Co., dated 4/10/02]

In the second letter, WR Grace compares asbestos contamination levels in Libby to those in NYC after the WTC collapse. WR Grace states that residences in Manhattan are more contaminated than in Libby (which is true). This is also offered as a rationale for not

cleaning up Libby to the more stringent standards imposed by Region 8, since the cleanup in Manhattan is rudimentary and slipshod in comparison to that being required for Libby.

We appreciate the opportunity you gave us on January 31 to present Grace's view of the data from Libby, Montana that EPA is using to guide its decision regarding removal of Zonolite Attic Insulation from homes in that community.

I would like to summarize several of the points that were made in the meeting. . . .

Based on the data we have seen, there are very low levels of asbestos in surface dust in homes in Libby, Montana. There is only chrysotile found on windowsills, which is a key collection point. In all surfaces in Libby, chrysotile fibers exceed amphibole fibers by 3X to 30X. In fact, asbestos concentrations in dust in Libby homes is significantly lower than that found in New York City before 9/11, is far below that found after 9/11, and is significantly lower than the concentrations that EPA found in studies of carpets, ceilings, and lights. . . . [Letter to Michael Shapiro, Principal Deputy Assistant Administrator, Office of Solid Waste and Emergency Response, EPA, from William M. Corcoran, Vice President, W. R. Grace & Co., dated 2/6/02]

Chatfield work as expert witness for defendants (including WR Grace) sued prior to 9/11/01 by the Port Authority for faulty asbestos insulation inside WTC towers

In 1997, Chatfield was an expert for defendants being sued by the Port Authority of New York and New Jersey.¹³ The Port Authority was contending that faulty asbestos fireproofing insulation was contaminating office spaces in the World Trade Towers, as well as in airports.

This expert work constitutes a clear conflict of interest for Chatfield serving on the EPA peer panel. This is because there would be a vested interest for these defendants for EPA to find there were no asbestos hazards from WTC fallout.

WR Grace was one of the defendants in this case brought by the Port Authority. Chatfield is still an expert witness for this company.

One of the defendants was U.S. Minerals, for whom Chatfield worked directly. Chatfield's CV shows that he served as an expert for U.S. minerals for two different cases. From 1990 to 1997, Chatfield's CV lists about 24 occasions of serving as an expert witness for U.S. Minerals, either during depositions or trial testimony.

Another defendant in the Port Authority suit was Armstrong World Industries. Chatfield's CV shows he served as an expert witness for this defendant in another suit.¹⁴

Another defendant in the Port Authority suit was Allied Signal. Chatfield has also provided expert witness services to this company as well, according to his CV.¹⁵

Statements in Chatfield deposition, Port Authority v. Allied Corporation (individually and as a subsidiary of Allied-Signal, Inc.); Armstrong World Industries; Tishman Realty and Construction Co., Inc.; U.S. Minerals and Products Co.; W.R. Grace and Co.; and GAF.

In his 1/15/97 Port Authority deposition, Chatfield attacks the credibility of tests done at the World Trade Center prior to 9/11/01 for faulty asbestos insulation. Asbestos fireproofing that had been sprayed onto steel beams, and had come off over the years and settled onto the tops of the ceiling tiles.¹⁶ See the endnotes for extended excerpts from his testimony.

One claim made by Chatfield is as follows: In an experiment on behalf of the Port Authority, clean plastic sheeting was first spread out in the room under the ceiling. Then, a ceiling tile was lifted out, which would simulate normal building maintenance operations. Then, after a few hours, the plastic sheet was tested to see if it had any asbestos fibers deposited on it as a result of the lifting of the ceiling tile. Asbestos fibers were found on the plastic sheet.

Chatfield claimed that test by the Port Authority was invalid. He claimed that the small diameter fibers of asbestos on the plastic sheet could not have come from the ceiling tile, because it would have taken up to 72 hours for these small fiber asbestos to settle out onto the plastic sheet!

Chatfield's consultancy for Union Carbide, and prejudicial statements saying Union Carbide's asbestos, similar to that in WTC fallout, is "innocuous" and only a "nuisance dust"

Chatfield consultancy to another Superfund site, the Coalinga mine in California, formerly owned by Union Carbide

As stated before, the WTC cleanup is being conducted under EPA's authority under CERCLA, the Superfund umbrella statute, in particular the NCP. Chatfield was an expert witness for Union Carbide from about 1994 or earlier until October, 2003. Thus, Chatfield was an expert witness for Union Carbide during his early tenure on the peer panel for the EPA ORD NCEA WTC risk assessment.

Chatfield's work at this other Superfund site on behalf of the responsible party addressed the same scientific issues and the exact same commercial products as in the EPA ORD NCEA document is also potential grounds for his exclusion from the EPA peer review panel.

Union Carbide's financial interest in outcome of WTC fallout evaluation by EPA

Union Carbide, a Dow Chemical subsidiary, was being sued for asbestos exposures from a mine in California previously owned by Union Carbide. This mine, the Coalinga Asbestos Mine in Coalinga, California was on the EPA National Priorities (Superfund) list, but after remediation has now been deleted from the NPL.¹⁷

Union Carbide's Calidria® brand of asbestos from this Coalinga mine is in the chrysotile asbestos category. It is used in many products such as vinyl floor tiles, ceiling tile, paints,

sealants and coatings, paper products, Bakelite, and dry wall joint compound. All these products would have been present in the World Trade Towers. Most believe that the bulk of the asbestos in WTC fallout came from the pulverization of the asbestos-vinyl floor tiles.

Union Carbide was defending itself contending that its Calidria® brand of chrysotile asbestos was different from other asbestos, and did not cause either asbestosis or cancer.

Thus, if EPA concluded that exposures to the particular type of asbestos in WTC dust were not as harmful as other asbestos exposures, Union Carbide would gain a vindication from EPA that Union Carbide's asbestos was not hazardous as well.

Chatfield's prejudicial statements on Union Carbide Calidria® asbestos, present in WTC fallout

Chatfield's published papers claiming Union Carbide asbestos innocuous and only a nuisance dust

There are three papers co-authored by Chatfield and Edward Ilgren, MD, which contain prejudicial statements about the hazards of Union Carbide's Calidria® asbestos. In these papers,¹⁸ Chatfield claims that chrysotile asbestos alone, without any amphibole asbestos contamination, does not cause asbestos-related cancers or even asbestosis. He maintains that other types of asbestos, such as the amphiboles, must be present in the chrysotile as contaminants in order for the asbestos to exert any carcinogenic effect.

See the excerpt below of the first paper by Chatfield:¹⁹

Controversy continues to surround the biological activity of short fibre chrysotile. This is largely due to a lack of studies in which there has been 'pure exposure' to this material. ... This report presents the morphological and morph metric findings of a lifetime inhalation study of F344 rats exposed to these types of chrysotile. The first, from Coalinga, Calif., is comprised of fibres that are almost all less than 5 um in length ... The other two ... are both Canadian long fibre preparations ... Exposed animals displayed no fibrosis following exposure to Coalinga chrysotile but showed fibrogenic responses with both Canadian fibres. ...

Taken together, the findings described in all these reports support the contention that short-fibred chrysotile is innocuous and should be regarded and regulated as nuisance dust. ... [Emphasis added.]

These papers by Chatfield demonstrate bias and prejudicial statements, and are also grounds for excluding him from the EPA ORD NCEA peer review panel, since he would be prejudiced against any conclusions by EPA that asbestos from the WTC collapse, containing primarily chrysotile asbestos, presented a hazard.

It would be difficult to believe that Chatfield could render any opinion stating that there were health risks from the asbestos from the WTC collapse as an EPA peer review panelist, because it would contradict what Chatfield had already said and was saying on behalf of Union Carbide.

An excellent published discussion of the credibility problems of these reports by Chatfield and Ilgren has been published.²⁰

Chatfield's statements at another EPA workshop on Union Carbide asbestos

In addition to his published papers on Union Carbides asbestos, Chatfield also made statements as an observer at the 5/30/03 EPA peer consultation workshop to reassess the risks of asbestos fibers (not necessarily related to the WTC).²¹ These statements as well claimed that Union Carbide asbestos was unique and should be treated differently by EPA as to health and safety:

I want to finish up with a few comments about chrysotile, and in particular, the Coalinga calidria chrysotile, which is the trade name for it. The mine is about 100 miles south of here. ... This chrysotile is quite unique, and it is a different geological origin from the more traditional types. Unlike other chrysotiles, when this is dispersed in air, the fiber bundles are much thicker as the lengths increase. So, as you pick a long body, it is generally thick, and it is not very long before you get to a non-respirable diameter. That doesn't happen with the other kinds of chrysotile; they all stay thin. So, much of the material from Coalinga, in fact, ends up being non-respirable. ...

Chatfield recommended to perform post 9/11 apartment study by NYC official without COI scrutiny, voiding EPA stated preference for scientists who had performed governmental WTC work

The EPA expressed advantage for peer panelists to have performed other governmental WTC investigations is negated if the scientists were improperly selected for this other governmental WTC work.

Chatfield avoided COI scrutiny for his study of two apartments near Ground Zero for the Ground Zero Task Force of Elected Officials. There was no time for a proper COI investigation, and officials did not have full knowledge of Chatfield's other clients, or his relationship to the person who recommended him (Alan Gerson). Everything was done quickly and in an emergency mode after 9/11. Chatfield actually took the samples from the two apartments in NYC on September 18, just a week after the disaster.

Thus, the fact that Chatfield performed his post 9/11 WTC study for a quasi governmental body does not in any way imply that he underwent a proper COI vetting process or normal scrutiny before his selection.

As seen below, Chatfield's conclusions, along with the conclusion of his collaborator in the GZTF study of two apartments, reflects the interests of their many asbestos-related defendant industry clients.

Statements by EPA and Versar that 9/11 WTC work advantageous

There are several instances where EPA and Versar state that work on environmental matters related to the collapse of the WTC was an advantage. These come from documents supplied by EPA in response to the Hulce FOIA.

In a talking points document, the script which Versar used when approaching potential panelists, the following was said:

External peer panel review of NCEA report ... [title of Versar talking points document]

Good morning/afternoon, my name is _____, I work for Versar Inc., an environmental consulting firm ... Versar is conducting an external peer panel review of the NCEA report ... I am calling with an invitation for you to join Versar as a 'proposed peer reviewer' ...

CONFLICT OF INTEREST ...

2. Are you doing other work at the World Trade Center currently? For whom? Other work at the WTC is not necessarily a COI, we just need to be aware and disclose this information. In fact we see it as a potential asset. [Emphasis added.]

In a Versar document, "Summary of Discussions (or Email Responses) with Potential WTC Peer Reviewers on COI," work on the WTC was also described as advantageous to being a peer reviewer:

[questions to potential peer reviewers] Are you doing other work at the World Trade Center currently? For whom? Other work at the WTC is not necessarily a COI, we just need to be aware and disclose this information. In fact we see it as a potential asset. [Emphasis added.]

In a 5/15/03 email to Versar from Matt Lorber at EPA, "prior work" on WTC exposures was listed as an advantage:

They are trying to put together a balance panel to cover critical areas of the assessment. Thus far they have obtained some top notch individual ... and all have direct experience in the WTC setting. ...

History of Alan Gerson's recommendation of Chatfield and Ilgren for the post 9/11 apartment study

Chatfield and E. B. Ilgren, MD were recommended to perform the indoor apartment contamination study for the GZTF by Alan Gerson.²² The recommendation was made directly to Madeline Wils, who was Chair of NYC Community Board 1.

Gerson was soon to be elected to be a NYC Council member on September 25, 2001 (the 9/11/01 elections were delayed until this date). Gerson had previously served as Chair of Community Board 2 from July 1997-July 1999. After his election on 9/25/01, Gerson quickly became involved in health issues related to the WTC collapse. He is listed as a member of the Ground Zero Task Force on Chatfield's post 9/11 apartment study, with the title of "NYC Councilmember (elect)".

Gerson had worked for the law firm Kelley Drye & Warren LLP for 18 years, including during his tenure as Community Board 2 Chair. He worked for this firm up until at least "several to six months before" 9/11/01, according to Ilgren's testimony below. This law firm represents defendant corporations, not victims, in product liability and toxic tort cases.²³

Gerson did not just work for a law firm defending asbestos-related defendant corporations, he himself worked on these asbestos-defense cases.

None of the elected officials I spoke with, including Wils, were aware that Gerson defended companies being sued by asbestos victims at his law firm, neither at the time he recommended Chatfield and Ilgren to the Ground Zero Task Force, nor in the years following 9/11.

Gerson knew of COI/credibility problems of Chatfield and Ilgren when recommending them

It is questionable that Alan Gerson should have recommended Chatfield and Ilgren to the GZTF since Gerson was aware that Chatfield and Ilgren were currently expert consultants for asbestos-defendant companies, particularly Union Carbide. As an attorney, Gerson was defending Union Carbide. Both Chatfield and Ilgren were experts for Union Carbide on the same case. Gerson hired Ilgren, and Ilgren reported to Gerson on this case.

Union Carbide, now a subsidiary of Dow Chemical, manufactured its asbestos under the brand name is Calidria®. The Union Carbide asbestos is used in many products such as vinyl floor tiles, ceiling tile, paints, sealants and coatings, paper products, Bakelite, and dry wall joint compound. All these products would have been present in the World Trade Towers. Union Carbide was defending itself contending that the chrysotile asbestos in its Calidria® brand was different from other asbestos. Most believe that the bulk of the asbestos in WTC fallout came from the pulverization of the asbestos-vinyl floor tiles.

Chatfield explicitly that the Union Carbide asbestos was "innocuous" and should be treated like a "nuisance dust." Gerson was present when Ilgren testified about this statement in the paper he co-authored with Chatfield.

This should have raised questions in Gerson's mind about Chatfield's and Ilgren's abilities to conduct a study to represent the interests of exposed NYC citizens, since their results could contradict the financial interests of their asbestos-defendant clients.

Were Chatfield and Ilgren going to say that there was a problem with the exposures of the NYC victims of 9/11, when they were currently saying just the opposite as they were saying as experts for Union Carbide in the ongoing litigation?

Both Chatfield and Ilgren were listed as expert witnesses for Union Carbide at time they performed post 9/11 apartment study for GZTF

Chatfield was listed as an expert witness on behalf of Union Carbide from 1994 until October, 2003. Gerson was an attorney for Union Carbide on this same case up until a few months before his election to the NYC Council. Thus, Gerson knew of Chatfield's conflict of interest problem when he recommended Chatfield to the GZTF.

On 9/11/02, a year after the disaster, Ilgren testified regarding how he became involved in testing apartments near Ground Zero after 9/11. In this testimony, Ilgren also summarizes his past relationship with Gerson. Ilgren states that in 1984, he was hired by Gerson to be an

expert consultant on behalf of Union Carbide, and reported directly to Alan Gerson until about 6 months before 9/11/01.

This testimony was provided in a trial wherein Ilgren was serving as an expert witness on behalf of Union Carbide Corporation.²⁴

CROSS OF EDWARD ILGREN IN CONWED V. UNION CARBIDE

Q. And incidentally you told us this morning that you played some role with respect to the 9-11 situation. In fact you were a consultant, who was one of many who were analyzing whether the asbestos released with the collapse of the World Trade Centers might pose health hazards in New York City, correct.

A. That is absolutely correct. It's absolutely correct in the following way --

THE COURT: No, no, if it's wrong it's wrong.

THE WITNESS: I believe it's incorrect.

THE COURT: All right.

MR. WILL: Well --

BY MR. BROWNSON:

Q. Well, you told us that you played some role with the fire fighters in determining whether they had any health problems resulting from the situation of 9-11, just talking about the residents with respect to --

A. Didn't you say the testing task force?

Q. I'm asking you about the fire fighters?

A. The fire fighters? I'm sorry, what's your question?

Q. Did you have some role in determining whether or not the fire fighters had any health problems as a result of the collapse of the World Trade Center on 9-11?

A. Yes.

Q. And I think you told us that you became involved with that for some association with a Congressman named Nadler?

A. That was the residents. The Fire Fighters Vice President of the Uniform Fire Fighters for the City of New York, McCrouter, and others sent me medical records to review of a number of these fire fighters who had incurred -- who are risking exposure, had scarification of the lungs after four or five months and were disabled. And in fact they wanted to have those people properly followed up long-term within a Center of Excellence in New York City, which they were not having done, that's why they came to me because I had written in the paper that they were at risk and no one else had so emphatically and clearly stated what the risks were, why they were at risk and they wanted to come and use the information to try to get those people seen.

Q. So the fire fighters went to you because you went to them in the first place?

A. No, the first fire fighters went to me because -- I mean, they read the paper and they decided they wanted to understand this more fully, they were getting sick and what was wrong with them.

Q. And you got involved in the first place with his Congressman Nadler?

A. That is correct.

Q. And my question to you, sir, is that that contact through Congressman Nadler may have something to do with your situation with Mr. Alan Gerson (ph.)?

A. Absolutely.

Q. And Mr. Alan Gerson is a lawyer who for many years represented Union Carbide in asbestos cases.

A. Yes, the lawyer who's now a City Councilman and the region which he looks after is lower Manhattan, which was the infected area.

Q. Lower Manhattan.

A. So he is no longer a lawyer, he hasn't been a lawyer -- I think he had left several months or six months before.

Q. He worked at a law firm that represented Union Carbide and in that capacity he hired you to work for Union Carbide in asbestos matters and you first worked on this case until very recently you were reporting to Mr. Gerson, that is about a year and a half ago, because then he left his job because he was elected to the City Council in New York City?

A. That's right.

Q. And as unfortunately luck would have it his district included the World Trade Center, so you had that connection to Mr. Gerson and the World Trade Center?

A. That's correct.

Q. And at the time we took your deposition in this case you had already been paid at that time over \$200,000 by Union Carbide to work on its behalf with Calidria asbestos?

A. That is correct.

Q. And all in direct respect to this case --

A. Um, I think the transcript reads that it was at least two large cases for Conwed.

Q. Okay. Maybe that money was for this case and another case and other matters. How much have you charged Union Carbide for your work since 1984?

A. I believe there was another \$5,000 which would be approximately \$100,000.

Q. Do you currently hold any jobs, sir, where you get a pay check in any institution?

A. No.

Ilgren's testimony shows that he was an expert witness for Union Carbide starting in 1984. Ilgren continued as an expert for Union Carbide on this case until October, 2003.

Another CV of Ilgren lists his many other defendant asbestos-related companies. Interestingly, however, the CV that Ilgren attached to his report to the GZTF did not list any of his many asbestos-defendant industrial clients.

Gerson was present during testimony about Chatfield/Ilgren paper which stated that chrysotile asbestos such as in WTC dust was "innocuous" and a "nuisance dust"

Chatfield and Ilgren co-authored three papers about the hazards of Union Carbide's Calidria® asbestos. In these papers,²⁵ Chatfield and Ilgren claim that Union Carbide's brand of chrysotile asbestos does not cause cancers or asbestosis, and that is "innocuous" and should only be treated like a "nuisance dust." The Union Carbide asbestos brand name is Calidria®, and is used in many products such as vinyl floor tiles, ceiling tile, paints, sealants and coatings, paper products, Bakelite, and dry wall joint compound. All these products would have been present in the World Trade Towers.

Gerson knew that Chatfield and Ilgren had made these claims in their published studies because Gerson was present at a deposition on 8/13/98 in which Ilgren was specifically asked about these statements.²⁶

Gerson recommended Ilgren despite knowing Ilgren misrepresented his credentials

There are other reasons why Gerson should have had reservations about the suitability of Ilgren performing work for the GZTF. This is because Gerson was present when Ilgren admitted to misrepresenting his credentials. Ilgren claimed in 1994 that he was on the faculty of Oxford University on his curriculum vitae. This was not just a clerical error on the part of Ilgren, or a case of using a CV that had not been updated. Ilgren testified²⁷ that he made the mistake because he was "unsure" of his current status at Oxford in 1994, and had to check it by inquiring at Oxford before he realized he made a "mistake."

Furthermore, Ilgren's CV claiming he was on the faculty of Oxford in 1994 was not just a case of listing this fact along with many other entries in a long list of jobs. Ilgren included the claim that he was on the Oxford faculty in 14-point bold-faced Times Roman lettering on the cover page of his CV, with no other listing of any other current or past work experience on this cover page.

There were other problems with Ilgren's representations of his credentials. See the extensive excerpts from the trial and deposition testimony of Ilgren that are provided in the endnotes of this memorandum.

In past Gerson helped Union Carbide oversee a change in death certificate of employee that had listed asbestosis as a factor; therefore Gerson not naïve about asbestos issues and bias of industry experts

Asbestos litigation lawyers, whether for the defendants or plaintiffs, are extremely knowledgeable about asbestos health effects, exposure measuring, etc. Asbestos defense

lawyers also work very closely with their clients to educate them and shield them from liability. Thus we can conclude that Gerson had full knowledge of the implications of his recommendation to the GZTF to use Chatfield and Ilgren for the post 9/11 apartment study.

Gerson took a pro-active approach to coach Union Carbide in overseeing the change of a death certificate of an employee which formerly had listed asbestos exposures as a factor in the death. In 1991, Gerson advised the former plant manager, John Myers, then a Union Carbide litigation consultant, to question a diagnosis of asbestosis which had been listed as a condition on one Union Carbide workers death certificate.

It was very important for Union Carbide not to have any death certificate indicating asbestos as a cause. This is because Union Carbide was claiming that its particular type of asbestos was harmless and did not cause asbestosis or cancer. Union Carbide was already in litigation defending itself from disease and wrongful death suits.

Testimony of John Myers states specifically that he consulted the attorney on how to act, without giving Gerson's name:²⁸ (More extensive excerpts of this testimony are provided in the endnotes.)

Q. What happened after you found out that his death certificate said asbestosis on it?

A. I contacted the law firm that I was dealing with at that time and -- [attorney for Union Carbide prevents further testimony based on attorney-client privilege] [p. 82, 8/21/03 deposition of Myers]

Other court documents, attached to this memorandum, consist of the actual handwritten notes of Myers about his conversations with Gerson, as well as handwritten notes between Myers and other Union Carbide employees "monitoring" the death certificate change. There is also a formal letter written by Meyers to Gerson on the subject.

The two notes summarizing the instructions that Gerson was giving to Myers about the death certificate are quoted below:

Alan Gerson 1/7/91

Don't have our Dr. contact Dr. Oyer [coroner] unless he knows him or is comfortable in questioning the diagnosis of asbestosis. Have Dr. Kumar review old medical records.

1/7/91 Alan Gerson

Have our physician review PRW [Paul Whitlock] medical records and find out why asbestosis was listed as cause - on informal basis. Get copy of Death Cert. from funeral parlor or from County to find out from physician why he listed asbestosis.

per Chris at Whitehurst

Monterey & Santa Clara County won't issue permit for burial. Paul back to Santa Clara for autopsy. Actually, now there is no Death Cert.

a. Heart Condition

b. Hyposis

c. Sepsia other significant contribution causes asbestosis

He'll try to get Dr. info. for me.

Alan - Have our Dr. contact his Dr.

" [referring to Alan Gerson] don't " [ditto to the above statement 'have our Dr. contact his Dr.]

On 6/3/91, Meyers wrote a formal letter to UC's attorney Alan Gerson stating:

Dear Alan:

Enclosed is a copy of the final autopsy report for Paul Whitlock. I am sure you will be as pleased as I am to not that asbestosis was not involved in his death, nor is there even any mention of it.

Very truly yours

John L. Myers

Myers, who appears to have been one of Union Carbide's "point men" for overseeing changes in death certificates. Myers testified at length in depositions on 7/29/03 and 8/21/03. He testified about his involvement in death certificates, as well as his newly found belief that Union Carbide's asbestos (Calidria® brand) caused neither asbestosis nor cancers. Extended excerpts are provided in the endnotes.^{29, 30}

Known credibility problems with death certificate change by coroner

The change in the death certificate from "asbestosis" to "pulmonary fibrosis" for Union Carbide employee Whitlock was known to be erroneous by the Union Carbide employees involved in the oversight of the change. Alan Gerson, intimately involved in the oversight of having the death certificate changed, would also have been aware that it was changed erroneously.

The physician/coroner who performed the autopsy and changed the diagnosis on the death certificate (Angelo Ozoa) concluded that Union Carbide employee (Paul Whitlock) could not be suffering from asbestosis because there were no "asbestos bodies" found in his lungs:³¹

Lungs (8 H&E): Both lungs show acute bronchopneumonia and extensive fibrosis of the pulmonary parenchyma. A moderate degree of acute and chronic congestion is also apparent. In places, there is fibrous thickening of the pleura, but no pleural calcified plaques are present. No asbestos bodies are identified as such even on special stain (iron). In some areas beneath the pleura, some atypical cells with hyperchromatic nuclei are noted but no definite evidence of a neoplastic process is recognized.

However, it is well known that asbestos bodies do not form around thin/short chrysotile asbestos fibers. The Union Carbide Coalinga/Calidria® asbestos to which Whitlock was exposed consisted of small chrysotile fibers. The Union Carbide physicians who were overseeing the change in the death certificate and communicating with the coroner were aware of this, but did nothing to alert the coroner to the problem. The coroner would have needed to use an electron microscope (TEM) to see the chrysotile asbestos fibers in the lung tissues of Whitlock, but instead only used a standard visual light microscope (PLM).

A good discussion is available about this problem from the Toxicological Profile for Asbestos by the Agency for Toxic Substances and Disease Registry (ATSDR) of the Centers for Disease Control (CDC), excerpted in the endnotes.³² This document discusses the fact that there is no correlation between any visual examination of lung tissue using a PLM light microscope, because chrysotile fibers themselves cannot be seen, and "asbestos bodies" do not form around chrysotile fibers.

Ozoa, the coroner who performed the autopsy and changed the "asbestosis" diagnosis, either did not have the competence to know that he was making a mistake in the autopsy of Whitlock, or was otherwise influenced to change the death certificate.

This not the only time there have been problems with this particular coroner. In fact, this same coroner, Ozoa, was later indicted in another case for incompetence and falsifying a death certificate of a woman in order to cover up his original mistake and shoddy work. Ozoa had concluded that the woman had been murdered, instead of having committed suicide. As a result of Ozoa's falsifications, the husband of the woman was unnecessarily tried for murder. See the endnotes for more details.³³

This information is provided here so as to shed light on whether or not Gerson knew the implications of recommending Chatfield and Ilgren to the GZTF to perform the apartment contamination study after 9/11. I believe he did

Implications of Union Carbide death certificate case to WTC issues

The story of Alan Gerson, Chatfield, Ilgren, and Union Carbide, and the changed death certificate an employee has vast implications. The lawyers and experts who will be defending EPA in the new lawsuit brought by first responders and exposed residents may well try to claim that WTC asbestos could not possibly have caused any injuries.

EPA may try to use the same "anything but chrysotile" (ABC) defense, just as Union Carbide has been doing for years.³⁴ After all, the predominant asbestos type that has been found in WTC fallout is also short, thin fiber chrysotile asbestos, just like Union Carbide's Calidria® asbestos from their California Coalinga mine.

In fact, EPA and ATSDR have already started the process of attempting to change their conclusions about the carcinogenic potency of chrysotile asbestos and short fiber asbestos. See Section U of my 7/4/03 report which summarizes the current asbestos reassessments underway by both EPA and ATSDR.³⁵

See also discussions below documenting that Ilgren cited two reports authored by himself and Chatfield on Union Carbide's Calidria® chrysotile asbestos as part of his rationale that the asbestos in WTC fallout was harmless. This was in Ilgren's section of the report on the post 9/11 study of two apartments for the Ground Zero Task Force.

Prejudicial statements and bias in Chatfield and Ilgren's post 9/11 apartment contamination study

Prejudicial statements in Chatfield's segment of the post 9/11 apartment study

The conclusion section of Chatfield's post 9/11 apartment study for the GZTF made less stringent recommendations than EPA for the cleanup of residential spaces. This constitutes prejudice which could compromise Chatfield's ability to agree with any EPA conclusions of greater risks in the EPA ORD NCEA human health assessment.

It is true that initially, Chatfield's conclusions on risks from WTC dust were the same as or slightly more precautionary than those of EPA and the NYC DOH during the months of September and October, 2001. However, EPA has changed its conclusions about the proper cleanup methods. (See excerpts below.)

Prejudicial conclusion section of Chatfield's report on two post 9/11 apartments

The following is the conclusion section of Chatfield's 10/12/01 segment of the overall report for the GZTF on the two apartments contaminated with WTC fallout.

6.0 CONCLUSIONS AND RECOMMENDATIONS

The sampling conducted on 18 September 2001 revealed that the concentrations of PCBs, PCDD/PCDFs (expressed as 2,3,7,8-TCDD Equivalents), and inorganic metals (excluding calcium) were generally low or below comparative background levels. However, the concentrations of asbestos found in dust samples and in the air inside the apartments were significantly elevated. Because these air samples were collected under passive conditions, any disturbance of this material could increase the airborne concentrations and potentially increase exposure to asbestos.

The following recommendations can ensure proper cleanup of the asbestos-contaminated dust and reduce exposures of cleanup personnel and occupants returning to the building. Unless proven otherwise through testing, all dust should be assumed to be asbestos-containing.

1) The dust cleanup should be conducted by an environmental contractor with expertise in asbestos contamination cleanup or remediation of hazardous materials. Contractors selected for this work should be licensed by the proper authorities in the City of New York and/or the State of New York for asbestos or hazardous material cleanup activities. Individuals working for these companies should be properly trained by completing asbestos training courses certified by the New York State Department of Health and licensed for asbestos activities by the New York State Department of Labor. In lieu of this requirement, at a minimum, individuals should have Awareness Training in accordance with the OSHA Asbestos Standard, 29 CFR 1926.1101. The training should cover the potential exposures (such as asbestos and

caustic irritant dust) that may be encountered during the activities, appropriate personal protective equipment, and work practices.

2) Individuals performing the dust cleanup should be equipped with proper personal protective equipment to reduce exposure to asbestos-containing and alkaline dust. This equipment should include the use of half-face air-purifying respirators that are equipped with high-efficiency particulate air (HEPA) filters. Note: The level of respiratory protection can be modified according to the conditions of worker exposure and the airborne level of asbestos. Respiratory protection should be provided in accordance with OSHA Standard 29 CFR 1910.134. Additionally, individuals should use protective clothing such as disposable coveralls or similar whole-body clothing including hoods, boots, and gloves.

3) To reduce dust recirculation, all surfaces (including those inside of cabinets, etc.) should be cleaned using vacuum cleaners equipped with HEPA filters. The surfaces should then be wet-wiped with amended water containing a non-sudsing surfactant. No surface should be dry swept or dusted because this will re-entrain the dust. Upholstery and carpets should be HEPA-vacuumed and cleaned using either steam or a hot-water extraction method (Kominisky et. al, 1990). All clothing, linens, and other similar items should be laundered.

4) The heating, ventilation, and air-conditioning (HVAC) system should be inspected. If the system was in operation during or after the September 11th incident, it may contain asbestos-contaminated dust. An environmental consultant should be consulted to determine the most efficient procedures to clean the system including the air-handling unit and ventilation ducts (supply and return).

5) A suitable re-occupancy clearance criterion needs to be established. This criterion can be based on a thorough visual inspection and/or air testing.

6) To prevent or minimize the outdoor dust from entering the apartment: (1) keep windows closed and repair all broken glass; (2) set the air-conditioner to re-circulate air (closed vents), change the filter initially and frequently thereafter; and (3) remove shoes before entering the apartment.

Asbestos tests in Chatfield's post 9/11 apartment study

Chatfield would not have been motivated to show unrealistic low asbestos concentrations in the two apartments. The asbestos-related industries could point to EPA's response after 9/11 as an example and claim: "Look, EPA did not think there were any health risks indoors when the levels were extremely high. Why is EPA forcing us to pay for cleanups to a higher standard in other parts of the country?"

In fact, as pointed out earlier in this memo, as well as in my 7/16/03 memo, which brought COI allegations to the attention of the IG, one company has done exactly this. WR Grace, the company responsible for the asbestos contamination inside homes at the Libby, MT Superfund site, complained to EPA in its legal defense that it was unfair to make them clean up to more stringent standards than EPA was using in NYC after 9/11.

Recirculation of air, changing filters

Chatfield restates the recommendations in the NYC DOH residential/office do-it-yourself cleanup guidelines. Recirculating air inside an apartment contaminated with heavy dust

layers would be counter-productive, since it was known at the time by Chatfield that the air outside was less contaminated than the air inside. EPA had released its results for outdoor air by this time, and the results were widely covered in the media. Chatfield also did his own measurements at the same time of both indoor and outdoor air.

There was no longer the heaviest source of WTC dust at the time Chatfield made his recommendation, the initial collapse of the towers. The contaminated outdoor air had been diluted with fresh air over time. There had been several rain events outdoors to wash WTC dust away. EPA's HEPA vacuum trucks also had supposedly removed the heaviest contamination from the streets. Not so the interiors of buildings.

Chatfield, as an asbestos expert, would have known that the confined space effect inside apartments would concentrate asbestos. Opening windows during any do-it-yourself cleanup or while living in the apartment would have been advisable as a way of diluting the more heavily contaminated indoor air with the cleaner outdoor air.

Chatfield would also have known that changing the filters on any air conditioner with ordinary filters would not serve to remove the harmful respirable sized contaminated WTC dust. Only a HEPA filter on an air conditioner would have done this. Including this statement in Chatfield's 10/12/01 GZTF report would have given citizens a false sense of security.

Visual inspection for dust without air testing recommended

Chatfield stated that visual inspection for dust after cleanup would be adequate, although he also mentioning air testing as an option. Under the EPA/NYC cleanup program implemented in May, 2002, air testing was required. Under the early NYC DOH guidelines for do-it-yourself cleanups issued 9/17/01, however, no testing was recommended. Chatfield would have known that EPA regulations required testing after any professional abatement by certified asbestos abatement contractors. Waiving any strong recommendation for aggressive air testing after cleanup is questionable.

Wet extraction of carpet/upholstery recommended instead of replacement

Most importantly, Chatfield recommended cleaning upholstery and carpet using a wet extraction technique, while in the same sentence citing EPA published research performed by Kominsky, et al. This research demonstrated that wet extraction cleaning of carpet was ineffective for removing asbestos, only resulting in a maximum reduction of 40 to 60% asbestos.

Although the NYC Dept. of Health originally recommended that residents using only dry HEPA vacuum cleaners, EPA eventually made statements on its web site and in recommendations to citizens that the same EPA studies by Kominsky proved just the opposite, that wet extraction of carpets and upholstery was ineffective, removing only 40 to 60% of the asbestos. See Section P of my 7/4/03 report for details and references.

Chatfield as well as his co-author, John Kominsky, would have been extremely aware that even wet extraction was ineffective, not only because of Kominsky's own studies, but also

because it was common knowledge that EPA Region 8 had rejected wet extraction cleaning of soft materials. Region 8 was requiring purchasing new carpet and upholstered furniture for asbestos contaminated residences at the WR Grace Superfund site in Libby, MT. Chatfield was soon to become an expert witness for WR Grace.

Failure of Chatfield to use EPA's indirect method for asbestos analysis in post 9/11 apartment study

Even though Chatfield's asbestos test results did not minimize amounts using the analytical test procedures that he did, Chatfield did not employ EPA's more sophisticated test method using indirect preparation. This is the EPA Level II method, using indirect sample preparation to overcome any interference problems, which were prevalent in WTC samples.³⁶ The EPA guidance states the following:

M.2.1 TEM

Use the update to the EPA provisional method (Yamate 1984). The sample should be transferred directly from the polycarbonate filter to the electron microscope grid. If high levels of organic materials are suspected or found, cellulose ester filters and indirect transfer (involving ashing, sonicating, and refiltering the fibers) is recommended. ...

Other researchers in the early days after 9/11 did in fact use the EPA Level II method when they found interferences in high-load samples. They found much higher levels of asbestos by using the EPA Level II protocols.³⁷ On 2/5/04, I sent the IG office a table which compared the different levels of asbestos found in the Chatfield study, compared to that by HP Environmental, *et al.*, which used indirect sample preparation for the more heavily contaminated samples.

Chatfield in his verbal comments at the 7/14/03 public meeting of the peer panel is reported to have been very critical of any use of EPA's Level II test for asbestos by indirect preparation.

Failure of Chatfield to test for crystalline silica

Chatfield's post 9/11 apartment study did not test for crystalline silica. This is problematic. In EPA's pilot cleaning study of apartments at 110 Liberty St., an apartment building immediately facing Ground Zero on the southern boundary, excessive levels of silica were found even after a minimum of 3 rigorous abatements (one by the tenants, a subsequent one by the fire department, and then one by EPA/NYC DEP). It took several more abatements for EPA to bring silica levels within acceptable levels at 110 Liberty. But Chatfield was testing apartments even before the most rudimentary cleaning in his study. Undoubtedly, the silica levels would have been above standards if measured.

Questionable findings of normal levels of lead, dioxins, and PCB's in Chatfield's post 9/11 apartment study

Chatfield found supposedly "lower than background concentrations ... significantly less than the guidelines" of PCB's, and "significantly lower than cleanup guidelines" of polychlorinated dioxins and furans (PCDD's and PCDF's). These results are remarkable and

questionable, since in EPA's pilot cleaning study of 110 Liberty St., as well as in many individual apartment cleanings participating in the EPA/NYC DEP dust cleanup program, PCB's were higher than cleanup standards even after several rigorous abatements. Chatfield was testing two apartments where there were still heavy layers of visible dust, yet he found no elevated levels of lead, mercury, PCB's or dioxins.

Chatfield also found no elevated lead levels, which is also questionable, given the thick heavy layers of dust. Again, in EPA's pilot cleaning study of 110 Liberty St., as well as in many individual apartment cleanings participating in the EPA/NYC DEP dust cleanup program, lead levels were higher than cleanup standards, even after several rigorous abatements.

Prejudicial statements in Ilgren's segment of the post 9/11 apartment study

Edward B. Ilgren, MD, the collaborator with Chatfield in the post 9/11 apartment study for the Ground Zero Task Force, also made statements in his 10/11/01 report to the GZTF minimizing or denying significant hazards from indoor contamination by WTC dust.

Ilgren does not in any way contradict the conclusions of Chatfield. Both he and Chatfield recommended OSHA-level respiratory protection, but only for those workers continually involved in apartment/office cleanups. Ilgren states that the NYC DOH recommended cleaning procedures are appropriate for residents, which specifically state that common dust masks are not even needed indoors during do-it-yourself cleanups.

Ilgren made the following statements, which mirror those of Chatfield, while adding additional statements related to the risk of asbestos (saying there is no asbestos risk to residents, but that workers cleaning apartments should wear protective gear).

Dr. John Kominsky and Dr. Eric Chatfield will report their detailed technical and analytical findings, including full data sets related to this survey, in a separate communication. The aim of this report is to provide a statement related to the possible health risks to residents and cleaners from exposures to asbestos and inorganic metals due to the collapse of the World Trade Center. [p. 1]

Asbestos exposure can produce three diseases: mesothelioma, asbestosis, and asbestos-related lung cancer. ... The development of each of these diseases is dose related and the doses needed to induce them are substantial. There are thresholds for all three diseases (Ilgren, 1989; 1993; Ilgren & Browne, 1991; Ilgren & Wagner, 1991; Browne, 1993). ... The development of each of these diseases also depends on fiber type. Chrysotile does not induce mesothelioma (Ilgren & Chatfield, 1998). ... In summary, the levels of long thin asbestos fibers needed to produce asbestosis and thus asbestos related lung cancer are exceedingly high and generally exceed 25 to 50 fiber years (Browne, 1993). ... Amphibole exposures are needed to induce mesothelioma ... [p. 2]

The airborne fiber (>5u) concentrations are very low and are thus of no concern. Since the surface wipe reading are increased, elevated levels of airborne asbestos could be produced if the surface dust is disturbed. ... If this was so and the materials were disturbed, significantly elevated levels of chrysotile might be produced. However, given the small percentage of amphibole, it is very unlikely that significantly elevated levels of airborne amphibole fiber would be seen. This, in turn, suggests that residents and cleaners could not attain doses of amphibole fiber sufficient to put

them at risk of developing mesothelioma. ... It would therefore follow that residents are also not at risk of developing asbestos and asbestosis related lung cancer. The residents are also not at risk of developing asbestos related disease since their duration of exposure is too brief. Indeed, the EPA and the NYC DEP appear to concur with this view stating that "ill effects such as lung cancer require long term exposure" (Wall St. Journal 11 Oct 01). [p. 3-4] ...

A second form of amphibole asbestos fiber called richterite was also found in this investigation in exceedingly low quantities. ... Some will recognize richterite as being associated with the vermiculite found in Libby, Montana. This raises the possibility that the vermiculite came from a W R Grace monokote spray used to insulate the World Trade Center complex. Given the date of the construction of the complex and the use of monokote during that period of time, the finding of some richterite containing vermiculite would not be unexpected. ... [p. 5]

The recent Wall Street Journal article (Wall St. J., 11 Oct 01 "Residents study asbestos levels near Ground Zero") states that "there appear to be as many approaches to cleaning up and dealing with the dust as there are buildings in lower Manhattan." This is particularly disturbing since some residents, albeit at no risk of asbestos related disease, could still develop serious sensitivity type reactions, such as acute asthma and severe naso-pharyngitis, if exposed to the highly irritating dusts. Contaminants must therefore be removed using the appropriate work practice techniques which should include HEPA vacuuming and subsequent wet wiping of all surfaces with surfactant containing water. Soft furniture should also be cleaned professionally e.g. by steam cleaning in situ. ... [p. 6]

On the basis of this very limited survey, exposures to inorganic metals pose little if any risk to residents. Professional cleaning of apartments is again advised. Cleaners should wear the appropriate respiratory protection and clothing. ... [p. 13]

Prejudicial statements by other EPA WTC peer review panelists, Patrick Kinney and Alison Geyh

Two other panelists are known to have advised the public through the press that there were no hazards from WTC exposures for residents. Hazards only applied to first responder rescue workers and abatement workers continually exposed in cleanups on a daily basis. Their statements are prejudicial, making it difficult for them to change their opinions at this later date to agree with any EPA conclusions, no matter what the data, that there are potential or real risks from WTC exposures to residents.

They could be in a liability situation, subject to lawsuits. If they not only failed to warn the public, but reassured them in the past, and if a member of the public can demonstrate in court a likelihood of that injury/illness being the result of WTC exposures that would not have occurred were it not for the reassuring statements, then there is a problem. There would be a vested financial interest in EPA finding no hazards as a shield against lawsuits.

There would not be the same kind of legal liability problem for a panelist if they had earlier advised the public to take precautions over and beyond those recommended by public officials at the time. Such a person could easily state that new evidence demonstrated that such precautions were unnecessary.

Prejudicial statements by Patrick Kinney

One panel member, Patrick Kinney, has gone on record to state that tests had conclusively demonstrated that asbestos concentrations as well as the other measured toxic constituents were not of concern to residents.

See below two articles in the New York Times and another posted on a help site for citizens where Kinney makes such statements. There may be many other places where Kinney made such statements, such as in testimony or other press no longer accessible on the internet.

The quality of the air has become a matter of widespread anxiety among people who live or work in Lower Manhattan — anxiety compounded in many cases by open disbelief in assurances from government and public health officials that the air, while acrid and sometimes smelly, is generally safe to breathe.

Local residents and workers in downtown buildings say they fear that burning eyes, runny noses and scratchy throats — common maladies below 14th Street, especially at night — could be an indicator of something worse that is not being measured at all. For many people, the plume of dust and smoke that continues to be a presence downtown has become part of the nightmare itself: in an altered New York, even the air, it seems, is no longer what it was. ...

But the results obtained by The Times, and interviews with independent health experts around the country and at the E.P.A., also suggest strongly that emotion and anxiety have elevated concerns about the air far beyond the levels shared by most scientists and public health experts. "There's little risk to the general public of any ongoing air pollution related to the World Trade Center," said Patrick L. Kinney, an associate professor of environmental health sciences at Columbia University, who has monitored air testing results and was briefed about Adelaide's findings.

Professor Kinney and other experts say that the raw throats and sinuses that many residents and workers complain about are in fact mostly evidence of the body's defensive systems. Large particles of dust that get trapped in nasal and throat passages trigger irritation, but that also means that most of the particles are not making it all the way to the lungs.

Smaller particles, called respirable dust, which can penetrate deeply into the lungs and are a greater health concern, were not found in significant quantities at street level by Adelaide, which also confirms recent government tests.

[KIRK JOHNSON with ANDREW C. REVKIN (10/11/01) Contaminants Below Levels for Long-Term Concerns, New York Times, <http://193.78.190.200/10f/contaminant.htm>]

Other public health experts said that Dr. Levin's presentation reinforced their assessment that the long-term health consequences of the attacks were not likely to be severe for the general population.

"My assessment hasn't changed," said Patrick L. Kinney, an associate professor of public health at the Mailman School of Public Health at Columbia University. "The main health concern was workers around the pile," he said.

But Professor Kinney added that there had been health effects that were not lifethreatening, including new cases of asthma and sinusitis in people who were exposed to the dust.

"Beyond that, I'm not aware of any data that has suggested that people off-site have suffered any important health consequences," he said.

{Kirk Johnson (4/26/02) Expert Says Asbestos Slightly Raised Risks for Disease Among Residents of Lower Manhattan, New York Times, http://www.mesotheliomacenter.org/news_02.html }

More than six weeks after the September 11 terrorist attack on New York, fires are still smoldering under the debris of the former World Trade Center complex. The continuing smoke is worrying some city residents about the quality of the air they are breathing. . . .

City officials have tried to reassure New Yorkers, ordering a series of on-going tests to monitor air quality. Patrick Kinney specializes in the effects of air quality on respiratory systems at Columbia University's School of Public Health. He says the tests show there are no toxic pollutants, like asbestos, tainting the quality of air. "The data that has been collected so far do not show concentrations of pollutants that are of concern," adds Professor Kinney. "However, not all of the pollutants that you might want to look at have been monitored or, at least, reported yet. So the database is incomplete. Based on what we know so far, there is no cause for alarm." . . .

But Professor Kinney says it is unlikely that new data will show any pollutants that put people at risk. "I do not think it was unwise to have people start repopulating the area," he says. "I think that our noses are very sensitive and we pick up a lot of things that are not necessarily toxic. I think it is good to be careful, to minimize exposure as much as possible. For the general public, as long as we are careful, I think the risks are quite low." . . . [Emphasis added.]

[Help-for-You.com (10/28/01) NY Residents Worry About Air Quality, Barbara Schoetzau, New York, www.help-for-you.com/news/Oct2001/Oct28/PRT28-38Article.html]

Prejudicial statements by Alison Geyh

The peer review panelist Alison Geyh has also made definitive conclusions that asbestos testing showed no harmful levels to residents, and that there were no lung obstructive airway problems for residents and office workers (as opposed to first responders). As with the panelist Kinney, it would be difficult for Geyh from a liability standpoint to now agree with any EPA conclusions indicating a hazard or compromised health risk.

Investigators from the Johns Hopkins Bloomberg School of Public Health now believe that World Trade Center workers' respiratory problems are the result of exposure to dust and airborne contaminants at Ground Zero. Workers assigned to clear debris have reported coughing, wheezing and sore throats while working at Ground Zero. The symptoms seemed to increase the longer they worked at the site, according to Dr. Alison Geyh, the chief investigator and assistant professor of environmental health sciences at Johns Hopkins.

"The good news is that we did not find unhealthy levels of asbestos, but we don't know what the long term health risks may be regarding exposure to other airborne contaminants at the site." . . . [Emphasis added.]

[World Trade Center Health Update Summarized by Cheryl Runyon from the Environment News Service AmeriScan, Aug. 23, 2002, <http://www.ncsl.org/programs/esnr/wtchealth.htm>]

In a study of more than 180 cleanup workers, researchers at Johns Hopkins Bloomberg School of Public Health found that acute respiratory symptoms such as coughs, phlegm and wheezing were more prevalent than before they began working at the site. But in most workers, said Dr. Alison Geyh, the lead researcher, there was no sign of lung obstruction.

"For the general community this is a very good story," Geyh said. . . .
[Researchers tell of health studies tied to WTC disaster, By Carl Glassman, 11/2/01, Online News From The Tribeca Tribune
<http://www.tribecatrib.com/newsnov02/enviro2.html>]

2.

COI issues - Chatfield consultancy to Region 1, Brookfield schools

The EPA IG needs to investigate this other instance where Chatfield has influenced EPA's decision making process, and where EPA Region 1 circumvented the EPA COI investigation and mitigation process in utilizing the services of Chatfield for a risk assessment applied to the Brookfield condominium/school asbestos situations.

New 2/10/04 Connecticut Attorney General Investigation, faulting EPA/Chatfield/Beard risk assessment for settled dust

The Connecticut Attorney General (AG was critical both of EPA Region 1 and the CT Department of Public Health's role in not insuring the cleanup and testing of asbestos. The AG also noted problems with Region 1's spurious benchmark of 45,000 structures per square centimeter (s/cm^2) asbestos on surfaces in settled dusts.

The history of Brookfield's school asbestos problem is best summarized in the 2/10/04 AG report itself. The CT AG investigation is available online, and excerpts are given here.³⁸

As early as the spring of 2000, concerns about asbestos in the Brookfield schools were raised through numerous letters to DPH from Brookfield residents [Kathy Hulce, Theresa Burhis, Melinda Kelly, Laura Macchiavema, and others]. ...

During the summer of 2000, DPH [Connecticut Dept. of Public Health] sought the technical assistance of the EPA (Region I) to address the concerns of the Brookfield residents ...

DPH and EPA officials ultimately determined in 2000 that asbestos remediation would be appropriate in areas where the concentration of asbestos in settled dust exceeded 45,000 structures per square centimeter. This standard of 45,000 structures per square centimeter was not a health standard nor a legal standard. Rather, it was a number that was determined to correlate with asbestos levels in outdoor ambient air. Representatives from DPH and the EPA met with Brookfield town and school officials to establish a remedial asbestos cleaning and assessment action plan that corresponded with this goal.

Throughout the summer of 2000, DPH and EPA were actively involved ... decided that the schools were suitable for occupancy for the 2001-02 school year.

In response to the complaints that DPH had been negligent in carrying out its enforcement of laws and regulations related to asbestos ... On July 17, 2001, the DPH General Counsel's Office completed and issued its internal report which generally concluded that the recommendations of the EPA regarding the asbestos remediation of the Brookfield schools had been followed. [On April 2, 2001, Kathy Hulce, a parent, submitted a petition to the DPH requesting a complete cleaning including the ventilation system and the use of dust as well as air testing.] ...

Despite the actions by the Brookfield local school district, assisted by DPH and EPA in 2000, Brookfield residents continued to have concerns ... Brookfield parents and

teachers continued to convey these concerns to DPH through correspondence. In May 2002, a music teacher from Huckleberry Hill Elementary School in Brookfield independently hired an asbestos consultant to test her classroom for air contaminants. The test results revealed asbestos levels well in excess of 45,000 structures per square centimeter, the benchmark that had been established by DPH and EPA during the asbestos remediation conducted in Brookfield in 2000. Additional dust and air testing conducted between May and June of 2002 revealed the presence of high levels of asbestos fibers in settled dust in all four Brookfield school buildings, resulting in the premature closure of the Brookfield schools. ...

To respond to this emergency, Brookfield officials assembled a volunteer, ad hoc Asbestos Oversight Committee, which included the First Selectman, the Superintendent of Brookfield Public Schools, two asbestos consultants hired by the town, as well as certain Brookfield residents who had expressed concern about issues related to asbestos in the schools. This town committee determined that the Brookfield schools should be cleaned and remediated in those areas where testing revealed asbestos fibers in settled dust of 5000 structures per square centimeter. ...

On June 11, 2002, representatives from DPH and EPA participated in a public forum to address questions of the Brookfield community regarding asbestos. ... DPH explicitly refused to monitor or oversee the asbestos decontamination effort during the summer of 2002. Even though, in 2000, DPH and EPA had established a goal to clean asbestos where asbestos fibers exceeded 45,000 structures per square centimeter, DPH officials did not offer any opinion or comment regarding the merit of the town's determination to apply a much more stringent standard by cleaning asbestos where testing revealed asbestos fibers in settled dust exceeded 5,000 structures per square centimeter.

[T]he Governor and the Secretary of OPM formally certified on July 12, 2002, that the situation in Brookfield constituted "an unusual and serious condition endangering public health and welfare," DPH's explicit abdication of its duty in 2002 to oversee compliance with, and enforcement of, the laws and regulations related to asbestos in schools was deeply troubling. ... After all, in 2000, DPH and EPA extensively reviewed and approved the plan to clean asbestos in those areas of the Brookfield school buildings where micro-vacuum sampling revealed that the concentration in settled dust exceeded 45,000 structures per square centimeter.

During the 2002-03 school year, the Brookfield school district adopted and carried out an Asbestos Monitoring Program, which included random air testing every 6 weeks in 90-100 classrooms throughout the Brookfield schools, in addition to annual dust sampling of each classroom ventilator in all four of the Brookfield schools buildings. In those locations where air test results yielded concentrations of asbestos levels in the air greater than 0.0004 fibers per cubic centimeter, classrooms were isolated, cleaned, re-tested, and determined to be suitable for reoccupancy ... [Emphasis added.]

EPA Region 1's version of history Brookfield asbestos problem and of Region 1 benchmark standard of 45,000 s/cm2 asbestos in settled dust as told by EPA Region 1's Wayne Toland

Region 1 gives a different account of events. According to a 9/10/02 email from Wayne Toland, EPA Region 1, in the year 1996 he used Chatfield as well as Mike Beard (consultant with RTI) as consultants for a risk assessment for a condominium. The same risk assessment was then used for the Brookfield school system in 2000. See the excerpts of the Toland's email in the endnotes.³⁹

The Region 1 risk assessment was questioned by concerned parents, teachers, and elected officials, and the press in Brookfield. There were a series of obvious technical flaws with the Region 1 risk assessment, all leading to a prediction of safe levels of asbestos much higher than typically found in direct-measured background levels.

Toland, in his 9/10/02 email, justifies the high benchmark value of 45,000 structures asbestos per square centimeter (s/cm^2) set in 1996 for the condominium because it was an "EJ" (which means Environmental Justice) issue, because the "folks" (African Americans) would not be able to afford to clean up the asbestos in the condominium to safer levels. This is a complete perversion of the intention of EPA's Environmental Justice program, which is intended to give equal protection to minorities and the less advantaged, not a justification for giving less protection.⁴⁰

Toland then states that the same 1996 risk assessment for the condo was used as-is in 2000 for the Brookfield schools. Toland describes Brookfield as "a fairly affluent town situated about 25 miles north of Stamford, CT ... where 7 of the top (Fortune 100) companies are." In other words, Toland is then pointing out that this is not an "EJ issue" in Brookfield, no longer a situation involving African Americans. Toland is using the term "EJ issue" as code for a racial minority.

Toland goes on to describe the complaints of the citizens, and claims that only "one voice" is leading them, derisively describing Ms. Hulce as "their self-appointed Joan of Arc."

Brookfield citizens were critical of the claims in Toland's 9/10/02 email, disputing his representations as well as objecting to his contemptuous comments.⁴¹ A full copy of these letters is being provided to the EPA IG to assist in their investigation.

Chatfield involvement in Region 1 benchmark for asbestos at 45,000 s/cm² in settled dust

These facts are known about Chatfield's involvement in the Brookfield school system. As stated before, in 1996, Region 1 consulted with him for the condominium risk assessment. This same risk assessment was used in 2000 by EPA Region 1 for the Brookfield school system. Then, in the year 2002, Chatfield spoke to a concerned parent and also prepared a letter at the request of a teacher in Brookfield concerning the school contamination with asbestos. I also contacted Chatfield by email in 2002 about the Brookfield schools, and although Chatfield did not respond to me, he mentioned my email in his letter provided to the Brookfield teacher. Chatfield made statements at the 7/14/03 public peer review meeting in NYC about the WTC risk assessment to some effect that he was not involved with the Brookfield schools, but I do not know his exact wording.

The details and documentary evidence are discussed below:

Initial consultancy to Region 1 in 1996, used Brookfield school risk assessment in 2000

The 9/10/02 Toland memo (above) documents Chatfield's involvement in 1996 with the condominium risk assessment. A new cover page was put on this 1996 risk assessment, turning it into the 2002 Brookfield school system risk assessment.⁴²

Jenkins' 5/30/02 email and faxes to Chatfield

In a 5/30/02 email,⁴³ I contacted Chatfield and raised concerns about the use of his 1983 data to support allowing the extremely high benchmark for asbestos dust (45,000 s/cm²). I attached electronic versions of the full Region 1 risk assessment to show how they had chosen the one highest level he had found in outdoor air was being used as background. I also sent sections of the "EPA Purple Book" which is a guidance manual under the CAA NESHAP to show how EPA had interpreted his outdoor air data in the past – EPA looked at the exact same data set from Chatfield's 1983 study, and concluded that outdoor background air concentrations were at least an order of magnitude lower.

I explained the manner in which Region 1 was using his data to justify high exposures of children in Brookfield. At the time, I did not know that he had been a consultant to Region 1 and responsible for the way his 1983 data was being used by Region 1.

I personally received no reply or acknowledgement of my request from Chatfield disavowing the way in which his data was used.

5/27/02 letter from Chatfield concerning Brookfield school asbestos and conversation with concerned parent

At the request of Margaret Fitzgerald, the music teacher in Brookfield, Chatfield sent a letter dated 5/27/02.⁴⁴ The letter is addressed to "To Whom it May Concern." The letter was requested to assist in obtaining an injunction against the reopening of the Brookfield schools, temporarily closed because of asbestos contamination.

In his 5/27/02 letter, Chatfield refers to my 5/30/02 email to him, but does not mention the date of my email. (There is some problem with dates, possibly due to backdating on Chatfield's letter. I doubt my computer incorrectly dated my email.)

Chatfield advises Fitzgerald that asbestos in the Brookfield school system should be cleaned up until there is no visible dust, and recommends aggressive air testing. Chatfield does not, however, say anything in his letter to disown the misuse of his 1983 data by Region 1 in their risk assessment. Thus, Chatfield implicitly condones it in the year 2002.

The use of the outlier high value in Chatfield's 1983 data to back-calculate a safe dust concentration was the central issue at this time in the cleanup standards for the Brookfield schools. Instead of addressing the central issue of whether 45,000 s/cm² was an appropriately derived value, Chatfield minimized concerns for asbestos in the settled dust by claiming that it was unlikely for some of the asbestos to become airborne:

Asbestos can be present in dust and debris such that the ASTM analytical method D5755-95 gives a high result, but the asbestos-containing particles in the dust and debris will almost always be substantially fewer in number and frequently will be far too large to become airborne.

During the same time period, Chatfield was also contacted telephonically by a concerned parent, Ms. Kathy Hulce. I am informed that Chatfield did not explicitly criticize the manner

in which Region 1 had used his 1983 data to back-calculate the 45,000 s/cm² benchmark level for asbestos in dust.

Chatfield statement at NYC peer review panel public meeting for the ORD NCEA WTC risk assessment that he was never a consultant for the Brookfield schools

I have been told that Chatfield said at peer review panel meeting in NYC on 7/14/03 that he was not a consultant for the Brookfield school system. I do not know his exact words. The EPA IG office will need to review the tape recordings of this meeting.

Flawed science, EPA Region 1 dust benchmark of 45,000 s/cm² derived from Chatfield's data

Region 1's risk assessment⁴⁵ with its back calculated surface dust level of 45,000 s/cm² from Chatfield's limited and outdated 1983 data was totally erroneous, flawed, and misrepresentative of facts and basic scientific principles.

Statements in the Region 1 risk assessment itself were egregious mischaracterizations of established EPA policy, and directly contradicted the conclusions of the Agency for Toxic Substances and Disease Registry (ATSDR) of the Centers for Disease Control (CDC) which had prepared its own evaluation of actual outdoor air background asbestos levels on behalf of EPA.⁴⁶

My 6/9/02 memorandum addressed the fallacies in the EP/Chatfield/Beard benchmark safety level of 45,000 s/cm². A table was given showing how EPA/Chatfield/Beard chose every false outlier value so as to drive up their estimate of background levels of settled dust. See the excerpts in the endnotes.⁴⁷

Use of high outlier value for asbestos in air from Chatfield's 1983 study

The highest outlier value of ambient, outdoor air was used from the 1983 Chatfield study⁴⁸ to back-calculate a level of asbestos in settled dust. Toland states that "ALL AGREED" meaning that Chatfield was not disputing the way in which Region 1 was using Chatfield's one high outlier value from his 1983 study, instead of an average. The higher Region 1 and its consultants could claim was in background air, the higher the back-calculated dust level would be.

See pages 10 through 14 of my 6/9/02 memorandum⁴⁹ which discusses EPA Region 1's misuse of the data from the 1983 Chatfield study, instead of the newer approved data specifically developed by EPA.

In stark contrast, the 1991 Health Effects Institute (HEI) study,⁵⁰ produced under a mandate to EPA, and as summarized by the Agency for Toxic Substances and Disease Registry (ATSDR) in a series of Toxicological Profiles for Asbestos,⁵¹ found outside ambient background air to be as follows: For rural areas, 0.00001 s/cc, and urban background air, 0.0001 s/cc.

The ATSDR profile for asbestos and other toxic substances are updated every 3 years, with the last update for asbestos being in the year 2001. The ATSDR profile for asbestos has

discussed the HEI study for asbestos in outdoor air since 1993, long before the 1996 Region 1/Chatfield/Beard risk assessment for the condominium and the 2000 risk assessment for the Brookfield schools. Chatfield's 1983 study was not mentioned or cited by the ATSDR asbestos profile in their evaluation the extensive literature on outdoor as well as indoor air asbestos levels.

Chatfield knew his 1983 study was superceded by new EPA-commissioned analysis

Chatfield knew when advising Region 1 in 1996 that his 1983 study was outdated and superceded by new EPA-commissioned analyses. In deposition testimony,⁵² Chatfield admitted that he was familiar with the findings of the Health Effects Institute (HEI) 1991 study showing extremely low indoor and outdoor asbestos background levels.

Beard, other consultant for Region 1 risk assessment, also aware of ATSDR/HEI data, but continued to support use of Chatfield 1983 data

In an email interchange between myself and Beard on 3/21/02,⁵³ I told Beard about the ATSDR/HEI data for indoor and outdoor air. I forwarded the website so that Beard could download the ATSDR Toxicological Profile for asbestos, with the HEI tables and ATSDR's evaluation of the HEI data. As seen from the excerpts in the endnotes, Beard thanked me for the information, and said he would leave risk assessment to "experts" such as myself.

Yet on 6/11/02, Beard appeared along side with Region 1 at a public meeting in Brookfield, continuing to defend the use of the high outlier value from the 1983 Chatfield study as justification to exposing children to extremely high levels of asbestos in dust at 45,000 s/cm². Later in a telephone conversation, Beard told me that he was not using the newer data from the ATSDR asbestos profile because he doubted that his computer would have been able to download the document.

Rejection by Brookfield elected officials of Region 1 benchmark of 45,000 s/cm² asbestos in settled dust, and implement asbestos air standard more stringent than EPA is using in the cleanup of NYC after the WTC collapse

Brookfield Selectmen reject EPA Region 1 dust standard of 45,000 s/cm²

The AG report (see above) discusses the fact that the town selectman committee overseeing the cleanup rejected this standard, instead setting a standard of 5,000 s/cm² for asbestos in settled dust. In addition, the local newspapers discussed the debate and rejection by Brookfield of the Region 1 risk assessment.⁵⁴

Brookfield Selectmen also implement more protective asbestos air standard than EPA is using for cleanups in NYC after the WTC collapse

It is noteworthy that the Brookfield Selectmen also set an air standard of 0.0004 structures per cubic centimeter (s/cc). This is total asbestos fibers and structures, not just "PCM equivalents." This level of 0.0004 s/cc is the detection limit of the laboratory method. Brookfield officials correctly stated for the record that they were "way ahead of the pack".⁵⁵

This level being used by Brookfield is much lower than what EPA is using in NYC after the WTC disaster. In NYC, EPA is only counting "PCM equivalent" asbestos fibers, not all asbestos fibers and structures. In other words, for NYC residents, EPA will test the air and find all the asbestos structures and fibers, but will discount or ignore any that are not within a certain size range. In NYC, EPA is making the assumption that asbestos fibers smaller than 5 microns in length are not hazardous, an assumption contested by many scientists.

Difference between decisions of elected officials in Brookfield compared to NYC in the aftermath of 9/11

There is a marked difference in the responses of the elected officials of Brookfield, CT compared to those in NYC responding to the toxic fallout from the World Trade Towers. One would think that the New York City officials would want to be as protective of the living victims of 9/11 as the officials in Brookfield are of their children, rejecting EPA guidance they thought was flawed. Unfortunately, this is not the case.

The explanation may lie in an examination of the backgrounds and financial ties of the officials in the two different cities. See earlier sections for a documentation of the relationship of Alan Gerson, NYC Councilmember, to asbestos industry defendant corporations.

State and local governments are always free to institute more stringent standards, but not less, than EPA's under any of the environmental laws which EPA administers (AHERA, CAA, CERCLA/NCP, CWA, etc.) See Section V of my 7/4/03 report⁵⁶ for a citation to the language in the EPA regulations which would have allowed NYC to implement more stringent standards for the cleanup than EPA.

Failure of EPA Region 1 to investigate any COI of Chatfield

EPA Region 1 is at fault for accepting the services (apparently *pro bono*, since Chatfield did not list this work on his CV) of Chatfield to perform such an inherently governmental function of deciding what levels of asbestos are safe for citizens. Region 1 apparently did nothing to investigate the background and conflict of interests of Chatfield when accepting his free services.

Chatfield lists eight occasions of serving as an expert witness for asbestos defendants being sued by school systems for asbestos damages in his CV.⁵⁷ There were no instances where Chatfield listed consultancy to any school boards, however. Potential COI problems due to these or other asbestos industry defendant relationships with Chatfield was apparently neither sought nor evaluated by Region 1.

Need for EPA IG investigation of spurious Region 1 dust benchmark and failure to prevent improper influence on EPA functions by consultancy with Chatfield

Earlier request for IG investigation of Region 1 benchmark and Chatfield COI

On 10/2/03, a concerned parent, Ms. Kathy Rossland-Hulce, requested that the EPA IG investigate the matter of Region 1's improper use of data from an outside consultant, Chatfield:⁵⁸

In the spring of 2000, parents brought to light that the Brookfield Public School System had not been following the laws of AHERA for years. EPA Region 1 performed an ineffective risk assessment using a non-protective "standard" of 45,000 asbestos structures per centimeter squared for asbestos in dust ... Upon investigation, I discovered that this "standard" was, in actuality, an arbitrary benchmark level that had been used once before in a low-income East Hartford condominium and was based upon the one outlying air measurement from an outdated air study by Dr. Eric Chatfield, even though newer data used by ATSDR was widely accepted and available. (Please see my attached letter dated 7-7-02 to Administrator Robert Varney.)

EPA Region 1 told us our schools were "safe" after cleaning up 5 "found" areas of asbestos contamination over 45,000 s/cm², in spite of our protests and continued letters for 2 years after. Letters remained unsatisfactorily answered, including the question as to why ventilation ducts were not tested nor cleaned in all schools in 2000.

This risk assessment failed us, as our worst fears were realized in 2002.

In the spring of 2002, teacher Margaret Fitzgerald independently hired an asbestos consultant to test her room for asbestos in dust. Several exceedingly high levels were found (example: 3 million s/cm²!) in both air and dust. ...

As a result of pressure from the community, further testing of all four schools ensued. ALL FOUR SCHOOLS WERE EXTENSIVELY AND HIGHLY CONTAMINATED. For example, 14 MILLION s/cm² were found in a radiator at Brookfield High School!

Schools were closed and professionally cleaned to a more protective standard of 5,000 s/cm². This time around, the ventilation was cleaned.

Parents' and teachers' concerns about the inadequacy of EPA's risk assessment in 2000 were validated.

Yet EPA Region 1 continues to espouse 45,000 as a valid benchmark level. (Please see attached letter dated 9-4-02 from Stephen S. Perkins, Director of Office of Environmental Stewardship, EPA Region 1.)

The dangers our children have been exposed to is unconscionable and scandalous. If parents and teachers had not remained vigilant and tenacious, our children and school staff would still be working in an asbestos-contaminated environment under the false illusion that "our schools were safe."

Due to the insidious latency of effects from asbestos exposure, we will not truly know for years what effect this exposure to asbestos will have on Brookfield children's health.

For the sake of our children and our nation's citizens, please intervene to have the EPA finally establish health protective risk assessment procedures and standards for asbestos.

Before writing this letter to the EPA IG, Ms. Hulce wrote to Region 1 Administrator Varney on 7/7/02 to see if EPA stood behind the 45,000 s/cm² benchmark.⁵⁹ On 9/4/02, Steven Perkins, replied to Hulce,⁶⁰ saying:

Thank you for your letter ... expressing concerns about EPA's recommended benchmark for asbestos cleanups. ... We have also consulted with the Agency for Toxic Substances and Disease Registry (ATSDR) in an effort to determine if the clean-up benchmark of 45,000 s/cm² should be revised based on existing ambient air or exposure studies to which ATSDR may be privy. If this is the case, EPA will reconsider this benchmark with a focus on revising it to a level consistent with those study results.

However, Region 1 has done nothing to revise or withdraw its dust benchmark standard. Because Region 1 insists on continuing to use this standard, the EPA IG should intervene.

Prior statements by EPA IG that dust benchmarks such as developed by Region 1 not appropriate

The EPA IG stated last summer that EPA should develop a standard for asbestos in settled dust in it 8/21/02 investigation of EPA's actions in the aftermath of the WTC collapse.⁶¹

Risk assessors employ a mathematical formula to estimate the amount of asbestos in dust that can be expected to become airborne in order to evaluate the potential risk to human health from asbestos in dust. This factor is known as the "K Factor." However, this factor is not deemed reliable at this time. The panel that completed the peer review for EPA's indoor standards did not endorse the asbestos-settled dust benchmark because the "the K-factor methodology is, at this time, inadequate for predicting inhalation exposure from asbestos surface loading measurement."

We believe EPA should review the AHERA standard and determine whether the standard needs to be revised in light of the fact that better filters are available today, and continue the work of the indoor COPC group to develop health-related screening levels for asbestos in dust

Surely the IG should instruct Region 1 to cease and desist with the continued use of its *ad hoc* dust standard which is neither sanctioned by the rest of the Agency nor developed under conditions to prevent the improper influence of outside parties with conflicts of interest.

There is an obvious continued need for the EPA IG to investigate Region 1's circumvention of EPA's procedures to investigate and mitigate potential conflicts of interest of consultants, which were apparently violated in the use of Chatfield to develop this dust benchmark.

The problem with Chatfield is just the tip of the iceberg at EPA. This circumvention of EPA COI procedures and the need for additional control of outside influences on EPA by special interests is discussed in greater detail in the conclusion section of this memorandum.

3.

COI issues - panelists for EPA /ATSDR asbestos risk reassessment

Section U of my 7/4/03 report brought to the attention of the IG another EPA peer panel assisting in both the EPA and ATSDR reassessment of asbestos fiber toxicity. This memorandum supplements the information with additional documentation of asbestos industry financial ties of the peer panel consultants for these efforts.

A review of a recent EPA expert panel and a scientific panel convened by ATSDR reveals that several panel members failed to disclose their on-going consulting contacts with corporations (or their lawyers) with material interests in the outcome of the discussions.

EPA panel COI issues

This recent EPA-sponsored event on asbestos-related risk is a showcase for the weakness in the EPA conflict of interest procedures and further suggests the lengths that industry will go to advance its interests, even at the expense of the public welfare. In its 2003 *Report on the Peer Consultation Workshop to Discuss a Proposed Protocol to Assess Asbestos-Related Risk*,⁶² EPA charged the panel members with the task of considering whether EPA should change its method of assessing risk from asbestos exposures. One of the issues the EPA is considering is whether to assign varying degrees of risk to different asbestos types and fiber sizes.⁶³

The panel for the *Peer Consultation Workshop* was put together at the last minute and apparently went through a cursory conflict of interest review. The public was not provided a copy of the full curriculum vitae of the panelists before or after the completion of their report.

Despite recent peer-reviewed articles indicating that short, thin chrysotile asbestos is hazardous,⁶⁴ the panel came down in favor of assigning low risk to chrysotile fibers. A closer look at the undisclosed industry ties of these panel members underscores the failings of the EPA COI procedures. At least four of the eleven panel members have consulted for asbestos defendants in litigation; one panel member actually worked for Union Carbide Corporation before becoming a litigation consultant.

Peer Consultation Workshop panel member James D. Crapo, MD

Peer Consultation Workshop panel member James D. Crapo, MD has testified in asbestos litigation for Union Carbide and many other entities. Crapo has also testified before congress in support of legislation to end lawsuits against the asbestos industry. Crapo has admitted, under oath, that he has made from \$200,000 to \$250,000 per year as an expert for asbestos companies.⁶⁵ Crapo did not disclose his ongoing work for Union Carbide and its counsel in

litigation. This is especially important because Crapo is aware that Union Carbide's main defense, in which his testimony is often crucial, is that short, amphibole-free chrysotile does not cause asbestos-related disease. Crapo, despite earning substantial income as an expert witness in litigation, last published an article on the health effects of asbestos in 1990 and has not been the primary author on a paper on the health effects of asbestos since 1980.

Peer Consultation Workshop panel member Mary Jane Teta, PhD, MPH

Peer Consultation Workshop panel member Mary Jane Teta, PhD, MPH, now an active asbestos litigation consultant for the automotive industry and other friction product manufacturers, is actually a former employee of Union Carbide Corporation. Teta never disclosed her work with Union Carbide, a corporation facing potential asbestos liabilities which the Dow Chemical Company, Union Carbide's corporate parent, describes as . In fact, much of Teta's work as an epidemiologist was supported by Union Carbide while she was a corporate epidemiologist for Union Carbide. This too was not disclosed to the EPA or conference attendees.

Peer Consultation Workshop panel member Bruce Case, MD

Peer Consultation Workshop panel member Bruce Case, MD, a professor at McGill University, has an extensive background working for defendants in asbestos litigation. McGill University has been funded extensively by the asbestos mining interests (including the Quebec Asbestos Mining Association c/k/a the Asbestos Institute). The Canadian asbestos mining industry seeks to have chrysotile asbestos treated differently from other asbestos because the primary form of asbestos found in Canada is chrysotile. Case is listed as an expert witness by numerous asbestos defendants, including Union Carbide who presents the short fiber chrysotile argument as a defense. A recent peer-reviewed publication identified many serious problems with articles published by Case and others which are the crux of the asbestos industry's short fiber chrysotile defense. See Egilman et. al, Exposing the "Myth" of ABC, "Anything But Chrysotile": A Critique of the Canadian Asbestos Mining Industry and McGill University Chrysotile Studies, *Am. J. Indus. Med.* 44:540-557 (2003).

Peer Consultation Workshop panel member Roger McClellan, PhD

Peer Consultation Workshop panel member Roger McClellan, PhD admitted in his conflict of interest forms as having consulted for Union Carbide in asbestos litigation. While McClellan did disclose his consultation, the potential conflict of interest exists.

Peer Consultation Workshop panel member Bertram Price, PhD

Peer Consultation Workshop panel member Bertram Price, PhD also consulted extensively for the asbestos industry. Price does not disclose whether he has consulted for Union Carbide, but his ties to the industry present a potential conflict of interest.

Eric Chatfield, PhD, observer-commenter

While the panel was well-stocked with industry sympathetic scientists, the audience too was filled with industry experts and lawyers. Some of these experts made pro-industry statements without identifying their industry affiliations. For example, Eric Chatfield, PhD, a long term consultant to Union Carbide and other asbestos companies, stood up and commented as follows:

I want to finish up with a few comments about chrysotile, and in particular, the Coalinga Calidria chrysotile, which is the trade name for it. The mine is about 100 miles south of here. There are some remarks about this in the protocol. This chrysotile is quite unique, and it is a different geological origin from the more traditional types. Unlike other chrysotiles, when this is dispersed in air, the fiber bundles are much thicker as the lengths increase. So, as you pick a long body, it is generally thick, and it is not very long before you get to a non-respirable diameter. That doesn't happen with the other kinds of chrysotile; they all stay thin. So, much of the material from Coalinga, in fact, ends up being non-respirable. On the other hand, it disperses very readily in water to single fibrils. I have never seen a Calidria single fibril longer than about 30 μm . It just simply does not exist. I have been using this material as a reference standard since the 1970s to simulate water dispersion, and it is a very different material from other chrysotiles, and I think that should be recognized in the protocol as far as possible. Thank you.

Without revealing his long-standing relationship with Union Carbide and its lawyers, Chatfield made this pro-Union Carbide statement as if it were scientific fact. Chatfield has worked with numerous Union Carbide's lawyers, many of whom were present at the conference.

David Bernstein, PhD, observer-commenter

Another commenter from the observers was David Bernstein, PhD. The Report described his comment as follows:

Bernstein presented findings from a chronic inhalation study that investigated the influence of fiber length and biopersistence on toxicity in rats. The study was conducted for the European Commission, but findings from the study have not been reported in the peer-reviewed literature and a written summary of the study was not provided to the expert panelists. Bernstein indicated that this study found that long fibers were more biopersistent than short fibers. He further noted that exposure to fibers up to 20 μm long were found to be uncorrelated with toxic response, and only those fibers longer than 20 μm were correlated with toxicity. These findings were reportedly derived by comparing a toxic endpoint at 24 months following exposure to the distribution of fiber lengths retained in the rats' lungs. The toxic endpoint considered was collagen deposition at bronchoalveolar junctions—a precursor to pulmonary fibrosis. Bernstein claimed that the panelists can draw from this study's findings to make definitive statements on the toxicity of fibers shorter than 5 μm .

Panelists' Discussion: When discussing this study, one panelist asked if preferential deposition of long fibers is expected to occur at the bronchial-alveolar junctions, and Dr. Bernstein said yes. This panelist noted that the apparent correlation between fiber size and toxicity might simply result from studying an endpoint where short fibers do

not preferentially deposit. Another panelist encouraged Dr. Bernstein and his colleagues to publish these results.

When Bernstein ultimately published his results, the article acknowledged what he did not when presenting the data to the panel: the work was with Union Carbide's Calidria-brand asbestos and was funded by Union Carbide. As with Chatfield at the EPA conference, it appears that Bernstein decided to offer his opinions which were funded by Union Carbide without disclosing the potential for bias. Also present during this ATSDR panel presentation were numerous asbestos industry expert witnesses and asbestos industry defense lawyers.

ATSDR peer panel COI issues

The recent ATSDR panel which led to the publication of Report on the Expert Panel on Health Effects of Asbestos and Synthetic Vitreous Fibers: The Influence of Fiber Length, had many panel members with potential conflicts of interest, including Bruce Case, See supra.

Result of inadequate control of COI issues on EPA/ATSDR panels

Only by exploring the complete background of each member of the panel could a thorough conflict of interest check be done. With so many potential conflicts of interests in this sampling of the panel, the quality of the panel's recommendations is in serious doubt. Furthermore, the index of suspicion about potential bias goes up substantially when published, peer-reviewed works which support a position contrary to those of industry are either ignored or dismissed without explanation. For example, Suzuki's work showing that the dominant fiber in the tumor and pleural tissue of people who died from mesothelioma is short (less than 5 microns) chrysotile. Suzuki's 2002 work was not addressed by the panel.

Conclusions

The shortcomings with EPA's oversight of with the selection of this particular peer panel for the ORD NCEA WTC risk assessment, the Region 1 risk assessment for the Brookfield schools, and the peer panel for EPA's reassessment of asbestos fiber toxicity is merely the tip of the proverbial iceberg. EPA has some serious problems with the way it is assessing health risks. Only through vigorous conflict of interest disclosure requirements for outside scientists can the EPA really be comfortable that its positions are relatively free from outside influence.

The question remains whether the industry has sponsored the expert witnesses and consultants to come offer pro-industry opinions under the guise of unbiased research. This is a serious problem and militates for a much more stringent conflict of interest process which would require complete disclosure of all consulting arrangements including past, present and reasonably foreseeable future work. Only with complete disclosure of the corporations, organizations, and other entities with which an expert has ties can the public believe they are aware of potential biases.

EPA is not living up to its own standards for investigating and mitigating conflicts of interest by the experts it employs for advice on policy, regulations, and cleanup actions. There is a powerful effort to shape EPA opinion through secret means. Industries with vested interests are using the time honored means of liberal applications of money to pay scientists to sit on these EPA panels. They are even paying scientists to show up in the audiences at EPA public meetings to push industry's junk science without identifying themselves as paid asbestos-defendant lobbyists.

The result? A false sense of security, because the public never knows how decisions affecting the health of their children and loved ones is made at EPA. The polluting industries have the best cover of all, lurking in the shadows of an agency paid for by public tax dollars to render impartial decisions.

The efforts at all levels of EPA to minimize and misrepresent risks from asbestos and other toxics in WTC fallout is a prime example of this endemic problem at EPA. One would think that the nation, even the Bush administration, would do all possible to overprotect the living victims of 9/11. On 9/14/01, President Bush even said explicitly that no expense was to be spared to clean up the toxics that had infiltrated people's homes and offices after 9/11. But he has done the opposite.⁶⁶

The White House controlled what EPA was allowed to say to the public about WTC fallout, deleting precautionary statements from EPA press releases,⁶⁷ telling citizens through EPA it was safe. This was because it was in the interests of the asbestos-related industries not to protect citizens, so they could then justify not cleaning up in other parts of the country.

Two days ago on 3/10/04, citizens of our country were forced to institute a class action lawsuit against EPA just to recoup costs from the expensive asbestos abatements that they,

themselves paid for out of their own pockets after the Twin Towers collapsed.⁶⁸ In addition, citizens are suing for medical monitoring and cleanup costs of the many residential and business properties that have yet to be abated.

There is a need for EPA to adopt an open disclosure policy, publishing the full, complete, and detailed curriculum vitae of each and every outside consultant and advisor. Each consultant should submit a COI statement signed under oath certifying their statements are true, that they are not being paid by someone with a vested financial interest to represent them now, in past, or in the reasonably foreseeable future. I propose that the EPA adopt conflict of interest statements which require outside experts to disclose their potential conflicts under penalty of perjury in a manner similar to the new requirements on private sector CEO's instituted by the Sarbanes-Oxley Act of 2002 in the wake of the Enron scandal. All outside expert conflict of interest statements should all be placed on EPA's website saving the effort of concerned citizens going through the arduous process of requesting the information from EPA, as Ms. Kathy Rossland-Hulce was forced to do for Chatfield (see earlier sections).

Endnotes

¹ Jenkins, C. (July 16, 2003) Conflict of Interest and prejudicial statements, expert peer review panelists for EPA NCEA report titled: "Exposure and Human Health Evaluation of Airborne Pollution from the World Trade Center Disaster". Memorandum from Cate Jenkins, Ph.D., Waste Identification Branch, Hazardous Waste Identification Division, Office of Solid Waste, EPA addressed to WTC Team, EPA Inspector General's Office: Jim Hatfield, Chris Dunlap, Geoff Pierce, Dana Gilmore, Sarah Fabirkiewicz, Steve Schanamann Nikki Tinsley, EPA Inspector General Paul McKechnie, EPA Ombudsman

² Jenkins, C. (July 4, 2003) Comments on the EPA Office of Inspector General's 1/27/03 interim report titled: "EPA's Response to the World Trade Center Towers Collapse" A DOCUMENTARY BASIS FOR LITIGATION, prepared by Cate Jenkins, Ph.D., Environmental Scientist, Waste Identification Branch, Hazardous Waste Identification, Office of Solid Waste Office of Solid Waste and Emergency Response, EPA. Available from author at Jenkins.cate@epa.gov or posted at the following web addresses:

<http://www.nyenvirolaw.org/PDF/Jenkins-7-4-03-documentary-d2.pdf>

<http://nycosh.org/Jenkins-7-4-03-documentary-d.pdf>

³ EPA (October, 2002) Exposure and Human Health Evaluation of Airborne Pollution from the World Trade Center Disaster, NCEA - W - 1395, EPA/600/P-2/002A October 2002 External Review Draft, http://oaspub.epa.gov/eims/eimscomm.getfile?p_download_id=36387

⁴ Jenkins, C. (July 4, 2003) Comments on the EPA Office of Inspector General's 1/27/03 interim report titled: "EPA's Response to the World Trade Center Towers Collapse" A DOCUMENTARY BASIS FOR LITIGATION, prepared by Cate Jenkins, Ph.D., Environmental Scientist, Waste Identification Branch, Hazardous Waste Identification, Office of Solid Waste Office of Solid Waste and Emergency Response, EPA. Available from author at Jenkins.cate@epa.gov or posted at the following web addresses:

<http://www.nyenvirolaw.org/PDF/Jenkins-7-4-03-documentary-d2.pdf>

<http://nycosh.org/Jenkins-7-4-03-documentary-d.pdf>

⁵ Procurement Policy Notice No. 95 - 04, Procedures for Handling Post Award Organizational Conflicts of Interest (COI), dated 9/20/95, posted on the EPA website at <http://www.epa.gov/oam/ptod/COI/ppn95-04.pdf>

⁶ EPA ORD (December, 2000), U.S. Environmental Protection Agency PEER REVIEW HANDBOOK 2nd Edition Prepared for the U.S. Environmental Protection Agency by members of the Peer Review Advisory Group, a group of EPA's Science Policy Council. <http://www.epa.gov/osp/spc/prhandbk.pdf>

⁷ Hulce, K. (July 21, 2003) FOIA request to Betty Lopez, EPA National Freedom of Information Officer.

⁸ Jenkins, C. (July 4, 2003) Comments on the EPA Office of Inspector General's 1/27/03 interim report titled: "EPA's Response to the World Trade Center Towers Collapse" A DOCUMENTARY BASIS FOR LITIGATION, prepared by Cate Jenkins, Ph.D., Environmental Scientist, Waste Identification Branch, Hazardous Waste Identification, Office of Solid Waste Office of Solid Waste and Emergency Response, EPA. Available from author at Jenkins.cate@epa.gov or posted at the following web addresses:

<http://www.nyenvirolaw.org/PDF/Jenkins-7-4-03-documentary-d2.pdf>

<http://nycosh.org/Jenkins-7-4-03-documentary-d.pdf>

⁹ Hulce, K. R.- (7/28/03) FOIA Request addressed to EPA National FOIA Officer Lopez.

¹⁰ Hulce, K. R.- (January 28, 2003) FOIA request addressed to V. Ferguson, EPA Region VIII FOIA Officer.

¹¹ Chatfield, E (August 30, 2002) Report No. 02C029, Expert Report of Eric J. Chatfield, Ph.D., in the Matter of United States v. W.R. Grace & Co., et al., Civil Action No. 01-72-M-DWM, Prepared for Kathryn Jarvis Coggon, Holme Roberts and Owen, LLP, 1700 Lincoln St., Suite 4100, Denver, CO 80203, by Chatfield Technical Consulting, Limited, 2071 Dickson Rd., Mississauga, Ontario, Canada, L5B, Y1B.

¹² 7/14/03 Comments from citizens about Chatfield's potential conflicts of interest at the public meeting of EPA's peer review panel for the EPA ORD NCEA WTC human health risk assessment. The citizen group "9/11 Environmental Action" (website at <http://www.911ea.org>) raised the issue from the floor of the meeting. Kimberly Flynn, senior legal staff on the New York Environmental Law and Justice Project (<http://www.NYenviroLAW.org>) submitted both a written statement as well as reading it into the record at the 7/14/03 meeting. The section addressing conflicts of interest is given below:

In addition, panelists' CVs should have been made publicly available well in advance of the meeting, so that any imbalances in the panel might have been corrected. Timely public oversight is critical for ensuring that protecting people's health will be the decisive factor in the panel's deliberations and that those who serve on the panel will render independent and unbiased judgments.

At this time, we have concerns about the inclusion on the peer panel of individuals with close ties to, or who are directly employed by major polluting industries regulated by the EPA. We question whether these individuals are in a position to objectively weigh the hazards of chemicals their own companies or clients produce, use or discharge into the environment.

Likewise, we are concerned that one or more individuals on the panel may have recent or continuing contractual relationships with EPA. If true, this too would constitute a potential conflict of interest. Such individuals by virtue of their ties to EPA may have already taken a position investigations in response to the WTC disaster.

¹³ Port Authority of New York and New Jersey v. Allied Corporation, et al., United States District Court, Southern District of New York, 91 Civ. 0310 (CLB) (MDF). Defendants include: Allied Corporation (individually and as a subsidiary of Allied-Signal, Inc.); Armstrong World Industries; Tishman Realty and Construction Co., Inc.; U.S. Minerals and Products Co.; W.R. Grace and Co.; and GAF.

¹⁴ Expert for Fibreboard Corporation (Defendant): The Court of Common Pleas, Hamilton County, Ohio, Case No. A8405380; Cincinnati Board of Education vs. Armstrong World Industries, Inc., et al. Attorney Thomas L. Eagen, Jr.; Cash, Cash, Eagen & Kessel, 1000 Tri-State Building, 432 Walnut Street, Cincinnati, Ohio 45202.

¹⁵ Deposition on behalf of DaimlerChrysler Corporation (Defendant): Virginia: In the Circuit Court for The City of Newport News; Civil Action No. 24242C-23: Edith King vs. Allied Signal, Inc., et al. Attorney Susan F. Demaris; Clark Hill, PLC, 500 Woodward Avenue, Suite 3500, Detroit, Michigan 48226.

¹⁶ Chatfield, E. J. (January 15, 1997) Deposition testimony in: Port Authority of New York and New Jersey v. Allied Corporation, et al., United States District Court, Southern District of New York, 91 Civ. 0310 (CLB) (MDF). Defendants include: Allied Corporation (individually and as a subsidiary of Allied-Signal, Inc.); Armstrong World Industries; Tishman Realty and Construction Co., Inc.; U.S. Minerals and Products Co.; W.R. Grace and Co.; and GAF.

[The following are excerpts of Chatfield's deposition]

[In an experiment, clean plastic sheeting was first spread out in the room under the ceiling. Then, the ceiling tile was lifted out, which would simulate normal building maintenance operations. Then, after a few hours, the plastic sheet was tested to see if it had any asbestos fibers due to the lifting of the ceiling tile. Chatfield claimed that the small diameter fibers of asbestos found on the plastic sheet could not have come from the ceiling tile, because it would have taken up to 72 hours for this size of asbestos fiber to settle out onto the plastic sheet.]

Q. [counsel for plaintiff, Robert Turkewitz] With respect to the first video entitled World Tradecenter Tower – 1 Re-entrainment and Friability Demo by Richard Hatfield, what comments do you have regarding that video? ...

... he's an expert who's been – He is designated by U.S. Mineral to testify ... [p. 17]

Q. Is it your understanding that the asbestos that was sampled below the ceiling was re-entrained during the ceiling-tile lift demonstration and settled on those surfaces?

A. [Eric Chatfield] I believe there was a plastic sheet put on the floor before the experiment and that the sample referred to here as Sample Number 2 was collected from the surface of that plastic sheet.

Q. Following the demonstration. Is that correct?

A. Yes.

Q. So after the ceiling tile was lifted – when the ceiling tile was lifted, dust became entrained in the air. Is that correct?

A. Yes.

Q. And then it settled out on top of that sheet.

A. Yes.

Q. And the sheet, the surface of that sheet, was sampled by Mr. Hatfield.

A. Yes.

Q. And would you agree that the asbestos fibers that were analyzed and found on those surfaces came from the ceiling tile, or came from the surface of the ceiling tile?

A. I have something of a problem, because the fibers reported in the data couldn't possibly have arrived on the floor in the period of time of the experiment.

Q. Do you know how – Do you know the period of time between the actual demonstration and when the sample was collected?

A. I believe it would have been on the record of an hour or two hours.

Q. Are you saying that the structures at the size they're reported here would have been airborne for a longer period of time?

A. Yes.

Q. How much longer would they have been airborne, given the range of structures that you see?

A. After the ceiling-tile lift the – all of the structures reported 0.05 micrometers in diameter, and they would take – To fall from the ceiling to the floor they will take somewhere between 33 days and 73 days.

Q. And that's without any air velocity at all without any air movement at all, or is that in a room where there's ordinary air movement taking place? Is that in a stagnant environment?

A. Yes.

Q. So is it your opinion that the dust that Mr. Hatfield sampled would not have included structures that may still have been airborne at the time that he sampled?

A. My opinion would be that the – these data would arrive from a fewer number of very large structures that fell down within the period of the time of the experiment. ... [pp. 28-30]

[Chatfield answered questions about the U.S. Mineral's fireproofing material that had been sprayed on the steel beams, and the studies done by the Port Authority showing that some of this fireproofing material had disintegrated and deposited asbestos-contaminated dust onto the tops of the suspended ceiling tiles:]

Q. It's my understanding you actually visited some of these buildings. Is that correct?

A. Yes.

Q. What buildings did you visit?

A. I visited the World Trade Center, Towers 1 and 2 ...

Q. What was the purpose for your visits to these buildings?

A. To – In association with Entek to do the air sampling.

Q. Did you actually run the monitors?

A. I didn't run them personally, no. I had something to do with the location of the samples.

Q. You were part of the decision-making process as to where the samplers should be located?

A. Yes. [pp. 32-33] ...

Q. When did you make your trips to the Port Authority buildings?

A. The World Trade Center was on the 26th and 27th of August, 1991. ...

Q. Did you actually conduct any kind of inspection of the fireproofing materials?

A. No.

Q. I take it you did not test the friability of the material?

A. In one of the terminals at least I saw it, but that was the extent of my work on that. [p. 35] ...

Q. And you're aware that the actual ceiling tile itself at the World Trade Center does not contain asbestos.

A. I don't know that.

Q. Have you ever been above ceiling tiles where U.S. Minerals asbestos-containing Cafco Blaze Shield Type D material has been sprayed on the structural steel?

A. I can't say I've been above. I've looked from below at fireproofing on beams so far as it will go.

A. No.

Q. And looking below you weren't able to see the tops of the ceiling tiles and see what was on the tops of the ceiling tiles?

A. No. [p. 38] ...

Q. But in this video Mr. Ewing makes reference to the fact that there is fireproofing debris and dust on the top of the ceiling tiles, does he not?

A. Yes. [p. 39]

[On behalf of U.S. Mineral, Chatfield also analyzed the air for asbestos inside the World Trade Center buildings. He only found chrysotile asbestos, not other forms of asbestos:]

A. The next group is the air sampling data from World Trade Center.

Q. These are air samples that you have actually analyzed?

A. Yes. [pp. 45-6] ...

A. The majority were collected in Tower A.

Q. Were any of the samples collected above the ceiling?

A. No. [p. 49]

Q. ... Were any asbestos fibers detected in any of those samples, outdoor samples?

A. No.

Q. But asbestos fibers were detected in some of the indoor samples. Is that correct?

A. Yes.

Q. At the time that you samples – conducted air sampling at the World Trade Center were you informed what floors had already been removed? In other words, where you informed where the asbestos fireproofing was still in place and where it had been removed?

A. In a general sense, yes. I was told the ninth and tenth floors didn't have any asbestos, and the 12th didn't have any. The 11th was roughly half abated, and that 13 and 14, 15, 17, and 19 all had asbestos. [p. 51] ...

Q. Looking at the summary sheet it appears for Tower A you collected samples from Floors 92 and 108 and from Tower B from Floors 84 and 108. Let me ask you to look at the summary sheets and confirm that.

A. Yes. [p. 59] ...

Q. With respect to the chrysotile fibers that you found or detected in the samples, do you have any opinions as to the source of those asbestos fibers?

A. No. As you probably notice, most of them are matrices with other materials and that other material is pretty well always gypsum.

Q. I think you indicated before that Cafco Blaze Shield Type D contains gypsum?

A. Yes. [pp. 90-1]

¹⁷ EPA ID CAD980817217, COALINGA ASBESTOS MINE COALINGA FRESNO CA. See EPA Record of Decision at: <http://cfpub.epa.gov/superrods/rodinfo.cfm?mRod=09020751990ROD049>

¹⁸ Ilgren, E. and Chatfield, E. (1997) Coalinga fibre – A short, amphibole-free chrysotile. Part 1: Evidence for a lack of fibrogenic activity. *Indoor + Built Environment*, 6:264-276.

Ilgren, E. and Chatfield, E. (1998) Coalinga fibre – A short, amphibole-free chrysotile. Part 2: Evidence for a lack of tumorigenic activity. *Indoor + Built Environment*, 7:18-31.

Ilgren E. and Chatfield E. Coalinga fibre: a short, amphibole-free chrysotile. Part 3: Lack of biopersistence. *Indoor Built Environment*. 1998;7:98-109.

¹⁹ Ilgren, E. and Chatfield, E. (1997) Coalinga fibre – A short, amphibole-free chrysotile. Part 1: Evidence for a lack of fibrogenic activity. *Indoor + Built Environment*, 6:264-276.

²⁰ Egilman, David (2004) Letters, RE: Controlled Use of Asbestos. *Journal of Occupational and Environmental Health*, pp. 99-103.

²¹ EPA (May 30, 2003) Report on the Peer Consultation Workshop to Discuss a Proposed Protocol to Assess Asbestos-Related Risk Prepared for: U.S. Environmental Protection Agency Office of Solid Waste and Emergency Response Washington, DC 20460 EPA Contract No. 68-C-98-148 Work Assignment 2003-05, Prepared by: Eastern Research Group, Inc. 110 Hartwell Avenue Lexington, MA 02421 FINAL REPORT. See Appendix E, page E-11. <http://www.epa.gov/superfund/programs/risk/asbestos/>

²² NYC Council web page (current) Biography, Alan Gerson -- Democrat.
http://www.council.nyc.ny.us/committees/details.cfm?con_id=7

²³ <http://www.kelleydrye.com/>

The Products Liability Practice Group represents numerous corporations in litigation involving a wide variety of products in a broad spectrum of industries. This includes extensive experience serving as national counsel, managing and coordinating the defense of companies in nationwide multi-district mass tort litigation. The Group represents clients throughout the United States and abroad in a large number of products liability and toxic tort cases. ...

Our experience in defending products liability actions is unparalleled, and we take pride in our proven ability to successfully resolve these matters in practical and cost effective ways. Kelley Drye has represented numerous types of companies in products liability matters including chemical companies, machinery manufacturers, pharmaceutical companies and medical device companies. Clients include major corporations such as Union Carbide, Xerox, Johnson & Johnson, Eli Lilly, Hercules, Bristol-Myers Squibb Company, Exxon, Otis Elevator and SmithKline Beecham, as well as numerous smaller business enterprises. Our representations have involved a wide variety of products and have included some of the largest and most complex products liability and toxic tort litigations in history, including the Bhopal, Agent Orange and asbestos litigations. The Group has also defended many small and medium-sized products liability litigations. ...

The products with which the Practice Group has experience include:

Various chemicals and chemical by-products, including: PCBs; methyl isocyanate; dioxin; formaldehyde; ethylene oxide; hydrogen sulfide; carbon disulfide; acetone; acetylene; ethyl alcohol; polyurethanes; hydrocarbons; toluene diisocyanate; polyvinyl chloride; glycol ethers; and dioxane.

Herbicides, pesticides and agricultural chemicals, including Agent Orange (2,4-D; 2,4,5-T), Temik, Carbaryl and Treflan. [Agent Orange is contaminated with dioxins]

Asbestos

Numerous pharmaceuticals such as DES, Accutane, Oralflex, Hismanal, L-Tryptophan, Stadol, Prozac, oral contraceptives, anti-hypertensives and ulcer medications.

Medical devices and other medical products, including: pacemakers; IUDs; latex gloves; Pap smears; and surgical devices.

Breast implants

Various types of industrial machinery, such as printing presses, machine tools, industrial knitting machines, slitting and converting equipment, power press brakes and hand tools.

Consumer products such as sport bicycles, fitness equipment and dietary supplements.

[emphasis added in sections above]

²⁴ UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, Conwed Corporation, a Delaware corporation, Plaintiff, vs. Union Carbide Corporation, a New York corporation, Defendant. Case No. 5-92-88, September 11, 2002, 9:30 o'clock a.m., St. Paul, MN. Transcript at pages 134 to 138.

²⁵ Ilgren, E. and Chatfield, E. (1997) Coalinga fibre – A short, amphibole-free chrysotile. Part 1: Evidence for a lack of fibrogenic activity. Indoor + Built Environment, 6:264-276.

Ilgren, E. and Chatfield, E. (1998) Coalinga fibre – A short, amphibole-free chrysotile. Part 2: Evidence for a lack of tumorigenic activity. Indoor + Built Environment, 7:18-31.

Ilgren E, Chatfield E. Coalinga fibre: a short, amphibole-free chrysotile. Part 3: Lack of biopersistence. Indoor Built Environment. 1998;7:98-109.

²⁶ Ilgren, E. B. (August 13, 1998) Deposition testimony in: Conwed Corporation, Plaintiff, -against Union Carbide Chemicals & Plastics Co., Inc., (f/k/a Union Carbide Corp, Defendant, and Union Carbide Chemicals & Plastics, Inc. (f/k/a Union Carbide Corp.), -against Owens-corning Fiberglas Corporation, Walker Jamar Company, A. W. Kuettel & Sons, Inc., Api, Inc. and Macarthur Company, Third-party Defendants. Case No. Civ. 5-91-88 United States District Court, Eastern District Of Pennsylvania, In Re: Asbestos Products Liability, Litigation (No. Vi). This Document relates to: United States District Court, Fifth Division, District of Minnesota

²⁷ Ilgren, E. B. (September 11, 2002) Trial testimony in: Conwed Corporation, a Delaware corporation, Plaintiff, vs. Union Carbide Corporation, New York corporation, Defendant. Case No. 5-92-88, September 11, 2002. UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, BEFORE THE HONORABLE JUDGE DONALD ALSOP, UNITED STATES DISTRICT COURT JUDGE, TRIAL HEARING, VOLUME XIII. Testimony of Dr. E. B. ILGREN

A. I was a member of the faculty from 1992, and we clarified that. At the time we clarified it the very next day.

Q. Are you saying that you were a member of the faculty in 1992 at Oxford University in England?

A. We raised this in the deposition on, as I recall on the 21st of June, and you brought that to my attention and I said that it was – I didn't realize I was no longer on the faculty but that day or that – early the next morning before we had a continuation on the 22nd I called Oxford and they said that indeed I was no longer on the faculty but I had been on the faculty from 1984 to 1992, and believe we showed you the letter to that effect.

Q. Well, and at that deposition I showed you a letter written to me from Oxford University in response to my inquiry?

MR. WILL: Objection, Your Honor. This is hearsay.

THE COURT: Objection sustained.

MR. BROWNSON: It's true, is it not, Doctor Ilgren, that at all times that you appeared in this case including when you submitted that curriculum vitae you were not a member of the faculty of Oxford University in England and yet you held yourself out as being on that faculty.

A. I don't believe that's correct.

Q. On your curriculum vitae dated 1994 under employment it reads, and I quote, June 1989 to present, member faculty biological sciences, sub-faculty biochemistry University of Oxford Edmond Hall, I did read that correct, sir?

A. Right.

Q. And that was not true. You were not a member of that faculty?

A. Well, I wasn't a member of the faculty at that particular time, no.

Q. But -- A. And I explained -- at the time I explained it, it was my assumption that I was on the faculty and I clarified it and we clarified it.

Q. And when I took your deposition in June of 1994, I asked you this question, did you leave the University staff at Oxford in 1987, and your answer, it's news to me --

A. Correct.

Q. -- is that correct? Now this is not a hypothetical, Doctor Ilgren, shall your curriculum vitae lists that appointment under the leading employment, correct?

A. If you say so.

Q. Well, would you like me to show it to you? What is the heading at the top of the page, sir?

A. Yeah, that's employment.

Q. Okay. And employment to me means a job where you receive a pay check, is that how you understand the word employment?

A. Well, I had received a paycheck from the University from 1985 through -- I can't remember, '89 or something.

Q. Well, this curriculum vitae says you were still employed there in 1994, you weren't receiving a paycheck then, were you?

A. Well, you just -- I just answered your question. I was mistaken. At the time I clarified -- at the time, it's been eight years ago, and I followed through with a lot of the things you raised at the time. And that was one of them and I stand corrected -- or I sit corrected.

Q. And the fact is I caught many mistakes on your curricular vitae, which you have now changed and submitted a new curriculum vitae, correct?

A. Shortly after we had the first deposition you pointed out a series of what I consider to be minor errors and they were all corrected and we used those at the next deposition.

Q. Do you consider a person not knowing where they are employed to be a minor error, sir?

A. I think I've just answered that question.

Q. Well, answer it again, please. Maybe I missed it?

A. I was employed at the University of Oxford from 1985 to approximately 1990-91. And I'm saying that the minor –

Q. Or the small?

A. Of this issue in my mind is the fact that for three years I was not a member, I wasn't a member of the faculty.

Q. Well, you're aware, sir, that when an expert is qualified to give opinions in a Federal Court of law such as this, that qualification is based on their particular training, expertise and qualifications that the expert has, are you not?

A. Are you asking me what the Federal law requirements are?

Q. Yes.

A. I have no idea.

Q. Okay. You're aware, sir, that ordinary people who are not experts are not allowed to render opinions in Federal Courts, are you not?

A. Mr. Brownson, I'm not aware. I don't know what the Federal Courts require.

Q. Okay. Well, you have – you weren't dragged into this case by subpoena, sir. You appeared here voluntarily as a paid consultant by Union Carbide, isn't that correct?

A. I have appeared here of my own volition.

Q. Yes.

A. Absolutely right.

Q. And in condition with that appearance in this case in this court, you stated in 1994 that you were employed on the faculty of Oxford University in England, and you were not?

A. I just admitted I was wrong.

Q. You also stated on that curriculum vitae submitted to us in this case that in 1994 you were a member of the Royal College of Pathology in England, did you not?

A. I said I was an associate of the Royal College of Pathologists, and that's the way it was being presented.

And I called the Royal College and we inquired and as I recall to the best of my recollection that the issue arose that I was not allowed to put the initial MRC Pat on the letterhead of the paper unless I had full membership and it was immediately taken off and that's where it sits.

Q. And you did not have full membership, you were not a full member of the Royal College of Pathology in 1994 when you submitted a curriculum vitae to us in this case?

A. But I presented the qualifications as an Associate Member.

Q. That's fine. I will ask you that, but before I do, just humor me here. You were not a member of the Royal College of Pathology, a full member?

A. I was not a full member.

Q. And a full member of the Royal College of Pathologists in England is allowed to use this alphabet soup of letters after their name of MRC Pat, are they not?

A. That's correct. And MRC Pat means Member Royal College of pathologists, and people in different parts of the country write to me entitled Doctor E. B. Ilgren, MD, MRC Pat. And I was living in the UK and I had no knowledge that I was not allowed to use MRC Pat, and I was not allowed to use MRC Pat, and that's -- yes, I used it and you were the first person to raise it to my attention. After you raised it to my attention it was deleted.

Q. And that is a medical title, that pathologist, that Britons wear with a great deal of pride because that indicates they are a member of that select membership in the Royal College of Pathology, that's why they put those initials after their name, do they not? A. And I was addressed MRC Pat by distinguished pathologists at the Imperial Cancer Research Fund which is why I used it, and no one ever raised any questions about it until you did in the deposition on June 21, 1994.

Q. And whether or not other people in England addressed you as that or not, you never passed the qualifying credits or met the qualifying criteria, passed the exam which would allow you to have that membership?

A. I had no idea at the time I was not allowed to use on a piece of paper in the letterhead MRC Pat, and all the time it was there it was Associate.

Q. Okay. And an Associate Member is not a full member, that's like a member who does some things but does not rise to the level of a full membership?

A. And since --

Q. A full member?

A. Okay.

Q. A full member.

A. An Associate member is a person that has part one of the Royal College --

Q. Right, not yet a member of the Royal College?

A. Right.

Q. An Associate Member as I learned and we used at the deposition are not allowed to use those initials behind their names, correct?

A. Associate Members are not allowed to use it, yes.

Q. Now I'm just a guy from Minnesota, I got your curriculum vitae in 1994, I may not be the brightest guy in the world but I tried --

THE COURT: Just a minute. You don't have to editorialize, just ask the question.

MR. BROWNSON: Sorry, Your Honor. Okay.

BY MR. BROWNSON:

Q. Well, would you agree with me, Doctor Ilgren, that a reader of this curriculum vitae you submitted in this case would conclude that you were employed as a Professor at the University of Oxford in England, and you were a member of the Royal College of Pathologists?

A. Why would they conclude I'm a Professor?

Q. Because it says you're a member of the faculty. Doesn't faculty mean Professor?

A. There's all sorts of people on the faculty who are not Professors.

Q. A janitor isn't on the faculty, is he?

A. Well, go figure. I don't think anybody in this country is going to think a faculty on the University of Minnesota is a Professor just because he is part of the University.

Q. And in that same curriculum vitae you submitted to us in this case you stated that from June of 1974 to June of 1976 you were a, quote, registrar -- senior registrar graduate at New York Hospital, Cornell University Medical Center, did you not?

A. Could you just read that again?

Q. Okay. I will show it to you if you like. Registrar, senior registrar?

A. What's the dates?

Q. June 1974 to June of 1976?

A. Well, the things written for the English.

Q. Well, answer the question?

A. That's --

Q. Did you put that on this --

A. Sure.

Q. -- resume?

A. Yeah.

Q. And you were aware, of course, that Cornell University Medical Center had no such position, did you not?

A. Of course.

Q. Were you not?

A. But the CV is written for English so they can understand what the equivalent is, they have no title in the UK as resident, the equivalent is registrar, and that CV was done that way because I was trying to communicate with the English.

Q. I hate to editorialize again, but I'm not English and you gave this to me in this case as a statement of your qualifications --

A. Well, we cleared it up.

THE COURT: Wait a minute. Just ask the questions otherwise we'll be here quite a long time.

MR. BROWNSON: Sorry, judge.

BY MR. BROWNSON:

Q. Well, you were A RESIDENT at the time in New York, correct, you weren't a registrar?

A. Okay.

Q. Okay. And you weren't a senior resident, you were a regular resident because there is no such thing as a senior resident at that hospital?

A. That's correct.

Q. Okay. Now when you describe your position as senior registrar, would you agree with me, sir, that a person if told that -- if you just used the English version of resident might think that that's in fact meant senior resident?

A. It doesn't translate that way.

Q. Because --

A. That's how it works.

Q. Okay.

Hgren, E. B. (June 22, 1995) Deposition testimony in: Conwed Corporation, Plaintiff, -against Union Carbide Chemicals & Plastics Co., Inc., (f/k/a Union Carbide Corp, Defendant, and Union Carbide Chemicals & Plastics Inc. (f/k/a Union Carbide Corp.), -against Owens-corning Fiberglas Corporation, Walker Jamar Company, A. W. Kuettel & Sons, Inc., Api, Inc, and Macarthur Company, Third-party Defendants. Case No. Civ. 5-91-88 United States District Court, Eastern District Of Pennsylvania, In Re: Asbestos Products Liability, Litigation (No. Vi). This Document relates to: United States District Court, Fifth Division, District of Minnesota

Q. The next exhibit I marked 35 is a curriculum vitae of yours that Mr. Will provided to me since the time of your last deposition and I received it on January 30th, I don't know exactly when he sent it, but around that time. And there's been some changes from your prior Cv which we had previously marked as exhibits in this case, and I'll confess I didn't go through this and compare line by line, but my question was what changes have been updated or made on this Cv, as we see on Exhibit 35, from the prior ones which I actually have with me. The first one was Exhibit 1, we also have an Exhibit 2, which is an old Cv. I don't know if you want to see that or not, you probably don't need to. ...

Q. And now what other changes are there?

A. At the bottom the member of faculty of biological and agricultural sciences and subfaculty of biochemistry, University of Oxford, that was deleted because I am not presently a member.

Q. Now I know this was a long time ago, but when I had last questioned you about the Cv, you indicated that you were not sure what your current status was, I think somewhere along those lines of being on that faculty. Have you gotten further information since that time that can clarify that?

A. Yes.

Q. And what's that?

A. April 1992 on page 1, professional experience, five lines from the bottom, the university told me that I was on the faculty up until April 1992.

Q. Now, are there any other changes in this Cv, Exhibit 35, compared to Exhibit 1?

A. Yes.

Q. And what are those?

A. Well, on page 1 of the Cv, how do I identify this -- as Exhibit 1. On the first page of the Cv, that's Exhibit 1, the entire section "Education" has been deleted. The section under "Professional experience" has been edited or annotated so that to begin with the category "Student worker at Bryn Mawr College 1973" was deleted. The next line "Doctorate of medicine" was incorporated into a new section on the Cv, Exhibit number 35, entitled "Degrees and Certifications." The date in the old Cv, Exhibit 1, of 1971 for doctorate of medicine was corrected from 1971 to 1974. ...

Q. Now I have a couple of questions on the new Cv which I'm looking at, Exhibit 35, under the heading "Fellowships and Grants." The last listing is August of 1990 to September of 1991, W. R. Grace & Company research project. Have you applied for any fellowships or grants since that time?

A. No.

Q. Obviously you haven't had any since that time, right?

A. Right. ...

By Mr. Brownson:

Q. Dr. Ilgren, at the first session of your deposition we asked you how much you have charged Union Carbide for your work in connection with this case, and I wanted to just follow up on that since it's been nearly a year now. In the past year, how much have you charged Union Carbide for your work on this case?

A. I don't know.

Mr. Will: Just this as opposed to --

A. I don't know.

Q. Do you have a figure as to how much you've charged Union Carbide generally for asbestos-related work during the past year?

A. I don't have a figure.

Q. Is your rate still \$200 an hour?

A. Yes.

Q. And do you have any idea how many hours you've devoted to asbestos-related matters for Union Carbide in the last year?

A. It was over a thousand, I think.

Q. And some portion of that's for this case and some portion would be for other cases?

A. Just there's just Conwed and Chicago.

Q. Conwed being this case and Chicago being the Chicago board of education case?

A. Yes.

Q. And over that period of time in the past year, what percentage of your total income from professional services has this constituted?

A. Maybe a third.

Q. And I was trying to limit that question to -- I don't care to know about any income you have from investments or other sources but just in terms of your professional services I was asking, so it's about a third of that income, professional service income?

A. Yes.

Q. And of the remaining two-thirds of your professional service income over the past year, what portion of that has come from litigation-related activities?

A. 90 percent probably.

Q. And has all that litigation been related to asbestos litigation or is it other kinds?

A. Other kinds.

Q. Has any of that been related to asbestos litigation?

A. Some. I couldn't tell you what. I would think most of it is not asbestos-related.

(Discussion off the record)

Q. One final question just to finish up this matter of the consultations and legal cases. As I understand it, in the past year, one-third of your income from professional services has been from the two Union Carbide cases, and then I'm unclear about the remaining two-thirds. I think you said 90 percent of the remaining two-thirds is for litigation?

A. Right.

Q. So of total income from professional services for the past year, would it be fair to say that about 95 percent of that comes from legal matters, litigation matters?

A. Yes, 90, 95.

²⁸ Myers, John L (August 21, 2003) Deposition Testimony in: IN RE: BALTIMORE CITY ASBESTOS LITIGATION, Consolidation Case No. 24X02000676; MARIANO SCELSEI, et al. vs. AC and S, Inc., et al., October 2003 Trial Group, Case No. 24X01001843; CASES AFFECTED: NATHANIEL HAWKINS, Case No. 24X02001551; IN THE CIRCUIT COURT FOR BALTIMORE CITY.

²⁹ JOHN L. MYERS (July 29, 2003) Deposition testimony. KELLY-MOORE PAINT COMPANY, INC., Plaintiff, vs. DOW CHEMICAL COMPANY, et al., Defendants. NO. 19785-BH02 IN THE DISTRICT COURT OF BRAZORIA COUNTY, TEXAS 23rd JUDICIAL DISTRICT.

[Testimony of former Union Carbide plant manager changing Union Carbide worker death certificate so it did not read "asbestosis"]

Q. Sir, you are -- are you still the Mayor in King City?

A. Yes.

Q. How long have you been the Mayor?

A. I'm in my 11th year. ...

Q. One of the things you have done is monitor death certificates in King City, isn't it?

A. No, I don't do that.

Q. You haven't kept up with what -- when the employees that worked at the mine die?

A. I know when they die, yes.

Q. And you don't look at their death certificates?

A. I have on occasion, but I don't -- it's not a practice, no.

Q. Have you not testified just three weeks ago that one of your practices was to monitor the death certificates?

A. No, I don't recall testifying to that.

Q. You don't remember giving a deposition over at the Doubletree about three weeks ago where you asked about -- you were asked about death certificates?

A. Yes, I'm -- I'm answering what your question was. I don't recall doing that as a matter of practice.

Q. In 1991 you became aware of a death certificate that showed that an employee at the King City mine had died of asbestosis; correct?

A. Yes. I -- no, I don't know the date. If you can show me the paperwork.

Q. Approximately.

A. I have no idea approximately even.

Q. Okay. I'm sorry. I wasn't clear. Were you agreeing with approximately, or not agreeing with approximately?

A. No, I'd like for you to show me the document, then we can have the accurate date.

Q. We'll take the date out of it, just to be clear then. You're aware of a death certificate that you saw that indicated that an employee that had worked at the King City mine had died and the death certificate said asbestosis was the cause; correct?

A. I don't remember that as the cause, no.

Q. You don't --

A. The word "asbestosis" was on the certificate, but I don't know whether that listed it as the cause. ...

Q. Well, you remember the name. You testified three weeks ago you knew who it was. You just didn't want to say.

A. That's correct.

Q. So who was it?

A. We're talking -- I don't know which death certificate you're talking about.

Q. So who was it? So there are more death certificates that might have said asbestosis on them than one? ...

Q. Mr. Myers –

A. Yes.

Q. -- after you found out about this you had somebody call the Coroner's office to talk about that death certificate, didn't you?

A. Yes.

Q. And after that call was made, the death certificate was changed, wasn't it?

A. It was changed later, yes.

Q. Do you think that was appropriate?

A. Yes, in that case it was.

Q. So you think it's appropriate for you to use your influence as Mayor to have death certificates changed?

A. Has nothing to do with -- I don't think I was Mayor at that time, for one thing, and I was not acting -- if I was the Mayor I was not acting as Mayor. I was acting as a concerned person. ...

Q. You certainly would agree that in 1991 if it came out that a person that worked at the King City mine had died of asbestosis that would be against the interests of Union Carbide and KCAC, wouldn't it?

A. It was a -- it was a questionable decision by whoever did the examination, and we questioned it. And it was changed by the -- whoever the medical people were in the Coroner's office.

Q. Objection. Non-responsive. With all due respect, it's not my question, sir.

A. Okay.

Q. If there was a death certificate that stayed and remained stating someone died of asbestosis, that would be against the interests of Union Carbide and KCAC; true?

A. Not necessarily.

Q. You think that would be a good thing?

A. It would be a -- a matter of concern.

Q. Well, sir, that wasn't the first time --

A. Not saying it was good or bad. It's a matter of concern. ...

Q. What about Mr. Whitlock? Was he a friend of yours?

A. Yes.

Q. He's dead too, isn't he?

A. Yes.

Q. Do you know how many of the people that Doctor Lewinson surveyed in 1984 are now dead?

A. No, I have no idea.

Q. With respect to the death certificate originally said asbestosis on it, you got a copy of that death certificate, didn't you?

A. Yes. ...

Q. Well, no, how did you see it to then tell somebody to call to see about getting it investigated? ...

Q. Just like you decided it was important to call the Sheriff about that death certificate; right?

A. I don't think I --

Q. You certainly --

A. -- called any Sheriff, but --

Q. You didn't tell me that that was done? The Sheriff wasn't contacted about the death certificate?

A. Not that I know of.

Q. Call the Coroner?

A. Coroner, yes.

Q. Same thing. You made it a point to contact him, didn't you?

A. I don't know about other counties, but the County of Monterey, the Sheriff is the Coroner.

Q. And you did that because you thought it was important to get accurate information out in the public; right? You didn't want something wrong in a public document; right?

A. I don't really consider a death certificate a public document.

Q. Oh. So you got your hands on somebody's private, personal death certificate that shouldn't have been public?

A. I said I don't know if it's public or not. I -- I did have a copy, yes. ...

BY MR. EGDORF:

Q. Did you contact his family about whether they thought it was okay for you to contact the Coroner about his death certificate?

A. I don't recall if I did that or not.

Q. Did you ask the family if it was okay to -- for you to contact his doctor?

A. I don't recall that I contacted his doctor.

Q. Well, you said that -- strike that. As far as you're concerned, it was okay to do all those things without their permission?

A. As I said, I don't remember if I talked to Mrs. Whitlock or not.

Q. Do you think it was okay to talk to them without their permission?

A. If it was okay to what?

Q. For you to contact the Sheriff's office -- excuse me -- the Coroner or anyone else regarding his cause of death without their permission? Do you think that's okay?

A. I said I don't recall whether I did or not.

Q. I understand that. I said if you did it without their permission, do you think that's okay?

A. I don't know.

Q. You're not sure?

A. I don't know. ...

Q. So you decided that the death certificate was wrong, and you didn't even know what the autopsy had found; right?

A. I didn't say it was wrong. I questioned it.

Q. Well, you were questioning it when the autopsy hadn't even been done yet, and you're not even a doctor; right?

A. That's correct.

Q. So on what basis were you questioning it?

A. Because of my concern whether one of our employees might have asbestosis.

Q. So in the early 1990s you finally got concerned about that?

A. I think I was concerned many years before that.

Q. Well, that wasn't what your --

A. That's why we put in our engineering controls, why we gave physical exams, why we used respirators. I mean, that -- all this was done out of concern for the employees' health.

Q. Sir, you didn't do that because of your concern for the employees. You did that because you were concerned for Union Carbide because there was going to be a document that had asbestosis in it; right?

A. That's what you said, but that's not what I'm saying.

Q. I mean, you've never seen a death certificate of any of the employees of Union Carbide at King City that didn't say asbestosis and called the Coroner and said: You better check and make sure. It might be asbestosis. You never did that, did you?

A. Not that I recall. I don't think I've seen many death certificates.

Q. You didn't do it on any of them, did you?

A. I did it on one, yes.

Q. I'm trying to figure out, sir -- I mean, autopsies -- I mean, we don't have bodies sit around for weeks before autopsies are done generally, do we?

A. I don't know. I'm not a Coroner. I mean, I'm not a medical doctor, remember.

Q. Sometime between the time this guy died and before the autopsy that you say is required by law to be done, somehow in that time period you got his death certificate?

A. I don't -- I tried to say I cannot remember where I got it or where -- how I got it. ...

Q. Can we -- I mean, King City is a small town, isn't it?

A. Twelve thousand population, about.

Q. And you're the Mayor; right?

A. Yes.

Q. You're on the City Council, so obviously some people know you to vote for you; right?

A. Yes.

Q. Give me some ideas who might have given you this death certificate, if you didn't go do it on your own. Who would be thinking: God, we ought to give this to John?

A. I cannot tell you anything different than what I've already told you. You can ask me many times, but I don't remember where it came from. ...

Q. Do you have any other jobs other than working at the mine?

A. Yeah, I work part time in a funeral home.

Q. When did you do that?

A. Oh, I think I started -- it was after I retired. Probably seven or eight years ago.

Q. So in the mid '90s?

A. Seven or eight years ago, whatever that is. ...

Q. Do you think maybe you could have got the death certificate while you were working at the funeral home?

A. That's possible.

Q. Maybe you could have seen other death certificates while you worked at the funeral home?

A. Yes.

Q. So possibly -- not saying it happened, but one possible scenario is that there's a former employee of the King City mine who dies, shows up at the Grim funeral home with a death certificate before he has an autopsy, and you might see that, right?

A. That's possible, yes.

Q. And at this time you're the Mayor of the town, right?

A. I don't know whether I was at that time or not. I am now, yes.

Q. Well, you tell me. You've been the Mayor for 11 or 12 years, and you told me you retired at 1993. I agree, I'm not good at math, but that would make you the Mayor after you retired, wouldn't it?

A. Yes. ...

[Testimony of former Union Carbide plant manager on history of Coaling mine ownership by Union Carbide, from whence they obtained the asbestos to make their product Calidria ®]

Q. Was KCAC profitable while you were the President? [Union Carbide was once the owner of the Coalinga mine in California. Union Carbide sold the mine to KCAC]

A. As far as I recall, in most years it was, yes.

Q. And you were President what? Seven, eight years, something like that?

A. From '85 to '93. And I said I didn't share in the profits, but we did have an employee -- if we had net income -- positive net income it was shared with the employees.

Q. And you obviously got a salary?

A. Yes.

Q. Now, did you actually retire from Union Carbide?

A. I quit working for them in 1985. I didn't start receiving any pension checks until I retired from KCAC.

Q. In '93?

A. Yes.

Q. So the last ten years or so, in addition to the monies you've received as part of your testifying in litigation, you've also received pension benefits from Union Carbide?

A. From Union Carbide and KCAC.

Q. From both?

A. Yes. ...

Q. Now, sir, I was going to ask you some questions regarding the sale of Carbide's interest in the mine. That's called the Coalinga mine; right? Or am I mixing up some terms there?

A. Yeah, you're mixing some terms.

Q. Okay. What's it called?

A. The whole deposit was sometimes called the Coalinga deposit. My -- because the other two companies operating up there had their operations headquartered in Coalinga.

Q. Fair enough. I just want to make sure I define the mine correctly. What would I call the mine so you and I aren't confused, or some other lawyer reads this one day and says you said something you didn't say?

A. Uh --

Q. Just call it the King City mine? Can you live with that, or do you want something else?

A. No, it was in San Benito County. It wasn't even in the --

Q. Okay.

A. Sixty miles -- 30 miles from King City.

Q. Well, why don't we just call it the mine? Can you live with that?

A. Okay. The asbestos mine.

Q. The asbestos mine, where y'all got your Calidria?

A. Right.

Q. Now, I was going to ask you some questions of the -- the sale of the interest from Carbide to KCAC, but with what I asked you earlier, I just want to make sure this is right. The sale actually was done by, you believe, this Carbide Corporation to KCIC (sic), not Union Carbide directly to KCAC; right? ...

A. -- if we were still Calidria Corporation when we -- that was a very short-lived corporation. I'm not sure whether it changed back to Union Carbide, or if Calidria Corporation was in existence when the sale was made.

Q. If I asked you this earlier I apologize, because I kind of got off topic when I asked you about that. Did you have any involvement in the sale of the interest from whatever company it was to KCAC, other than just you were an employee out there?

A. I was involved. I talked to the potential buyers about the operation.

Q. Who were the other two companies in that area that were mining asbestos?

A. In what area?

Q. Out -- you said there were two other companies operating near the -- the mine where the Calidria came from.

A. Yes, J. M. and Atlas Asbestos.

Q. J. M. as in Johns-Manville?

A. Yes.

[Testimony of former Union Carbide plant manager on whether Union Carbide's Coalinga (Calidria) asbestos can cause cancer or asbestosis]

Q. Are you familiar with employees at the King City mine that were found to have pleural thickening?

A. No.

Q. Do you know what that is?

A. Well, thickening of the pleura.

Q. Are you aware that in the literature that that's something that can be caused by exposure to asbestos; correct?

A. Yes.

Q. Including Calidria; correct?

A. I don't think so, no.

Q. Sir, haven't you testified before that you believe Calidria can cause asbestosis and lung cancer?

A. Yes. I'm talking about today I don't believe that Calidria is harmful.

Q. Okay. Didn't you just testify -- excuse me. Didn't you just testify three weeks ago that you believed that Calidria could cause asbestosis and lung cancer?

A. I don't recall that, no.

Q. Well, certainly --

A. Oh.

Q. -- if you gave a deposition three weeks ago you told the truth, didn't you?

A. That's what we were -- as I said, that's what we were telling customers while we were selling it, to treat our asbestos like any others, but since I've retired I think there's been many -- quite a bit of information to show that Calidria asbestos does not cause disease.

Q. When did you come up with that?

A. In the last ten years. As I said, I've -- with different studies.

Q. What document told you that?

A. I haven't seen any document that told me that.

Q. So you're saying there's studies out there that now say suddenly Calidria is safe and better?

A. That's what I understand. I haven't seen them. ...

BY MR. EGDORF:

Q. Well, heck. I mean, when you found that out, did you send a letter to somebody at KCAC and say: We need to take all those warnings off the products? This is all wrong.

A. When I found out what?

Q. Well, that Calidria is perfectly safe.

A. That was after I retired. [Emphasis added.]

Q. Yeah. And so when you found out, because it's important to get the facts right, as you told me with the death certificates, even though you weren't working there anymore, did you call somebody at KCAC and say, whoa, you've got a false warning on your product? Did you do that?

A. Did I tell KCAC what to do?

Q. Yeah.

A. I'm afraid not. There were still rules regarding --

Q. So it's okay to --

A. – rules regarding regulations.

Q. So it's okay –

A. --regarding regula- -- why don't you let me finish?

Q. Go ahead.

A. There were still rules regarding labels that go on bags. ...

BY MR. EGDORF:

Q. In 1966, when you got involved with Calidria and you knew or had been told at the time, whether you believe it now or not, that Calidria was unsafe, did you ever suggest to somebody: Maybe we shouldn't do this? Maybe we shouldn't sell this?

A. I don't recall anybody telling me it was unsafe.

Q. Well, you told me you – excuse me. You testified earlier today you knew since 1966?

A. Not that it was unsafe.

Q. You knew that it might cause lung cancer and asbestosis, and you testified in many depositions that you got that information in your training before you started working with Calidria in 1966; right?

A. No, I haven't testified to that. [Emphasis added.]

Q. You haven't?

A. No.

Q. You sure you didn't say that three weeks ago too?

A. That I got it in training before I started working?

Q. Safe – part of your safety training in 1966, before you went to the Calidria department. ...

BY MR. EGDORF:

Q. Okay. I had Doctor Egilman print out a copy of a couple of pages of the deposition, of the deposition I was referring to earlier that Mr. Hartley took of you a few weeks ago. I want to show you page 35. If you would read the question and the answer that's bracketed starting at line 19, please.

A. The question: All right. And when -- when you started -- when you started working with Calidria in the 1960's, you, through your training and orientation at Union Carbide were aware that asbestos caused asbestosis and cancer, correct? Ms. Judin: Object to form. The Witness: Yeah, I think I answered that earlier, yes, I would have been aware of that.

Q. All right. Is that answer accurate?

A. Yes. ...

BY MR. EGDORF:

Q. I think your counsel has the exhibit excerpt of that transcript. I wanted to call your attention to page 35 on Exhibit 6 or 7, I think it is. What's the number I marked that? I lost track again.

A. 7. ...

BY MR. EGDORF:

Q. I want to ask you -- show you another deposition, November 29, 2001. ... Page 73, line 7, the question is:

There were areas where you wore respirators because the Chrysotile asbestos can hurt you; right?

If you'd look at line 9 and read your answer out loud, please?

A. Yes, it can cause asbestosis or I think it can. We have -- like I say, we haven't had any -- And then he cut me off.

Q. What was the date of the deposition, per the front page of the whole deposition, sir?

A. November 29th, 2001. ...

Q. So of the two depositions we saw, which one was accurate? The one that said you knew about asbestos in the '60s, or the one that said you didn't know anything as of 1970, that you gave in 1982? Which is the truthful one? ...

BY MR. EGDORF:

Q. I'm just asking you which -- you're saying both testimonies are accurate?

A. Yeah, to the best of my knowledge, they were accurate at that time.

Q. Okay. So the testimony where you said you knew about asbestosis and lung cancer in the '60s is accurate, and the one that says you didn't know anything about lung cancer as of 1970 is also accurate?

A. To the best of my ability, that was the best answer. ...

Q. So here today in 2003, you know more about what you knew about asbestos in 1966 than you did in 1966 or 1970 or 1982?

A. Yes, I think so.

Q. You just had memory loss in 1982?

A. No, I said I've reviewed documents that would have shown that I was made available -- made -- made aware of those hazards of asbestos. ...

[Testimony of former Union Carbide plant manager on Union Carbide health and safety record]

Q. You proud of the safety record at Union Carbide?

A. Very proud, yes.

Q. (To Doctor Egilman) You know which one I want. You don't have it? Bhopal? You proud of that?

A. I'm not familiar with --

Q. You're not?

A. -- what happened there. I'm not -- no, I don't -- I mean I don't know any details of -- of what caused the accident.

Q. You know thousands of people died because of a Carbide facility over there; right?

A. Carbide had a facility there, and people died, yes. I don't know whether it's because they had a facility or not.

Q. Well, you know that Carbide's been asked to come to India and answer for criminal charges. You know that, don't you?

A. I have read that. ...

Q. What about Hawk's Nest? Are you proud of that?

A. Of what?

Q. Hawk's Nest, are you proud of that?

A. I don't know what you're talking about.

Q. You're not familiar with the thousands of mine workers that died as a -- in West Virginia working on a mine for Union Carbide in the '20s and '30s?

A. I don't remember that, no.

Q. You don't remember seeing information about how Carbide took those thousands of bodies and dumped them in an unmarked pit? You don't know about that?

A. No. No, I don't.

Q. You don't know about in that case that the guy who ran the mine over there consulted with the Coroner and got the death certificates changed as to how those people died?

MR. LASSETTER: Object to the form. THE WITNESS: I don't know anything about what you're talking about. So you don't -- you ...

Q. Do you think Carbide took the initiative as a safety leader with respect to asbestos?

A. I don't know what you mean by "took the initiative as a leader."

Q. Made sure that all the information got out there to the public so the public could judge it on their own.

A. That's -- as I just said, that's part of our practice, to send the customer the information that we had on -- through the Asbestos Toxicology Report and other scientific documents that were available.

Q. Well, sir, you didn't send all the documents. You sent the ones that -- the ones that you chose to send; correct?

A. We filed our files with what we thought were appropriate documents on the health hazards of asbestos. ...

BY MR. EGDORF:

Q. What's the title?

A. "Our Ten-Year Safety Failure."

Q. And whose letterhead is it?

A. It's got a Union Carbide --

Q. If you turn to the next page, sir, and read out loud the first paragraph, under "Summary."

A. Simply stated, our safety performance has shown no improvement for more than ten years as measured by the most significant yardstick: Disabling injury frequency. Furthermore, in the last ten years we have become the most hazardous employer in the Big Seven chemicals group, maiming people at more than twice the rate of the others. And last year we let more accident dollars go down the drain, or up in smoke, than any one of these major competitors.

[Testimony of former Union Carbide plant manager on Union Carbide not submitting health information to EPA]

Q. Now, on the first page, sir, somebody, in handwriting, put "Company Confidential"; correct?

A. Yes.

Q. Certainly you wouldn't expect somebody at Carbide to write something false in a document that's going to be kept within Carbide, do you?

A. I would have no opinion on that. I'm --

Q. Nobody shared that memo with you?

A. This?

Q. Yes.

A. I said I've never seen it before.

Q. Okay. Is that the kind of thing you think you should have been told about?

A. Not necessarily, no. I wasn't involved with the corporate activities. ...

Q. In 1982 did you guys -- you guys -- Union Carbide were advised of some requirements promulgated by EPA to submit unpublished health and safety studies; correct?

A. I -- again, I don't recall that.

Q. Well, if EPA had asked you to produce all unpublished health and safety studies, is that something you'd feel obligated to comply with?

A. This is Calidria or Union Carbide? I -- I wouldn't have any -- I don't have any opinion on that.

Q. Well, it must be Calidria if your name's on the document, wouldn't it, in 1982?

A. Yes.

Q. And of course in 1982 you -- you're still working for Union Carbide. You're -- what's your title at the plant?

A. Product and Production Manager.

Q. Okay. So if EPA had said in 1982, we want copies of your health and safety studies, that's something you'd feel like you need to comply with, wouldn't you?

A. I think it would have to be evaluated. I don't think you can just say yes or no to some -- a question like that. ...

Q. Okay. Now, if they asked for your health and safety studies regarding Calidria, okay, would you take that to mean you need to give them all of them?

A. You mean anything that we had collected?

Q. Sure.

A. You mean passing out to customers, that kind of thing?

Q. No, I don't think you had to pass it out to customers because it says it's unpublished. Unpublished health and safety studies.

A. Again, I -- I would have to know the situation and -- and the legal requirements. ...

Q. Well, if you did so, do you think that was appropriate --

A. I don't --

Q. -- to decide that the Mellon study shouldn't be given to the EPA?

A. I don't know.

[Testimony of former Union Carbide plant manager on Union Carbide purchasing asbestos-contaminated homes of employees]

Q. Now -- ... Do you remember a time where Union Carbide purchased the homes of employees that had asbestos in them?

A. I don't remember purchasing any, but there were some homes that had asbestos in them.

Q. You had some employees at King City who took the asbestos to their homes and used that for insulation; correct?

A. Yes.

Q. At any time did anybody warn those employees that they should not do that?

A. I don't know. I wasn't there at that time. ...

Q. Now, do you remember a fellow named Roy Crow?

A. Yes.

Q. He was an employee out there, wasn't he?

A. Yes.

Q. And isn't he one of the people that used asbestos obtained from the mill to insulate in his attic?

A. I think that he was, but I do not know that for sure.

Q. Do you know who Terrance Keating (phonetic) is?

A. No.

Q. Well, in 1980 you were still involved with Calidria; right?

A. 1980 I was in Niagara Falls in the marketing department.

Q. Okay. Did you ever disclose as part of your marketing that you had advised your own employees that they needed to take Calidria out of their houses?

A. Did we tell customers that? Is that what you said?

Q. Yeah.

A. No.

Q. Did you ever tell any of your customers that you at Union Carbide had bought an employee's house to eliminate possible further exposure?

A. Did we tell customers that?

Q. Yes.

A. No, not that I recall.

Q. Well, you wouldn't need to buy somebody's house and take all the asbestos out if it was safe, would you?

A. I don't think at that time we knew what the safety hazards were with as- -- with our asbestos. Again, we -- at that point in time we were telling everyone it was -- to treat it the same as any other asbestos.

³⁰ Myers, John L (August 21, 2003) Deposition Testimony in: IN RE: BALTIMORE CITY ASBESTOS LITIGATION, Consolidation Case No. 24X02000676; MARIANO SCELISI, et al. vs. AC and S, Inc., et al., October 2003 Trial Group, Case No. 24X01001843; CASES AFFECTED: NATHANIEL HAWKINS, Case No. 24X02001551; IN THE CIRCUIT COURT FOR BALTIMORE CITY.

[Testimony of former Union Carbide plant manager on the changed death certificates of Union Carbide employees]

Q. Mr. Myers, I'm going to show you -- after I pass it to your counsel, let her take look at it -- what's been marked as Exhibit 6, which is a document headed, "Union Carbide Corporation Corporate Medical Director's Office." It's labeled "Confidential" and dated June 2, 1976, addressed to Mr. F. H. Larrison, Jr. And it states in the first paragraph - - I'll let your counsel look at it before I read that for the record. Could you read the first paragraph of that letter, after you've had a chance to look through it?

A. "For the past two years, the Medical Department has been obtaining a copy of the death certificate of all deceased active and former employees."

Q. Were you aware of that policy when you were at Union Carbide?

A. No, I don't remember that.

Q. Okay. I had asked you about Mr. Whitlock. Tell me about Mr. Whitlock.

MS. ROSENBERG: Objection to the form of the question. What do you mean?

THE WITNESS: As I told you, he was an employee of the -- worked mainly in the mill.
... ..

Q. Of what did Mr. Whitlock die?

A. As far as I know he had a -- he had a history of heart trouble. I think he had bypass surgery a few years before he died, and he was at Stanford with another heart condition when he passed away.

Q. How did you come to find out that Mr. Whitlock had died?

A. He was an employee of mine.

Q. What brought it to your attention, though? I mean, you had a lot of employees over the years.

A. No, not too many.

Q. Over 400.

A. Oh, that came and went, yes.

Q. And so Mr. Whitlock dies, and his death certificate says on it that he's had asbestosis; correct?

A. That's right.

Q. How does that come to your attention?

A. I don't remember how I found that out.

Q. Have you ever looked at the death certificate of any other former employee?

A. Only one that I can remember.

Q. Who?

A. Mr. Kronkhyte.

Q. What was Mr. Kronkhyte's position at the mill?

A. He was the -- obviously all of them changed as they advanced during the years, but I think when he passed away, he was -- I think he was vice president of KCAC. ...

Q. Why did you look at Mr. Kronkhyte's death certificate?

A. Again, I don't recall, and I don't know why I did.

Q. What did it show? What did it say?

A. That I don't remember. He had a chronic lung condition. I probably wanted to see if there was any asbestosis involved with him, because of his lung situation. ...

Q. Was there any asbestosis reflected on his death certificate?

A. No. ...

Q. And there have only been 2 people that you've looked at the death certificates for?

A. Oh, as far as I can recall, yes.

Q. It's not something that you do as a regular practice?

A. No. No.

Q. You don't pull the death certificate of every person that worked at the plant that dies?

A. No.

Q. And you don't recall why it was that this came to your attention?

A. No, I don't.

Q. What happened after you found out that his death certificate said asbestosis on it?

A. I contacted the law firm that I was dealing with at that time and -- [Emphasis added.]

MS. ROSENBERG: Mr. Myers, I'm just going to instruct you not to reveal the substance of any attorney-client communications. If you can't answer that question without doing so, then I don't want you to answer it.

THE WITNESS: What happened was eventually -- I don't know whether I called or someone -- some medical doctor called the coroner's office to find out or question that determination on the death certificate.

BY MR. RUCKDESCHEL:

Q. Essentially they challenged the determination?

MS. ROSENBERG: Objection to the form.

THE WITNESS: No. As I say, I think they questioned it.

BY MR. RUCKDESCHEL:

Q. Was an autopsy performed?

A. Yes.

Q. Where?

A. In Santa Clara County.

Q. By whom?

A. I have no idea. The coroner's office, I think they did the autopsy. And that's a law in the State of California, that if someone dies of a disease that's related to something that they were working with, an autopsy is required.

Q. And as a result of that challenge to the death certificate, what, if anything, happened to the designation of asbestosis on it?

MS. ROSENBERG: Objection to the form.

THE WITNESS: Well, I don't agree that it was a challenge. I said it was a question. The autopsy revealed no evidence at all of any asbestos-related disease, and I think the death certificate was changed.

BY MR. RUCKDESCHEL:

Q. Changed to what?

A. To the -- to eliminate asbestosis as a cause of -- or contributing cause to the death.

Q. You would agree with me that if that hadn't happened, if the -- if the death certificate had not been changed, you would no longer be able to sit in rooms like this and testify that nobody had gotten sick that worked at the plant?

MS. ROSENBERG: Objection to the form.

THE WITNESS: Yeah. But it was changed, and as I say, an autopsy showed that it was not asbestosis.

BY MR. RUCKDESCHEL:

Q. You understand that the claim that nobody has gotten sick from Union Carbide asbestos that worked at the plant is a frequently raised defense in cases such as this one?

A. Yes.

[Testimony of former Union Carbide plant manager on whether Union Carbide's Coalinga (Calidria®) asbestos causes cancer]

Q. When did you stop believing that Union Carbide asbestos causes cancer?

MS. ROSENBERG: Objection to the form of the question.

THE WITNESS: I don't know whether I ever believed that it caused cancer. I think there's been a lot of evidence in the last 10 years that leads me to believe that Calidria asbestos is not hazardous to the health.

BY MR. RUCKDESCHEL:

Q. You would agree with me, sir, that in 1983, you "firmly believed" -- and I use that in quotations -- that Calidria asbestos was a cancer hazard?

MS. ROSENBERG: Objection to the form.

THE WITNESS: If you're talking about something -- what we told customers, we told all of our customers to treat our asbestos the same as any other asbestos. ...

BY MR. RUCKDESCHEL:

Q. In 1983, you proposed a label to be put on packages of Calidria asbestos. Do you remember a time in the early '80s when the packaging, the warning label was going to be changed? ...

A. "I firmly believe that the first line item is true for short fiber chrysotile -- others may not."

Q. And when you say "short fiber chrysotile" there, you're referring to chrysotile asbestos mined from the Coalinga deposit that Union Carbide was selling?

A. It doesn't say that it; just says short fiber chrysotile. Short fiber -- There was short fiber available from Canada.

Q. You're talking here about a label to go on quote, "Calidria," close quote, asbestos; right?

A. That's right.

Q. And you say you "firmly believe that" it -- "the first line item is true for short fiber chrysotile." Now, what kind of fiber was coming out of the Coalinga deposit?

A. What kind of fiber?

Q. Short fiber chrysotile; correct?

A. Yes.

Q. All right. And what's the first line item on -- the proposed warning that you prepared?

A. "Warning -- Cancer Hazard."

Q. And you firmly believed at the time that this was true regarding the asbestos that Union Carbide was mining?

A. Again, I say for short fiber chrysotile. I don't say Calidria.

Q. Well, this is a label that's going to go on Calidria; right?

A. Yes. ...

Q. And you've testified in the past that you believed that chrysotile asbestos, including Union Carbide chrysotile asbestos, caused cancer in sufficient dose?

A. Could cause cancer.

Q. Right. And now your testimony is that you believe it cannot?

A. That's correct.

Q. And that's based on information that you've learned in the last 10 years or so?

A. Or so, yes.

Q. All right. From whom have you learned that information?

A. I think a large part of it is from the experience with our employees who now -- you know, some 30 years, 25 to 30 years exposures, there was no asbestos-related disease.

Q. Assuming that --

A. And I don't think any of our customer's employees are suffering from disease due to our product.

Q. And that assumes that the doctor that diagnosed Mr. Whitlock as having asbestosis was wrong?

A. I think he was.

Q. All right. And that assumes that the doctor that diagnosed Mr. Sinclair as having asbestosis was wrong?

A. That was proven later to be incorrect, yes.

Q. It was proven later by Union Carbide's guy?

A. No.

Q. The records will speak for themselves in that regard. ...

Q. In 2000 and coming forward to today, do you remain of the belief that Union Carbide asbestos cannot cause asbestosis?

A. Yes.

Q. Same for lung cancer?

A. Yes.

Q. Same for mesothelioma?

A. Yes. ...

Q. At what point, sir, did you become the president of the Asbestos Information Association?

A. I don't recall that.

Q. Were you the president?

A. Yes. Well, yes. ...

³¹ Ozoa, Angelo K (January 9, 1991) Report of Autopsy. County of Santa Clara, Office of the Medical Examiner-Coroner.

[Ozoa was the coroner who changed the diagnosis of "asbestosis" for a Union Carbide worker]

³² ATSDR (September, 2001) TOXICOLOGICAL PROFILE FOR ASBESTOS U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Public Health Service Agency for Toxic Substances and Disease Registry, <http://www.atsdr.cdc.gov/toxprofiles/tp61.html>

Asbestos bodies are collections of fibers (usually of length >8 µm) with a protein iron coating (also known as ferruginous bodies) that, when observed in lung tissue sections in conjunction with fibrosis, have been proposed to be used in the diagnosis

of asbestosis (Churg 1989; Craighead et al. 1982). Whereas light microscopy can be used to detect and count asbestos bodies, most uncoated fibers in tissue or fluid samples are too small to be visible (Dodson et al. 1999). Transmission or scanning electron microscopy is used to detect and count uncoated asbestos fibers in lung tissue or fluid samples, and electron diffraction or energy-dispersive x-ray analysis is used to determine asbestos type (e.g., chrysotile, anthophyllite, tremolite) (NIOSH 1994b). These biomarkers provide indicators of retained internal dose, the cumulative net result of deposition and clearance of inhaled asbestos fibers. ...

In Libby, Montana vermiculite miners and millers exposed to fibrous tremolite, counts of asbestos bodies in sputum samples closely reflected intensity and duration of past exposure (Sebastien et al. 1988b), but asbestos body counts in sputum samples from volunteers from other cohorts of workers exposed to asbestos (predominately chrysotile or lower levels of amphibole fibers than in Libby) did not reliably reflect past levels of exposure (McDonald et al. 1988, 1992). Concentrations of asbestos bodies in bronchoalveolar lavage fluid samples have been reported to reflect past exposure to asbestos fibers in a number of studies (De Vuyst et al. 1988, 1997; Dumortier et al. 1990, 1998; Roggli et al. 1994a; Teschler et al. 1994; Tuomi et al. 1991b) and to correlate with lung tissue concentrations of asbestos bodies (De Vuyst et al. 1988; Sebastien et al. 1988a; Teschler et al. 1994), but exposure to amphibole fibers may be better reflected than exposure to chrysotile fibers. ...

Teschler et al. (1994) concluded that concentrations of asbestos bodies and amphibole fibers in bronchoalveolar fluid samples reliably predict lung concentrations of retained amphibole fibers, but not retained chrysotile fibers, and that negative findings for asbestos bodies in bronchoalveolar fluid samples do not necessarily rule out significant exposure to asbestos fibers. ...

Analysis of concentrations of asbestos bodies (by light microscopy) or asbestos fibers (by electron microscopy) in lung tissue samples may represent more accurate reflections of past asbestos exposure than analysis of bronchoalveolar fluid or sputum samples, but these approaches are not without difficulties, especially for assaying exposure to chrysotile fibers, which are more rapidly cleared than amphibole fibers (Case 1994; Churg and Wright 1994). Although asbestos bodies can form on lung retained chrysotile, amphibole cores appear to be more prevalent in general populations and asbestos exposed occupational groups, even though exposure may have primarily involved chrysotile (Case 1994; Dumortier et al. 1990). Correlations between lung concentrations of asbestos bodies and concentrations of retained uncoated asbestos fibers in numerous studies have been observed most consistently for amphibole fibers and generally not for chrysotile fibers (Albin et al. 1990b; Case et al. 1994; Karjalainen et al. 1996a, 1996b).

³³ NELSON GALBRAITH, Plaintiff-Appellant, v. COUNTY OF SANTA CLARA, a Municipality of the State of California; ANGELO OZOA, MD, individually, and in his official capacity as Santa Clara County Chief Medical Examiner-Coroner, Defendants-Appellees. No. 00-17369 D.C. No. CV-99-20887-SW OPINION, UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. Appeal from the United States District Court for the Northern District of California, Spencer M. Williams, Senior Judge, Presiding, Argued and Submitted April 11, 2002—San Francisco, California Filed October 9, 2002

This appeal involves a claim that a county coroner falsified an autopsy report, leading to the false arrest and prosecution of plaintiff Nelson Galbraith ("Galbraith") for murder in violation of his constitutional rights. ...

Galbraith maintains that his wife, Josephine Galbraith ("Josephine"), committed suicide on September 18, 1995. She first tried to slit her wrists, then strangled herself by double knotting a sash around her neck. During this time, Galbraith was in a separate room watching television. Josephine had been under the care of physicians for severe depression with suicidal ideation. In the days before her death, Josephine asked her physicians for a lethal dose of medication; she repeatedly told family members that she wanted to die, and said she just wanted to "sprout wings and fly away." The officers who investigated Josephine's death originally concluded that the cause of death was suicide. They based their determination on Josephine's statements before her death and the absence of scattered blood, defensive wounding, and indication of a struggle at the scene. Dr. Angelo Ozoa, the County's Chief Medical Examiner-Coroner, performed an autopsy on Josephine's body, and concluded that Josephine did not commit suicide but was instead strangled. This finding shifted the focus of the investigation. ...

Dr. Ozoa's autopsy report, attached to the amended complaint, describes Josephine's body ... It further states that external examination of the neck revealed "somewhat transverse wrinkle marks but . . . no evidence of injury" and internal examination revealed that "[t]he hyoid, larynx, trachea, soft tissues and cervical spine are unremarkable and show no evidence of injury." Despite this apparent lack of injury to the neck, both internally and externally, Dr. Ozoa concluded that the cause of death was asphyxia due to ligature strangulation by an assailant. Galbraith alleges that this conclusion was a result of Dr. Ozoa's "incompetence" and that Dr. Ozoa deliberately attempted to cover up his incompetence from this point forward. ...

Dr. Ozoa communicated his autopsy findings to Detective Michael Yore of the Palo Alto Police Department. Detective Yore's investigative report, which is also attached to the amended complaint, states: "This homicide was originally thought to be a suicide until the Corners [sic] Office advised me that he [sic] cause of death had changed." ...

According to the amended complaint, Galbraith was arrested and charged with murdering Josephine as a direct result of Dr. Ozoa's determinations. Dr. Ozoa testified at Galbraith's preliminary hearing and trial that Josephine was strangled, that the death was not a result of suicide, and that Galbraith was the likely perpetrator. The jury acquitted Galbraith.

After Galbraith's acquittal, Josephine's body was exhumed. An expert retained by Galbraith found that Josephine's neck organs were not properly dissected. More specifically, the expert concluded that Dr. Ozoa could not have examined key internal neck structures that Dr. Ozoa claimed to have examined in the autopsy report, such as the hyoid bone, which remained fully encased in muscle, and the cartilage of the trachea, which was obscured by the still-attached thyroid gland. The expert opined that close examination of these structures would have been central to any forensic determination that the cause of death was ligature strangulation by an assailant. Galbraith's amended complaint alleges that Dr. Ozoa intentionally lied about the nature and extent of the autopsy to the police, prosecutors, and later on the stand in order to cover up his shoddy work. ...

Neither side has challenged the district court's application of these warrant affidavit cases to the present facts, and we agree, without deciding any issue of immunity, that a coroner's reckless or intentional falsification of an autopsy report that plays a material role in the false arrest and prosecution of an individual can support a claim under 42 U.S.C. § 1983 and the Fourth Amendment. ...

The amended complaint also describes deficiencies in the autopsy itself tending to indicate that Dr. Ozoa never did the work he claimed he had done to support his conclusion that Josephine's death was caused by an assailant. Finally, the amended complaint alleges that Dr. Ozoa deliberately lied about the autopsy in the autopsy report, in his communications with other investigators, and on the witness stand at the preliminary hearing in order to cover up his incompetence, and that these lies proximately caused Galbraith's arrest and prosecution for murder. ...

³⁴ Egilman D, Fehnel C, Bohme SR. (2003) Exposing the "myth" of ABC, "anything but chrysotile": a critique of the Canadian asbestos mining industry and McGill University chrysotile studies. *Am J Ind Med.* 2003 Nov;44(5):540-57.

Egilman, David (2004) Letters, RE: Controlled Use of Asbestos. *Journal of Occupational and Environmental Health*, pp. 99-103.

³⁵ Jenkins, C. (July 4, 2003) Comments on the EPA Office of Inspector General's 1/27/03 interim report titled: "EPA's Response to the World Trade Center Towers Collapse" A DOCUMENTARY BASIS FOR LITIGATION, prepared by Cate Jenkins, Ph.D., Environmental Scientist, Waste Identification Branch, Hazardous Waste Identification, Office of Solid Waste Office of Solid Waste and Emergency Response, EPA. Available from author at Jenkins.cate@epa.gov or posted at the following web addresses:

<http://www.nyenvirolaw.org/PDF/Jenkins-7-4-03-documentary-d2.pdf>

<http://nycosh.org/Jenkins-7-4-03-documentary-d.pdf>

[See Section U for a discussion of the chrysotile and fiber length issues currently before EPA and ATSDR, and conflict of interest problems with industry consultants currently acting as peer reviewers for these efforts. The conflict of interest problems are similar to, but separate from the COI issues being addressed in this memorandum]

³⁶ EPA (1985) Guidance for Controlling Asbestos-Containing Materials in Buildings. Office of Pesticides and Toxic Substances, EPA Pub. No. EPA 560/5-85-024. Known as the "Purple Book." See pages M-3 to M-2.

³⁷ Granger, R. H., McKee, T., R., Millette, J. R., Chmielinski, P., and Pineda, G. (October 1, 2001) Preliminary Health Hazard Assessment: World Trade Center. Submitted for publication to the American Industrial Hygiene Association Journal. H. P. Environmental, Inc. 104 Elden St., Herndon, VA 20170.

³⁸ INVESTIGATIVE REPORT OF THE ATTORNEY GENERAL INVESTIGATION RICHARD BLUMENTHAL, ATTORNEY GENERAL, CONNECTICUT (FEBRUARY 10, 2004) CONCERNING THE ACTIONS OF THE CONNECTICUT DEPARTMENT OF PUBLIC HEALTH IN RESPONSE TO THE DETECTION OF ELEVATED LEVELS OF ASBESTOS IN SCHOOLS IN BROOKFIELD, <http://www.cslib.org/attygenl/hottopics/brookfieldasbestosreport.pdf>

³⁹ Toland, W. (September 10, 2002) "Subject: Issues Pertaining to Brookfield (CT) Public School District". Email addressed to large EPA group called the Regional Asbestos Coordinators and National Asbestos Coordinators (RAC/NAC).

Brookfield, CT, is a fairly affluent town situated about 25 miles north of Stamford, CT ... 2+ years ago, the CT DPH had responded to a complaint from a school parent who was concerned that asbestos may have been released in an elementary school (the "Huckleberry Hill Elementary School") during a renovation that had occurred a few months earlier. ...

Immediately some concerned citizens (all with children in the BPSD [Brookfield Public School District]) began to question the state's oversight of the school district's handling of its asbestos regulatory affairs. The focus of their initial wrath was the AMP and the state's "incompetence" in that there were many more AMP violations than they had documented during the initial inspection (note: these "concerned citizens" are all represented by just one single voice who some...but not all...view as their self-appointed Joan of Arc). ...

Some of those results came back "high" for fibers in settled dust which lead to even louder criticism of the state's initial inspection. During this entire debate, one school teacher at Huckleberry Hill decided under her own volition and expense to hire a private consultant to sample for asbestos in her classroom...the music room. The music room was partially carpeted and had some linoleum as well but EPA DID NOT...based on its best professional judgment at the time...suggest that the school-hired consultant sample in this music room. This private consultant found "substantial" structure concentrations in settled dust (250,000+ s/cm(superscript: 2)) in 2 samples collected (by microvacuuming). All this after each of the school buildings within the BPSD [Brookfield Public School System] was given a clean bill of health by the DPH. Needless to say this really began to set things off in BPSD community. ...

Part of the problem was that EPA recommended to the BPSD that clean up of each room should be conducted if the concentrations of asbestos in settled dust exceeded a benchmark we had set way back in 1996. By way of background, Region I was quite involved in an enforcement-related issue in Hartford, CT, in 1996 Since it was an EJ [Environmental Justice, meaning that it involved exposures of citizens who were in a racial minority, e.g., African American] issue and none of these folks had a whole lot of money ... we needed to establish a "benchmark" by which the need for remediation should be judged. This temporary, de facto, unenforceable benchmark is the source of some the most stinging criticism Region I receives...even by one very vociferous critic at EPA HQ (read on)!

The "Number" (i.e., 45,000 s/cm(superscript: 2))

In order to try and make SOME correlation of asbestos airborne concentrations to the amount of structures found in settled dust, we contacted Mike Beard, of RTI, and Eric Chatfield of Chatfield Technical Consulting in Toronto for assistance. For this 1996 compliance case ONLY, it was decided on this conference call (note: representatives of the condo complex, the real estate management firm, and the company who performed the energy upgrade project (all named Respondents in the complaint)...as well as their respective attorney's...were ALL on board that conf. call) that we would use Chatfield's 1983 ambient air study which looked for background ambient asbestos air levels in Toronto, a city whose demographics were somewhat comparable to Hartford. Chatfield reported in this published study that airborne fiber concentrations ranged from a low of 0.000 f/cc(superscript: 3) or "none detected"...which were most of the sample results...to a high of 0.045 f/cc(superscript: 3).

To relate this to the probability that any these fibers in settled dust could be expected to become airborne under normal or routine occupant traffic conditions, we used k-factors published by Jim Millette which attempts to make that correlation. Millette reported that there appeared to be a reasonable linear relationship (or "k-factor") of asbestos fibers in settled dust to airborne concentrations in the range of about $10^{(superscript: -5)}$ to $10^{(superscript: -7)}$ depending on activity in that immediate area. Therefore, we proposed...and EVERYONE AGREED...that we would use the median k-factor ($10^{(superscript: -6)}$) and set a benchmark of 45,000 s/cm² by which necessary clean-up at that complex would be determined and built that into the consent agreement.

Although we used the highest end of the published Chatfield study to set this benchmark recognizing that this was going to be fairly costly to people who may least afford to pay for these services [this was the CT condo Toland describes as being an "Environmental Justice" issue above, i.e., involving African Americans], we felt that was fair and all agreed. ...

⁴⁰ <http://www.epa.gov/ej>

The first two sentences on EPA's EJ web page read as follows:

Environmental Justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people, including a racial, ethnic, or a socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies.

Less than two weeks ago, the EPA Inspector General issued a report on EPA's failure to institute EJ requirements at EPA:

EPA (March 1, 2004) Evaluation Report EPA Needs to Consistently Implement the Intent of the Executive Order on Environmental Justice Report No. 2004-P-00007.
<http://www.epa.gov/oigearth/reports/2004/20040301-2004-P-00007.pdf>

⁴¹ Fitzgerald, Margaret (September 15, 2002) Margaret Fitzgerald, music teacher, untitled letter to Toland disputing Toland's 9/10/02 email

Hulce, Kathy (September 23, 2002) letter from concerned parent addressed to EPA Region 1 Administrator. Ms. Hulce subsequently distributed this letter widely by email with the subject line reading "Summary of Asbestos in Brookfield from 'Joan of Arc' "

Kelley, Melinda (September 27, 2002) letter addressed to EPA Region 1 Administrator registering formal complaint against Wayne Toland.

⁴² EPA (November 1, 2000) EPA Region 1 Mary Rosenstein, Associate Director, Office of Ecosystems Protection, Letter with attached risk assessment to CT Dept. of Public Health, "United States Environmental Protection Agency, Technical Appendix, Brookfield School System, Brookfield, CT."

⁴³ Jenkins, C. (May 30, 2002) email to Eric Chatfield with subject line: " Dr. Chatfield, EPA is misquoting you in one of these two documents, but WHICH ONE IS IT????"

⁴⁴ Chatfield (May 27, 2002) "RE: Huckleberry Hill Elementary School, Brookfield, CT." Letter provided to Margaret Fitzgerald, teacher, Brookfield school system, addressed to "Whom it May Concern."

⁴⁵ EPA (November 1, 2000) EPA Region 1 Mary Rosenstein, Associate Director, Office of Ecosystems Protection, Letter with attached risk assessment to CT Dept. of Public Health, "United States Environmental Protection Agency, Technical Appendix, Brookfield School System, Brookfield, CT."

The results ... of the fifty-one (51) Method D5755-95 samples were compared to the benchmark chosen by EPA based on the asbestos fiber levels found in ambient (outside) air measured by Transmission Electron Microscopy (TEM), within the range 0.01 - 0.045 fibers/structures per cubic centimeter (f/cc) [*this is the same as structures per milliliter, or s/mL*]... In order to compare the benchmark levels from cubic centimeter(cc) to settled dust levels in square centimeter (cm²) and allowing for the aerodynamic properties of these fibers, a K-factor must be applied. After the application of the appropriate K-factor we calculated a benchmark of 45,000 structures per square centimeter (s/cm²).

EPA established benchmark levels of ambient (outside) air measured by Transmission Electron Microscopy (TEM) within the range 0.01 - 0.045 fibers/structures per cubic centimeter (f/cc) ...

More recent studies in which asbestos air and surface dust levels were measured by TEM have been used to calculate additional K-factors. Based on these controlled studies for reentrainment of settled fibers into air, the K-factor of 10⁶ [ten to the minus six, or 0.000001] was used. As shown in Section 7.0, the 0.045 f/cc corresponds to 45,000 s/cm² after the application of the K-factor.

⁴⁶ ATSDR (2000) Section 5.4 – Levels Monitored or Estimated in the Environment. Toxicological Profile for Asbestos, Agency for Toxic Substances and Disease Registry, Centers for Disease Control, ATSDR. Available by calling 1-888-42-ATSDR. www.atsdr.cdc.gov/toxprofiles/tp61.html

⁴⁷ Jenkins, C. (June 9, 2002) TESTING CARPET, THE ASBESTOS RESERVOIR: Best test for carpets; EPA ultrasonication method; No consultants needed; only cost is the lab fee ; EPA shows HEPA vacuuming does not remove asbestos; EPA and other asbestos dust benchmarks/safety levels. Memorandum from Cate Jenkins, Ph.D., Hazardous Waste Identification Division, OSW, EPA addressed to Affected Parties and Responsible Officials.

See page 12 and following. Posted at: <http://911digitalarchive.org/objects/109.pdf>

It is unconscionable for Region 1 to have used the 0.045 s/mL highest outlier value from the study. At a minimum, it should have used the mean (average) for all of the measurements, most of which showed no asbestos at all.

Since 1983, however, much more definitive studies with increased sensitivity have become available for background air levels. Region 1 should have used the peer reviewed level for ambient outside air from these more recent studies established by the Agency for Toxic Substances and Disease Registry (ATSDR) of the Centers for Disease Control (CDC). The ATSDR is an authoritative source for this information for EPA, and is funded through EPA statutes to develop this information in a Toxicological Profile for Asbestos. The early 1983 [Chatfield] study used by Region 1 was not even mentioned by the ATSDR.

ATSDR's findings ... for rural areas is 0.00001 s/mL, and urban air is 0.0001 s/mL.²⁹
... Compare 0.00001 s/mL and 0.0001 s/mL with the level of 0.045 s/mL used by Region 1 for the Brookfield schools! ...

Region 1 also falsely claimed that 0.01 to 0.045 s/mL asbestos in air is the EPA benchmark for ambient air. The fact is, EPA has no benchmark or ambient air standard for asbestos. This is made clear in EPA statutes, regulations, and publications. As stated earlier, EPA does not consider any exposure level to asbestos to be safe. The only benchmark is zero asbestos levels, zero exposure. ...

Region 1 needed to do more than use an incorrect value for background air in order to make its risk level for settled dust high enough to cover existing contamination levels in the Brookfield School System. To do this, Region 1 also intentionally chose an inappropriate, low K-factor for its calculations.

There was no reason for Region 1 to have gone through any calculation process to project background dust levels from air levels. Typical background dust levels are well established, just like typical air levels.

Region 1 chose to ignore the fact that the same reference they used for K-factors also contained real world data for typical dust levels, which are widely recognized by industrial hygienists and other asbestos abatement specialists. See Table 2 for typical dust levels for buildings with or without asbestos contamination problems. Compare 200 s/cm², a real world background level for buildings that do not contain asbestos materials, with Region 1's calculated level of 45,000 s/cm².

Even if Region 1 did not want to use this published data on typical dust levels, it had its own data, developed during the testing of the Brookfield schools, that showed that clean surfaces and clean schools had much, much lower background dust levels.

⁴⁸ Chatfield, E. (1983) Measurement of asbestos fibre concentrations in ambient atmospheres. Prepared for the Canadian Royal Commission on Matters of Health and Safety Arising from the use of Asbestos in Ontario by Eric Chatfield, Manager, Optics Research Centre, Ontario Research Foundation, Mississauga, Ontario.

⁴⁹ Jenkins, C. (June 9, 2002) TESTING CARPET, THE ASBESTOS RESERVOIR: Best test for carpets; EPA ultrasonication method; No consultants needed; only cost is the lab fee ; EPA shows HEPA vacuuming does not remove asbestos; EPA and other asbestos dust benchmarks/safety levels. Memorandum from Cate Jenkins, Ph.D., Hazardous Waste Identification Division, OSW, EPA addressed to Affected Parties and Responsible Officials.

See page 12 and following. Posted at: <http://911digitalarchive.org/objects/109.pdf>

⁵⁰ Health Effects Institute (1991) Asbestos in public and commercial buildings: A literature review and synthesis of current knowledge. Report of the asbestos literature review panel. Cambridge, MA: Health Effects Institute.

⁵¹ Health Effects Institute-Asbestos Research (1991) Asbestos in Public and Commercial Buildings. A Literature Review and Synthesis of Current Knowledge. "HEI-AR is organized to gather and to generate reliable and objective information, and is supported jointly by the Environmental Protection Agency and a broad range of private parties that have an interest in asbestos. The congressional mandate under which HEI-AR now operates specifies that the HEI-AR research "effort shall in no way be construed to limit or alter EPA's authority or obligation to proceed with rulemakings and to issue rules as necessary." 141 Portland St., Suite 7100, Cambridge, MA 02139.

⁵² Port Authority of New York and New Jersey v. Allied Corporation, et al., United States District Court, Southern District of New York, 91 Civ. 0310 (CLB) (MDF). Defendants include: Allied Corporation (individually and as a subsidiary of Allied-Signal, Inc.); Armstrong World Industries; Tishman Realty and Construction Co., Inc.; U.S. Minerals and Products Co.; W.R. Grace and Co.; and GAF.

Q. The next one is the Health Effects Institute Asbestos Research report. What opinions do you expect to render regarding that report?

A. That's a rather broad question. There's evidence in the summaries of the main report concerning the effects of direct and indirect analysis. There is evidence of low concentrations in public commercial buildings, airborne concentrations, and overall discussion of the – of the topic of airborne concentrations in buildings, and I think – I can't say – point to any specific items until such time as I'm questioned on a – Specific questions may be raised, and those questions are likely to be addressed in here. ... [pp. 2219-20]

⁵³ Jenkins, C. and Beard, M. (March 21, 2002) Email interchange in 4 parts. Subject: "Mike, a question for you --- "

[Beard to Jenkins]

... The EPA "Silver Book" cites TEM airborne asbestos levels of 0.0 to 0.045 f/cc found in urban and rural ambient samples. I don't think we have any epidemiology to state that there is widespread disease associated with a level of 0.045 f/cc. ...

[Jenkins to Beard]

Thank you, Mike.

I also agree that the 0.000004 f/mL level is not relevant to be imposed on one particular exposure scenario. But it is the EPA risk level, and there it stands. We cannot question it at this point.

Also, for urban and city air, we have to accept what ATSDR says about average values. I agree that you do not use a "non-detection" as equivalent to zero. Either you assign the detection limit itself as the value, or 1/2 the detection limit. That is what I did in my 3/11/02 memo for the Libby data.

I do not know any scientist, even the ATSDR, who would assign a zero value to a detection limit value. We actually do have epidemiologist saying that there is definite risk at the 0.045 f/cc level. They do not say "widespread disease" of course. Instead, they say based on human studies and a linear model, that the increased risk would be 1 in 100. That is what

ATSDR said in their final review in 2001, and what EPA says in IRIS.

We have no evidence that urban air even approaches 0.045 f/mL for a 70 year exposure period. Until you can establish that you have a large population actually exposed at these levels for 70 years., you cannot claim that this level is safe or there is no evidence of widespread disease at this level. ...

[Beard to Jenkins]

Thanks Cate,

Can you give me the reference for the ATSDR data on ambient air so I can keep up to date???

Thanks

Mike

[Jenkins to Beard]

Mike, the reference is to: Table 5-2, ATSDR (2000) Toxicological Profile for Asbestos, Centers for Disease Control, ATSDR. Available by calling 1-888-42-ATSDR. Currently, only the final draft version is posted at www.atsdr.cdc.gov/toxprofiles/tp61.html]

[Beard to Jenkins]

Thanks Cate! I now have a copy. Maybe someday I will begin to understand risk assessment. But for now, I'll leave that to experts like you!!!

⁵⁴ Heather Barr (2003-06-01) Clearing the air Sources of school asbestos remain a mystery. THE NEWS-TIMES. http://www.newstimes.com/cgi-bin/dbs.cgi?db=news&view_records=1&id=50925

In the beginning, some environmental officials said that a level of 45,000 structures (or bits of asbestos) per square centimeter was an acceptable level for dust sampling.

But some parents wondered about that level. Kathy Hulce, who has two children in the district, researched asbestos by requesting information from state and federal sources. She came to the conclusion that the original 45,000 structures standard was "scandalous."

In fact, when the school system formed an advisory committee of officials and parents to assist with the asbestos clean-up, members adopted a much lower threshold of 5,000 structures per square centimeter for dust sampling. Brookfield adopted a level that was 25 times less than a benchmark level used for sampling air, said Granville.

Heather Barr (2002-06-29) Asbestos removal outlined —Residents to vote on \$900,000 to start cleanup. THE NEWS-TIMES.

High levels of asbestos contamination were found in some rooms of Huckleberry Hill School in the middle of May. After that school was closed, testing revealed high levels of asbestos in all four town schools.

No source of the contamination has yet been pinpointed.

Vernon Rohde of S&B Environmental, who was hired by music teacher Margaret Fitzgerald to test Huckleberry Hill School, said in recent results, Brookfield High School showed the worst levels of all four schools. He said consultants found high levels of asbestos contamination in some radiators and rooms.

Rohde said some readings were in the millions. He said the 5,000 structures per square centimeter standard is being used, and that more than half of the high school's rooms, around 50, must be cleaned.

Granville said he does not endorse using the 45,000 structures per square centimeter level either.

Rohde agreed. "(The school system is) going against my advice," said Rohde if the 45,000 standard is used.

⁵⁵ Robert Miller and Heather Barr (February 11, 2004) State no help on asbestos, THE NEWS-TIMES,, http://www.newstimes.com/cgi-bin/dbs.cgi?db=news&view_records=1&id=59549

First Selectman Jerry Murphy — who was not in office in 2002 — said Tuesday that the town now has an indoor air quality program "that's way ahead of the pack." Brookfield uses a much stricter standard than the one the public health department adopted for the town in 2000 — a standard that does not exist in either federal or state regulations.

⁵⁶ Jenkins, C. (July 4, 2003) Comments on the EPA Office of Inspector General's 1/27/03 interim report titled: "EPA's Response to the World Trade Center Towers Collapse" A DOCUMENTARY BASIS FOR LITIGATION, op cit. See earlier citation for web address.

⁵⁷ ERIC J. CHATFIELD (August 20, 2002) CURRICULUM VITAE, CURRENT AT 2002-08-20. Submitted to EPA's contractor Versar as part of process for selection to EPA's peer review panel for the EPA ORD NCEA WTC human health risk assessment.

[The following were listed as expert consultancy services involving the defense of asbestos companies against suits brought by school boards]

1991 Mar 07 Deposition on behalf of U.S. Mineral Products Company (Defendant): U.S. District Court for The Eastern District of Pennsylvania, No. 830268; Asbestos School Litigation. Attorneys Stephen J. Imbriglia and Carl H. Delacato, Jr.; Hecker Brown Sherry and Johnson, 1700 Two Logan Square, 18th and Arch Streets, Philadelphia, PA 19103.

1992 Mar 19 Deposition on behalf of U.S. Mineral Products Company (Defendant): U.S. District Court, Eastern District of Texas, Beaumont Division, Case No. B-87-00507; Dayton Independent School District, et al vs. U.S. Mineral Products Company, et al. Attorneys Peter C. Kennedy; Hecker Brown Sherry and Johnson, 1700 Two Logan Square, 18th and Arch Streets, Philadelphia, PA 19103, and David A. Livingston; Livingston & Markle, 200 Waugh on the Bayou, 55 Waugh Drive, Houston, TX 77007.

1993 Apr 13 Expert Witness Testimony at Trial on behalf of Fibreboard Corporation (Defendant): The Court of Common Pleas, Hamilton County, Ohio, Case No. A8405380; Cincinnati Board of Education vs. Armstrong World Industries, Inc., et al. Attorney Thomas L. Eagen, Jr.; Cash, Cash, Eagen & Kessel, 1000 Tri-State Building, 432 Walnut Street, Cincinnati, Ohio 45202.

1994 Jun 15 Deposition on behalf of United States Mineral Products (Defendant): State of Michigan in the Circuit Court for the County of Wayne, No. 84-429634-NP; Board of Education of the School District for The City of Detroit vs. The Celotex Corporation, et al. Attorney Carolyn Sullivan, Esquire; Melick & Porter, One Joy Street, Boston, Massachusetts 02108.

1995 Aug 15 Deposition on behalf of Union Carbide (Defendant), and on behalf of United States Mineral Products Company (Defendant): State of Illinois, County of Cook, SS: in the Circuit Court of Cook County, Illinois, County Department - Law Division, No. 92 L 9934: Board of Education of the City of Chicago vs. A, C and S., Inc., et al.; No. 92 L 9933: Evanston Community Consolidated School District No. 65, et al., vs. A, C and S., Inc., et al.; No. 92 L 9932: Board of Education of High School District No. 211, et al., vs. Abitibi Asbestos Mining Co., Ltd., et al.; No. 92 L 9927: Board of Education of Township High Schools, et al., vs. A, C & S., Inc., et al. Attorney, on behalf of Union Carbide, Matthew E. Norton; Burke, Weaver & Prell, 55 West Monroe Street, Chicago, Illinois 60603, and Attorney, on behalf of United States Mineral Products Company, Peter C. Kennedy; Hecker Brown Sherry and Johnson, 1700 Two Logan Square, 18th and Arch Streets, Philadelphia, PA 19103.

1986 Dec 15 Deposition on behalf of United States Mineral Products Company, Inc. (Defendant): U.S. District Court for The Western District of North Carolina, Greensboro Division, C-85-1256-G; Burlington City Board of Education v. United States Mineral Products Company, Inc. Attorneys J.A. Gardner, III and G.C. York; Hedrick, Eatman, Gardner & Kincheloe, 741 Kenilworth Avenue, Suite 300, Charlotte, North Carolina 28204.

1986 June 25 Deposition on behalf of U.S. Gypsum Co. (Defendant): Circuit Court of Jackson County, Missouri, Case No. N/A; School District of Independence, Missouri, No. 30 v. U.S. Gypsum Company. Attorney J.D. Pagliaro; Morgan, Lewis & Bockius, 2000 One Logan Square, Philadelphia, PA 19103.

1985 Dec 11 Deposition on behalf of U.S. Gypsum Co. (Defendant): U.S. District Court of the Eastern District of Tennessee, Eastern Division, No. 2-83-329; Sherry Wolfe et al. (Washington County Board of Education, Tennessee) v. U.S. Gypsum Co., National Gypsum Company and W.R. Grace & Co. Attorneys J.D. Pagliaro and D.J. Valenza; Morgan, Lewis & Bockius, 2000 One Logan Square, Philadelphia, PA 19103.

⁵⁸ Hulce, Kathy (October 2, 2003) letter to EPA Inspector General Nikki Tinsley requesting an investigation on Region 1's reliance on Chatfield and their continued use of the 45,000 s/cm² standard for asbestos in settled dust.

⁵⁹ Hulce, K. (July 7, 2002) letter addressed to EPA Region 1 Administrator Varney concerning the Region 1 risk assessment for the Brookfield schools.

⁶⁰ EPA (September 4, 2002) Letter from EPA Region 1 Stephen S. Perkins, Office of Environmental Stewardship, addressed to Ms. Kathy Hulce concerning the Region 1 risk assessment for the Brookfield schools.

⁶¹ EPA (August 21, 2003) Evaluation Report EPA's Response to the World Trade Center Collapse: Challenges, Successes, and Areas for Improvement Report No. 2003-P-00012. See page 114. http://www.epa.gov/oig/reports/2003/WTC_report_20030821.pdf

⁶² EPA (May 30, 2003) Report on the Peer Consultation Workshop to Discuss a Proposed Protocol to Assess Asbestos-Related Risk Prepared for: U.S. Environmental Protection Agency Office of Solid Waste and

Emergency Response Washington, DC 20460 EPA Contract No. 68-C-98-148 Work Assignment 2003-05,
Prepared by: Eastern Research Group, Inc. 110 Hartwell Avenue Lexington, MA 02421 FINAL REPORT..
<http://www.epa.gov/superfund/programs/risk/asbestos/>

⁶³ The issue of asbestos fiber type and "short" fibers (those less than 5 microns in length) has become a central issue in product liability litigation where asbestos companies deny that their short fiber chrysotile asbestos can cause disease in workers (this is primarily the defense of friction products manufacturers (brakes/clutches), gasket and packing manufacturers, and Union Carbide (its Calidria-brand chrysotile had an average length of 5 microns). Thus, the asbestos industry has a huge interest in the outcome of these scientific panels. If the asbestos industry and their lawyers can convince the EPA to change its current position (all types of asbestos are dangerous) to assigning little or no risk to chrysotile asbestos, the industry would have a huge new weapon in defending themselves.

⁶⁴ Dr. Yasunosuke Suzuki and others found that the predominant form of asbestos found in and around asbestos-related mesothelioma tumors was short (less than 5 microns) chrysotile asbestos. Dr. Suzuki concluded:

The majority of asbestos fibers in lung and mesothelial tissues were shorter than 5 µm in length. Conclusions: 1) Fiber analysis of both lung and mesothelial tissues must be done to determine the types of asbestos fibers associated with the induction of human malignant mesothelioma; 2) short, thin asbestos fibers should be included in the list of fiber types contributing to the induction of human malignant mesothelioma; 3) Results support the induction of human malignant mesothelioma by chrysotile.

Suzuki and Yuen, Asbestos Fibers Contributing to the Induction of Human Malignant Mesothelioma, *Ann. N.Y. Acad. Sci.* 982: 160-176 (2002).

Dr. Ronald Dodson and others also published a peer-reviewed article which made clear that there clearly is not enough data to exonerate fibers shorter than 5 microns as a hazard. Dodson, Atkinson & Levin, Asbestos Fiber Length as Related to Potential Pathogenicity: A Critical Review, *Am. J. Indus. Med.* (2003). The EPA panel inexplicably ignored these and hundreds of other works which suggest that chrysotile is a potent carcinogen.

⁶⁵ In his testimony before the Senate Judiciary Committee, Dr. Crapo indicated he had been an expert in asbestos litigation "from time to time." Under oath in litigation, Dr. Crapo admits that his consultation with asbestos companies was 20-25% of his annual income and that he did not dispute that he'd earned up to a "couple of million dollars."

⁶⁶ David France and Erika Check (September 14, 2001) Asbestos Alert. *Newsweek*, <http://msnbc.com/news/629268.asp?0sp=w12b2&cp1=1>

"We're getting in there and testing to make sure things are safe," Whitman says.
"Everything will be vacuumed that needs to be, air filters (in area buildings) will be cleaned, we're not going to let anybody into a building that isn't safe. And these buildings will be safe. The president has made it clear that we are to spare no expense on this one, and get this job done." . . .

Susan Ferraro (September 14, 2001) EPA chief says water, air are safe. *New York Daily News*

"The President has said, 'Spare no expense, do everything you need to do to make sure the people of this city and down in Washington are safe as far as the environment is concerned,'" Whitman said. . . .]

⁶⁷ See specific statements of White House changes to EPA press releases after 9/11 in the following report:

EPA (August 21, 2003) Evaluation Report EPA's Response to the World Trade Center Collapse: Challenges, Successes, and Areas for Improvement Report No. 2003-P-00012. See page 114.
http://www.epa.gov/oig/reports/2003/WTC_report_20030821.pdf

⁶⁸ Full text of legal brief available at the publication "Inside EPA" (subscription).

See press articles at:

Lower Manhattan residents and workers sue EPA over air quality, David New York Newsday, March 10, 2004
<http://www.newsday.com/news/local/wire/ny-bc-ny--groundzerolawsuit0310mar10,0,332607.story?coll=ny-ap-regional-wire>

EPA Sued Over Sept. 11 Contamination, Reuters, March 20, 2004 Wed Mar 10, 2004 07:18 PM ET
<http://www.reuters.com/newsArticle.jhtml?type=topNews&storyID=4542138>

Lower Manhattan Residents Sue EPA Over Air Quality, AP Says, David M. Leavitt & Richard Rosen, Bloomberg News, March 10, 2004
<http://quote.bloomberg.com/apps/news?pid=10000103&sid=aLq4YBzD.wn0&refer=us#>

Group Is Suing Federal Agency Over Post-9/11 Health Hazards, by Anthony, DePalma, New York Times, March 11, 2004
<http://www.nytimes.com/2004/03/11/nyregion/11epa.html?ex=1080012807&ei=1&en=6bd7654708d2dafc>

Downtowners Suing Feds Over Toxic Lies, by William Neuman, New York Post, March 11, 2004
<http://www.nypost.com/news/regionalnews/20482.htm>

cc: Dr Kumar
For your info -
should Paul's X-rays
be reviewed?
John Meyer
1/22/11

cc: Chris Timothy
LMB
Alan Gerson
1/23/11
MFC 1/24/11

Autopsy
 30 Investigation
 Send 25 2 Gats
 med. ex./Coroner
 850 Thornton Way
 ST 95128-
 4702
 file # 91-007-210
 210

Alan Gerson 1/7/91
 Don't have own Dr.
 contact Dr. Oyer
 unless he knows him
 or is comfortable
 In questioning the
 diagnosis of asbestosis.
 Have Dr. Kumar review
 old medical records.
 Is body still here, leaning today for
 autopsy - rapid ex. fossils.

IMPORTANT MESSAGE

FOR John
 DATE 1/8/91 TIME 1:09 AM
 M Chris
 OF Whitehurst - Thurm.

PHONE AREA CODE LOCATION EXTENSION

TELEPHONED	PLEASE RESP.
CALL RETURNED	WILL CALL AGAIN
NUMBER TO BE RECALLED	NUMBER
RETURNED YOUR CALL	SPECIAL ATTENTION

MESSAGE Theresa from Santa Clara
County Coroner (299-5137) to
get autopsy report. Wait couple
of days.

SIGNED Chris
 LIVED IN U.S.A.
 TIPS FORM 2008B

From The Desk Of
JOHN MYERS

1/8/91

674-3500

Dr. Kumar in Greenfield

Never saw Paul

Greenberg } Saw Paul

Hyde }

Wait until after autopsy to
recheck Paul's records.

Dr. Greenberg - Doesn't remember any
banking problem of Paul. Wait
until autopsy is in.

Calidra

A PRODUCT OF EDCARD INC
P.O. BOX 11 - 95020 S.F., CA 94120
Telephone 415-341-1100

7

1/27/91 Alan Gerson

Have our physician review PRV medical records and find out why asbestos was listed as cause - on informal basis. Get copy of Death Cert. from funeral parlor or from County to find out from physician why he listed asbestos.

of Santa Clara County, per Chris at Whitehurst
Mandary A. Don't know permit for burial. Paul
book to Santa Clara for autopsy
Actual, north side.
A No Death Cert for

a heart condition

to hypoxia

in Sept 1988

Asbestos in lungs

He'll try to get the info for me.

Alan: My name is on contact list

"(1/27/91)"

Calidria

A PRODUCT OF **KCAC** INC

PO BOX K • KING CITY, CA 95300
TEL (408) 385-5385
FAX (408) 385-1148


June 3, 1991

Alan J. Gerson, Esq.
Kelley, Drye & Warren
101 Park Avenue
New York, NY 10178

Dear Alan:

Enclosed is a copy of the final autopsy report for Paul Whittleck. I am sure you will be as pleased as I am to note that asbestosis was not involved in his death, nor is there even any mention of it.

Very truly yours,


John L. Myers

/mb:

Encl.

cc: Frank M. Brown

P.S. See especially p. 4

UCASB07008157

From The Desk Of Dr. Kumar
JOHN MYERS

For our telecon this date,
please review the attached
autopsy report on Paul
with track and call me with
your comments. A response at
your earliest convenience would
be appreciated.

Thanks,

John

5/31/91

~~Specifically, I want to know if
asthenia has been completely
exonerated as a
"problem".~~

Calidria
A PRODUCT OF ECKHARDT &
PETERSON, INC.
WASHINGTON, D.C. 20001

5/31/91 ~ 5³⁰ pm

Dr. Kumar called and concurred
that asthenia was not mentioned
in the report nor was it a
factor in Paul's death

UCASB07008158

Frank

Per am. telecon:

According to Paul's Death Certificate (which is no longer valid),
the immediate cause of death was:

- "BRADYCARDIA" - Abnormally slow heart beat
- due to "HYPOXIA" - Oxygen deficiency.
- due to "Sepsis" - Disease causing organisms in the blood

Other significant conditions - "AsBESTOSIS"

The attending physician was Philip Cyax, MD - Stanford.
One local Dr. said he is probably an intern and listed
everything he could think of. Paul's local Dr. said
there has never been any indication of asbestosis disease
in Paul's physical exams. Both local Drs. think an
autopsy will not show asbestosis. I agree.

The County would not allow burial since asbestosis was
listed and there had been no autopsy. It will be a few
days before we have the results of the autopsy. A new death
certificate will be issued.

We have not ever hidden anything from employees and
will answer any questions. Paul's condition was probably
due to cigarette smoking, not asbestos. I will be glad to
talk to your employees if they have questions.

JGM ~~1/8/91~~ 1/8/91



SURGEON GENERAL
OF THE
PUBLIC HEALTH SERVICE

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

WASHINGTON, D.C. 20201

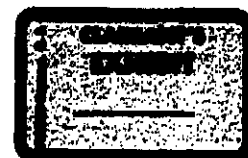
April 25, 1978

PHYSICIAN ADVISORY - HEALTH EFFECTS OF ASBESTOS

The results of recent studies of shipyard workers have increased concern about the health effects associated with previous occupational exposure to asbestos. This advisory notice will assist you in dealing with inquiries from your patients and other members of the public.

Asbestos refers to a group of widely used fibrous minerals. Significant exposure of men and women employed in shipyards is known to have occurred, even among those not directly working with asbestos. Exposure to asbestos can also occur in many settings, such as, direct mining and manufacturing; construction; insulation; roofing; demolition; brake lining; and the manufacture and installation of asbestos pipe, sheets, panels, paper products, friction materials, textiles, floor tiles, paints, and gaskets. The risk has been documented extensively for certain occupational exposures, and there are reports that asbestos-associated disease also occurs in household contacts of asbestos workers.

The primary effects of past asbestos exposure are asbestosis, a lung disease, and certain types of cancer, primarily lung cancer and pleural and peritoneal mesothelioma and, less frequently, gastro-intestinal and other cancers. It is now known that the health effects of asbestos appear after a long latent period (15, 25, 35 or more years) after the initial exposure. Exposures as short as a month may result in disease many years later, because the inhaled dust, being mineral, tends to remain in the tissues. ~~It has been noted in studies of heavily exposed workers that~~ approximately 20 to 25 of each 100 deaths among asbestos workers 20 or more years from onset of exposure are found to be from lung cancer, 7 to 10 from mesothelioma, 4 from cancer of the esophagus, stomach, colon/rectum, and some ~~excess cancers of other sites (oropharynx, larynx, and kidney)~~. In addition, in some groups, as many as 7 percent of workers die of a form of pneumoconiosis, asbestosis. Cigarette smoking significantly increases the lung cancer risk of asbestos exposure and aggravates asbestosis.



In dealing with your patients or other individuals who worked in shipyards or believe that they were otherwise exposed to asbestos, you may wish to consider the following issues:

1. Occupational or Exposure History -- A detailed, lifetime history must be obtained. This is time consuming, but important because significant exposures may have been brief (one month) and may have occurred many years ago (i.e., during World War II). Because the World War II work force was comprised of many women as well as men, the potential for female patient involvement should not be overlooked.
2. Careful Management of Lung Disease -- A detailed history for symptoms such as shortness of breath or exertional dyspnea, physical examination, chest x-ray, and pulmonary function tests may be helpful in diagnosing the pneumoconioses associated with asbestos. Early x-ray changes are often subtle so x-rays must be reviewed carefully by experienced readers. Such readings should include a thorough search for pleural changes. Careful attention to and aggressive treatment of respiratory infections may be important in patients with asbestosis. The use of currently effective influenza and pneumococcal vaccines should be considered.
3. Emphasis on Smoking Cessation -- Discontinuation of smoking is an important step in the control of the sequelae of asbestosis and will assist in the prevention of lung cancer. Individuals who smoke and who have been exposed to asbestos have 30 to 90 times the risk of getting lung cancer of individuals who neither smoke nor have been exposed to asbestos and 7½ to 30 times the risk of the non-smoking asbestos workers. Data are available which show that cessation of smoking will significantly diminish the risk of developing lung cancer among asbestos workers.
4. Cancer Surveillance -- The usefulness of screening asymptomatic, exposed individuals for lung, gastro-intestinal and other cancers is now under study in clinical trials. Individuals, however, should be carefully questioned regarding possible symptoms which could be related to cancer: chest pain, hoarseness, hemoptysis, weight loss, melena, etc. If such symptoms are present, an appropriate diagnostic workup should be undertaken.

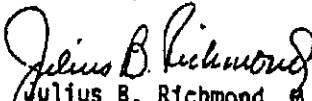
It is important to note that many people exposed to asbestos -- perhaps a majority -- suffer no apparent ill effects. It is hoped that most of your patients will be in this category.

Current use of asbestos is regulated, but attention must be given to proper ventilation and engineering controls and the use of respirators -- all measures of primary prevention. In the past the dangers of asbestos exposure were not fully appreciated; much exposure occurred in previous decades, particularly in shipyards, where individuals often worked in confined quarters.

- 3 -

A discussion of asbestos and its health effects appears in the March/April issue of Ca, The Cancer Journal for Clinicians and is available through the American Cancer Society, 777 Third Avenue, New York, New York 10017. A more detailed physician information alert will be distributed by the National Cancer Institute through a number of medical journals within the next two or three months including the Journal of the American Medical Association. Additional information including a more detailed series of questions and answers can be obtained by writing to Asbestos, National Cancer Institute, 9000 Rockville Pike, Bethesda, Maryland 20014.

Sincerely,



Julius B. Richmond, M.D.

Surgeon General
Assistant Secretary for Health



WORLD HEALTH ORGANIZATION

INTERNATIONAL AGENCY FOR RESEARCH ON CANCER

CHEMICALS AND INDUSTRIAL PROCESSES
ASSOCIATED WITH CANCER IN HUMANS

IARC MONOGRAPHS, Volumes 1 to 20

Report of an IARC ad hoc Working Group which
met in Lyon, 15-17 January 1979 to advise the
Director, IARC, on chemicals carcinogenic for humans

Prepared by:

RALPH ALTHOUSE
LORENZO TOMATIS

JAMES HUFF
JULIAN WILBOURN

September 1979

INTERNATIONAL AGENCY FOR RESEARCH ON CANCER

LYON

CLAIMANT'S
EXHIBIT

CHEMICALS AND INDUSTRIAL PROCESSES
ASSOCIATED WITH CANCER IN HUMANS

Lyon, 15-17 January 1979

Members

- F. Armitage, Professor of Biomathematics, Department of Biomathematics,
University of Oxford, Pusey Street, Oxford OX1 2JZ, United Kingdom
- B.K. Armstrong, The University of Western Australia, Department of
Medicine, Medical School Building, The Queen Elizabeth II Medical
Centre, Nedlands, Western Australia, 6009, Australia (*Rapporteur*)
- A.L. Brown, Dean, School of Medicine, The University of Wisconsin,
7th floor, WARF Building, 610 North Walnut Street, Madison,
Wisconsin 53706, United States of America (*Chairman*)
- P. Bogovski, Director, Institute of Experimental and Clinical Medicine,
42 Miu Street, Tallinn 200015, Estonia, USSR
- P. Cole, Department of Epidemiology Harvard University, School of
Public Health, 677 Huntington Avenue, Boston, Massachusetts,
02115, United States of America
- N.E. Day, Unit of Epidemiology and Biostatistics, International Agency
for Research on Cancer, 150 cours Albert-Thomas, 69372 Lyon
Cédex 2, France
- G. Della Porta, Director, Division of Experimental Oncology A. Istituto
Nazionale per lo Studio e la Cura dei Tumori, Via C. Venezian 1,
20133 Milan, Italy
- R.A. Griesemer, Director, Carcinogenesis Testing Program, Division of
Cancer Cause and Prevention, National Cancer Institute, Bethesda,
Maryland 20014, United States of America (*Rapporteur*)
- T. Hirohata, Chairman, Department of Public Health, School of Medicine,
Kurume University, 67 Asahi-machi, Kurume City 830, Japan
- S.D. Jayakar, Laboratorio di Genetica Biochimica ed Evoluzionistica
(C.N.R.), via S. Epifanio 14, 27100 Pavia, Italy
- L. Massé, Ecole Nationale de la Santé Publique, Avenue du Prof. Léon
Bernard, 35043 Rennes Cédex, France

M.C. Pike, University of Southern California Medical School, Edmondson Research Building, 1840 N. Soto Street, Los Angeles, California 90032, United States of America

R. Preussmann, Institut für Toxikologie und Chemotherapie, Deutsches Krebsforschungszentrum, Im Neuenheimer Feld 280, 6900 Heidelberg 1, Federal Republic of Germany

M.A. Schneiderman, Associate Director for Science Policy, National Cancer Institute, Bethesda, Maryland 20014, United States of America

L. Teppo, Finnish Cancer Registry, The Institute for Statistical and Epidemiological Cancer Research, Liisankatu 21 B, 00170 Helsinki 17, Finland

D.B. Thomas, Fred Hutchinson Cancer Research Center, Program in Epidemiology and Biostatistics, 1124 Columbia Street, Seattle, Washington 98104, United States of America

J.K. Wagoner, Special Assistant for Occupational Carcinogenesis, Office of the Assistant Secretary of Labor, Occupational Safety and Health Administration, US Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, United States of America

N.J. Wald, I.C.R.F. Cancer Epidemiology and Clinical Trials, University of Oxford, Department of the Regius Professor of Medicine, Radcliffe Infirmary, Oxford OX2 6HE, United Kingdom
(*Vice-Chairman*)

I.B. Weinstein, Professor of Medicine and Public Health/Director, Division of Environmental Sciences, College of Physicians and Surgeons of Columbia University, Institute of Cancer Research, 701 West 168th Street, New York, N.Y. 10032, United States of America

Representative from the Commission of the European Communities

W.J. Hunter, Health and Safety Directorate, Commission of the European Communities, Bâtiment Jean Monnet, Plateau du Kirchberg, Luxembourg, Grand Duchy of Luxembourg

CHEMICALS AND INDUSTRIAL PROCESSES
ASSOCIATED WITH CANCER IN HUMANS
IARC MONOGRAPHS VOLUMES 1-20

ABSTRACT

An international *ad hoc* Working Group of experts in cancer research met at the International Agency for Research on Cancer (IARC) in January 1979 to evaluate the data on human and experimental animal carcinogenicity for 54 chemicals, groups of chemicals, and industrial processes. Monographs for these chemicals were published in Volumes 1-20 of the *IARC Monographs on the Evaluation of the Carcinogenic Risk of Chemicals to Man*. On the basis of evidence from human studies, 18 of the 54 chemicals and industrial processes are human carcinogens. A further 18 chemicals are probably carcinogenic for humans, although the data were considered not adequate to establish a causal association. To reflect differing degrees of evidence of carcinogenicity within this group, it was further subdivided; for six chemicals there was a high degree of evidence, and for 12 there was a lower degree. Data on the remaining 18 chemicals were considered insufficient to allow any evaluation of carcinogenicity. The report summarizes the background, purpose, and overall conclusions of the Working Group. The evidence supporting the evaluations is given in the Appendix.

This volume includes a cumulative index of chemicals for Volumes 1-20 of the IARC Monographs, as well as an index by possible target organ in humans. A condensed version of this report will appear in the December 1979 issue of *Cancer Research*.

CHEMICALS AND HUMAN CANCER

11

II. *Limited evidence* of carcinogenicity indicates a possible carcinogenic effect in humans, although the data are not sufficient to demonstrate a causal association.

III. *Inadequate evidence* of carcinogenicity indicates that the data are qualitatively or quantitatively insufficient to allow any conclusion regarding carcinogenicity for humans.

Dividing lines were by no means firmly drawn between *sufficient evidence* and *limited evidence* from animal studies and between *inadequate evidence* and *limited evidence* from both human and animal studies. When differences of opinion occurred among the members of the Working Group, the classification was made by majority vote.

Evaluation of the carcinogenic risk to humans

Presently, no objective criteria exist to interpret the animal data directly in terms of human risk. Thus, in the absence of *sufficient evidence* from human studies, evaluation of the carcinogenic risk to humans was based on consideration of both the epidemiological and experimental evidence. Furthermore, the breadth of the categories for human and animal evidence defined above allows substantial variation within each, and the decisions reached by the group regarding overall risk incorporated these differences, even though they could not always be adequately reflected in the placement of a chemical into a particular category in the Table. The evidence in support of these decisions is summarized in the notes for each chemical in the Appendix.

The chemicals, groups of chemicals, or industrial processes were placed into one of three groups:

Group 1

The chemical, group of chemicals, or industrial process is carcinogenic for humans. This category was used only when there was *sufficient evidence* to support a causal association between the exposure and cancer.

Group 2

The chemical or group of chemicals is probably carcinogenic for humans. This category includes chemicals for which the evidence of human carcinogenicity is almost 'sufficient' as well as chemicals for which it is only suggestive. To reflect this range this category has been divided into higher (group A) or lower (group B) degrees of evidence. The data from experimental animal studies played an important role in assigning chemicals to category 2, and particularly to those in group B.

Group 3

The chemical or group of chemicals cannot be classified as to its carcinogenicity for humans.

APPENDIX: DESCRIPTIVE EVALUATIONS

23

However, the influence of other constituents of the working environment cannot be excluded in these studies. Case reports have suggested an association between exposure to arsenic compounds and blood dyscrasias and liver tumours¹⁻⁴.

6. ASBESTOS (Group 1)

All types of commercial asbestos fibres that have been tested are carcinogenic in mice, rats, hamsters and rabbits, producing mesotheliomas and lung carcinomas after inhalation, and after intrapleural, intratracheal and intraperitoneal administration⁵.

Occupational exposure to chrysotile, amosite, anthophyllite, and mixtures containing crocidolite has resulted in a high incidence of lung cancer. A predominantly tremolitic material mixed with anthophyllite and small amounts of chrysotile has also caused an increased incidence of lung cancer. Pleural and peritoneal mesotheliomas have been observed after occupational exposure to crocidolite, amosite and chrysotile asbestos. Gastrointestinal tract cancers were increased in groups exposed occupationally to amosite, chrysotile or mixed fibres containing crocidolite. An excess of cancer of the larynx was also observed in exposed workers. Mesotheliomas have occurred in individuals living in the neighbourhood of asbestos factories and crocidolite mines, and in persons living with asbestos workers. Both cigarette smoking and occupational exposure to asbestos fibres increase lung cancer incidence independently. When present together, they act multiplicatively⁵.

-
- ¹ Kjeldsberg, C.R. & Ward, H.P. (1972) Leukemia in arsenic poisoning. *Ann. Intern. Med.*, 77: 935-937.
 - ² Kyle, R.A. & Fenne, G.L. (1965) Hematologic aspects of arsenic intoxication. *N. Engl. J. Med.*, 273: 18-23.
 - ³ Brady, J., Liberatore, F., Harper, P., Greenwald, P., Burnett, W., Davies, J.N.P., Bishop, M., Polan, A. & Vianna, H. (1977) Angiosarcoma of the liver: an epidemiologic survey. *J. Natl. Cancer Inst.*, 59: 1383-1385.
 - ⁴ Lander, J.J., Stanicy, R.J., Sumner, H.W., Boswell, D.C. & Anch, R.D. (1975) Angiosarcoma of the liver associated with Fowler's solution (potassium arsenite). *Gastroenterology*, 68: 1582-1586.
 - ⁵ IARC Monographs, 14: 1-106, 1977.

iv. *Negative evidence* means that within the limits of the tests used, the chemical is not carcinogenic. The number of negative studies is small, since in general, studies that show no effect are less likely to be published than those suggesting carcinogenicity.

v. *No data* indicates that data were not available to the Working Group.

The categories *sufficient evidence* and *limited evidence* refer only to the strength of the experimental evidence that these chemicals are (or are not) carcinogenic and not to the extent of their carcinogenic activity. The classification for any chemical may change as new information becomes available.

Assessment of evidence for carcinogenicity from human studies

Evidence of carcinogenicity from human studies comes from three main sources:

1. Case reports of individual cancer patients who were exposed to the chemical or process.
2. Descriptive epidemiological studies in which the incidence of cancer in human populations was found to vary spatially or temporally with exposure to the agents.
3. Analytical epidemiological (case-control and cohort) studies in which individual exposure to the chemical or group of chemicals was found to be associated with an increased risk of cancer.

Three criteria must be met for a causal association to be inferred between exposure and human cancer (3):

1. There is no identified bias which could explain the association.
2. The possibility of confounding has been considered and ruled out as explaining the association.
3. The association is unlikely to be due to chance.

In general, although a single study may be indicative of a cause-effect relationship, confidence in inferring a causal association is increased when several independent studies are concordant in showing the association, when the association is strong, when there is a dose-response relationship, or when a reduction in exposure is followed by a reduction in the incidence of cancer.

The degrees of evidence for carcinogenicity in human studies were categorized as:

1. *Sufficient evidence* of carcinogenicity indicates a causal association between exposure and human cancer.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

MEMORANDUM

DATE: April 16, 2004

SUBJECT: Bruce Case, MD, EPA consultant for asbestos:
COI misrepresentations and slander against other scientists

TO: EPA IG WTC Team: Nikki Tinsley, Chris Dunlap, Sarah Fabickiewicz, Dana Gilmore, Jim Hatfield, Geoff Pierce, Steve Schanemann

CC: Affected parties and responsible officials

FROM: Cate Jenkins, Ph.D.*
Environmental Scientist, Waste Identification Branch
Hazardous Waste Identification Division (Mail Code 5304W)
Office of Solid Waste

Cate Jenkins

This memorandum documents evidence of substantial misrepresentations to the U.S. government by Bruce Winston Case, MD. Case served as a consultant for an EPA peer panel on asbestos risks,¹ an issue directly related to EPA's response to the World Trade Center disaster.

Case provided false and misleading information regarding his work history and sources of real and perceived COI on a detailed COI form² prior to his selection to the EPA panel, as well as to myself.

In addition, in a recent email interchange between Case and myself, he slanders other scientists who were not selected to serve on the EPA peer panel. This was to justify his contention that they were unfit to serve. In my 3/11/04 memorandum to the EPA Office of the Inspector General (OIG), I suggested several other scientists whom I believed should have been included so as to achieve balance and a broader spectrum of scientific views. The

* The conclusions and opinions in this memorandum are those of the author and do not necessarily reflect those of the U.S. Environmental Protection Agency.

panel EPA had chosen was heavily weighted to scientists who served as expert witnesses and consultants to the asbestos industry.

The credibility of Case's written statements and input into this EPA panel are also seriously in question, because they fail to consider all relevant evidence. There is a documented record that the panel members were in fact provided with relevant studies for their analysis, and the obligation and charge to the panel members to provide EPA with an unbiased analysis of all this data. However, Case chose to utilize only those studies which supported the financial interests of the asbestos industry.

Legal basis, allegations regarding EPA consultant Bruce Winston Case, MD

The documentation provided herein relates to concealment and covering up relevant information, misrepresentations, false writings, false and fraudulent statements, etc. by a particular EPA consultant. These offenses fall within the criminal statutes at Title 18, Chapter 47, Section 1001 of the U.S. Code: CRIMES AND CRIMINAL PROCEDURE.³

On 7/4/03, 7/16/03, and then on 3/11/04, I provided your office documentation of EPA's failure to investigate and mitigate consultant COI issues, especially as related to asbestos and World Trade Center (WTC) toxic fallout. These problems fall under EPA's obligations to insure the integrity and impartiality of its decisions by preventing, investigating, and mitigating COI issues, whether real or perceived.

History

EPA panel on asbestos toxicity convened in conjunction with WTC collapse

Case served on EPA's Peer Consultation Workshop on a Proposed Asbestos Cancer Risk Assessment. EPA published the proceedings of this workshop on 5/30/03.⁴ Case not only contributed to the joint conclusions of the panel, but he also wrote a separate section by himself, consisting of his personal "Premecting Comments" which were incorporated without any changes into the final EPA published proceedings.

This panel was convened after the collapse of the WTC with no possible desired outcome other than to downgrade the carcinogenicity status (and thus degree of protection) for asbestos. This association is supported by the fact that the panel was requested and funded by EPA's Superfund Program under the Comprehensive Environmental Response and Liability Act (CERCLA), which is the same statutory authority under which EPA responded to the WTC disaster.

Case's email correspondence with myself over his COI issues

Attached are a series of email interchanges between Case and myself from 3/15/04 through 3/23/04. Case was critical of my portrayal⁵ of him in my 7/4/03 report to the OIG⁶ as well as my 3/11/04 report⁷ to the OIG. My 7/4/03 report documented that Case has previously published statements that chrysotile asbestos, the predominant type found in WTC fallout,

does not cause cancer and made false claims that the scientific community agreed with him. My 7/4/03 and 3/11/04 reports both documented his history on behalf of defendants in asbestos litigation, and the fact that his research was based on data and studies funded by asbestos mining interests (including the Quebec Asbestos Mining Association, commonly known as the Asbestos Institute).

In these emails, Case also defends his selection to the EPA peer panel over the other scientists I had recommended, namely Ronald Dodson, PhD; David Egilman, MD; Phillip Landrigan, MD; and Yasunosuke Suzuki, MD. Case slanders these scientists, both directly and by innuendo.

Misrepresentations of funding sources, consultancies, and work history

False certification to EPA by Case that he was never involved in asbestos court cases/litigation

As a prerequisite for serving on the EPA peer panel, Case was required to provide a detailed Conflict of Interest (COI) certification form and answer specific questions relating to real or perceived COI. On 12/16/02, Case provided a 9-page COI certification form and questionnaire⁸ to Eastern Research Group, Inc. (ERG), the EPA contractor who was selecting the individual panel members as subcontractors. Case's COI certification/questionnaire contained the following response to a question about involvement in court cases:

ERG questionnaire, page 1, question 2]

Have you contributed to, or been involved in any asbestos-related cases (including the current case between EPA and W.R. Grace related to the Libby, Montana mine site)? If yes, please be specific as to your involvement.

[Case's response]

The question implies but does not state "legal" cases; if so, the answer is no. ... [Case goes on to describe work and research relating to Libby, but "never regarding litigation."]

There are several instances, listed below, where I know that Case was an expert witness for the asbestos industry in litigation. Thus, his response to the COI questionnaire and certification was false.

Expert witness for AC&S defending against litigation brought by John Hance, et al.⁹

Expert witness for US Gypsum in Alber vs. U.S. Gypsum.¹⁰

Expert witness for Gerlock in the litigation Donald Clpov, et al., vs. AC&S, Inc.¹¹

Expert witness for asbestos defendant s in Breaux v. AC&S, Inc. et al.¹²

Expert witness for asbestos defendant s in Pfummer v. AC&S, Inc.¹³

Expert witness for Mobil in Mass Action Tort against Defendant Mobil Corporation¹⁴

Expert witness for Georgia-Pacific in Flowers, et al. v. AC&S, et al.¹⁵

Expert witness for Anchor Packing Company in *Vandenberg, et al. v. AC&S, et al.*¹⁶

Expert witness for Greene Tweed & Co., Inc. in *Allen v ABCO Industries, Inc., et al.*¹⁷

I have been told there are many other instances, too numerous to justify the time tracking them down. It was EPA/ORD's job to have specifically solicited and investigated this information before choosing Case as a consultant. However, even this limited list lends the lie to Case's contention to me that he has spent his life helping asbestos victims:

[Case to Jenkins, 3/15/04 email] ... Your comments could cause interference with my ability to help victims both here in Canada and elsewhere. I cling to the perhaps naive belief that we are on the same "side" in wishing to help victims and prevent both exposure and disease, which I have spent my professional life doing.

False claims by Case that his research not funded by the asbestos industry

Potential misrepresentations of asbestos industry funding in CV Case supplied to EPA

Case's biographical summary, published as part of the proceedings of the EPA panel on asbestos,¹⁸ did not admit to any asbestos industry or other private party clients, but did mention governmental sources of research funding. This biographical summary is identical to the biographical summary Case included as part of his full CV which he posted on his personal website.¹⁹ Thus, it is highly probable that the full CV he provided to EPA is also identical to the one he posted on his personal web site.

There is a separate section in Case's CV on his personal website titled "Research Grants" where he makes the direct claim that he has never received funding from the asbestos industry:

Only peer reviewed grants and scholarship grants included: Dr. Case has never received, or applied for, grants from private industry.

Case's full CV on his web site is exhaustive in listing governmental consulting and grants. However, it intentionally omits any mention of his asbestos industry or other private party funding. This is deliberately misleading and a misrepresentation. If he had never mentioned any research funding or consultancy work whatsoever for any party, whether governmental or private, he might have been able to justify his CV. However, he did not, giving a biased, misleading account of his consultancies and grants.

False claim by Case to Jenkins that research not funded by asbestos industry

Case also claimed in an email to me that his research was not funded by the asbestos industry, at least not in cases where his name appeared as the first author. The following is from his first email to me on 3/16/04:

Are you aware that all McGill University studies of which I am the first author were financed by peer-reviewed granting committees (of EPA, among others) at arm-length from government, and that none of my research has received so much as ONE PENNY from "asbestos companies", or for that matter, any private industry at all (which pretty much makes me unique in academia, don't you think)?

His claims are untrue, even when he was the first author on a paper, as seen from the acknowledgement section of a few of the papers I had available, as well as his own courtroom testimony.

Case's published studies document funding by the asbestos industry

The following published studies by Case indicate that the source of funding comes entirely or in part from asbestos-related companies. There could well be others, but I have not had the time to investigate.

NAYEBZADEH, ATAOLLAH; DUFRESNE, ANDRE; CASE, BRUCE; VALI, HOJATOLAH; WILLIAMS-JONES, A.E.; MARTIN, ROBERT; NORMAND, CHARLES; CLARK, JAMES (2001) Lung Mineral Fibers of Former Miners and Millers from Thetford-Mines and Asbestos Regions: A Comparative Study of Fiber Concentration and Dimension. *Archives of Environmental Health*, 56(1): 85.

"This research was funded in part by a joint grant from the JM Asbestos Corporation and the Natural Sciences and Engineering Research Council of Canada."

McDonald, A., Case, B., Chrug, A., Dufresne, A., Gibbs, G., Sébastien, P., McDonald, J. (1987) Mesothelioma in Quebec chrysotile miners and millers: epidemiology and aetiology. *Ann. Occup. Hyg.* 41(8) 707.

"This paper has depended on work on the cohort carried out continuously since 1965 and made possible by the help of people and agencies too numerous to mention ..."

Note that the "cohort ... since 1965" in the second paper refers to a group of exposed workers followed in McDonald's research funded by the Quebec Mining Association. Case denies any association between himself and/or his institution, McGill University, in his 3/24/04 email to me: "QAMA has no relation to McGill University nor has it during my tenure (literal and figurative) here (82-88 and 92-present)." This is untrue, because it clearly funded the work of McDonald at McGill. QAMA is on record as actively sought "friendly" scientists at McGill, and Case worked with the same data, cohort, and scientist funded by QAMA at McGill. See pages 354-358 of my 7/4/03 report to the EPA OIG for further documentation.

Court testimony where Case admits to research being funded by asbestos industry

In courtroom testimony, Case admits to funding of his research by the asbestos industry, namely WR Grace and the Quebec Asbestos Mining Association (QAMA).²⁰ Case testified as follows:

Q. Did you do a study in which it was funded by W. R. Grace?

A. No, Dr. McDonald did a study that was funded by W. R. Grace.

Q. And were you involved with that study?

A. I participated in the analysis of sputum from people who worked in a vermiculite mine in Libby, Montana and because of that I think W. R. Grace had gone bankrupt.

Q. Doctor, the study and paper that came out of that study, did your name appear on that paper?

A. Yes. It certainly didn't help W. R. Grace any, did it?

Q. You also were involved in a study with Dr. McDonald that was sponsored by individuals who were involved with the Quebec Mining Companies?

A. You mean the 1989 paper?

Q. Yes, sir.

A. Yes.

Q. And they were mining chrysotile fibers up in Canada; isn't that true?

A. Yes.

Q. In the early 1990s you lectured to defense attorneys on the issue of chrysotile, isn't that correct?

A. Yes.

Case's false claim that he worked directly for EPA

Case also misrepresented his work history in a court of law, claiming that he worked for EPA directly. The following is trial testimony that took place on 4/19/01:²¹

... and then I was working with some folks at the University of Pittsburgh, and that led to my moving to Pittsburgh in 1988, and I stayed there until 1992, and Pittsburgh I worked full time as an epidemiologist for the United States Environmental Protection Agency. I was director of the United States Environmental Protection Agency's Center for Environmental Epidemiology which is at the University of Pittsburgh. ...

I have also consulted for NIOSH and EPA, as I have said.

Case was making a false statement designed to impress the jurors that he was a full EPA employee. He was not. He only worked for the Univ. Pittsburgh under a grant that the university had received from EPA. He was on the faculty of Pitt, but certainly not an EPA employee in any way. He was merely a consultant to EPA.

Note how Case tries to further distinguish his work as being that of a full EPA employee by saying that he ALSO consulted for EPA as well. This was intended to clearly differentiate his earlier statement as working directly for EPA from "being merely a consultant to EPA." Thus it was no slip of the tongue by Case when he claimed that he worked for EPA.

It is noteworthy that Case's CV that he himself posted on his personal website, Case describes his work at Pitt differently. On his CV, Case describes the work correctly, as being under an EPA grant to Pitt, stating that he was only on Pitt faculty during the time period in question, not in any way an "EPA employee."²²

Case's slander/innuendo for excluding other scientists from EPA panel

In my 3/11/04 report to you, I suggested that additional scientists should have been included on the EPA panel so as to achieve balance and to mitigate any COI by the heavy weighting of scientists who served as paid expert consultants to the asbestos industry.

Instead of welcoming the input of additional scientists, Case attacks them. He first claims they published studies which somehow went to Machiavellian extremes to circumvent the established peer review process of the journals. He then claims they failed to report the sources of their research funding as part of their published studies, again mysteriously circumventing journal policy.

But, as seen below, it is instead Case who is guilty of these alleged offenses, failing to report funding sources on his publications

Case's allegations against Drs. Dodson, Egilman, Landrigan and Suzuki are given below:

[Case to Jenkins, 3/15/04 email] I was taken aback in the attached to see myself attacked while professional paid witnesses with true but not acknowledged COIs are cited by you without mention of said COI for their work (since they do not disclose them this is of course not your fault).

All of the latter are publishing in the AJIM, which itself has serious COI problems in both the person of its editor and some members of its editorial board, which preclude citing this journal as "peer-reviewed" when it comes to asbestos matters. Unless the peer reviewers themselves and their own COIs are disclosed or come forward voluntarily, which would help.

Your sole source for attacks on my own objectivity appears to be "Never Again Consulting"'s questionable and error-filled article in AJIM, which does not identify their paying clients and COI; and my citizenship and University (which is public, and does NOT receive funding from the "QAMA", nor has it since I began work there in 1982).

[Case to Jenkins, email #1 of 3/16/04] [P]lease respond to my original inquiry which had to do with the other (COI) document bearing your signature and dated March 11, 2004 and the COI of those on whom you rely (specifically Dodson, Suzuki, and Egilman). ...

Now, when will those you cite in your document reveal their conflicts? Please address my questions, if you can.

[Jenkins to Case, email #2 of 3/16/04] I guess I am not understanding the part where you are asking me about others I cite in my document not revealing their conflicts of interest.

[Case to Jenkins, email #2 of 3/16/04]

Suzuki

Dodson

Egilman

Landrigan

Their conflicts of interest, or apparent COI, or possible COI. Who pays them? How much do they pay them? What do they pay them for? How much are they paid for testimony in legal and compensation cases (including cases here in Canada), and by whom? ... It matters in this context only that they are paid, and are thus in a position of possible COI and should reveal this; also, possible is just that - possible).

Why do their published articles not follow the guidelines set down in the journals they publish in for the revelation of said conflicts? Read for example the policy page of the Ann J Indust Med. Why does the editor of that magazine reject peer review, according to personal communications from him to me and as documented in Science in 1990/91?

These are simple matters, and were they to be invited to EPA conferences as panelists they would have to reveal them. ...

[Landrigan to Cass, email #3 of 3/18/04] Now you have identified the parties that concern you. But there is still a problem in that you ask questions about them, instead of informing me specifically. You obviously know the answers, but I am not in the position to answer myself. My 3/1/04 document contained my analysis of research into specific individuals only, and not, for example, into Landrigan who was not serving as a panelist on any of the EPA panels that were subject of my 3/1/04 memo. Please enlighten me about your concerns about these individuals.

[Cass to Landrigan, email #5 of 3/18/04] Landrigan's acceptance of \$ 50,000 for publication costs from "a fund for plaintiffs" is discussed in Science and is in fact acknowledged on the title flap of the Ann NY Acad Sci non-peer-reviewed publication "The Third Wave of Asbestos Disease", to which I contributed a paper at the invitation of Dr. Seifritz. ... To the best of my knowledge, unlike our own work, Dr. Suzuki's research was never submitted to or approved by any independent, competitive peer-review panel outside his own institution ...

[Landrigan to Cass, 3/17/04, email] Before answering your other concerns directly, I would like to give you another opportunity to clarify your innuendoes about Drs. Egilmen, Landrigan, Dodson, Suzuki and others. You are claiming their published articles did not follow the guidelines of the American Journal of Industrial Medicine, and that the editor rejected peer review, claiming this was documented at some unknown place in the magazine Science. You also claim that there are depositions that are public documents that also support your contention, and imply that I should figure out which and find them myself. But you really need to supply me with all this alleged, highly suspect documentation directly to support your serious claims.

[Cass to Landrigan, 3/17/04, email] Re lack of peer review: this refers to Ann NY Acad Sci Volume 843, edited by Landrigan and Kazami. The Science article is attached; the highly unusual ALTERNATIVES offered (INSTEAD of peer review, which was requested, including by myself) are mentioned. ... In addition Dr. Landrigan would not have my own article ("Health Effects of Tremolite: Now and in the Future") peer-reviewed, as per his letter to me at the time, offering instead to let me write MORE (presumably) non-peer-reviewed material. Do you believe these articles should have been peer-reviewed? If so, should peer reviewers as well as authors reveal their possible perceived conflicts? Most journals also have a policy about this, and the answer is "yes".

Case's allegations of a lack of peer review as one basis for excluding scientists from EPA panel

After being forced to ask Case twice for his evidence, Case was only able produce two instances where he thought that either Drs. Dodson, Egilman, Landrigan and/or Suzuki failed to obtain or provide peer review. This was in one article in the American Journal of Industrial Medicine (in an unknown year and by an unknown scientist) and the proceedings of a conference held by the New York Academy of Sciences (NYAS) back in 1990.²³

Case's claim that the scientists circumvented the established peer review process for papers published in the American Journal of Industrial Medicine or other journals is without merit. All one needs to do is answer the following question: Is this a peer reviewed journal? If the answer is yes, then we must assume that the studies contained therein are in fact peer reviewed prior to publication. Without evidence to the contrary, we must assume that the editors of these journals did not somehow circumvent their own journal policy. These allegations by Case are therefore absurd and slanderous.

As for the claim of a lack of peer review in the NYAS conference proceedings, Case knows full well that conference proceedings are not peer reviewed prior to publication. Scientists are invited to present papers, and scientists typically only submit abstracts of the paper prior to their full presentations at the conference itself. Then, after the speech is delivered, researchers prepare a write-up of their presentations for publication. It would be impossible to then "rewrite history" for a presentation that had already been delivered by some peer review process.

Case's claims scientists were unfit because of failure to report funding sources and instance where asbestos victim law fund paid for National Academy of Sciences conference

Case also claimed that these scientists were unfit to serve on the EPA panel because they, unlike himself, failed to report their funding sources as part of their published studies. This is equally false and slanderous. It is always up to the journal editor and/or journal policy whether sources of funding are reported.

One journal where Case alleged a scientist failed to meet requirements, the American Journal of Industrial Medicine, did not have any absolute rule on reporting funding. The policy, as quoted by Case himself, stated that the source of funding is only "generally" given, and that it was up to the discretion of the editor whether or not to include it, probably depending on space concerns, etc.

Case also dredged up an instance where a plaintiff lawyer fund paid the publication costs for an asbestos conference proceedings. The conference itself was convened by the prestigious National Academy of Sciences back in 1990, wherein one of the scientists Case was attacking participated. This is ludicrous and would be humorous if it were not for Case's slanderous intent. The *Science Magazine* article²⁴ that Case himself sent me explained that this conference was only held in response to a 1988 conference sponsored by the asbestos industry, where scientists with opposing views had been excluded.

Case guilty of alleged offense of failing to report funding in publications

While attempting to find fault with other scientists for their alleged failure to report the source of funding as part of publications, Case himself have done the same. By saying this, I am in no way agreeing with Case that this is a professional offense or misconduct. As stated earlier, the reason for not including funding sources as part of publications is undoubtedly the exercise of discretion by the editor. A few examples are given below where Case either failed to report his funding sources, or the journal did not choose to include this information.

Case, B. and Dufresne (1997) Asbestos, asbestosis, and lung cancer: observations in Quebec Chrysotile workers. *Environmental Health Perspectives*, 105, Supp. 5: 1113-8.

Hull, M., Abraham, J., and Case, B. (2002) Mesothelioma among workers in asbestiform fiber-bearing talc mines in New York State. *Annals of Occupational Hygiene*, 46, Supp. 1, 132-8.

Wall, H., Abraham, J., Balnes, J., Case, B., Chung, A., Hughes, J., Schenker, M., Sebastian, P. (1990) Health effects of tremolite. *American Review of Respiratory Disease*, 142, 1453

Becklake, M., Case, B. (1994) Editorial: Fiber burden and asbestos-related lung disease: Determinants of dose-response relationships. *Am. J. Respir. Crit. Care Med.*, 150: 1488.

Case, B. (2001) Lung-retained fiber as a marker of environmental dose. Conference Proceedings, 2001 Asbestos Health Effects Conference, hosted by EPA, California Office of Environmental Hazard Assessment, NIOSH, ATSDR, MSHA, May 24-25, 2001, Oakland, CA. Published at the conference proceedings web page at: <http://www.epa.gov/swanima/ahec/summary/presentations/day1/case112.pdf>. See main page at: <http://www.epa.gov/swanima/ahec/>

Case, B. (1998) Letters 008: Nonoccupational Exposure to Chrysotile Asbestos and the Risk of Lung Cancer, *New England Journal of Medicine*, and 009, *The New England Journal of Medicine*, Volume: 339, Number: 14, Page: 999-1002.

In the NEJM article, cited above, however, Case is apparently at fault for not revealing his funding sources, because the editor of this prestigious journal was forced to add the following statement at the end of Case's letter:

Editor's note: Dr. Case has served as an expert witness in asbestos litigation during the past five years.

Credibility/omissions in Case's contributions to EPA panel

The panelists, including Case, prepared written statements, which were then incorporated without any peer review and published by EPA in the final proceedings of the workshop in Appendix B as panelists "Protecting Comments".²⁵ Case's written statement should be expunged as it knowingly misrepresents the full set of relevant data by Case, notwithstanding EPA's disclaimer about these statements from individual peer panelists.²⁶

Case's omissions and misrepresentations in EPA on asbestos fiber size

EPA asked panelists to respond to very specific questions; one of them being the effect of fibers size on carcinogenicity. EPA current policy states that fibers longer than 5 micrometers (μm , or microns) are the only ones that are carcinogenic, discounting any effects from shorter fibers. However, EPA currently assumes that all fibers longer than 5 μm all have the same carcinogenic potency. EPA wanted the panelists to decide if EPA should change this estimate, and assume that fibers in the 5 to 10 μm size range have lower carcinogenicity. This would essentially downgrade EPA's risk assessment for asbestos.

Case responded to this EPA question as follows, citing only those human epidemiological studies supporting the asbestos industry viewpoint:

Some data does exist from epidemiological studies which may inform as to effects of fiber length on lung cancer incidence or mortality. Studies of workers in asbestos textile industries, in which there is some evidence that there is more slow of exposure fiber-length distributions to longer fibers, have generally shown a higher dose-response gradient for lung cancer risk (Knox JF, Holmes S, Doll R et al. 1988; Newhouse ML, Barry G, Wegner JC et al. 1972; Peto J, Doll R, Howard SV et al. 1977; Peto J 1980; McDonald AD, Fry JS, Woolley AJ et al. 1983; McDonald AD, Fry JS, Woolley AJ et al. 1983; Paci E, Bulassi E and Geddes M 1987; Sebastian P, McDonald JC, McDonald AD et al. 1989; Dement JM and Brown DP 1994; Dement JM, Brown DP and Okun A 1994; McDonald JC 1988; Case EW, Duftreine A, McDonald AD et al. 2000; Hodgson JT and Darnton A 2000) .

Conversely, studies of gold mine workers in South Dakota and Inconite miners in Minnesota suggested no lung cancer risk for a largely short (< 5 μm) fiber distribution. ... (Gillem JD, Dement JM, Larnen RA et al. 1976) ...

It seems reasonable to weight the exposure indices in question to assign greater risk for greater fiber length. It also seems unreasonable based on current knowledge to assign any weight at all to fibers of less than 5 μm in length.

In making these claims, Case blatantly ignored his own 2001 study in the Archives of Environmental Health.²⁷ This study included the following finding:

Fiber dimension and concentration may vary substantially between two necropsy populations of former chrysotile miners and millers of Theford-Mines and Asbestos regions. This possibility could explain, at least in part, the higher incidence of respiratory diseases among workers from Theford-Mines than among workers from the Asbestos region. The authors used a transmission electron microscope, equipped with an x-ray energy-dispersive spectrometer, to analyze lung mineral fibers of 88 subjects from the two mining regions and to classify fiber sizes into three categories. The most consistent difference was the higher concentration of tremolite in lung tissues of workers from Theford-Mines, compared with workers from the Asbestos region. Amosite and crocidolite were also detected in lung tissues of several workers from the Asbestos region. No consistent and biologically important difference was found for fiber dimension, therefore, fiber dimension does not seem to be a factor that accounts for the difference in incidence of respiratory diseases between the two groups. The greater incidence of respiratory diseases among workers of Theford-Mines can be explained by the fact that they had greater exposure to fibers than did workers at the Asbestos region. Among the mineral fibers studied, retention of tremolite fibers was most apparent. [Emphasis added.]

Case was very familiar with and proud of this study that he chose to omit from his EPA panel document. Case made the following statements in a court of law about this 2001 study which showed that fiber length had no effect on lung disease.²⁸ Case mentioned the study of his own volition, calling it his most recent work. This was during the testimony where the lawyer for defendant asbestos company, for whom he was a paid consultant, was establishing the expertise of Case. Case was not in any way disowning the study or discrediting it.

Q. Dr. Case, I want to show you this document. Are you familiar with this document?

A. Yes. That is my curriculum vitae.

Q. Is that true and correct as of today?

A. It is not up to date. It is missing four or five recent publications, and it is missing some of the journals that I reviewed for. I would say it is two or three years old.

Q. The four or five additional publications, do they have anything to do with asbestos?

A. Most of them do, yes.

Q. Do you recall the titles?

A. Yeah. The most recent one was on fiber burden in mining workers. That was in the Archives of Environmental Health in February of 2001.

Case also included this particular research study in his list of publications in his CV posted on his website.²⁹ In fact, Case lists five papers and conferences wherein he was the co-author and/or presenter with Dr. A. Nayebezhadeh, the lead author of this 2001 paper in the Archives of Environmental Health. This again establishes his close professional relationship with the principal investigator of the study he ignored/omitted for the purposes of the EPA panel.

Case not only omitted one of his very own studies which contradicted his industry-favorable conclusions, he also omitted and ignored all the other studies which demonstrate that fibers less than 5 μm are carcinogenic.

On 2/21/03, I submitted a compilation of additional studies to be evaluated by the EPA panel on which Case served.³⁰ These studies had not previously been reviewed and evaluated by ATSDR panel on asbestos toxicity, and I believed that it was important for EPA to now formally evaluate them, whether accepting the conclusions or not. I included abstracts and extended excerpts, as well as the full text of 16 studies that also showed that asbestos fibers less than 5 microns were associated with cancer. I wanted the EPA panel to formally evaluate these studies as part of their deliberations, including Dr. Case.

The studies I had compiled were in fact officially offered by the EPA chairperson to the other panelist for consideration and review, a fact which is stated in the final 5/30/03 report of EPA peer panel.³¹

[Page 1-3] 1.1 - Background ... 1.2 Scope of the Peer Consultation Workshop ...
1.2.1 Activities Prior to the Peer Consultation Workshop ...

Distribute review documents and other relevant information. Several weeks prior to the peer consultation workshop, ERG sent every panelist copies of the charge and the proposed risk assessment methodology (Berman and Crump 2001). These items formed the basis of the technical discussions at the workshop. In addition, ERG distributed several additional publications on related topics (see Table 1, at the end of this section, for list of the publications). The supplemental publications were provided largely in response to panelists' requests for further background information on selected issues. The panelists also circulated publications amongst themselves on specific topics. Finally, one of the meeting chairs noted for the record that, upon arriving in San Francisco, he also received a memo and copies of many abstracts and other information from Case, Jenkins of EPA. The meeting chair offered to share these materials with other panelists during the workshop. (Emphasis added.)

However, Case and the other asbestos-industry consultants on the EPA panel chose to ignore these studies, neither agreeing with their conclusions nor giving any rationale for disagreeing with the findings.

Case instead relied only on his highly selective lung burden studies, studies which looked at the asbestos content in the lungs of people who had died of mesothelioma. As stated in my 7/4/03 report, these lung burden studies are irrelevant to mesothelioma, which is a cancer that occurs in the pleura (chest cavities). The studies Case omitted looked at the asbestos burdens (deposits) in the pleura itself where the cancers occurred.

My 7/4/03 report to the EPA OIG³² documented that these key studies were being ignored by Case and the other panel members:

[T]he attached report addresses ... violations by EPA of the Federal Advisory Committee Act, which has resulted in a subversion of the principles of the Administrative Procedures Act upon which it was based ... As a result of the WTC collapse, EPA's Office of Solid Waste and Emergency Response initiated a re-evaluation of the Agency's risk and carcinogenicity classifications for asbestos. ... experts drafting the reassessment have apparent conflicts of interest, and key research appearing in peer reviewed publications have been omitted and ignored in the reassessment. ...

Neither the EPA nor the ATSDR published full information on the panelists, and apparently did not aggressively ask the necessary questions of the panelists to determine whether there were conflicts of interest and bias. Looking at a scientist curriculum vitae is in no way adequate to determine whether a scientist serves solely and frequently as an expert witness for the asbestos industry, or whether a scientist's university department is funded by the asbestos industry, etc. Neither the EPA nor the ATSDR included experts who had conducted research and had developed independent evidence published in prestigious peer reviewed journals which supported alternative conclusions than those of the panelists who were chosen.

Case's misrepresentations and omissions to EPA regarding chrysotile carcinogenicity

Case's omission of studies showing pure chrysotile causes mesothelioma

In his "Premeting Comments" statements, Case also responded to EPA's questions on whether chrysotile asbestos was carcinogenic. Case contended in his comments to EPA as well as elsewhere that pure chrysotile asbestos will never cause mesothelioma unless

extremely improbable high exposures occur, difficult to achieve even in industrial settings. However, Case omitted from his deliberations any consideration of the many published studies showing a relationship to pure chrysotile asbestos to cancer, where the asbestos was not contaminated with amphibole asbestos

For example, a recent study examining workers in China³³ omitted by Case showed that pure chrysotile amphibole-free asbestos caused mesothelioma. There are undoubtedly many other studies. If these studies are invalid in some way, then the panelists, including Case, had the obligation of discussing them and pointing out the reasons for not accepting their conclusions.

Case's false claims that there is a scientific consensus that chrysotile asbestos is not carcinogenic

As documented in my 7/4/03 report to the EPA OIG, Case made a clearly false statement in the New England Journal of Medicine,³⁴ contending that there was now a scientific consensus that chrysotile asbestos did not cause mesothelioma. Case did not and could not have given any references in his statements in his New England Journal of Medicine letter to support his claim of this alleged consensus. Case's letter elicited several rebuttals, abstracted below:

[Letter from Bruce W. Case, M.D. McGill University of Montreal, QC H3A 2B4, Canada]

To the Editor: Landrigan is wrong in concluding that "a more than sevenfold mortality rate... from pleural cancer in mining areas, as compared with non mining areas, corroborates an enormous body of literature showing that Canadian chrysotile... is a potent carcinogen." This mortality rate (seven cases) is entirely explained by the few cases among women in the area who had occupational exposure to amphiboles in the manufacture of gas masks, (Ref. 1) the repair of burlap bags that contained imported fibers, (Ref. 2) and possibly, in one case, the tremolite brought home on miners' clothes. (Ref. 2) Seven such women received workers' compensation in Quebec during the period of the study by Camus et al. indeed, there is now a scientific consensus that chrysotile asbestos is not a cause of malignant mesothelioma, even among chrysotile-asbestos miners and millers

Editor's note: Dr. Case has served as an expert witness in asbestos litigation during the past five years. ...

[Letter from Philip J. Landrigan, M.D. Mount Sinai School of Medicine, New York, NY 10029]

Case is inaccurate in his claim that chrysotile asbestos from Canada is not a cause of mesothelioma, and his assertion that there is a scientific consensus on this point is not true. (Ref. 5) Also, he is disingenuous in his one-sided quest for factors other than chrysotile that would explain away the observed sevenfold excess of mesotheliomas among women in the chrysotile-asbestos-mining areas of Quebec. Experimental as well as epidemiologic studies have shown conclusively that Canadian chrysotile is fully capable of causing malignant mesothelioma, (Ref. 6) and the International Agency for Research on Cancer acknowledges that chrysotile is a cause of mesothelioma. (Ref. 3)

The letter from Dr. Landrigan makes it clear that Case's claim of a consensus on chrysotile being non-carcinogenic is not true.

In addition, in 1999, the European Union banned chrysotile asbestos.³⁵ Clearly, if Case's claim that there was this alleged consensus was true, this would not have happened. There would have been a consensus panel of scientists working on the EU ban of asbestos during 1998, agreeing that chrysotile asbestos was carcinogenic. The opposite is obviously true. (Earlier in 1991, the EU banned other forms of asbestos.) The EU also reaffirmed in the year 2002 its earlier findings that chrysotile asbestos is carcinogenic.³⁶

(Interestingly, the EU 2002 findings specifically addressed and rejected the conclusions of E. Ilgren, MD and E. Chutfield, PhD in their published studies³⁷ which concluded that Union Carbide's chrysotile asbestos was not carcinogenic, as discussed in great detail in my 3/11/04 report.)

Conclusions

The problems noted in this report to the EPA OIG indicate serious problems not only with this particular consultant, but also indicate the integrity of the panel workshop on asbestos toxicity as a whole. The proceedings of this EPA peer panel on asbestos toxicity, published on 5/30/03, should be withdrawn by EPA, as it is irrevocably tainted.

I also believe that the OIG should actively investigate all of the other scientists who participated on the EPA panel on asbestos toxicity. Depending on self-certification by the scientists is obviously insufficient.

As recommended in my 3/11/04 report to you, EPA should post the full CV's and COI certifications of all contractors, subcontractors, and consultants in a central location on the EPA web site. This is essential to insure the integrity of EPA's decision making process.

An essential part of this central web site for all EPA consultants/contractors/subcontractors should be an invitation to the public to alert the EPA OIG of any omissions or misrepresentations in the COI certifications, certifications and CV's. There needs to be a statement that EPA takes its responsibilities seriously to guard and protect the integrity of its decision making process through the utilization of outside experts, and that it is actively soliciting help from the public on abuses.

Consultants are willing to risk the improbable scrutiny of a few motivated individuals such as myself. There are not too many who would go to this level of effort. But consultants would be more leery of being exposed to all of America on a central EPA web site. If they knew that the price of providing EPA with their expertise was to have their COI certifications, credentials and full work history posted, they might hesitate to obfuscate.

EPA also needs to immediately post on its website the COI certifications and full curriculum vitae of the consultants it hired to serve on another EPA panel, the World Trade Center Expert Technical Review Panel (<http://www.epa.gov/wtc/panel/>). This is because it is again Eastern Research Group, Inc. who is the EPA contractor who selected the panel members and

supposedly investigated their COI statements. Obviously, Eastern Research Group failed to insure the integrity of the EPA panel on asbestos toxicity, the panel on which Bruce Cacc served. It is probable that they have again failed for this other EPA panel. The living victims of the World Trade Center disaster, those still exposed to toxic fallout, need to be given an opportunity on their own to investigate any COI problems and falsifications by this other EPA panel.

ENDNOTES

¹ EPA (May 30, 2003) Final report: EPA's Peer Consultation Workshop on a Proposed Asbestos Cancer Risk Assessment. <http://www.epa.gov/superfund/programs/risk/asbestos/>

² Case, B. W. (December 16, 2002) "Reply from Dr. Bruce Winston Case to questions posed by Kate Schaik for Eastern Research Group regarding pending February EPA review of asbestos risk assessment model(s), along with general comment on the interface between accurate peer review and 'perceived' conflict of interest."

This 9-page form is posted at:

<http://library.epilman.com/index.html?location=files/conflicts%20what%20conflicts>

You must download this document to your hard drive to see all pages. It is in "TIF" format, and will only show the first page if you attempt to view it from the web site directly.

³ TITLE 18—CRIMES AND CRIMINAL PROCEDURE. PART I—CRIMES. CHAPTER 47—FRAUD AND FALSE STATEMENTS. Sec. 1001. Statements or entries generally

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) makes any materially false, fictitious, or fraudulent statement or representation; or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years, or both. ...

⁴ EPA (May 30, 2003) Final report: EPA's Peer Consultation Workshop on a Proposed Asbestos Cancer Risk Assessment. <http://www.epa.gov/superfund/programs/risk/asbestos/>

⁵ Approved photograph of Bruce Case, MD as appearing on his website and curriculum vitae at: www.asbestos.net



⁶ Jenkins, C. (July 4, 2003) Comments on the EPA Office of Inspector General's 1/27/03 interim report titled: "EPA's Response to the World Trade Center Towers Collapse" A DOCUMENTARY BASIS FOR LITIGATION, prepared by Case Jenkins, Ph.D., Environmental Scientist, Waste Identification Branch, Hazardous Waste Identification, Office of Solid Waste Office of Solid Waste and Emergency Response, EPA. Available from author at Jenkins.case@epa.gov or posted at the following web addresses:

<http://www.nyenvirolaw.org/PDF/Jenkins-7-4-03-documentary-d2.pdf>

<http://nycosh.org/Jenkins-7-4-03-documentary-d.pdf>

⁷ Jenkins, C. (March 11, 2004) Memorandum titled: Additional documentation, EPA Inspector General investigation into failure to prevent consultant conflicts of interest in: 1. External peer review panel for EPA ORD NCEA human health risk assessment for the aftermath of the WTC collapse; 2. EPA Region 1 external consultants for risk assessment for asbestos contamination in Brookfield, CT school system; 3. EPA and ATSDR external consultants on peer panels for the asbestos fiber size and toxicity reassessments. Addressed to: EPA IG WTC Team: Nikki Tinsley, Chris Dunlap, Sarah Fabickiewicz, Dana Gilmore, Jim Hatfield, Geoff Pierce, Steve Schenarman.

⁸ Case, B. W. (December 16, 2002) "Reply from Dr. Bruce Winston Case to questions posed by Kate Schalk for Eastern Research Group regarding pending February EPA review of asbestos risk assessment model(s), along with general comment on the interface between accurate peer review and 'perceived' conflict of interest."

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⁹ Case, B. (April 19, 2001) Testimony in the case of John Hance, et al. v. A, C and S, Inc. Consolidated Case No. 24-X-0000374, in the Circuit Court for Baltimore City.

¹⁰ DAVID ALBER and JOYCE ALBER, as Husband and Wife, Plaintiffs, vs UNITED STATES GYPSUM COMPANY, et al., Defendants, CASE NO: 2000, CV 2035, IN THE DISTRICT COURT IN AND FOR THE COUNTY OF BOULDER, STATE OF COLORADO, Deposition of Dr. Bruce W. Case, held at the Queen Elizabeth Hotel 900, Rue, L. vesque Blvd. West Montreal, Province of Quebec, August 22, 2001.

¹¹ Donald Cipov, et al., vs. ACandS, Inc., et al., pending in the 141st Judicial District Court in Tarrant County, Texas

¹² Breaux v. AC&S, Inc. et al, CAUSE NO. 00-08721, IN THE DISTRICT COURT DALLAS COUNTY, TEXAS, 162nd JUDICIAL DISTRICT

¹³ Plummer v. AC&S, Inc. CAUSE NO. 00-07604-H, IN THE DISTRICT COURT DALLAS COUNTY, TEXAS, 160th JUDICIAL DISTRICT

¹⁴ Mass Action Tort against Defendant Mobil Corporation, (August 26 September 24, 2002) IN THE CIRCUIT COURT OF KANAWHA COUNTY WEST, IN RE: ASBESTOS PERSONAL INJURY LITIGATION, Civil Action No. 02-C-9004, Telephonic Depositions of BRUCE W. CASE, M.D

¹⁵ Flowers, et al. v. AC&S, et al., Civil Action No. 01-VS-014834-D, IN THE STATE COURT OF FULTON COUNTY, STATE OF GEORGIA.

¹⁶ Vandenberg, et al. v. AC&S, et al., Cause No. A020373-C, IN THE DISTRICT COURT OF ORANGE COUNTY, TEXAS, 128TH JUDICIAL DISTRICT.

¹⁷ *Allen v ABCO Industries, Inc., et al.*, Cause no. B-169624, IN THE DISTRICT COURT OF JEFFERSON COUNTY, TEXAS, 60TH JUDICIAL DISTRICT.

¹⁸ EPA (May 30, 2003) Final report: EPA's Peer Consultation Workshop on a Proposed Asbestos Cancer Risk Assessment. <http://www.epa.gov/suprfund/programs/risk/asbestos/> or specifically at: <http://www.epa.gov/suprfund/programs/risk/asbestos/pdf/epgpub.pdf>

See Appendix B, page B-8 which gives a summary of Dr. Case's biography, which reads in its entirety as follows:

Dr. Case is a pathologist and epidemiologist at McGill University in Montreal, Canada. Following his residency in pathology at McGill University he obtained the Diploma in Occupational Hygiene at McGill, and worked as a post-doctoral fellow and instructor at the Mount Sinai School of Medicine, New York, from 1980-1983. While there, he performed some of the first studies on asbestos-mediated free radical release, with the help of the Young Investigator's Award of the American Lung Association. On his return to McGill he joined the Dual Diseases Research Unit. The focus of this group was the epidemiological study of diseases related to mineral fiber exposure using lung-retained fiber in exposure assessment. In 1986, he received the National Health Scholarship of NHRDP (Canada) for his work in the field. In 1988, he moved to the University of Pittsburgh, where he succeeded Dr. Philip Erntferne as Director of the U.S. EPA Center for Environmental Epidemiology, through their cooperative agreement with the University of Pittsburgh School of Public Health, where he was also associate professor of epidemiology. He returned to McGill in 1992 and continues research, teaching, and clinical work there in pathology, epidemiology, occupational health and in the McGill School of Environment. Dr. Case has participated in workshops, given lectures, and provided peer reviews and advice for many national and international agencies and professional societies on the subject of the exposure assessment and health effects of mineral fibers, including: EPA, CDC (through ATSDR and NIOSH), the U.S. Consumer Product Safety Commission (CPSC), the International Agency for Research on Cancer (IARC), the International Commission on Occupational Health (ICOH), the British Occupational Hygiene Society (BOHS), the American Thoracic Society (ATS), the Geological Society of America (GSA), and the Collegium Farnetzi. His research on asbestos and other mineral fiber and particle exposures and related diseases has been funded by American and Canadian public agencies including EPA, MRC (Canada) and NHRDP (Canada). Dr. Case has published over 100 papers on these subjects.

¹⁹ Case, B. *Cartellium vites*, posted at www.asbestos.net

²⁰ Case, B. (April 19, 2001) Testimony in the case of John Hanson, et al. v. A. C and S, Inc. Consolidated Case No. 24-X-00000374, in the Circuit Court for Baltimore City. See pp. 3413 - 3417.

Q. Did you do a study in which it was funded by W. R. Grace?

A. No, Dr. McDonald did a study that was funded by W. R. Grace.

Q. And were you involved with that study?

A. I participated in the analysis of sputum from people who worked in a vermiculite mine in Libby, Montana and because of that I think W. R. Grace had gone bankrupt.

Q. Doctor, the study and paper that came out of that study, did your name appear on that paper?

A. Yes. It certainly didn't help W. R. Grace any, did it?

Q. You also were involved in a study with Dr. McDonald that was sponsored by individuals who were involved with the Quebec Mining Companies?

A. You mean the 1989 paper?

Q. Yes, sir.

A. Yes.

Q. And they were mining chrysotile fibers up in Canada; isn't that true?

A. Yes.

Q. In the early 1990s you lectured to defense attorneys on the issue of chrysotile, isn't that correct?

A. Yes.

²¹ Case, B. (April 19, 2001) Testimony in the case of John Hancock, et al. v. A, C and S, Inc. Consolidated Case No. 24-X-00000374, in the Circuit Court for Baltimore City.

²² Bruce, C. (undated) Curriculum vitae. See online at: <http://www.asbestos.net/>. You will need to scroll down the web page to find it:

1988 - 1991 University of Pittsburgh Director, Center for Environmental Epidemiology
Graduate School of Public Health Pittsburgh, Pennsylvania ...

I. Grants in which Dr. Case was Principal or co-Principal investigator: ... Oct. 1988 -
91 "Center for Environmental Epidemiology" United States EPA \$1.08 million US
(Cooperative Agreement) (continued x'1) (at Univ. of Pittsburgh)

²³ Stone, R. (1990) No meeting of the minds on asbestos. *Science*, 254: 928.

²⁴ Stone, R. (1991) No meeting of the minds on asbestos. *Science*, 254: 928.

²⁵ EPA (May 30, 2003) Final report: EPA's Peer Consultation Workshop on a Proposed Asbestos Cancer Risk Assessment. <http://www.epa.gov/superfund/programs/risk/asbestos/>

See Appendix B, pages B-7 to B-41.

²⁶ The 5/30/03 proceedings of the peer panel included the following disclaimer that statements are those of the individual scientists were included without any review or changes by the other scientists on the panel:

The panelists offered individual summary statements, which were not discussed or debated among the panel. Following is a summary of the panelists' individual summary statements in the order they were given:

✓ ²⁷ NAYEBZADEH, ATAOLLAH; DUPRESNE, ANDRE; CASE, BRUCE; VALL, HOJATOLAH; WILLIAMS-JONES, A.E.; MARTIN, ROBERT; NORMAND, CHARLES; CLARK, JAMES (2001) Lung Mineral Fibers of Former Miners and Millers from Theford-Mines and Asbestos Regions: A Comparative Study of Fiber Concentration and Dimension. *Archives of Environmental Health*, 56(1): 65.

²⁸ Case, B. (April 19, 2001) Testimony in the case of John Hance, et al. v. A, C and S, Inc. Consolidated Case No. 24-X-00000374, in the Circuit Court for Baltimore City. See page 3343.

²⁹ Bruce, C. (undated) Curriculum vitae. See online at: <http://www.asbestos.net/> . You will need to scroll down the web page to find it.:

³⁰ Jenkins, C. (February 21, 2003) Email to Richard Troast, EPA OSWER, Subject: " EPA draft ABESTOS RISK REASSESSMENT – OMITTS/IGNORES important studies."

Richard [Troast, EPA contact person for EPA panel on fiber size, asbestos type]

I have attached a memo to you including a compendium of studies relevant to the EPA IRIS asbestos risk reassessment. They address the fiber size and chrysotile questions. These studies were omitted from the draft.

I would appreciate your providing copies of this memorandum with its attachment to other EPA staff working on the IRIS reassessment as well as to the peer consultant workgroup and contractor.

Thank you.

Cate Jenkins

[MEMORANDUM ON EPA LETTERHEAD AND ATTACHMENT LIST OF STUDIES]

2/21/03

ABSTRACTS AND EXTENDED ABSTRACTS STUDIES RELEVANT TO:

1. Mesothelial Tissue and Lung Tissue Asbestos Burden Studies In Human Mesothelioma Cases
2. Carcinogenicity of Chrysotile Asbestos

[followed by listing of 16 studies with abstracts and excerpts of the full text of the study. The full text of the studies were also provided. The memo was sent not only to Troast, but to many scientists. My memo offered to provide an electronic version of the full text of these articles. Many scientists did request them from me directly, as well.]

³¹ EPA (May 30, 2003) Final report: EPA's Peer Consultation Workshop on a Proposed Asbestos Cancer Risk Assessment. <http://www.epa.gov/superfund/programs/risk/asbestos/>

³² Jenkins, C. (July 4, 2003) Comments on the EPA Office of Inspector General's 1/27/03 interim report titled: "EPA's Response to the World Trade Center Towers Collapse" A DOCUMENTARY BASIS FOR LITIGATION, prepared by Cate Jenkins, Ph.D., Environmental Scientist, Waste Identification Branch, Hazardous Waste Identification, Office of Solid Waste Office of Solid Waste and Emergency Response, EPA. Sec memo and Section U.

Available from author at Jenkins.cate@epa.gov or posted at the following web addresses:

<http://www.nyccivilaw.org/PDF/Jenkins-7-4-03-documentary-d2.pdf>

<http://nycoash.org/Jenkins-7-4-03-documentary-d.pdf>

²³ Eiji Yano,1 Zhi-Ming Wang,2 Xiao-Rong Wang,1-3 Min-Zheng Wang,2 and Ye-Jia Lan,2 (2001) Cancer Mortality among Workers Exposed to Amphibole-free Chrysotile Asbestos, *Am. J. Epi.*, Vol. 154, No. 6, 538.

Available full text online at:

<http://www.nilac.jp/journal/Html/Indicate/Contents/SUP0000003000/JOU0003000020/ISS0000020023/ART0000260575/ART0000260575.pdf>

²⁴ Letters 006 and 009, *The New England Journal of Medicine*, Oct 1, 1998, Volume: 339, Number: 14, Page: 999-1002, Nonoccupational Exposure to Chrysotile Asbestos and the Risk of Lung Cancer (Correspondence) Churg, Andrew; Demirogha, Hakan; Soltes, Rosemary K.; Costa, Eduardo; Garrido, Amanda; Goyanes, Vicente J.; Langer, Arthur M.; Case, Bruce W.; Morgan, Robert W.; Goodman, Michael; Camus, Michel; Siemiatycki, Jack; Landrigan, Philip J.

²⁵ EPA (1999) Web page: European Union Broadens Asbestos Ban, <http://yosemite.epa.gov/R10/OWCMNSF/0/9283bd91d549a3b3882567da00594801?OpenDocument>

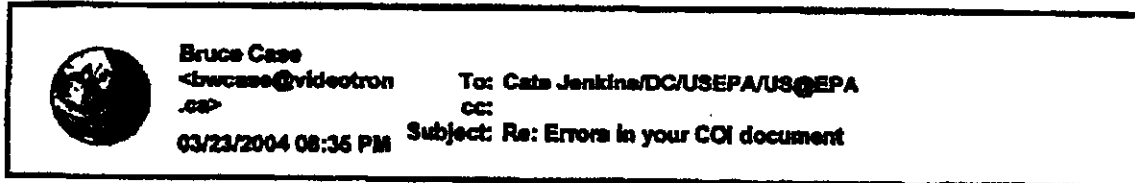
✓ ²⁶ European Union (December 17, 2002) SCIENTIFIC COMMITTEE ON TOXICITY, ECOTOXICITY AND THE ENVIRONMENT (CSTEE) Opinion on Risk to human health from chrysotile asbestos and organic substitutes Opinion expressed at the 35th CSTEE plenary meeting. http://europa.eu.int/comm/health/ph_risk/committees/sci/documents/out169_en.pdf

²⁷ Ilgen, E. and Chatfield, E. (1997) Coalings fibre – A short, amphibole-free chrysotile. Part 1: Evidence for a lack of fibrogenic activity. *Indoor + Built Environment*, 6:264-276.

Ilgen, E. and Chatfield, E. (1998) Coalings fibre – A short, amphibole-free chrysotile. Part 2: Evidence for a lack of tumorigenic activity. *Indoor + Built Environment*, 7:18-31.

Ilgen E. and Chatfield E. Coalings fibre: a short, amphibole-free chrysotile. Part 3: Lack of biopersistence. *Indoor Built Environment*. 1998;7:94-109.

ATTACHMENT: 3/15/04 to 3/23/04 email interchange between Bruce Case, MD and Cate Jenkins, PhD



I have testified against JM Asbestos - JM is Jeffrey Mine, not Johns Manville (although I have also testified against that company; perhaps I am older than you think!) Your confusion though is understandable given that JM Asbestos was when it was still solvent (bankrupt in October of last year) the operator of the same mine which was previously owned by Johns Manville in "colonial days". Hamel et al. v. JM Asbestos was M. Hamel and six other chrysotile miners and millers with lung cancer vs. Jeffrey Mine Asbestos (1996-97, so I am hardly too young). You or your associates can get the documents from official Quebec judicial sources; the case summary contains quite a cogent description for lay persons of the scientific arguments on both sides of the issue. Even the summary however (the case took well over a year) is quite long, and entirely in the official language. Witnesses for the Union and the CSST (compensation board, an intervenor as this was a challenge to their awards to workers) were myself, McDonald, Becklake and Dufresne (all at or previously at McGill). Witnesses for the company were Churg, Craighead, Weiss, Weill, and Browne.

Outcome: verdict for the workers. It appears you are confusing the 1948 asbestos strike detailed by our former Prime Minister (Trudeau, P.E.) in his classic book (a strike which was in many ways the beginning of modern Quebec) with the more recent legal case in which we succeeded in proving that asbestosis is not a necessary precondition for the attribution of lung cancer to asbestos exposure. This

was further documented (the sciences, not the legal case) in our paper in Environmental Health Perspectives in 1987, and in McDonald's textbook of epidemiology (BMJ press, second edition 2000).

"QAMA" has no relation to McGill University nor has it during my tenure (thoral and figurative) here (83-88 and 87-present). I AM that young!

Please do not write again.
I hardly need to support my
"confessions", as
you call my factual statements,
to you and your associates, with all due
respect.

BWC

Cato Jenkins
6/23/2004 6:11 PM
To: Brass Case <vrcase@videtrex.com>
cc:
Subject: Re: Error in your COI document

Dr. Case,

Thank you very much for your prompt reply to my earlier email, attached. I apologize for myself not getting back to you earlier and not being more prompt.

Actually, I have been preparing a detailed response to your other concerns about both my 3/11/04 and 7/4/03 submissions to the EPA Inspector General concerning both conflicts of interest and the lack of a full spectrum of scientific opinions on the EPA panels in question.

However, in going through your emails to me, I do request, if at all possible, that you give me a limited amount of additional information.

You did say that

"I cling to the perhaps naive belief that we are on the same "side" in wishing to help victims and prevent both exposure and disease, which I have spent my professional life doing"

You also said that in the past you have worked for plaintiffs in asbestos litigation as well as defendants, such as your work for the union in "Hansel v. JM asbestos."

I read this with interest in your emails, and thought perhaps you were too young to be on the side of the plaintiffs, since it was in 1949 that the union, headed by Hansel, went on strike against J.M.

Do you remember the full title of this case, and when it was tried? I believe it would be very helpful to support your contentions that you have represented a range of private clients if you could supply your actual testimony in this case, what the complaint was, and tell me the outcome of the case. Did you testify for both sides in this case, or only the plaintiffs?

You also state in your emails to me that you provided EPA with a full disclosure of all your professional clients. But unfortunately, the EPA report of the peer panel on which you served only gives a brief biographic summary which does not list any of these clients. Also you submit CV at www.saboteur.net only gives your governmental paid consultation, and does not give any of your consultation for private clients like defendant and plaintiffs in asbestos litigation.

Have you ever testified for J-M itself? Or other companies such as Cary, Nicole, or even QAMA?

It really would clear up once and for all whether there was any real or perceived conflict of interest if you provided to me the same list of all private and governmental clients/counselors, which you stated that you gave to EPA prior to your selection to the panel. You did tell me that full disclosure was important, and that you did provide this information to EPA.

This would supply the "outstanding link" in my response to you, and consider the unanswered questions which came to mind today when I started the project.

Thank you very much for your time.

Best regards,

Cave Jenkins



Bruce Cass
<bcass@vtdotcom.ca>
03/17/2004 12:59 PM

To: Cate Jenkins<DCJUSEPAUS@EPA>
cc
Subject: Re: Errors in your COI document

<http://www3.interscience.wiley.com/cgi-bin/jabout/34471/F-0rAauthors.html>

Conflict of Interest. At the time of submission of a manuscript, the Journal requires that all authors must disclose any affiliations with any organizations that to any author's knowledge have a direct interest, particularly a financial interest, in the subject matter or materials discussed. The single most important piece of information to be disclosed is the source of funding for the study. This information will be held in confidence while the paper is under review and will not influence editorial decision. Once the article is accepted for publication, the editors will discuss with authors the manner in which such information is to be communicated. Generally, the information will be presented in a footnote to the first page*.

(emphasis added).

* A good example of this being done properly is provided in Richard Lerner's recent article. It is a very simple matter, and is no reflection on the veracity of the paper or the integrity of the writer. It is simply something to be followed - by everybody. Please note as well Dr. Lerner's respectful description of the ATSDR panel on "short fibers", despite his disagreement with the "bottom line" in the executive summary, rather than attacking the panelists he reads the full report and notes what he feels is a discrepancy between the summary and some of the discussion. Civility in civil discourse is important, and is appreciated.

Re lack of peer review: this refers to Ann NY Acad Sci Volume 843, edited by Landrigan and Kozzani. The Science article is attached; the highly unusual ALTERNATIVES offered (INSTEAD of peer review, which was requested, including by myself) are mentioned. Note the erratum re Gibbs, and the apology of Landrigan to McDonald. In addition Dr. Landrigan would not have my own article ("Health Effects of Tremolite: Now and in the Future") peer-reviewed, as per his letter to me at the time, offering instead to let me write MORE (presumably) non-peer-reviewed material. Do you believe these articles should have been peer-reviewed? If so, should peer reviewers as well as authors reveal their possible perceived conflicts? Most journals also have a policy about this,

and the answer is "yes".

Re disclosure: This is a disclosure statement provided to me in a recent EPA solicitation for participation: "Have you been involved in any legal actions (e.g., as an expert witness or as a consultant) in cases involving exposure to: 1) asbestos;..."

Note that "disclosure" in this instance applies to ALL parties in litigation. I would very much like to see (for example) Ron Dodson on some of these panels; he has a great deal of expertise which can be useful and we have often exchanged information. We must all be treated the same way with respect to disclosure, and I am sure that others will honestly disclose their answers to questions like the above, as I have.

Re depositions: Note that depositions are taken in relation to litigation, and that if it is asbestos litigation, it should be disclosed as per the statement at the top here.

Best regards,

ETWC

PS - I appreciate your offer to "answer my... other concerns directly" and hope you will do so. If you will not, then there is no point in your replying again.



SCIENCE 1990 No Meeting of the Minds on Asbestos.pdf Eweban Third Wave Rolling the Waters.pdf

Cate Jenkins
03/17/2004 11:20 AM

To: Bruce Case <bwcase@videotron.ca>
cc:
Subject: Re: Errors in your COI document

Dr. Case,

Before answering your other concerns directly, I would like to give you another opportunity to clarify your innuendos about Drs. Egilman, Landrigan, Dodson, Suzuki and others. You are claiming their published articles did not follow the guidelines of the American Journal of Industrial Medicine, and that the editor rejected peer review, claiming this was documented at some unknown place in the magazine Science. You also claim that there are depositions that are public documents that also support your contention, and imply that I should figure out which and find them myself. But you really need to supply me with all this alleged, highly suspect documentation directly to support your serious claims.

Thank you very much,

Cate Jenkins, Ph.D.

You appear disingenuous in not responding to my requests

Bruce Case <bwcase@videotron.ca>



Bruce Case
<bwcase@videotron.ca>
03/18/2004 03:45 PM
#3

To: Cate Jenkins/DC/USEPA/US/EPA
cc:
Subject: Re: Errors in your COI document

You can access their depositions in litigation, which are public documents. Landrigan's acceptance of \$50,000 for publication costs from "a fund for plaintiffs" is discussed in Science and

Is in fact acknowledged on the title
step of the Ann NY Acad Sci non-peer-
reviewed publication "The Third Wave of
Asbestos Diseases", to which I contributed
a paper at the invitation of Dr.
Suzuki. In Dr. Suzuki's case, the
paper to which you refer was presumably
funded entirely by attorneys for plaintiffs
through their payments for Dr. Suzuki's
expertise, as most cases analyzed were
medical/legal and to the best
of my knowledge all were for attorneys
for plaintiffs. To the best of my
knowledge, unlike our own work, Dr. Suzuki's
research was never submitted to
or approved by any independent, competitive
peer-review panel outside the
own institution (see an NIH R-01).
If I'm wrong about this, let me know.

Why look only at the potential COI of one
viewpoint and not the other? And
for that matter, why look for a given
individual in the area of litigation
or compensation only at one aspect? That
is, to take myself as an example,
why not look at say, Hermal et al. v. JM Asbestos,
the landmark case in which
I testified for the union against Quebec's
largest asbestos company - now bankrupt?
Does ignoring this not seem a bit unfair?

I cannot do the work of going through all
of this for you, I am not a lawyer or an
administrator but a researcher and teacher,
but the volume and quality of documentation
of your work to date suggests that you have
the ability to do so in a fair and
balanced (sorry about that phrase! I am
no fan of the network that uses it) manner.

There are still some conferences where different
viewpoints are expressed, and constructive
dialogue engaged in, although they are
increasingly few due to polarization and
especially litigation. The best of these is
probably the BOHS "Thirded Parties" Symposia,
where you can have say, Arthur Frank,
myself, Jim Leigh, etc. all on the same platform.
The same is true for MING, but there is very
little epidemiology/trace; more clinical and basic
science. Still, we have had Julian Peck,
Jim Leigh, Geoffrey Berry, Mitchell
Carnus, myself, and so on over the years.

But this was also true of the EPA peer-
review conference in San Francisco,

In Feb. of 2003, which had a good cross-spectrum of academic opinion and was chaired by Lesley Stayner of NIOSH who effectively wrote the executive summary at the end of the meeting in an ad hoc manner in concert with most of the other panelists (Dr. Crepeo had to leave early so his views were not fully represented I think). The "reporters" (that is, contractors to EPA), essentially transcribed this. In my understanding, I also believe that a verbatim transcript is available - if it is not it should be, as I am fairly certain the proceedings were recorded for audio.

The panel was also announced publicly, open to all, and provided conclusions which included recommendations concerning a local group of victims. Balanced panels are important not only for what they produce but for the panelists themselves; Dr. Stayner felt this was the least notorious meeting he had been at and I certainly came away with different ideas about fiber type and lung cancer than I had going in - namely that they are of little or no importance, compared to dose, the nature of the smelting character, and fiber length (the latter requires further investigation which is being done, I understand, by NIOSH and EPA; NIOSH for example was able to obtain fibers from the Charleston asbestos handle plant although regrettably not for the earlier years of exposure).

BWC

Cate Jenkins
03/18/2004 01:58 PM
#3

To: Bruce Case <bwcase@videotron.ca>
cc:
Subject: Re: Errors in your COI document


Dr. Case,

Thank you again. Now you have identified the parties that concern you. But there is still a problem in that you ask questions about them, instead of informing me specifically. You obviously know the answers, but I am not in the position to answer myself. My 3/11/04 document contained my analysis of research into specific individuals only, and not, for example, into Landrigan who was not serving as a panelist on any of the EPA panels that were subject of my 3/11/04 memo.

Please enlighten me about your concerns about these individuals.

Cate Jenkins, Ph.D.

Bruce Case <bwcase@videotron.ca>

 Bruce Case
<bwcase@videotron.ca>
03/18/2004 01:47 PM
#2

To: Cate Jenkins/DC/USEPA/US@EPA
cc:
Subject: Re: Errors in your COI document

Suzuki

Dodson

Eglman

Landrigan

Their conflicts of interest, or
apparent COI, or possible COI.

Who pays them?

How much do they pay them?

What do they pay them for?

How much are they paid for testimony in legal and compensation cases (including cases here in Canada), and by whom? (It does not incidentally matter a fig what they do with their money; it matters in this context only that they are paid, and are thus in a position of possible COI and should reveal this; also, possible is just that - possible).

Why do their published articles not follow the guidelines set down in the journals they publish in for the revelation of said conflicts? Freed for example the policy page of the Am J Indust Med. Why does the editor of that magazine reject peer review, according to personal communications from him to me and as documented in Science in 1980/917

These are simple matters, and were they to be invited to EPA conferences as panels they would have to reveal them. I found it quite amazing as well that when I participated in the ATSDR conference in lower Manhattan to which you refer that not a single scientist from the Mount Sinai School of Medicine (where I studied for two years and taught for three) attended, at least not that I heard; even though the conference was public and all comments were published. Do they care or not?

You are quite right that we have to rely on the investigators themselves to provide accurate information on these matters; but I can see no better way.

Please understand that the fact that they are paid does not mean their work is invalid - the quality of work (or lack of same) is revealed by the work itself. The same goes for anybody.

I hope this is clearer!

You have obviously put a great deal of work into this and more communication is better communication. I appreciate your replies.

Bruce Case

Cate Jenkins
03/18/2004 01:10 PM
#2

To: Bruce Case <bwcase@videotron.ca>
cc:
Subject: Re: Errors in your COI document

Dr. Case,

I guess I am not understanding the part where you are asking me about others I cite in my document not revealing their conflicts of interest.

Cate Jenkins, Ph.D.

Bruce Case <bwcase@videotron.ca>



Bruce Case
<bwcase@videotron.ca>
03/18/2004 01:03 PM
#1

To: Cate Jenkins/DC/USEPA/US@EPA
cc:
Subject: Re: Errors in your COI document

Dear Dr. Jenkins:

I have read your documentary report previously; please respond to my original inquiry which had to do with the other (COI) document bearing your signature and dated March 11, 2004 and the COI of those on whom you rely (specifically Dodson, Suzuki, and Eglman). I have never stated that there are no perceived conflict of interest issues, assuming you identify those as testifying for law firms which represent both corporations and plaintiffs, including unions and sick individuals; have submitted them in writing as per EPA requirements, and have stated them publicly at the San Francisco meeting - including my citizenship. I reject the idea that these are irreconcilable conflicts of interest, and so did EPA, both before and at this public meeting and others - not to mention EPA paying my salary at the University of Pittsburgh for over three

years. Now, when will those you cite in your document reveal their conflicts? Please address my questions, if you can.

Again, you should understand that I agree with much that was in your documentary report and I believe it is best that we concentrate on what we share rather than what we do not. If we wish to make progress in reducing asbestos exposure and disease.

Incidentally, have you read my paper financed by a peer-reviewed grant from EPA while I was Director of EPA's Center for Environmental Epidemiology on the lung content of American school children, demonstrating that the most frequent fiber found was chrysotile?

Also, are you aware that the "McGill University studies" were financed in part by a grant by the United States Public Health Service; a grant which provided an important precursor to the current accepted ILO B-reading system?

Are you aware that all McGill University studies of which I am the first author were financed by peer-reviewed granting committees (of EPA, among others) at arms-length from government, and that none of my research has received so much as ONE PENNY from "asbestos companies", or for that matter, any private industry at all (which pretty much makes me unique in academia, don't you think)? Are you aware that I refused to participate with either the Canadian government or the Quebec government in their ill-adviced attempts to subvert the French government's actions to ban asbestos? With all due respect, do you believe everything you read?

Once again I will be quite happy to talk with you. Call me at home...

Bruce W. Cass, M.D., M.Sc., Dipl.
Occupational Hygiene, F.R.C.P.(C)

Cate Jenkins
03/18/2004 11:05 AM
#1

To: Bruce Case <bwcase@videotron.ca>
cc:
Subject: Re: Errors in your COI document




Documentary-Jenkins-070403.pdf

Dr. Case:

In response to your claims that you have no conflict of interest issues, please see page 354 and following of my attached 7/4/03 report for additional documentation on potential conflicts of interest, appearances of impropriety, and prejudicial statements as they would relate to your fitness to serve on any EPA or ATSDR peer review panel.

Cate Jenkins, Ph.D.

Bruce Case <bwcase@videotron.ca>

 Bruce Case
<bwcase@videotron.ca>
03/15/2004 09:48 AM

To: Cate Jenkins/DC/USEPA/US@EPA, Cate
Jenkins/DC/USEPA/US@EPA
cc:
Subject: Errors in your COI document

Dear Dr. Jenkins:

Although I agree with much of what you have written in some documents, I was taken aback in the attached to see myself attacked while professional paid witnesses with true but not acknowledged COIs are cited by you without mention of said COI for their work (since they do not disclose them this is of course not your fault). All of the latter are publishing in the AJIM, which itself has serious COI problems in both the person of its editor and some members of its editorial board, which preclude citing this journal as "peer-reviewed" when it comes to asbestos matters. Unless the peer reviewers themselves and their own COIs are disclosed or come forward voluntarily, which would help.

One such, Dr. Lemen, has done so at least in terms of disclosing his source of income in his last paper in that journal: an honorable thing to do.

Your sole source for attacks on my own objectivity appears to be "Never Again Consulting" a questionable and error-filled article in AJIM, which does not identify their paying clients and COI; and my citizenship and University (which is public, and does NOT receive funding from the "OAMA", nor has it since I began work there in 1982). Your comments could cause interference with my ability to help victims both here in Canada and elsewhere. I cling to the perhaps naive belief that we are on the same "side" in wishing to help victims and prevent both exposure and disease, which I have spent my professional life doing. The fact that scientists may disagree on some issues does not preclude their co-operation on others.

I will be glad to discuss this with you should you wish. Give me a call, but as I am on sabbatical rather than at the numbers below AT HOME: (514) 831-2175, or I would be happy to correspond with you by email. I also attach for your benefit our latest book for the Quebec National Institute of Public Health (INSPO) on the epidemiology of asbestos-related diseases in Quebec. (De Guire L, Carnus M, Cass BW et al. <http://www.inspo.org/condiff/publications/22-EpidemiologieExpositionEnvironna.pdf>); this is available together with summaries and a separate book on exposure assessment at <http://www.inspo.org>. Handcopies and descriptions can be seen and ordered at <http://www.inspo.org/publications/default.asp?ID=condiff&submit=1&chain>. These reports are naturally in "our" official language (French), but an accordingly short summary will appear shortly in English. We have so far succeeded in making most occupational diseases reportable within 48 hours in Quebec, including mesothelioma, by law, but are also engaged in an important corrétemps with the Government regarding their irresponsible policy perpetrated by the Act of the Legislature of June 2002. This is difficult, as it is supported by employers, unions, and government, and calls for the "accelerated use" of asbestos in Quebec (poor translation on my part perhaps but I cannot think of a better word for "accrué").

Regards,

Bruce W. Cass, M.D., M.Sc., Dipl. Occupational

Hygiene, F.R.C.P.(C)

Associate Professor, Pathology (on sabbatical)

Associate Member, Combined Department of

Epidemiology, Biostatistics and Occupational Health, and

McGill University

1205 Avenue

Monique Desjardins

1205 Avenue

Monique Desjardins

1205 Avenue

Monique Desjardins

1205 Avenue

Monique Desjardins

1205 Avenue

Monique Desjardins

1205 Avenue

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