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**Civil Administration**

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Exhibit "B"

Case ID: 861000001  
Control No.: 09103556

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24 April 2009

The Honorable Sandra Mazer Moss  
Complex Litigation Center  
Court of Common Pleas of  
Philadelphia County  
622 City Hall  
Philadelphia, Pennsylvania 19107

Attention: Donna Candelora, Esquire

**JUNE 2009 TRIAL GROUP  
SHEIN (MESOTHELIOMA) NO. 2221**

**CONTROL NUMBER 09040586**

Plaintiff's Counsel: Benjamin P. Shein, Esquire  
Defendant's Counsel: Timothy D. Rau, Esquire

Defendant's Motion Filed: 7 April 2009  
Plaintiff's Response Filed: 24 April 2009  
Defendant's Reply Due: 29 April 2009 at 2:00 p.m.

*Nadine Collier Novotny, Executrix of the Estate of Edward  
J. Novotny, Deceased v. Goodyear-Canada, et al.*  
**November Term 2007, No. 00963 – OPPOSED**

**PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY  
JUDGMENT ON BEHALF OF DEFENDANT, GOODYEAR-  
CANADA FOR LACK OF PRODUCT IDENTIFICATION**

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Case ID: 86100001  
Control No.: 09103556

Plaintiff Nadine Collier Novotny, Executrix of the Estate of Edward J. Novotny, Deceased, acting by and through her undersigned counsel, hereby submits, pursuant to the asbestos procedures adopted by this Court, this Letter Brief in opposition to the Motion for Summary Judgment on Behalf of Defendant, Goodyear-Canada for Lack of Product Identification (hereinafter referred to as "Defendant's Motion"). For the reasons set forth below, Plaintiff respectfully requests that this Honorable Court deny Defendant's Motion.

## ARGUMENT

Defendant Goodyear-Canada moves for summary judgment on the grounds that "Plaintiff has provided insufficient testimony or other evidence to establish any asbestos exposure attributable to Goodyear-Canada." Defendant's Motion at 1. For all of the following reasons, Plaintiff has met her burden of establishing that Edward J. Novotny, on a regular and frequent basis, worked in close proximity to asbestos-containing sheet gasket material manufactured, distributed and supplied by Goodyear-Canada.

### A. Legal Standard

Summary judgment may be granted only in those cases in which the record clearly shows that no genuine issues of material fact exist and that the moving party is entitled to judgment as a matter of law. The moving party has the burden of proving that no genuine issues of material fact exist. In determining whether to grant summary judgment, the trial court must view the record in the light most favorable to the non-moving party and must resolve all doubts as to the existence of a genuine issue of material fact against the moving party. Thus, summary judgment is proper only when the uncontraverted allegations in the pleadings, depositions, answers to interrogatories, admissions of record, and submitted affidavits demonstrate that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law. In sum, only when the facts are so clear that reasonable minds cannot differ, may a trial court properly enter summary judgment.

*Gutteridge v. A.P. Green Services, Inc.*, 804 A.2d 643, 651 (Pa. Super. 2002) (citations omitted). As the Pennsylvania Superior Court cautioned in *Samarin v. GAF Corporation*, 391 Pa. Super. 340, 571 A.2d 398 (1989), *alloc. den'd*, 524 Pa. 629, 574 A.2d 71 (1990): **"It is not part of the court's function to decide issues of fact but solely to determine whether there is an issue of fact to be tried."** *Id.* at 346, 571 A.2d at 402, quoting *Washington Federal Savings and Loan Association v. Stein*, 357 Pa. Super. 286, 288, 515 A.2d 980, 981 (1986) (citations omitted) (emphasis added).

## 1. Product Identification

The standard for product identification in a products liability case such as this was announced in *Eckenrod v. GAF Corporation*, 375 Pa. Super. 187, 544 A.2d 50 (1988), *alloc. den'd* 520 Pa. 605, 533 A.2d 968 (1988). There, the Pennsylvania Superior Court stated:

In order for liability to attach in a products liability action, plaintiff must establish that the injuries were caused by a product of the particular manufacturer or supplier. Additionally, in order for a plaintiff to defeat a Motion for Summary Judgment, a plaintiff must present evidence to show that he inhaled asbestos fibers shed by the specific manufacturer's product. Therefore, a plaintiff must establish more than the presence of asbestos in the workplace; he must prove that he worked in the vicinity of the product's use.

*Id.* at 190-91, 544 A.2d at 52 (citations omitted).

In *Lilley v. Johns-Manville Corporation*, 408 Pa. Super. 83, 596 A.2d 203 (1991), the Court held that evidence of **"even one day's worth of . . . inhalation [of asbestos dust] constituted a 'substantial contributing factor' to"** the plaintiff's development of an asbestos-related disease. *Id.* at 94, 596 A.2d at 208 (emphasis added). Such evidence **"was sufficient to permit a jury to infer that Mr. Lilley contracted a disease caused by his breathing, in his work place, asbestos fibers from products manufactured by . . . [the defendants]."** *Id.* (emphasis added).

Similarly, in *Andaloro v. Armstrong World Industries, et al.*, 799 A.2d 71 (Pa. Super. 2002), the Pennsylvania Superior Court held that causation of asbestos-related injuries is shown upon proof that the plaintiff **"inhaled some fibers from the products of the defendant manufacturer."** *Id.* at 86, citing *Lilley v. Johns-Manville Corporation, supra*, 408 Pa. Super. at 93, 596 A.2d at 207 (1991); *Samarin v. GAF Corporation, supra*, 391 Pa. Super. at 352-53, 571 A.2d at 405. Additionally, the *Andaloro* Court stated: **"Our case law includes no requirement that a plaintiff in an asbestos case [further] prove through [expert testimony] how many asbestos fibers are contained in the dust emissions from a particular asbestos-containing product."** *Id.*, quoting *Junge v. Garlock*, 427 Pa. Super. 592, 596, 629 A.2d 1027, 1029 (1993). Thus, while a plaintiff must demonstrate the identity of the asbestos-containing product and that he inhaled fibers shed from that company's product, **he or she does not have to "demonstrate the specific level or duration of his exposure" to satisfy his or her burden of proof.** *Andaloro v. Armstrong World Industries, et al., supra*, 799 A.2d at 86 (emphasis added), citing *Junge v. Garlock, supra*, 427 Pa. Super. at 596, 629 A.2d at 1029. See *Samarin v. GAF Corporation, supra*; *Eckenrod v. GAF Corporation, supra*. Accordingly, to defeat a motion for summary judgment based on product identification, a plaintiff need only produce evidence of inhalation of some asbestos fibers from the defendant's product; the duration of the exposure to the product does not need to be specified to satisfy the plaintiff's burden of proof.

When evaluating the record upon summary judgment, a court need only find that the plaintiff's contact with the defendant's asbestos product **"was of such a nature as to raise a reasonable inference that he inhaled asbestos fibers that emanated from it."** *Andaloro v. Armstrong World Industries, et al.*, *supra*, 799 A.2d at 86 (emphasis added), *citing Samarin v. GAF Corporation, supra*, 391 Pa. Super. at 352-54, 571 A.2d at 405; *Eckenrod v. GAF Corporation, supra*, 375 Pa. Super. at 190-91, 544 A.2d at 52. *See Gutteridge v. A.P. Green Services, Inc.*, *supra*, 804 A.2d at 652-53. So long as a plaintiff raises this reasonable inference, summary judgment must be denied.

Finally, in *Harahan v. AC & S, Inc., et al.*, 816 A.2d 296 (Pa. Super.), *aff'd* 828 A.2d 350 (Pa. 2003), the Court held that the testimony of co-worker witnesses, coupled with an exhibit made by one of the witnesses that identified a particular defendant's product, was sufficient evidence to give rise to a genuine issue of material fact as to whether that defendant's product caused the decedent's death. *Id.* at 300. *Harahan* further held that while summary judgment was granted in *Eckenrod* because there was not even a reasonable inference that the plaintiff there was exposed to the defendant's asbestos products, the testimony of two of the decedent's co-workers in *Harahan* was both circumstantial and direct evidence to show that there was a genuine issue of material fact as to whether defendant's product caused decedent's disease. *Id.* at 299-300.

## **B. Edward J. Novotny**

Edward J. Novotny was diagnosed with malignant mesothelioma in May 2007, and died from mesothelioma on 28 April 2009. At the time of his death, Mr. Novotny was sixty-five years of age. Mr. Novotny's malignant mesothelioma was caused by his occupational exposure to asbestos while working as a union electrician out of Local 607 of the International Brotherhood of Electrical Workers (IBEW), located in Shamokin, Pennsylvania.

James Scandle, a fellow union electrician and member of IBEW Local 607, testified regarding his work with Edward Novotny. *See generally* Scandle Video (Exhibit "A").<sup>1</sup> Mr. Scandle became a member of Local 607 in 1967, and he and Mr. Novotny, who became a member of Local 607 in 1965, were apprentices together. Ex. A at 14:16-15:15. From the mid-1960's forward, Mr. Scandle and Mr. Novotny were both members of Local 607, and Mr. Novotny remained a member of Local 607 throughout his career. Ex. A at 15:16-21.

Mr. Scandle and Mr. Novotny worked together at the Montour Steam Generating Plant (also known as "the Washingtonville Powerhouse"), a two-unit coal-fired steam-powered electrical generating station owned and operated by Pennsylvania Power & Light. Ex. A at 15:22-17:5 & 20:16-21:15. Mr. Scandle and Mr. Novotny worked together at Washingtonville from 1970 to 1973. Ex. A at 17:6-11. At that time, the Washingtonville plant was being constructed, and Mr. Scandle and Mr. Novotny worked together on the construction of both units at Washingtonville. Ex. A at 20:16-21:15.

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<sup>1</sup> The Video Deposition of James Scandle, the relevant portions of which are attached as Exhibit A, was taken on 25 March 2009.

According to Mr. Scandle, during the two to three years that he and Mr. Novotny both worked at Washingtonville, they were on the same crew and worked together "quite a bit." Ex. A at 18:21-19:5. Because the Washingtonville plant was under construction and was without permanent power and lights, Mr. Scandle's and Mr. Novotny's main job was providing temporary lighting and power for the other trades who were involved in the construction of the Washingtonville plant (e.g., iron workers, pipe fitters, boilermakers, carpenters, insulators, millwrights, masons). Ex. A at 19:6-20:15. When Unit No. 1 at Washingtonville was completed, Mr. Novotny and Mr. Scandle worked on the construction of Unit No. 2, and their duties, in terms of providing temporary lighting and power, were "almost identical." Ex. A at 81:10-23.

Mr. Scandle testified that during the two- to three-year period that he and Mr. Novotny worked together at Washingtonville, he and Mr. Novotny worked with and around – and were exposed to – products that contained asbestos. Ex. A at 17:12-18 & 41:13-15.

## **1. Asbestos-Containing Sheet Gasket Material**

Mr. Scandle identified gaskets as one of the asbestos-containing products that he and Mr. Novotny worked around. Ex. A at 17:22-18:10 & 41:13-15. Mr. Scandle explained that these gaskets were used to seal mechanical connections (bolted connections as opposed to welded connections) between pieces of pipe or between a piece of pipe and a piece of equipment like a pump or a valve. Ex. A at 41:16-42:16. Mr. Scandle knew that these gaskets contained asbestos because they were being used in high temperature and/or high pressure applications, Ex. A at 42:17-43:5, and Mr. Scandle testified that "an awful lot" of the mechanical connections at Washingtonville were in high temperature/high pressure areas. Ex. A at 43:19-25 ("... lots of them"). These were the areas where the asbestos-containing gaskets were utilized. Ex. A at 44:3-7.

Mr. Scandle explained that the gaskets that were being used at Washingtonville were fabricated in the "gasket shop." Mr. Scandle described the gasket shop as:

A small building like a garage. And they had worktables in there. And they had this gasket material stored in there. And they put the material up on these tables. And they had specs to draw the gasket with a compass, the inside of it, inside and outside diameter. And they'd punch the holes where the bolts went through. They cut them on these tables.

Ex. A at 44:17-45:3. This small building had no windows and only a fan mounted in the wall that blew air **into** the gasket shop (as opposed to an exhaust fan that would have pulled air out of the gasket shop). Scandle Discovery (attached as Exhibit "B") at 128:12-19 & 205:15-206:5.<sup>2</sup> According to Mr. Scandle, the gasket shop typically had between four and six (and sometimes as

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<sup>2</sup> The Discovery Deposition of James Scandle, the relevant portions of which are attached as Exhibit B, was taken on 25 March 2009.

many as eight) individuals doing nothing but fabricating gaskets. Ex. A at 45:4-46:4. The gasket material that was used to make the gaskets came in sheets, and large quantities of this sheet gasket material were stored in the gasket shop. Ex. A at 46:5-14 & 71:17-24.

According to Mr. Scandle, their maintenance duties required him and Mr. Novotny to be in the gasket shop twice a week. Ex. A at 46:21-25 & 48:7-50:7. These periodic sessions in the gasket shop lasted “an hour, hour and a half unless there was something major, then it would be longer.” Ex. A at 47:2-7. On the basis of his observations, Mr. Scandle described in detail the tasks being performed by the men who worked in the gasket shop. Ex. A at 50:8-52:8. According to Mr. Scandle, the fabrication of gaskets from the sheet gasket material required “quite a bit” of cutting. Ex. A at 52:9-13. Mr. Scandle also described in detail the conditions that confronted him and Mr. Novotny when they did their work in the gasket shop. Ex. A at 52:15-54:5. The excess sheet gasket material that was cut away to fabricate the gaskets would be thrown on the floor, Ex. A at 52:15-21 & 53:7-12, and when Mr. Scandle and Mr. Novotny were in the gasket shop, the floor was “[I]ttered with this gasket material.” Ex. A at 52:22-53:22 & 53:7-54:5. Discarded gasket material would also be on the electrical equipment that Mr. Scandle and Mr. Novotny came to work on. Ex. A at 53:3-6.

Mr. Scandle explained that the gasket shop at Washingtonville remained in the same location during the construction of both Unit No. 1 and Unit No. 2. Ex. A at 82:20-83:10. Mr. Scandle testified that the gaskets that were fabricated in the gasket shop were used in the construction of both Unit No. 1 and Unit No. 2. Ex. A at 83:14-84:17.

## **2. Durabla’s Asbestos-Containing Sheet Gasket Material**

Mr. Scandle specifically identified “Durabla” sheet gasket material as one of the brands of asbestos-containing sheet gasket material that was being used to fabricate gaskets in the Washingtonville gasket shop. Ex. A at 62:3-13 & 62:25. Mr. Scandle knew that the sheet gasket material was Durabla sheet gasket material because the “Durabla” name and logo were printed on the sheet gasket material. Ex. A at 69:14-21. Mr. Scandle described the logo as “triangular shaped.” Ex. A at 69:22-24. Mr. Scandle also described the color of the Durabla sheet gasket material as a “darker black or dark gray.” Ex. A at 70:22-71:13. Mr. Scandle’s description of the Durabla sheet gasket material is, in all respects, identical to the actual appearance of Durabla Black asbestos-containing sheet gasket material. *See Durabla Black Sheet Gasket Photograph (attached as Exhibit “C.”)*

When Mr. Scandle and Mr. Novotny were working together on the floor of the Washingtonville plant, they would see other workmen using these Durabla gaskets to seal mechanical connections in high temperature and/or high pressure lines. Ex. A at 66:25-69:3. This occurred during the construction of both Unit No. 1 and Unit No. 2 at Washingtonville. Ex. A at 83:24-84:17.

Mr. Scandle testified that when he and Mr. Novotny were working together in the gasket shop, they were exposed to dust and debris from the Durabla sheet gasket material. Ex. A at 52:15-53:2 & 53:7-54:5.

In its discovery responses, Durabla admits that it made asbestos-containing Durabla "black" sheet gasket material from 1913 "to the present" and that its Durabla black gaskets contained **eighty percent asbestos**. Durabla Interrogatory Answers (attached as Exhibit "D") at II. *See also* "Durabla Asbestos Sheet and Gaskets" (attached as Exhibit "E") at 3. More important, David W. Moser, the President of Durabla, has testified that Durabla did not begin to market a non-asbestos containing gasket material until 1983. Deposition of David W. Moser (Sept. 22, 1993) (attached as Exhibit "F") at 77:2-78:1.

In its discovery responses, Durabla further notes that its asbestos-containing gasket material "has been manufactured by other entities for Durabla from approximately 1913 to the present." Ex. D at XI. For purposes of the present case, Mr. Moser has testified that, **from 1969 to 1973, Durabla obtained its asbestos-containing gasket material from Goodyear-Canada**. Ex. F at 35:16-22.

### C. Sufficiency of Evidence

Goodyear-Canada has now moved for summary judgment, arguing that "Plaintiff has offered no testimony or other evidence indicating that he was ever exposed to any asbestos-containing products manufactured, supplied, or distributed by Goodyear-Canada." Defendant's Motion at 1. **Goodyear-Canada's motion for summary judgment is disingenuous in the extreme.** Goodyear-Canada is fully aware of the fact that, **during the relevant time period (1970-1973), Goodyear-Canada was the exclusive supplier of all asbestos-containing sheet gasket material that was sold by Durabla.**

Given this evidence, Goodyear-Canada's instant motion for summary judgment is **nonsense**. **From 1970 to 1973, Mr. Novotny was exposed, on a regular and frequent basis, to asbestos-containing sheet gasket material manufactured, distributed and supplied by Goodyear-Canada.**

It must also be noted that Durabla, the entity through which Goodyear-Canada distributed and sold its asbestos-containing gasket material, has not filed a motion for summary judgment in this case and does not challenge, **in any respect whatsoever**, Mr. Scandle's product identification testimony regarding Mr. Novotny's proximate, regular and frequent exposure to dust and debris from Durabla's asbestos-containing gasket material. Moreover, Goodyear-Canada, as the manufacturer of the Durabla asbestos-containing sheet gasket material around which Mr. Novotny worked, has not, by way of its motion for summary judgment, raised any challenge to Plaintiff's proffered evidence regarding Mr. Novotny's proximate, regular and frequent exposure to Durabla asbestos-containing gasket material.

### CONCLUSION

The evidence in this case – in the form of the videotaped testimony of James Scandle and the admissions that have been made by Durabla through its discovery responses and other

materials – is more than sufficient to raise a reasonable inference that Edward J. Novotny inhaled asbestos fibers shed from Durabla's asbestos-containing sheet gasket material that was manufactured, distributed and supplied by Goodyear-Canada. Any questions regarding the credibility or weight to be given to Mr. Scandle's testimony and the corporate evidence are for the jury to determine. *McNeal v. Eaton Corporation*, 806 A.2d 899 (Pa. Super. 2002); *White v. Owens-Corning Fiberglas Corporation*, 447 Pa. Super. 5, 17-18, 668 A.2d 136, 142 (1995). Based on the above evidence, viewed in a light most favorable to Plaintiff, genuine issues of material fact exist and summary judgment must be denied.

Moreover, Mr. Novotny developed, suffered and died from a terminal asbestos-related disease. Plaintiff has proffered evidence to establish Mr. Novotny's exposure to asbestos-containing products manufactured by Goodyear-Canada. Such evidence is more than sufficient to proceed to a jury determination on these issues. See *Donoughe v. Lincoln Electric Company*, 936 A.2d 52, 64 (Pa. Super. 2007) (*reargument denied* Dec. 13, 2007).

For the foregoing reasons, plaintiff Nadine Collier Novotny, Executrix of the Estate of Edward J. Novotny, Deceased, respectfully requests that this Honorable Court deny the Motion for Summary Judgment on Behalf of Defendant, Goodyear-Canada for Lack of Product Identification.

Respectfully submitted,

SHEIN LAW CENTER, LTD.

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JPK/jmc  
Attachments

cc: Via Electronic Service, Hand Delivery or Facsimile

Timothy D. Rau, Esquire (w/attachs.)

IN THE COURT OF COMMON PLEAS  
OF PHILADELPHIA COUNTY, PENNSYLVANIA

<i>NADINE COLLIER NOVOTNY,</i>	:	COURT OF COMMON PLEAS OF
Executrix of the Estate of Edward J.	:	PHILADELPHIA COUNTY
Novotny, Deceased,	:	FIRST JUDICIAL DISTRICT
	:	CIVIL TRIAL DIVISION
Plaintiff,	:	
	:	
v.	:	<b>ASBESTOS CASE</b>
	:	
<i>GOODYEAR-CANADA, Et AL.,</i>	:	NOVEMBER TERM 2007
	:	
Defendants.	:	No. 00963

**O R D E R**

AND NOW, to wit, this \_\_\_\_\_ day of May 2009, upon consideration of the Motion for Summary Judgment on Behalf of Defendant, Goodyear-Canada for Lack of Product Identification (Control No. **09040586**) and the papers filed in support thereof and in opposition thereto, it is hereby **ORDERED, ADJUDGED** and **DECREED** that said Motion is **DENIED**.

BY THE COURT:

\_\_\_\_\_  
Hon. Sandra Mazer Moss

## CERTIFICATION OF SERVICE

It is hereby certified by the undersigned member of the Bar of this Court that one (1) copy of the foregoing Plaintiff's Opposition to Motion for Summary Judgment on Behalf of Defendant, Goodyear-Canada for Lack of Product Identification has been served upon the counsel whose name and address is set forth below via electronic service, hand delivery or facsimile on Friday, the 24th day of April 2009.

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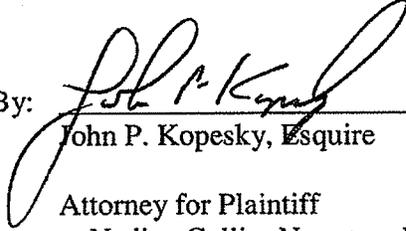
Facsimile No. 215.575.0856

Attorney for Defendant  
Goodyear-Canada

Dated: 24 April 2009

SHEIN LAW CENTER, LTD.

By:

  
John P. Kopesky, Esquire

Attorney for Plaintiff  
Nadine Collier Novotny, Executrix of the  
Estate of Edward J. Novotny, Deceased

# EXHIBIT A

NADINE COLLIER, : COURT OF COMMON PLEAS  
EXTRX. OF THE ESTATE : PHILADELPHIA COUNTY  
OF EDWARD NOVOTNY, :  
DECEASED :  
Plaintiff : NOVEMBER TERM, 2007  
:  
vs. : ASBESTOS CASE  
:  
3M COMPANY, et al. :  
Defendants :

- - -

WEDNESDAY, MARCH 25, 2009

- - -

Videotaped Deposition of JAMES  
SCANDLE, taken pursuant to notice at the Days  
Inn and Conference Center, 50 Sheraton Road,  
Danville, Pennsylvania, on the above date,  
beginning at or about 10:10 a.m., before  
Kathleen Woods Logue, Professional Reporter  
and Notary Public and Bob Higham,  
Videographer, there being present.

- - -

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1 JAMES SCANDLE  
 2 MR. KEATING: As far as  
 3 objections, an objection for one is good as to  
 4 all?  
 5 MR. KOPESKY: That's fine.  
 6 MR. KEATING: Can we go with  
 7 all objections except as to form reserved  
 8 until the time of trial?  
 9 MR. KOPESKY: That's fine.  
 10 MR. KEATING: Is that  
 11 satisfactory to everybody?  
 12 MR. COLEMAN: Do you have to  
 13 give the basis for the objection or can you  
 14 just say form objection without being more  
 15 specific?  
 16 MR. KOPESKY: If you can do it  
 17 in a word or two, that would be both helpful  
 18 and I think required.  
 19 MR. KEATING: If you have any  
 20 questions as we go forward with an objection,  
 21 you can ask us to go off and it can be  
 22 explained.  
 23 THE VIDEOTAPE OPERATOR: We're  
 24 on the record. My name is Robert Higham. I'm  
 25 the videotape operator employed by Higham

Page 11

1 JAMES SCANDLE  
 2 Enterprises, LLC, Voorhees, New Jersey.  
 3 This is a videotaped  
 4 deposition for the Court of Common Pleas,  
 5 Philadelphia County, Pennsylvania, November  
 6 Term 2007, Number 0963 in the matter of the  
 7 Estate of Edward Novotny versus 3M Company, et  
 8 al., taking place at the Days Inn and  
 9 Conference Center, 50 Sheraton Road, Danville,  
 10 Pennsylvania on behalf of the plaintiff, John  
 11 Kopesky, Esquire. All defense counsel will be  
 12 reflected on the stenographic record  
 13 The Court Reporter is Kate  
 14 Woods of Veritext Court Reporting.  
 15 The deponent today is James  
 16 Scandle.  
 17 Today's date is Wednesday,  
 18 March 25, 2009. The time on screen is 10:10.  
 19 The Reporter will now swear in the witness.  
 20 - - -  
 21 JAMES SCANDLE, after having  
 22 been first duly sworn, was examined and  
 23 testified as follows:  
 24 - - -  
 25 EXAMINATION

Page 12

1 JAMES SCANDLE  
 2 - - -  
 3 BY MR. KOPESKY:  
 4 Q. Mr. Scandle, good morning.  
 5 A. Good morning.  
 6 Q. I'm John Kopesky. I represent the  
 7 estate of Edward Novotny. You are here today  
 8 for your deposition. And I want to begin,  
 9 sir, by just asking you some questions about  
 10 your background a little bit.  
 11 Could you tell us, first of  
 12 all, how old you are, sir?  
 13 A. 61.  
 14 Q. Mr. Scandle, where were you born and  
 15 raised?  
 16 A. Shamokin, Pennsylvania.  
 17 Q. So you have lived in the Shamokin area  
 18 all of your life?  
 19 A. Yes.  
 20 Q. How far did you go in school, sir?  
 21 A. I graduated from high school.  
 22 Q. Which high school?  
 23 A. Our Lady of Lourdes.  
 24 Q. And what year was that?  
 25 A. 1965.

Page 13

1 JAMES SCANDLE  
 2 Q. Mr. Scandle, are you married?  
 3 A. Yes.  
 4 Q. How long have you been married?  
 5 A. 45 years.  
 6 Q. What is your wife's name?  
 7 A. Mary.  
 8 Q. And do you and Mary have any children?  
 9 A. Yes.  
 10 Q. How many?  
 11 A. Two, a boy and a girl.  
 12 Q. A son and a daughter?  
 13 A. Yeah.  
 14 Q. Are they married?  
 15 A. Yes.  
 16 Q. Any grandchildren yet?  
 17 A. Two.  
 18 Q. How old are the grandchildren?  
 19 A. One is in seventh grade and one is in  
 20 fifth grade.  
 21 Q. Mr. Scandle, generally, could you  
 22 briefly trace for us your employment after you  
 23 graduated high school?  
 24 A. I worked in a local factory the first  
 25 summer after school, a shoe factory, and then

4 (Pages 10 to 13)

1 JAMES SCANDLE  
 2 I went right into the electrical trade, worked  
 3 on construction from then on.  
 4 Q. So you have been in the electrical trade  
 5 working in construction since some time in the  
 6 late '60s?  
 7 A. Yes.  
 8 Q. Are you still currently employed?  
 9 A. Yes.  
 10 Q. By whom are you currently employed?  
 11 A. McCarls, Incorporated.  
 12 Q. And is that an electrical contractor?  
 13 A. They do electric work. They do other  
 14 mechanical work. But, yeah, they're an  
 15 electrical contractor.  
 16 Q. Mr. Scandle, are you a member of a  
 17 union?  
 18 A. Yes.  
 19 Q. Which union are you a member of?  
 20 A. The IBEW.  
 21 Q. International Brotherhood of Electrical  
 22 Workers?  
 23 A. Electrical Workers, Local 607.  
 24 Q. And where is the 607 local  
 25 headquartered?

1 JAMES SCANDLE  
 2 of those job sites.  
 3 What is the first job site  
 4 that you recall working with Ed Novotny where  
 5 you and Ed were together for a long period of  
 6 time, more than just a short job of a few  
 7 weeks, but were together for a longer period?  
 8 A. The Washingtonville Powerhouse.  
 9 Q. Okay. What you refer to as the  
 10 Washingtonville Powerhouse, is the, I guess,  
 11 the formal name of that facility the Montour  
 12 Steam Generating Plant?  
 13 A. Yes.  
 14 Q. And who owns the or -- who owns or  
 15 operates the Montour Steam Generating Plant?  
 16 A. PP&L.  
 17 Q. Pennsylvania Power & Light?  
 18 A. Yes.  
 19 Q. You called it Washingtonville. And for  
 20 the rest of my questioning, I'm going to call  
 21 it Washingtonville as well.  
 22 Fair enough?  
 23 A. Yeah.  
 24 Q. So when we talk about Washingtonville,  
 25 we're talking about that Montour Steam

1 JAMES SCANDLE  
 2 A. Shamokin.  
 3 Q. How long have you been a member of the  
 4 607 local?  
 5 A. Since 1967.  
 6 Q. Mr. Scandle, did you know Edward  
 7 Novotny?  
 8 A. Yes.  
 9 Q. How did you know Ed Novotny?  
 10 A. We were apprentices together. That's  
 11 where I met him.  
 12 Q. So Mr. Novotny joined the 607 local  
 13 about the same time that you did?  
 14 A. He was two years ahead of me. He was  
 15 two years.  
 16 Q. And were you and Mr. Novotny in the  
 17 union together from the late '60s onward?  
 18 A. Yes.  
 19 Q. Okay. So Mr. Novotny was a member of  
 20 that union throughout his career?  
 21 A. Yes.  
 22 Q. Mr. Scandle, did you work with Ed  
 23 Novotny on particular job sites together?  
 24 A. Yes.  
 25 Q. I want to talk to you today about some

1 JAMES SCANDLE  
 2 Generating Plant.  
 3 A. Okay.  
 4 Q. Fair enough?  
 5 A. Yes.  
 6 Q. Mr. Scandle, how long did you work at  
 7 Washingtonville with Ed Novotny?  
 8 A. From '70, 1970 to some time in 1973.  
 9 Q. So what would that be, about a two,  
 10 three year period?  
 11 A. Yeah, two to three.  
 12 Q. Mr. Scandle, while you and Ed Novotny  
 13 were working together at the Washingtonville  
 14 plant, excuse me, do you believe, sir, that  
 15 you and Mr. Novotny worked with or worked  
 16 around and were exposed to products that  
 17 contained asbestos?  
 18 A. Yes.  
 19 MR. COLEMAN: Objection,  
 20 compound, lack of foundation.  
 21 BY MR. KOPESKY:  
 22 Q. Mr. Scandle, what products do you  
 23 believe you and Mr. Novotny worked with and  
 24 around at the Washingtonville plant that  
 25 contained asbestos? And I'm just talking now

5 (Pages 14 to 17)

Page 18

1 JAMES SCANDLE  
 2 generally types of products.  
 3 MR. KEATING: Same objection.  
 4 MR. COLEMAN: Same objection,  
 5 lack of foundation.  
 6 THE WITNESS: Insulation.  
 7 BY MR. KOPESKY:  
 8 Q. Okay. Insulation. Any other types of  
 9 products?  
 10 A. Gaskets.  
 11 Q. Any other types of products in addition  
 12 to insulation and gaskets?  
 13 A. Wire.  
 14 Q. This is at Washingtonville?  
 15 A. Yes.  
 16 Q. Okay. Any other products besides  
 17 insulation and gaskets and wire?  
 18 A. Insulation is insulation.  
 19 Q. Okay. Well, we'll talk about the  
 20 insulation in a little bit more detail.  
 21 When you and Mr. Novotny were  
 22 working at Washingtonville, did you generally  
 23 work together?  
 24 MR. KEATING: Objection, form,  
 25 leading.

Page 19

1 JAMES SCANDLE  
 2 THE WITNESS: Quite a bit.  
 3 BY MR. KOPESKY:  
 4 Q. Were you on the same crew?  
 5 A. Yes.  
 6 Q. What -- let's talk generally about the  
 7 types of work that you and Mr. Novotny did at  
 8 the Washingtonville plant.  
 9 What were the kinds of jobs  
 10 that you worked on?  
 11 A. Our main task was temporary light and  
 12 power.  
 13 Q. Okay. Could you explain a little bit  
 14 more, for the benefit of the jury who probably  
 15 has not been in a power plant, what you were  
 16 doing, what you mean by temporary light and  
 17 power?  
 18 A. Well, there was no permanent power or  
 19 lights. Wherever there was a work area where  
 20 people were working, you had to install  
 21 lighting. And then the power was throughout  
 22 the whole thing, for welding machines, mostly  
 23 welding machines and to run equipment,  
 24 temporary equipment. It was a ten story  
 25 building.

Page 20

1 JAMES SCANDLE  
 2 Q. So would this be temporary power and  
 3 temporary lighting for the electricians who  
 4 were working at Washingtonville or were you  
 5 setting up temporary power and lighting for  
 6 other trades as well?  
 7 A. For everybody.  
 8 Q. What other types of trades were working  
 9 at Washingtonville when you and Mr. Novotny  
 10 were there besides the electricians?  
 11 A. Iron workers, pipe fitters,  
 12 boilermakers, carpenters, insulators,  
 13 millwrights, masons.  
 14 Q. Pretty much all of the trades?  
 15 A. Yes.  
 16 Q. I probably should have asked this  
 17 earlier. The Washingtonville plant, what was  
 18 the Washingtonville plant?  
 19 DEFENSE COUNSEL: Objection.  
 20 BY MR. KOPESKY:  
 21 Q. Describe it for us a little bit.  
 22 DEFENSE COUNSEL: When?  
 23 BY MR. KOPESKY:  
 24 Q. When you and Mr. Novotny were working  
 25 there.

Page 21

1 JAMES SCANDLE  
 2 A. What was it?  
 3 Q. Yeah.  
 4 A. It was a construction site, but the  
 5 power plant itself is a coal-fired powerhouse.  
 6 Q. So it's a coal-fired plant?  
 7 A. Yes.  
 8 Q. For generating electricity?  
 9 A. Yes.  
 10 Q. How many units at Washingtonville?  
 11 A. Two.  
 12 Q. Were you and Mr. Novotny involved in the  
 13 construction? Did you work on the  
 14 construction of both units?  
 15 A. Yes.  
 16 MR. KEATING: Objection, form.  
 17 BY MR. KOPESKY:  
 18 Q. Excuse me. All right, Mr. Scandle.  
 19 Let's talk about some of the products that you  
 20 have just mentioned generally. You talked  
 21 about insulation.  
 22 A. Yeah.  
 23 Q. What was being insulated at the  
 24 Washingtonville plant?  
 25 A. The boiler, the turbine, all connecting

6 (Pages 18 to 21)

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1 JAMES SCANDLE  
 2 Q. In the boiler area?  
 3 A. Yeah.  
 4 Q. Okay. Thank you.  
 5 How did the -- and were the  
 6 feed water heaters, for example, were they  
 7 insulated?  
 8 A. Yes.  
 9 Q. Okay. Were they insulated with the  
 10 asbestos insulation that you saw at the plant?  
 11 MR. KEATING: Objection, form,  
 12 leading.  
 13 THE WITNESS: Yes. They were  
 14 insulated with the blocks and the adhesive  
 15 paste.  
 16 THE COURT REPORTER: I didn't  
 17 hear you. What did you just say?  
 18 THE WITNESS: Adhesive paste.  
 19 MR. KOPESKY: Adhesive paste I  
 20 think he said.  
 21 THE COURT REPORTER: Okay.  
 22 BY MR. KOPESKY:  
 23 Q. And just so we're clear, Mr. Scandle,  
 24 the material that was being applied to these  
 25 vessels, the block, you believed that that was

Page 39

1 JAMES SCANDLE  
 2 asbestos-containing insulation for what  
 3 reason?  
 4 A. Because the packaging that it came in  
 5 had asbestos written on it.  
 6 Q. And would the same be true with respect  
 7 to what you have characterized as plaster that  
 8 was applied on top of the block?  
 9 A. Yes.  
 10 Q. Did you and Mr. Novotny work in the  
 11 vicinity of the feed water heaters, for  
 12 example, when the asbestos insulation workers  
 13 were applying the block and the asbestos  
 14 plaster to those vessels?  
 15 A. Yes.  
 16 MR. KEATING: Objection.  
 17 DEFENSE COUNSEL: Objection,  
 18 form.  
 19 BY MR. KOPESKY:  
 20 Q. How often did that occur during the time  
 21 that you and Mr. Novotny were at  
 22 Washingtonville?  
 23 A. For -- forever -- however long it took  
 24 them to insulate it we were around it.  
 25 Q. Was there a -- were there a particular

Page 40

1 JAMES SCANDLE  
 2 reason or reasons why you and Mr. Novotny were  
 3 in the vicinity of the feed water heaters?  
 4 A. Yeah. One in particular, we had our  
 5 substation located right next to it, the Power  
 6 Distribution Center, whatever you want to call  
 7 it now. And we had a temporary shelter made  
 8 right on the other side of it that we stored  
 9 our cables and equipment that we could stage  
 10 throughout the boiler.  
 11 Q. That substation, that was a temporary  
 12 power substation that had been set up?  
 13 A. Yes.  
 14 Q. Did the insulation work on the feed  
 15 water heater cause problems with that  
 16 substation that had to be dealt with by you  
 17 and Mr. Novotny?  
 18 A. Well, yeah. We would be covered with  
 19 the asbestos dust and every time -- you know,  
 20 every time you went to work on it.  
 21 DEFENSE COUNSEL: Objection,  
 22 lack of foundation.  
 23 BY MR. KOPESKY:  
 24 Q. And what did you and Mr. Novotny have to  
 25 do -- when you say it was covered with

Page 41

1 JAMES SCANDLE  
 2 asbestos dust and debris, where did that  
 3 asbestos dust and debris come from?  
 4 A. From the cutting of the blocks that were  
 5 insulated and from the dust from the plaster.  
 6 Q. And what did you and Mr. Novotny -- when  
 7 you had to work on that substation, what did  
 8 you and Mr. Novotny have to do to deal with  
 9 that dust and debris?  
 10 A. Just brush it away.  
 11 Q. With your hands?  
 12 A. Yes.  
 13 Q. All right, Mr. Scandle. You also  
 14 mentioned another product gaskets.  
 15 A. Yes.  
 16 Q. For the benefit of the jury, let's take  
 17 it one step at a time, what is a gasket?  
 18 A. It's a sealing material that they put  
 19 between pipe joints, flange pipe joints.  
 20 Q. Okay. So you have -- what do you mean  
 21 by a flange?  
 22 A. It's a way to connect two pieces of pipe  
 23 or connect the pipe to a device, a pump, a  
 24 valve. There's two -- each of them have a  
 25 flat surface. You bolt them together, put the

11 (Pages 38 to 41)

1 JAMES SCANDLE  
 2 gaskets in between the two flat surfaces, get  
 3 squashed in there.  
 4 Q. So you put the gasket between the two  
 5 flat pieces of -- the two flanges and bolt  
 6 them together and the gasket would seal it?  
 7 A. Yes.  
 8 Q. Okay. And I think you just said that  
 9 was for connecting pieces of pipe together?  
 10 A. Yeah. You could connect two pieces of  
 11 pipe or --  
 12 Q. Or connect a piece of pipe to a piece of  
 13 equipment?  
 14 A. Yes.  
 15 Q. Like a valve or a pump?  
 16 A. A pump, yes.  
 17 Q. The gaskets that were used at  
 18 Washingtonville, do you believe, Mr. Scandle,  
 19 that those gaskets contained asbestos?  
 20 A. Yes.  
 21 MR. COLEMAN: Objection, lack  
 22 of foundation.  
 23 BY MR. KOPESKY:  
 24 Q. Why do you believe, Mr. Scandle, that  
 25 the gaskets that were used at Washingtonville

1 JAMES SCANDLE  
 2 BY MR. KOPESKY:  
 3 Q. And it's those areas where they would  
 4 use the gaskets that contained asbestos?  
 5 MR. COLEMAN: Objection,  
 6 leading.  
 7 THE WITNESS: Yes.  
 8 MR. COLEMAN: Lack of  
 9 foundation.  
 10 BY MR. KOPESKY:  
 11 Q. The gaskets, the asbestos-containing  
 12 gasket -- well, strike that.  
 13 The gaskets that were being  
 14 used by the other trades at Washingtonville,  
 15 where did those gaskets come from?  
 16 A. They had a gasket shop that had --  
 17 Q. Could you explain to me what you mean by  
 18 that -- by a gasket shop?  
 19 A. A small building like a garage. And  
 20 they had worktables in there. And they had  
 21 this gasket material stored in there. And  
 22 they put the material up on these tables. And  
 23 they had specs to draw the gasket with a  
 24 compass, the inside of it, inside and outside  
 25 diameter. And they'd punch the holes where

1 JAMES SCANDLE  
 2 contained asbestos?  
 3 A. Because they were used in extremely high  
 4 temperature situations and their application  
 5 was in the high temperature or high pressure.  
 6 MR. COLEMAN: Objection, move  
 7 to strike.  
 8 BY MR. KOPESKY:  
 9 Q. The gaskets that were used at  
 10 Washingtonville, particularly the ones for the  
 11 high temperature or the high pressure --  
 12 actually, let me ask a preliminary question.  
 13 Were a lot of the mechanical  
 14 connections that were made at Washingtonville  
 15 by, I'm assuming, the pipe fitters?  
 16 A. Yes.  
 17 Q. Or maybe the millwrights?  
 18 A. Or boilermakers.  
 19 Q. Okay. Those mechanical connections at  
 20 Washingtonville, were a lot of them in either  
 21 high temperature or high pressure areas?  
 22 MR. COLEMAN: Objection,  
 23 leading.  
 24 THE WITNESS: An awful lot of  
 25 them, lots of them.

1 JAMES SCANDLE  
 2 the bolts went through. They cut them on  
 3 these tables.  
 4 Q. The people who worked in the gasket shop  
 5 making the gaskets, was that, in effect, from  
 6 what you were able to observe, was that their  
 7 job or --  
 8 MR. COLEMAN: Objection.  
 9 BY MR. KOPESKY:  
 10 Q. -- would a pipe fitter come in, make a  
 11 gasket and then take it back out again?  
 12 A. Oh, no. It was the same people in the  
 13 shop would prefab these gaskets.  
 14 Q. How many people worked in this gasket  
 15 fabricating shop making the gaskets?  
 16 A. I would say -- well, it varied. It got  
 17 busy and then slowed down. I'd say between  
 18 four and six, maybe eight sometimes.  
 19 Q. Okay. So when it wasn't that busy,  
 20 there would be four people in there making  
 21 gaskets?  
 22 A. Yeah.  
 23 MR. COLEMAN: Objection,  
 24 leading.  
 25 BY MR. KOPESKY:

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1 JAMES SCANDLE  
 2 Q. And if --  
 3 A. If it was -- if it was busy for them,  
 4 there would be eight.  
 5 Q. The material that they were making the  
 6 gaskets out of, could you describe that for  
 7 us? What was it? What did it look like?  
 8 A. It looked like a sheet of linoleum or  
 9 rubber, whatever.  
 10 Q. So it was a material that came in  
 11 sheets?  
 12 A. Yes.  
 13 Q. And where did they keep these sheets?  
 14 A. In the Gasket Shop.  
 15 Q. Were you and -- did you work with Mr.  
 16 Novotny in the Gasket Shop?  
 17 MR. COLEMAN: Objection,  
 18 leading.  
 19 THE WITNESS: Yes.  
 20 BY MR. KOPESKY:  
 21 Q. Over that two to three year period that  
 22 you and Mr. Novotny were at Washingtonville,  
 23 how often did Mr. Novotny -- did Mr. Novotny's  
 24 duties take him into the Gasket Shop?  
 25 A. It would be twice a week maybe.

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1 JAMES SCANDLE  
 2 Q. And when Mr. Novotny worked in the --  
 3 was working in the Gasket Shop, on average how  
 4 long would he be in there?  
 5 A. Usually not long. An hour, hour and a  
 6 half unless there was something major, then it  
 7 would be longer.  
 8 Q. And what were the types of duties or  
 9 what were the reasons that Mr. Novotny and  
 10 you -- excuse me -- and you would be in the  
 11 gasket shop working doing your work?  
 12 MR. COLEMAN: Objection. Off  
 13 the record.  
 14 THE VIDEOTAPE OPERATOR: Off  
 15 the video record, 10:47.  
 16 MR. COLEMAN: The basis of my  
 17 objection is you haven't placed the two of  
 18 them in the gasket room together.  
 19 MR. KOPESKY: Okay.  
 20 MR. COLEMAN: Let me put my  
 21 entire objection on the record.  
 22 I don't know if you are asking  
 23 him to speculate what Mr. Novotny was doing  
 24 based upon what he may have done at a previous  
 25 time in that garage.

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1 JAMES SCANDLE  
 2 MR. KOPESKY: Fair enough. We  
 3 can go back on.  
 4 THE VIDEOTAPE OPERATOR: Back  
 5 on the record, 10:47.  
 6 BY MR. KOPESKY:  
 7 Q. Okay. Mr. Scandle, let me ask some  
 8 preliminary question. I think you had  
 9 testified earlier that you and Mr. Novotny  
 10 were on the same crew together; correct?  
 11 A. Yes.  
 12 Q. Were you and Mr. Novotny -- did you and  
 13 Mr. Novotny work together in the Gasket Shop?  
 14 A. Yes.  
 15 Q. What duties or what tasks took you and  
 16 Mr. Novotny into the Gasket Shop?  
 17 A. Maintenance.  
 18 Q. And what is it that you were  
 19 maintaining, that you and Mr. Novotny were  
 20 maintaining in the Gasket Shop?  
 21 A. Either lights or tools. There was a big  
 22 electrical panel in there. Sometimes we had  
 23 to go in there to correct problems.  
 24 Q. This big electrical panel that was in  
 25 the Gasket Shop, was that big electrical panel

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1 JAMES SCANDLE  
 2 for the Gasket Shop or was it for other trades  
 3 in other parts of the plant?  
 4 A. It was for the pipe fitter's complex.  
 5 They had a big barracks type thing where the  
 6 men stayed. And that was partitioned off.  
 7 There was offices there for their -- the  
 8 foreman, where they kept their blueprints and  
 9 stuff. And this Gasket Shop was like an  
 10 attached garage to that. And the Electrical  
 11 Distribution Center for, you know, for the  
 12 panel for all that was in the Gasket Shop.  
 13 Q. So that panel wasn't just limited to the  
 14 Gasket Shop?  
 15 A. No.  
 16 Q. Okay. And you also mentioned  
 17 maintenance of lighting and tools. And was  
 18 that for the Gasket Shop itself?  
 19 A. Yeah. Heat. Yeah. It would maintain  
 20 the heat.  
 21 Q. So the electricians were responsible for  
 22 the heat?  
 23 A. Yes.  
 24 Q. And the lighting?  
 25 A. Yes.

13 (Pages 46 to 49)

Page 50

1 JAMES SCANDLE  
2 Q. And the power?  
3 A. Yes.  
4 Q. And if there was a problem, electrical  
5 problem with power equipment, was that the  
6 electrician's responsibility?  
7 A. Yes.  
8 Q. Now, let's talk about the work that was  
9 being done by the people who were making the  
10 gaskets in the Gasket Shop. You described it  
11 a little bit.  
12 Did they have to cut this  
13 material to make the gaskets that were being  
14 used for the construction of the plant?  
15 MR. COLEMAN: Objection,  
16 leading.  
17 THE WITNESS: Several times.  
18 BY MR. KOPESKY:  
19 Q. What is it that they would have to cut?  
20 Let's -- from what you were able to observe,  
21 and I understand you weren't a gasket cutter,  
22 but from what you were able to observe from  
23 your time in the gasket cutting room, kind of  
24 take us through the process a little bit, Mr.  
25 Scandle, of what you observed starting with

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1 JAMES SCANDLE  
2 what you have described as a flat sheet.  
3 A. Well, they cut that into a workable  
4 piece that was slightly bigger than the  
5 finished gaskets. And then they -- well, they  
6 had specs or drawings. They'd trace  
7 everything out with compasses or a template.  
8 And after they got that, they  
9 would do the cutting with razor, knives,  
10 except most of the time for the holes for the  
11 bolts they would punch them. They had to  
12 punch that to fit the different size bolts.  
13 They'd put a piece of metal  
14 under the gasket and punch it. Sometimes they  
15 would cut them. But I don't know. I seen  
16 them punching a lot of them.  
17 Q. So they would have to do a cutting for  
18 the outside --  
19 A. Outside of the flange and then for the  
20 pipe that the flange was -- the material was  
21 going through the pipe, whatever.  
22 Q. The steam or the hot water?  
23 A. Yeah.  
24 MR. COLEMAN: Objection,  
25 leading.

Page 52

1 JAMES SCANDLE  
2 BY MR. KOPESKY:  
3 Q. And then they would -- would they also  
4 have to cut holes so that the bolts for the  
5 flanges could go through the gasket and --  
6 A. Yes.  
7 Q. -- tighten it up?  
8 A. Yes.  
9 Q. Okay. A lot of cutting involved?  
10 MR. COLEMAN: Objection,  
11 leading.  
12 THE WITNESS: Yeah, quite a  
13 bit.  
14 BY MR. KOPESKY:  
15 Q. And as you observed it, Mr. Scandle,  
16 when you were in that gasket room, the Gasket  
17 Shop with Ed Novotny, the guys cutting the  
18 gaskets, what did they do with the excess, the  
19 pieces that they cutaway, the trash?  
20 A. Throw it on the floor so the worktable  
21 was nice and level and clean.  
22 Q. When you and Mr. Novotny were in the  
23 Gasket Shop together, what was the condition  
24 of the floor that you and Mr. Novotny walked  
25 through?

Page 53

1 JAMES SCANDLE  
2 A. Littered with this gasket material.  
3 Q. Was the gasket material on your  
4 equipment when you went in to do maintenance  
5 and to do work?  
6 A. Yes. There would be residue on them.  
7 Q. The dust and debris that was on the  
8 floor of the gasket room, where did that dust  
9 and debris come from, Mr. Scandle?  
10 MR. COLEMAN: Objection, form.  
11 THE WITNESS: The cutting of  
12 the gaskets and trimming them. Yeah.  
13 BY MR. KOPESKY:  
14 Q. And how do you know that, sir? How do  
15 you know that the dust and debris that was on  
16 the floor came from the cutting of the  
17 gaskets?  
18 MR. COLEMAN: Objection.  
19 THE WITNESS: Well, you seen  
20 the people do it. You know, they'd get their  
21 scrapes and it accumulated. You know, it was  
22 the same material laying on the floor only  
23 little pieces of it as the sheet material.  
24 BY MR. KOPESKY:  
25 Q. It was the same material as the sheet

14 (Pages 50 to 53)

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1 JAMES SCANDLE  
 2 material?  
 3 A. Yes.  
 4 Q. Same color?  
 5 A. Yes.  
 6 MR. KOPESKY: Off the video  
 7 for a minute.  
 8 THE VIDEOTAPE OPERATOR: Off  
 9 the record, 10:53.  
 10 - - -  
 11 THE VIDEOTAPE OPERATOR: Back  
 12 on the record, 10:54.  
 13 BY MR. KOPESKY:  
 14 Q. Mr. Scandle, excuse me, I'm sorry. In  
 15 addition to working with Ed Novotny at the  
 16 Washingtonville plant from '70 to '73, were  
 17 there any other job sites where you and Mr.  
 18 Novotny were working together for a  
 19 significant period of time?  
 20 A. Yes. The Berwick Power Plant.  
 21 Q. When were you and Mr. Novotny working  
 22 together at Berwick?  
 23 A. '81 to '83.  
 24 Q. So, again, about two to three years?  
 25 A. Two.

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1 JAMES SCANDLE  
 2 Q. Two years. And, Mr. Scandle, what was  
 3 Berwick?  
 4 A. It was a nuclear power, power plant.  
 5 They used nuclear energy instead of coal.  
 6 Q. And that was in Berwick, Pennsylvania?  
 7 A. Yes.  
 8 Q. Who was the owner operator of the  
 9 Berwick plant?  
 10 DEFENSE COUNSEL: Objection to  
 11 form.  
 12 THE WITNESS: PP&L.  
 13 BY MR. KOPESKY:  
 14 Q. Now, Mr. Scandle, do you believe that  
 15 while you and Ed Novotny were working together  
 16 at the Berwick plant for that two-year period  
 17 in the early 1980s that you and Mr. Novotny  
 18 worked with or worked around and were exposed  
 19 to products that contained asbestos?  
 20 A. Yes.  
 21 MR. KEATING: Objection, form.  
 22 MR. COLEMAN: Objection, lack  
 23 of foundation.  
 24 THE WITNESS: Yes.  
 25 BY MR. KOPESKY:

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1 JAMES SCANDLE  
 2 Q. What type or types of  
 3 asbestos-containing products do you believe  
 4 that you and Mr. Novotny worked with or worked  
 5 around and were exposed to at the Berwick  
 6 plant?  
 7 MR. KEATING: Objection.  
 8 MR. COLEMAN: Objection, lack  
 9 of foundation.  
 10 THE WITNESS: Wire, cable.  
 11 BY MR. KOPESKY:  
 12 Q. You're saying wire or -- are wire and  
 13 cable interchangeable as far as --  
 14 A. Yes. Cable has more than wire in it.  
 15 Q. Okay. So what would be the correct  
 16 term, cable?  
 17 A. Cable.  
 18 Q. Okay. Get our terminology straight.  
 19 Now, what was -- you told us  
 20 about your time with Mr. Novotny in  
 21 Washingtonville where your principal job was,  
 22 I think, you said temporary lighting and  
 23 power; correct?  
 24 A. Yes.  
 25 Q. What was your -- what was your principal

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1 JAMES SCANDLE  
 2 job or responsibility that you and Mr. Novotny  
 3 had when you were working at Berwick?  
 4 A. Pulling wire.  
 5 Q. What do you mean by pulling wire?  
 6 A. We were pulling it through conduit.  
 7 You'd have to fish the conduit, fasten the  
 8 wire to the fish and pull it through all the  
 9 fittings, junction boxes to its destination,  
 10 the motor, switch gears.  
 11 Q. Were you and Mr. Novotny when you were  
 12 working at Berwick were you on the same crew?  
 13 A. Yes.  
 14 Q. Okay. How often did you work with Mr.  
 15 Novotny at Berwick?  
 16 A. Every day.  
 17 Q. Now, Mr. Scandle, why do you believe  
 18 that the cable that you and Mr. Novotny worked  
 19 with at Berwick contained asbestos?  
 20 MR. KEATING: Objection, form.  
 21 THE WITNESS: Because when you  
 22 skinned it to get down to the conductors, took  
 23 the outside jacket off, the fillers, there was  
 24 a white fiber material that encased the  
 25 conductors, like a tissue paper. It was

15 (Pages 54 to 57)

Page 62

1 JAMES SCANDLE  
2 BY MR. KOPESKY:  
3 Q. All right, Mr. Scandle. We just took a  
4 short break. And now I want to ask you some  
5 more specific questions about some of the  
6 products that you have talked about here this  
7 morning.  
8 Let's start with the gaskets.  
9 Do you recall, Mr. Scandle, the names of --  
10 the specific names of the gasket material, the  
11 asbestos-containing gasket material that you  
12 and Mr. Novotny worked around in the Gasket  
13 Shop?  
14 MR. COLEMAN: Objection, lack  
15 of foundation.  
16 THE WITNESS: Yes.  
17 BY MR. KOPESKY:  
18 Q. Okay. What brands or what names of  
19 gaskets do you recall seeing in the Gasket  
20 Shop?  
21 A. Garlock.  
22 Q. What else?  
23 A. Cranite.  
24 Q. Any others?  
25 A. Durabla.

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1 JAMES SCANDLE  
2 Q. Okay. Any others that you can recall?  
3 A. No.  
4 Q. All right, Mr. Scandle. Let me ask you  
5 some questions about each of those.  
6 The gaskets that you  
7 identified as Garlock, how do you know that  
8 the sheet gasket material that you and Mr.  
9 Novotny worked around in the Gasket Shop were  
10 Garlock gaskets?  
11 A. Their name was printed all over it. And  
12 I seen it on other jobs.  
13 Q. Okay. But just so we're specific, that  
14 was one of the brands of the sheet gasket  
15 material that you and Mr. Novotny worked  
16 around at Washingtonville?  
17 A. Yes.  
18 MR. COLEMAN: Objection,  
19 leading.  
20 BY MR. KOPESKY:  
21 Q. And you told us earlier today when you  
22 were talking about that Gasket Shop that you  
23 believe that the gasket material contained  
24 asbestos; correct?  
25 A. Yes.

Page 64

1 JAMES SCANDLE  
2 MR. COLEMAN: Objection,  
3 leading, calls for speculation.  
4 BY MR. KOPESKY:  
5 Q. And you explained to us earlier today  
6 why you believed that the sheet gasket  
7 material that you and Mr. Novotny worked  
8 around in the Gasket Shop contained asbestos.  
9 Do you recall that testimony?  
10 MR. COLEMAN: Objection,  
11 leading.  
12 THE WITNESS: Yes.  
13 BY MR. KOPESKY:  
14 Q. The Garlock sheet gasket material that  
15 you and Mr. Novotny worked around in the  
16 Gasket Shop, was that sheet gasket material  
17 the sheet gasket material that you believe  
18 contained asbestos?  
19 MR. COLEMAN: Objection,  
20 leading, lack of foundation.  
21 THE WITNESS: Yes.  
22 BY MR. KOPESKY:  
23 Q. Did you see when you and Mr. Novotny  
24 were working out in the plant area, not in the  
25 Gasket Shop, but out in the plant area, did

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1 JAMES SCANDLE  
2 you see the pipe fitters and the millwrights  
3 using the Garlock gaskets that had been made  
4 in the Gasket Shop?  
5 A. Yes.  
6 MR. COLEMAN: Objection,  
7 leading.  
8 BY MR. KOPESKY:  
9 Q. And, Mr. Scandle, what kinds of lines or  
10 equipment or pipe were the pipe fitters and  
11 the millwrights using the Garlock gaskets for  
12 when they were making their mechanical  
13 connections with the flanges?  
14 A. Like what kind of pipes or --  
15 Q. What was --  
16 A. The purpose?  
17 Q. Yeah, if you know. Or, generally, if it  
18 was cold water, hot water.  
19 A. Hot water, I guess, or hot steam. I --  
20 MR. COLEMAN: Objection, move  
21 to strike, calls for speculation.  
22 BY MR. KOPESKY:  
23 Q. High temperature?  
24 A. Yeah, high temperature.  
25 Q. And when you and Mr. Novotny, and you

17 (Pages 62 to 65)

Page 66

1 JAMES SCANDLE  
2 told us earlier today how often you and Mr.  
3 Novotny were in the Gasket Shop, when you and  
4 Mr. Novotny were in the Gasket Shop, did you  
5 work around and were exposed to the dust and  
6 debris from the cutting of the Garlock  
7 gaskets?  
8 MR. COLEMAN: Objection,  
9 leading.  
10 THE WITNESS: Yes.  
11 BY MR. KOPESKY:  
12 Q. Mr. Scandle, let me ask you basically  
13 the same type of questions about the Cranite  
14 gaskets that you have just talked about.  
15 A. Yes.  
16 Q. The Cranite gaskets, how did you know  
17 that the sheet gasket material that you and  
18 Mr. Novotny worked around when you were in the  
19 Gasket Shop was Cranite?  
20 MR. SKINNER: Objection,  
21 leading.  
22 THE WITNESS: Its name was  
23 printed on it.  
24 BY MR. KOPESKY:  
25 Q. And when you and Mr. Novotny were

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1 JAMES SCANDLE  
2 working out on the floor of the plant, did you  
3 see other trades, other workers installing the  
4 Cranite gaskets in the flange joints?  
5 A. Yes.  
6 MR. SKINNER: Objection,  
7 leading, lack of foundation.  
8 BY MR. KOPESKY:  
9 Q. And, again, Mr. Scandle, what types of  
10 applications or what types of areas of the  
11 plant were the other trades installing the  
12 Cranite gaskets?  
13 MR. SKINNER: Objection,  
14 leading, lack of foundation.  
15 THE WITNESS: Piping systems.  
16 BY MR. KOPESKY:  
17 Q. Particular kinds of piping systems?  
18 Particular applications?  
19 A. Yeah, I guess. There were all different  
20 applications. Some of them were hot, high  
21 pressure, cold.  
22 Q. And the Cranite gaskets, were they being  
23 used in the -- let me ask the question -- let  
24 me ask you this question.  
25 You testified earlier today

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1 JAMES SCANDLE  
2 why you believed that gasket material  
3 contained asbestos. Do you recall that  
4 testimony?  
5 A. Yes.  
6 MR. SKINNER: Objection,  
7 leading.  
8 BY MR. KOPESKY:  
9 Q. Why do you believe that the gasket  
10 material that you and Mr. Novotny worked with  
11 and worked around -- I'm sorry, not worked  
12 with, but worked around in the Gasket Shop  
13 contained asbestos?  
14 MR. COLEMAN: Objection,  
15 leading, asked and answered.  
16 THE WITNESS: Because it was  
17 used for high temperature situations.  
18 MR. COLEMAN: Objection, move  
19 to strike, lack of adequate foundation.  
20 BY MR. KOPESKY:  
21 Q. Okay. And when you and Mr. Novotny were  
22 out on the floor, did you see the other trades  
23 installing the Cranite gaskets in what you  
24 characterize as high temperature applications?  
25 MR. SKINNER: Objection,

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1 JAMES SCANDLE  
2 leading, lack of foundation.  
3 THE WITNESS: Yes.  
4 BY MR. KOPESKY:  
5 Q. And when you and Mr. Novotny were  
6 working in the Gasket Shop, were you and Mr.  
7 Novotny working around and were you exposed to  
8 the dust and debris that was on the floor from  
9 the Cranite sheet gasket material?  
10 MR. SKINNER: Objection,  
11 leading, lack of foundation.  
12 THE WITNESS: Yes.  
13 BY MR. KOPESKY:  
14 Q. Let me ask you about the Durabla  
15 gaskets. The gasket, the sheet gasket  
16 material that you and Mr. Novotny worked  
17 around in the Gasket Shop, why do you believe  
18 that some of that gasket material was Durabla  
19 gaskets?  
20 A. It had their name printed all over and  
21 they had a logo on it.  
22 Q. What do you remember about the logo on  
23 the Durabla?  
24 A. It was triangular shaped.  
25 Q. And do you believe that the Durabla

18 (Pages 66 to 69)

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1 JAMES SCANDLE  
 2 sheet gasket material that you and Mr. Novotny  
 3 worked around when you were in the Gasket Shop  
 4 contained asbestos?  
 5 MR. SCHIAPPA: Objection,  
 6 leading, foundation, calls for speculation.  
 7 THE WITNESS: Because it was  
 8 used in high temperature situations.  
 9 BY MR. KOPESKY:  
 10 Q. And when you and Mr. Novotny were out  
 11 working on the, I'll call it working on the  
 12 floor, not in the Gasket Shop, but out in the  
 13 power plant, did you see other trades  
 14 installing Durabla gaskets that had been made  
 15 in the Gasket Shop in -- to make mechanical  
 16 connections?  
 17 A. Yes.  
 18 Q. Okay. And what kind of mechanical  
 19 connections, what kind of piping or what was  
 20 the piping for?  
 21 A. High temperature.  
 22 Q. In addition to seeing the names Garlock,  
 23 Cranite and Durabla on the sheet gasket  
 24 material in the Gasket Shop, do you recall  
 25 anything else about the sheet gasket material?

Page 71

1 JAMES SCANDLE  
 2 For example, do you recall anything about the  
 3 color of the sheet gasket material?  
 4 MR. COLEMAN: Objection,  
 5 compound.  
 6 THE WITNESS: Yes. The  
 7 Cranite was a lighter color, like a tan. And  
 8 the other two they were darker black or dark  
 9 gray.  
 10 BY MR. KOPESKY:  
 11 Q. And by the other two are we talking  
 12 about the Garlock and the Durabla?  
 13 A. Yes.  
 14 MR. COLEMAN: Objection,  
 15 leading.  
 16 BY MR. KOPESKY:  
 17 Q. And, Mr. Scandle, when you and Mr.  
 18 Novotny were working in the Gasket Shop, how  
 19 much of this sheet gasket material would be in  
 20 the Gasket Shop? Would there be a few sheets?  
 21 A. No. There would be quite a bit. They  
 22 had it stored there. It would be piled up  
 23 behind the worktables. And they'd get it as  
 24 they needed it.  
 25 Q. And did you happen to notice, Mr.

Page 72

1 JAMES SCANDLE  
 2 Scandle, when you and Mr. Novotny were working  
 3 in the Gasket Shop was there more of one brand  
 4 of gaskets than the other?  
 5 A. No. They seemed a pretty equal amount  
 6 of each.  
 7 Q. And when you and Mr. Novotny were  
 8 working out on the floor and you saw the other  
 9 trades installing the Garlock or the Cranite  
 10 or the Durabla gaskets in what you've  
 11 characterized as either high temperature or  
 12 high pressure applications, did you notice  
 13 whether one brand of gasket was being used for  
 14 one type of application? Was there any  
 15 difference in how the Garlock, Cranite or  
 16 Durabla gaskets were used?  
 17 MR. COLEMAN: Objection,  
 18 compound.  
 19 MR. SCHIAPPA: Objection,  
 20 compound.  
 21 THE WITNESS: I don't think  
 22 so. They seemed to be an equal amount all  
 23 over the plant.  
 24 BY MR. KOPESKY:  
 25 Q. Okay. All right. I want to ask you

Page 73

1 JAMES SCANDLE  
 2 about another or a type of equipment that was  
 3 at Washingtonville. Excuse me, Mr. Scandle, I  
 4 apologize.  
 5 Earlier today you testified  
 6 about working with Mr. Novotny in the vicinity  
 7 of valves that were being insulated by the  
 8 insulation workers.  
 9 Do you recall that testimony?  
 10 A. Yes.  
 11 Q. Do you recall the name or the names of  
 12 any of the people that made the valves that  
 13 were being insulated by the workers at  
 14 Washingtonville?  
 15 A. Crane.  
 16 Q. Crane?  
 17 A. Crane.  
 18 Q. And you were telling us earlier today  
 19 about large valves that were insulated with  
 20 the block insulation. Do you recall that  
 21 testimony?  
 22 A. Yes.  
 23 MR. SKINNER: Objection,  
 24 leading.  
 25 BY MR. KOPESKY:

19 (Pages 70 to 73)

Page 78

1 JAMES SCANDLE  
 2 Q. And because of the presence of that  
 3 storage shed and that substation, how often  
 4 were you and Mr. Novotny working in the  
 5 vicinity of that feed water heater?  
 6 A. Quite often.  
 7 Q. Mr. Scandle, do you know who made that  
 8 feed water heater?  
 9 A. Foster Wheeler.  
 10 Q. And you had told us earlier that the  
 11 feed water heaters at Washingtonville were  
 12 insulated.  
 13 Was the feed water heater that  
 14 was made by Foster Wheeler was that insulated?  
 15 MR. LEJEUNE: Objection,  
 16 leading.  
 17 THE WITNESS: Yes.  
 18 BY MR. KOPESKY:  
 19 Q. And what was it insulated with, sir?  
 20 MR. LEJEUNE: Objection,  
 21 leading.  
 22 THE WITNESS: The asbestos  
 23 block and the asbestos cement, putty, whatever  
 24 you want to call it.  
 25 BY MR. KOPESKY:

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1 JAMES SCANDLE  
 2 Q. And how do you know that the insulation  
 3 material, the block or the putty or the mud or  
 4 the plaster -- let's just be clear.  
 5 When you talk about mud or  
 6 putty or plaster, are we all talking -- are  
 7 you talking about the same product?  
 8 A. The same, yes.  
 9 Q. Okay. And that's the powder that was in  
 10 the bags?  
 11 A. Yes.  
 12 Q. And the block and the plaster material  
 13 that was used to insulate the Foster Wheeler  
 14 feed water heater where you had your storage  
 15 shed and your substation, how do you know that  
 16 that material contained asbestos, Mr. Scandle?  
 17 A. Because the asbestos was printed on the  
 18 packaging, the boxes, the bags.  
 19 Q. And specifically with respect to the  
 20 Foster Wheeler feed water heater that was next  
 21 to -- or, I should say, I guess your storage  
 22 shed and the substation were next to it.  
 23 A. Yes.  
 24 Q. What was the condition of the air like  
 25 when you and Mr. Novotny were working in that

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1 JAMES SCANDLE  
 2 area when the insulators were doing their  
 3 work?  
 4 A. Very dusty.  
 5 Q. And what was the condition, for example,  
 6 of the substation equipment when you and Mr.  
 7 Novotny had to work on that substation  
 8 equipment in that area?  
 9 MR. LEJEUNE: Objection to  
 10 form.  
 11 THE WITNESS: Very dusty.  
 12 BY MR. KOPESKY:  
 13 Q. And what did you and Mr. Novotny have to  
 14 do with the dust from the insulation from the  
 15 feed water heater?  
 16 MR. LEJEUNE: Objection, form.  
 17 THE WITNESS: Wipe it off,  
 18 brush it aside.  
 19 BY MR. KOPESKY:  
 20 Q. And just to be clear, the dust and  
 21 debris that was on the substation that you and  
 22 Mr. Novotny had to clean off, where did that  
 23 dust and debris come from?  
 24 MR. LEJEUNE: Objection, form.  
 25 THE WITNESS: From the feed

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1 JAMES SCANDLE  
 2 water heater.  
 3 BY MR. KOPESKY:  
 4 Q. Let's talk about the turbines at  
 5 Washingtonville. I'm sorry. Before we --  
 6 before we leave that, you told us earlier  
 7 today that there were two units at  
 8 Washingtonville?  
 9 A. Yes.  
 10 Q. Okay. And were you and Mr. Novotny  
 11 involved in the construction of both units?  
 12 A. Yes.  
 13 MR. KEATING: Objection,  
 14 leading.  
 15 BY MR. KOPESKY:  
 16 Q. Were the jobs that you -- were the jobs  
 17 that you and Mr. Novotny did, the temporary  
 18 lighting work, temporary lighting and  
 19 temporary power, excuse me --  
 20 A. Yeah.  
 21 Q. -- that you did, was it the same for  
 22 both Unit Number One and Unit Number Two?  
 23 A. Yes, almost identical.  
 24 Q. Okay. The feed water heater that you  
 25 told us about that you had your storage shed

21 (Pages 78 to 81)

Page 102

1 JAMES SCANDLE  
 2 Q. How many times did you do that, sir?  
 3 A. Once.  
 4 Q. And do you recall approximately when  
 5 that was?  
 6 A. Maybe two months before he died.  
 7 February, some time in February, I think.  
 8 Q. Prior to that visit, how long had it  
 9 been since you had seen Mr. Novotny?  
 10 A. Oh, maybe a year. He retired. He was  
 11 just sort of gone.  
 12 Q. When you saw Mr. Novotny at the time of  
 13 that visit, how did he look?  
 14 A. Sick, very sick.  
 15 Q. How was his weight?  
 16 A. He lost a lot of weight.  
 17 Q. How long did the visit last?  
 18 A. A half hour, 45 minutes.  
 19 Q. During that half hour to 45 minutes,  
 20 what did Mr. Novotny do while you were  
 21 visiting?  
 22 A. Sitting in the couch or on the couch.  
 23 Q. Did he move off the couch at all during  
 24 the time of your visit?  
 25 A. No.

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1 JAMES SCANDLE  
 2 Q. How did Mr. Novotny seem to you from  
 3 what you observed?  
 4 MR. KEATING: Objection, form.  
 5 THE WITNESS: Besides being  
 6 sick, I sensed he was embarrassed that I was  
 7 there, you know. He was glad to see you, but  
 8 maybe uneasy.  
 9 BY MR. KOPESKY:  
 10 Q. Didn't want to be seen while he was  
 11 sick?  
 12 MR. KEATING: Objection to  
 13 form, leading.  
 14 THE WITNESS: That's what it  
 15 appeared to me, yes.  
 16 MR. KOPESKY: Off the video.  
 17 THE VIDEOTAPE OPERATOR: Off  
 18 the record, 11:53.  
 19 - - -  
 20 THE VIDEOTAPE OPERATOR: Back  
 21 on the record, 11:54.  
 22 MR. KOPESKY: Mr. Scandle,  
 23 those are all the questions that I have for  
 24 you at this time. I appreciate you taking the  
 25 time today. And with that my questioning is

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1 JAMES SCANDLE  
 2 concluded.  
 3 I believe some of the other  
 4 lawyers here in the room may have a few  
 5 questions for you. But at this point, I'm  
 6 complete. Thank you very much for your time  
 7 this morning, sir?  
 8 THE WITNESS: You're welcome.  
 9 THE VIDEOTAPE OPERATOR: Off  
 10 the record, 11:54.  
 11 - - -  
 12 (Whereupon the deposition  
 13 concluded at 11:54 a.m.)  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

Page 105

1 JAMES SCANDLE  
 2 CERTIFICATE  
 3 - - -  
 4 COMMONWEALTH OF PENNSYLVANIA :  
 5 : SS  
 6 COUNTY OF PHILADELPHIA :  
 7  
 8 I, Kathleen Woods Logue,  
 9 Professional Reporter and Notary Public within  
 10 and for the County of PHILADELPHIA, State of  
 11 Pennsylvania, do hereby certify that the  
 12 foregoing testimony of JAMES SCANDLE was taken  
 13 before me at 50 Sheraton Road, Danville,  
 14 Pennsylvania on Wednesday, March 25, 2009;  
 15 that the foregoing testimony was taken in  
 16 shorthand by myself and reduced to typing  
 17 under my direction and control, and that the  
 18 foregoing pages contain a true and correct  
 19 transcription of all of the testimony of said  
 20 witness.  
 21  
 22 .....  
 23 KATHLEEN WOODS LOGUE  
 24 Notary Public  
 25  
 My Commission expires  
 August 16, 2012

27 (Pages 102 to 105)

# EXHIBIT B

NADINE COLLIER, : COURT OF COMMON PLEAS  
 EXTRX. OF THE ESTATE : PHILADELPHIA COUNTY  
 OF EDWARD NOVOTNY, :  
 DECEASED :  
 Plaintiff : NOVEMBER TERM, 2007  
 :  
 vs. : ASBESTOS CASE  
 : NO. 0963  
 3M COMPANY, et al. :  
 Defendants :

- - -  
 WEDNESDAY, MARCH 25, 2009  
 - - -

Videotaped Discovery

Deposition of JAMES SCANDLE, taken pursuant to  
 notice at the Days Inn and Conference Center,  
 50 Sheraton Road, Danville, Pennsylvania, on  
 the above date, beginning at or about 12:30  
 p.m., before Kathleen Woods Logue,  
 Professional Reporter and Notary Public and  
 Bob Higham, Videographer, there being present.

- - -  
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 17 NUMBER DESCRIPTION PAGE MARKED  
 18 (No exhibits were marked.)  
 19  
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 22  
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 25

3 (Pages 6 to 9)

Page 10

1 JAMES SCANDLE  
 2 THE COURT REPORTER: Usual  
 3 asbestos stipulations?  
 4 MR. KEATING: The usual  
 5 stipulations. All objections except as to the  
 6 form are reserved until the time of trial.  
 7 And an objection of one will inure to the  
 8 benefit of all.  
 9 Does the witness want to read  
 10 and sign this?  
 11 Sir, let me just ask you  
 12 before we go on the video tape. You have a  
 13 right when you are giving a deposition in  
 14 Pennsylvania to get a copy of the transcript,  
 15 to review it, to read and sign it.  
 16 If the Court Reporter should  
 17 make any mistakes, you have the right to  
 18 submit what is called an Errata Sheet and make  
 19 corrections on that. You also have the right  
 20 to waive that and not do it.  
 21 Do you want to see the  
 22 transcript and make corrections to it or you  
 23 waive that?  
 24 THE WITNESS: I'll waive it.  
 25 THE VIDEOTAPE OPERATOR: We're

Page 11

1 JAMES SCANDLE  
 2 on the record. This is March 25, 2009. This  
 3 is the beginning of the Defendants' discovery  
 4 of James Scandle. The Reporter will now swear  
 5 in the witness.  
 6 - - -  
 7 JAMES SCANDLE, after having  
 8 been first duly sworn, was examined and  
 9 testified as follows:  
 10 - - -  
 11 EXAMINATION  
 12 - - -  
 13 BY MR. KEATING:  
 14 Q. Mr. Scandle, my name is Mike Keating. I  
 15 represent one of the defendants in the case  
 16 filed on behalf of Mr. Novotny's estate.  
 17 I'm here to ask you some  
 18 questions today about what you know that might  
 19 be relevant to that case. And there are a lot  
 20 of other attorneys in the room who may also  
 21 have some questions for you after I'm  
 22 finished.  
 23 Aside from the earlier  
 24 videotaped trial deposition today, have you  
 25 ever had your deposition taken before?

Page 12

1 JAMES SCANDLE  
 2 A. For this case?  
 3 Q. For any case.  
 4 A. I testified in court as a witness once,  
 5 but, no, I never did a deposition.  
 6 Q. The court testimony that you did, was  
 7 that in connection with an asbestos-related  
 8 case?  
 9 A. No.  
 10 Q. Well, let me give you a few ground rules  
 11 going forward for this deposition just so  
 12 we're clear.  
 13 I'm going to ask you  
 14 questions. The Court Reporter will take down  
 15 my questions and your answers on the record.  
 16 And there will be a transcript prepared which  
 17 can be used in court.  
 18 Today, we're also videotaping  
 19 this discovery deposition. And it's possible  
 20 that the video tape may be used in court.  
 21 Because the Court Reporter is  
 22 taking this down on her machine and preparing  
 23 a transcript, it's particularly important that  
 24 you wait until you hear my question and answer  
 25 and that I wait until I hear your answer

Page 13

1 JAMES SCANDLE  
 2 before I ask another question. Is that --  
 3 A. That's good.  
 4 Q. That's good. Okay.  
 5 It's also important that you  
 6 give a verbal answer. The Court Reporter  
 7 can't take down a nod of the head or a  
 8 expression of the hands that we might  
 9 understand, but nothing would show up on the  
 10 record.  
 11 Is that satisfactory?  
 12 A. Yes.  
 13 Q. I may ask you some questions today that  
 14 you don't know the answer to, you don't  
 15 remember the answer. If I do that, just  
 16 please tell me that's the case and we'll move  
 17 on.  
 18 Is that satisfactory?  
 19 A. Yes.  
 20 Q. I also may ask some questions that you  
 21 don't understand for one reason or another. I  
 22 may poorly phrase them. You may not hear  
 23 them. If that's the case, please let me know  
 24 and I'll be happy to rephrase it or repeat it,  
 25 whatever is necessary so that you can answer

4 (Pages 10 to 13)

JAMES SCANDLE

JAMES SCANDLE

1 Q. And the pipe fitter's complex, how big  
 2 was that overall?  
 3 A. Pretty big.  
 4 Q. Can you give me some concept as to the  
 5 dimensions of that?  
 6 A. 100 by 100 living quarters. That's not  
 7 including the Gasket Shop.  
 8 Q. When you say living quarters, did the  
 9 men physically live there?  
 10 A. No. It had to be bigger than 100 by  
 11 100. Everybody had a seat, back to back  
 12 benches and above that you had a hook to hang  
 13 your stuff on. And that was all lined up in  
 14 there.  
 15 Q. So when you say living quarters, it was  
 16 more like a locker room facility with showers?  
 17 A. Yeah. That would describe it better.  
 18 Yeah. There were no showers.  
 19 Q. No showers. Okay.  
 20 How many pipe fitters in all  
 21 would have been on the job at any given time?  
 22 A. Hundreds.  
 23 Q. And what local would they have been --  
 24 would they have belonged to?  
 25

1 Q. Okay. And you told me about some of the  
 2 tools. You mentioned a gasket cutter. And I  
 3 have seen those before. It's got a blade that  
 4 goes around in a circular pattern?  
 5 A. Yeah.  
 6 Q. Okay. You mentioned knives and you  
 7 mentioned a puncher. Any other tools in  
 8 there?  
 9 A. Well, they had drills and stuff, but  
 10 they didn't use that much --  
 11 Q. Okay. Now, in this room, was there any  
 12 ventilation?  
 13 A. There was fans.  
 14 Q. Okay. How many fans would have been  
 15 present there?  
 16 A. At least one.  
 17 Q. Were there any windows in this room?  
 18 A. No.  
 19 Q. So this room, as you are describing it,  
 20 there's a door coming in from what you are  
 21 calling the pipe fitter's complex?  
 22 A. Yeah.  
 23 Q. And it goes into this room that's 20 by  
 24 30 foot?  
 25

JAMES SCANDLE

JAMES SCANDLE

1 A. I'm going to say 520, but I'm not -- it  
 2 was the Harrisburg local.  
 3 Q. And the individuals that were in the  
 4 gasket room, were they apprentices or were  
 5 they full-fledged mechanics?  
 6 A. They were variable.  
 7 Q. Now, the gasket room itself, what were  
 8 the dimensions of the gasket room?  
 9 A. 20 by 30.  
 10 Q. And in this 20 by 30 foot structure, you  
 11 mentioned benches?  
 12 A. No, not in the Gasket Shop there was no  
 13 benches. But that was in the locker room.  
 14 Q. Okay. The tables where they would make  
 15 the gaskets --  
 16 A. Yes.  
 17 Q. -- how many of those tables would have  
 18 been there?  
 19 A. Three, two or three. Three.  
 20 Q. And what size were the tables?  
 21 A. I don't know. Six by six, six by four.  
 22 Q. Okay. And in addition to the tables,  
 23 what else would have been present in the room?  
 24 A. There was tools there.  
 25

1 A. At least.  
 2 Q. Okay. How high was the ceiling in this  
 3 room?  
 4 A. Not very high, 10, 12 feet at the most.  
 5 Q. Okay. And were the walls themselves  
 6 insulated or were they just blank wood?  
 7 A. I don't remember.  
 8 Q. Okay. Was it a drafty room? That's why  
 9 I was asking.  
 10 A. No. No.  
 11 Q. Other than the three tables and a couple  
 12 of tools, was there anything else in this  
 13 room?  
 14 A. Electric panel.  
 15 Q. How big was the electric panel?  
 16 A. Two feet by three or four.  
 17 Q. Okay. Is that something as a neophyte I  
 18 would call a circuit panel?  
 19 A. Yeah. That's what it was.  
 20 Q. Okay. So it was just a circuit board?  
 21 A. Yeah.  
 22 Q. Okay. And when you would go into this  
 23 gasket room, you and Mr. Novotny, was it to  
 24 simply work on that electric panel or did you  
 25

1 JAMES SCANDLE  
 2 A. No.  
 3 Q. Let me switch -- go back to the -- on  
 4 the Crane, that issue I talked about with you.  
 5 A. Yes.  
 6 Q. In your mind, is the word Cranite, is  
 7 that a manufacturer's name or is that a trade  
 8 name or brand name? What do you associate  
 9 that with?  
 10 A. Manufacturer.  
 11 Q. Now, you made it clear to us earlier  
 12 that pipe covering was used at that facility,  
 13 at the Montour facility; correct?  
 14 A. Yes.  
 15 Q. To insulate the pipes?  
 16 A. Yes.  
 17 Q. And there was a lot of pipes run there;  
 18 correct?  
 19 A. Yes.  
 20 Q. And the insulators, in order to install  
 21 that pipe, they cut that pipe, didn't they,  
 22 the pipe covering?  
 23 A. The pipe?  
 24 Q. The pipe covering?  
 25 A. Yes.

1 JAMES SCANDLE  
 2 A. Yes. Yes.  
 3 Q. Correct? Okay.  
 4 MR. SKINNER: Sir, I'm going  
 5 to look over my notes. I think that may be  
 6 all I have. But, John, if you want to add  
 7 anything, go ahead.  
 8 - - -  
 9 EXAMINATION  
 10 - - -  
 11 BY MR. KOPESKY:  
 12 Q. Mr. Scandle, was there anything, from  
 13 what you were able to observe, was there  
 14 anything different or unique about the block  
 15 insulation that was applied to the Crane  
 16 valves as opposed to the block insulation that  
 17 was applied to the boiler or the feed water  
 18 heater or any other big pieces of equipment?  
 19 MR. SKINNER: Objection to  
 20 form.  
 21 MR. LEJEUNE: Objection to  
 22 form.  
 23 THE WITNESS: It looked -- it  
 24 looked all the same to me.  
 25 BY MR. KOPESKY:

1 JAMES SCANDLE  
 2 Q. Did you -- and Mr. Novotny and you were  
 3 present on many occasions when that pipe  
 4 covering was cut; correct?  
 5 A. Yes.  
 6 MS. O'NEILL: Objection to  
 7 form.  
 8 BY MR. SKINNER:  
 9 Q. Was insulation material -- well, strike  
 10 that.  
 11 Were the insulators using or  
 12 applying that pipe covering material to the  
 13 pipe runs at Montour during the entire time  
 14 you were there, those three years?  
 15 A. No. They weren't doing it in the very  
 16 beginning. They weren't doing it at the very  
 17 end.  
 18 Q. Okay. How long would you estimate that  
 19 the insulators were insulating the pipe run  
 20 with asbestos-containing pipe covering at the  
 21 Montour facility when you and Mr. Novotny were  
 22 present?  
 23 A. A year, year and a half.  
 24 Q. Okay. And I assume Mr. Novotny breathed  
 25 in the dust from that pipe covering being cut?

1 JAMES SCANDLE  
 2 Q. Did it all come out of the same boxes?  
 3 MR. SKINNER: Objection,  
 4 misstates testimony.  
 5 THE WITNESS: I couldn't say  
 6 it all come out of a box that said asbestos.  
 7 I don't know if it was the same company, but  
 8 it all came out of boxes.  
 9 MR. SKINNER: Move to strike  
 10 the non-responsive portions.  
 11 BY MR. KOPESKY:  
 12 Q. I'm sorry. Had you finished your  
 13 answer?  
 14 A. Yes.  
 15 Q. The gasket room, the Gasket Shop I  
 16 should say, I think you told us earlier there  
 17 were no windows in that shop?  
 18 A. No.  
 19 Q. There was a fan?  
 20 A. Yeah, cut in the wall.  
 21 Q. Blowing in or blowing out?  
 22 A. Blowing in. They only used it in the  
 23 summer, opened the door and turned the fan on.  
 24 Q. Okay. So the fan was blowing into the  
 25 shop?

52 (Pages 202 to 205)

Page 206

1 JAMES SCANDLE  
 2 A. Yes.  
 3 Q. Not out as an exhaust fan?  
 4 A. No. It was there for trying to be a  
 5 cooling fan.  
 6 Q. And how high up on the wall was that  
 7 fan?  
 8 A. Close to the ceiling, 10, 12 feet.  
 9 Q. When you and Mr. Novotny were working in  
 10 the Gasket Shop, the dust and debris that was  
 11 on the floor that you had testified about  
 12 earlier, was it from all three of the gasket  
 13 companies that you have identified here today?  
 14 MR. SKINNER: Objection,  
 15 leading, asked and answered.  
 16 THE WITNESS: Yes.  
 17 BY MR. KOPESKY:  
 18 Q. The large Crane valves that you recall  
 19 seeing at Washingtonville, the ones that were  
 20 insulated, was there also pipe insulation on  
 21 the pipes leading to those large Crane valves?  
 22 A. Yes.  
 23 Q. The smaller Crane valves that you recall  
 24 seeing insulated at Washingtonville, was there  
 25 pipe insulation on the pipes coming into and

Page 207

1 JAMES SCANDLE  
 2 going out of those smaller valves?  
 3 A. On some of them. Some of them weren't  
 4 insulated.  
 5 Q. Okay. I was asking, Mr. Scandle,  
 6 specifically on the smaller Crane valves that  
 7 were insulated.  
 8 A. Oh, yeah.  
 9 Q. Was the pipe that was going to and from  
 10 those valves also insulated?  
 11 A. Yes.  
 12 Q. With the pipe covering that you have  
 13 described?  
 14 A. Yes.  
 15 MR. KOPESKY: Okay. That's  
 16 all I have.  
 17 MR. SKINNER: I'll look at my  
 18 notes, but I think I'm done. Go off the  
 19 video.  
 20 THE VIDEOTAPE OPERATOR: Off  
 21 the record, 4:07.  
 22 - - -  
 23 (Whereupon a discussion was  
 24 held off the record.)  
 25 - - -

Page 208

1 JAMES SCANDLE  
 2 THE VIDEOTAPE OPERATOR: Back  
 3 on the video record, 4:09.  
 4 - - -  
 5 EXAMINATION  
 6 - - -  
 7 BY MS. O'NEILL:  
 8 Q. Hi, Mr. Scandle.  
 9 A. Hello.  
 10 Q. My name is Kathy O'Neill. We've met  
 11 before.  
 12 A. Yes.  
 13 Q. Let me introduce myself officially on  
 14 the record. I represent PPL in this lawsuit.  
 15 A. Yes.  
 16 Q. I just want to follow up on some of the  
 17 testimony that you have given earlier in the  
 18 day. I'm going to start with talking about  
 19 the Washingtonville plant.  
 20 A. Yes.  
 21 Q. And the time that you were there in 1970  
 22 to '73. Okay?  
 23 A. Yes.  
 24 Q. Am I right that that was the original  
 25 construction at that plant?

Page 209

1 JAMES SCANDLE  
 2 A. Yes.  
 3 Q. So it went from --  
 4 A. Nothing.  
 5 Q. -- open ground to this was the start --  
 6 the start of the construction and building of  
 7 the plant?  
 8 A. Yes.  
 9 Q. And you were on that construction site  
 10 as an electrician out of Local 607 of the  
 11 IBEW?  
 12 A. Yes.  
 13 Q. And when you were at that construction  
 14 project, you were there as an employee of  
 15 Ebasco?  
 16 A. Yes.  
 17 Q. I believe you told us Ebasco was the  
 18 general contractor for this construction  
 19 project?  
 20 A. Yes.  
 21 Q. And Mr. Novotny was also there as an  
 22 electrician out of Local 607?  
 23 A. Yes.  
 24 Q. And Mr. Novotny was also an Ebasco  
 25 employee?

Page 242

1 JAMES SCANDLE  
 2 MR. SCHIAPPA: I think the  
 3 record will speak for itself. Thank you.  
 4 MR. KOPESKY: The record will.  
 5 MR. SCHIAPPA: Thank you, Mr.  
 6 Scandle.  
 7 MR. KOEPSKY: Anybody else  
 8 want a third bite at the apple?  
 9 THE VIDEOTAPE OPERATOR: Going  
 10 off the record. The time is 4:41. That  
 11 completes this videotaped deposition.  
 12 - - -  
 13 (Whereupon the deposition  
 14 concluded at 4:41 p.m.)  
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Page 244

1 JAMES SCANDLE  
 2 INSTRUCTIONS TO WITNESSES  
 3 Read your deposition over carefully. It  
 4 is your right to read your deposition and make  
 5 changes in form or substance. You should  
 6 assign a reason in the appropriate column on  
 7 the errata sheet for any change made. After  
 8 making any change in form or substance which  
 9 has been noted on the following errata sheet,  
 10 along with the reason for any change, sign  
 11 your name on the errata sheet and date it.  
 12 Then sign your deposition at the end of  
 13 your testimony in the space provided. You are  
 14 signing it subject to the changes you have  
 15 made in the errata sheet, which will be  
 16 attached to the deposition before filing. You  
 17 must sign it in front of a witness. Have the  
 18 witness sign in the space provided. The  
 19 witness need not be a notary public. Any  
 20 competent adult may witness your signature.  
 21 Return the original errata sheet &  
 22 transcript to deposing attorney, (attorney  
 23 asking questions) promptly! Court rules  
 24 require filing within 30 days after you  
 25 receive the deposition. Thank you.

Page 243

1 JAMES SCANDLE  
 2 CERTIFICATE  
 3 - - -  
 4 COMMONWEALTH OF PENNSYLVANIA :  
 5 : SS  
 6 COUNTY OF PHILADELPHIA :  
 7  
 8 I, Kathleen Woods Logue,  
 9 Professional Reporter and Notary Public within  
 10 and for the County of PHILADELPHIA, State of  
 11 Pennsylvania, do hereby certify that the  
 12 foregoing testimony of JAMES SCANDLE was taken  
 13 before me at 50 Sheraton Road, Danville,  
 14 Pennsylvania on Wednesday, March 25, 2009;  
 15 that the foregoing testimony was taken in  
 16 shorthand by myself and reduced to typing  
 17 under my direction and control, and that the  
 18 foregoing pages contain a true and correct  
 19 transcription of all of the testimony of said  
 20 witness.  
 21  
 22 .....  
 23 KATHLEEN WOODS LOGUE  
 24 Notary Public  
 25  
 My Commission expires  
 August 16, 2012

Page 245

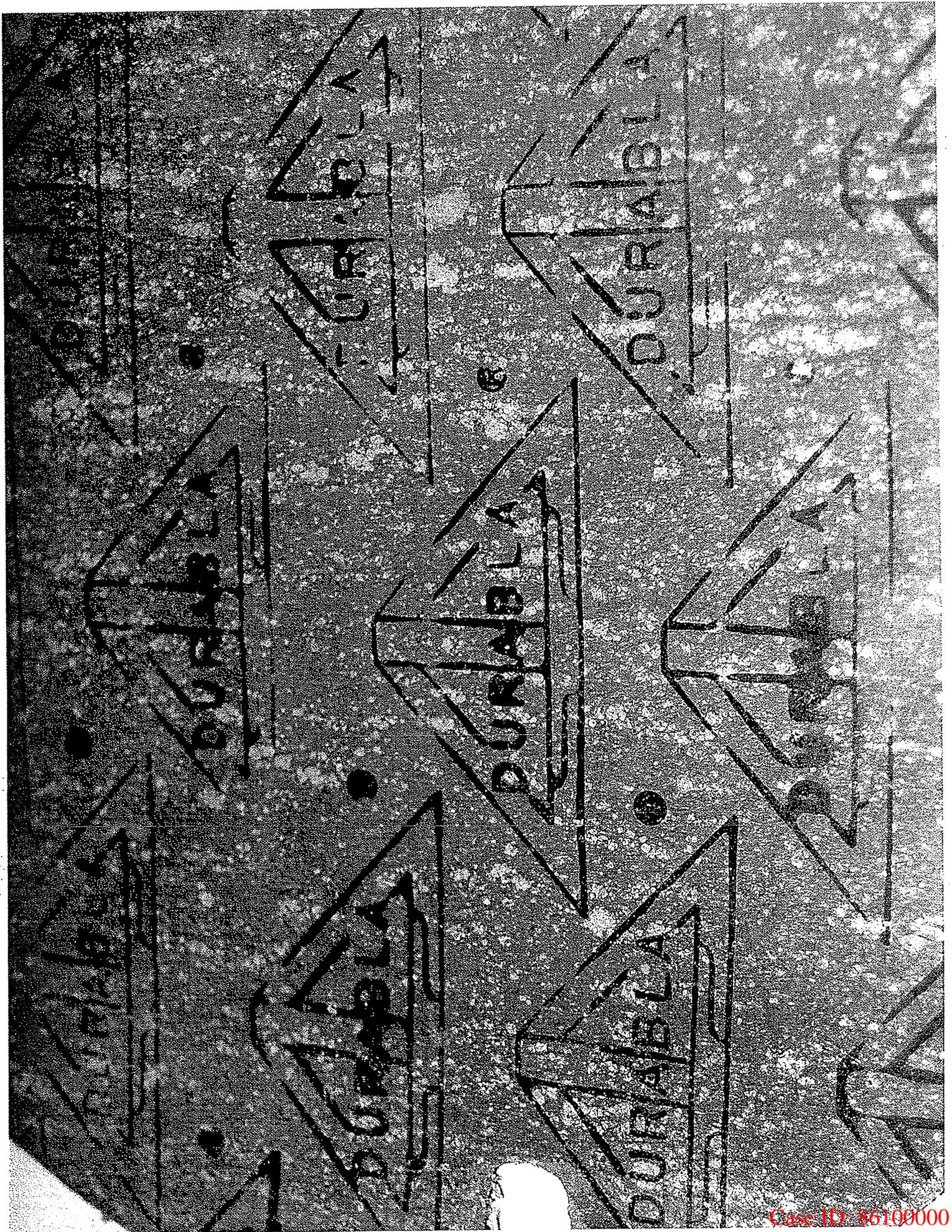
1 JAMES SCANDLE  
 2 I have read the foregoing  
 3 deposition and the answers given by me are  
 4 true and correct, to the best of my  
 5 knowledge and belief.  
 6  
 7  
 8  
 9  
 10  
 11 .....  
 12 JAMES SCANDLE  
 13  
 14  
 15  
 16  
 17 Witness to signature  
 18 Address  
 19  
 20  
 21 My Commission expires  
 22 .....  
 23  
 24  
 25

62 (Pages 242 to 245)

VERITEXT NATIONAL COURT REPORTING COMPANY  
 (215) 241-1000 (888) 777-6690

Case ID: 86100001  
 Control No.: 09103556

# EXHIBIT C





# EXHIBIT D

Sherry L. Horowitz, Esquire  
Attorney ID No. 30493  
111 Presidential Blvd., Suite 280  
Bala Cynwyd, Pennsylvania 19004  
(610) 667-0225

Attorney for Defendant  
Durabla Manufacturing Company

DEBORAH McLAUGHLIN, Executrix of	:	PHILADELPHIA COUNTY
the Estate of Francis McLaughlin,	:	COURT OF COMMON PLEAS
and In Her Own Right	:	JULY TERM, 2000
vs.	:	No. 000962
AMERICAN STANDARD, et al.	:	ASBESTOS CASE

DEFENDANT DURABLA MANUFACTURING COMPANY'S  
REPLY TO PLAINTIFF'S FIRST SET OF  
REQUESTS FOR ADMISSION AND INTERROGATORIES

General Objections

Durabla Manufacturing Company objects to Plaintiff's Definitions and Instructions as unduly burdensome, overly broad, seeking information beyond the scope of discovery, and seeking privileged information.

Durabla Manufacturing Company generally objects to these Requests as being unduly burdensome, harassing, oppressive, boilerplate, overly broad, vague, and repetitious. Objection is made to these Requests and Interrogatories on the grounds that they seek information which is not relevant or not reasonably calculated to lead to the discovery of admissible evidence. Objection is also made to these Requests and Interrogatories to the extent that they seek information or materials which have been gathered or prepared in the course of asbestos litigation, or which are otherwise protected by the attorney/client privilege, or the work product doctrine. Durabla

## II. INTERROGATORIES

### I. Yes

- (a) Durabla Manufacturing Company
- (b) New York
- (c) 1911
- (d) 140 Sheree Boulevard, P.O. Box 700, Lionville, PA 19341-0700
- (e) Yes
- (f) No
- (g) To conduct business as allowed by the laws of the State of New York, Durabla Manufacturing Company's state of incorporation
- (h) No
- (i) No
- (j) Not applicable

### II. Defendant does not mine, manufacture, produce, process, compound, or convert asbestos, asbestos fiber, and/or asbestos-containing products. Without waiving this objection, Defendant is a distributor:

- (a-b) Durabla White: 1978-1987  
PenPak: approximately 1980-present  
Durabla Black: approximately 1913-present
- (c) Durabla gasket material is intended to create and maintain a static seal between two flanges in piping systems
- (d) Durabla White: 80% chrysotile  
PenPak: 75% chrysotile  
Durabla Black: 80% chrysotile
- (e) Durabla White: white gasket material  
PenPak: grey gasket material  
Durabla Black: black gasket material

### III. (a-e) Gasket material is packaged in cardboard rolls. Cut gaskets are placed in plastic bags and packaged in cardboard boxes. Each bag, box and cardboard roll contains the Durabla name and triangle logo.

### IV. Yes. Durabla states that the following cautionary language documents have been provided to customers: Durabla Manufacturing Company product brochures containing cautionary language (1980, 1986, 1993, 1996); Material Safety Data Sheets (since 1980); packing slips (1980, 1985); gasket and sheet gasket material cautionary labels (1990); and gasket removal memo provided to customers (1991).

### V. Objection. It is denied that Defendant Durabla Manufacturing Company is a manufacturer. Without waiving this objection, see answer to Question III hereinabove.

VI. No.

VII. No.

VIII. Yes. Durabla has sold and distributed gasket material from the following Pennsylvania locations: 1969-1979 - Strafford, PA; 1979-1985 - Paoli, PA; 1985-present - Lionville, PA.

IX. Defendant objects to this Interrogatory as it is overly vague, ambiguous, overly broad in temporal and geographic scope, and not reasonably calculated to lead to the discovery of admissable evidence. Durabla specifically objects to Plaintiff's failure to identify and/or limit the time period in which Plaintiff alleges exposure and Plaintiff's failure to specifically identify the products to which Plaintiff alleges exposure. Notwithstanding these objections, and without waiving any rights hereto, Defendant Durabla refers Plaintiff to its Response to Request for Admission No. 7. Durabla continues to search its records for potentially responsive information.

X. No.

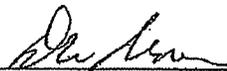
XI. Yes. All Durabla asbestos-containing gasket material identified in Answer to Interrogatory No. II has been manufactured by other entities for Durabla from approximately 1913 to the present.

Respectfully submitted,

  
SHERRY L. HOROWITZ, ESQUIRE  
Attorney for Defendant  
Durabla Manufacturing Company

VERIFICATION

DAVID W. MOSER, President of DEFENDANT DURABLA MANUFACTURING COMPANY, hereby states that he is authorized to take this verification on behalf of DEFENDANT DURABLA MANUFACTURING COMPANY, Defendant herein, and that the statements made in the foregoing pleading are made subject to the penalties of 18 Pa C.S. Section 4904 relating to unsworn falsification to authorities, and that same are true and correct upon the signer's personal knowledge, information, and belief.



---

DAVID W. MOSER, President

Durabla Manufacturing Company

# EXHIBIT E

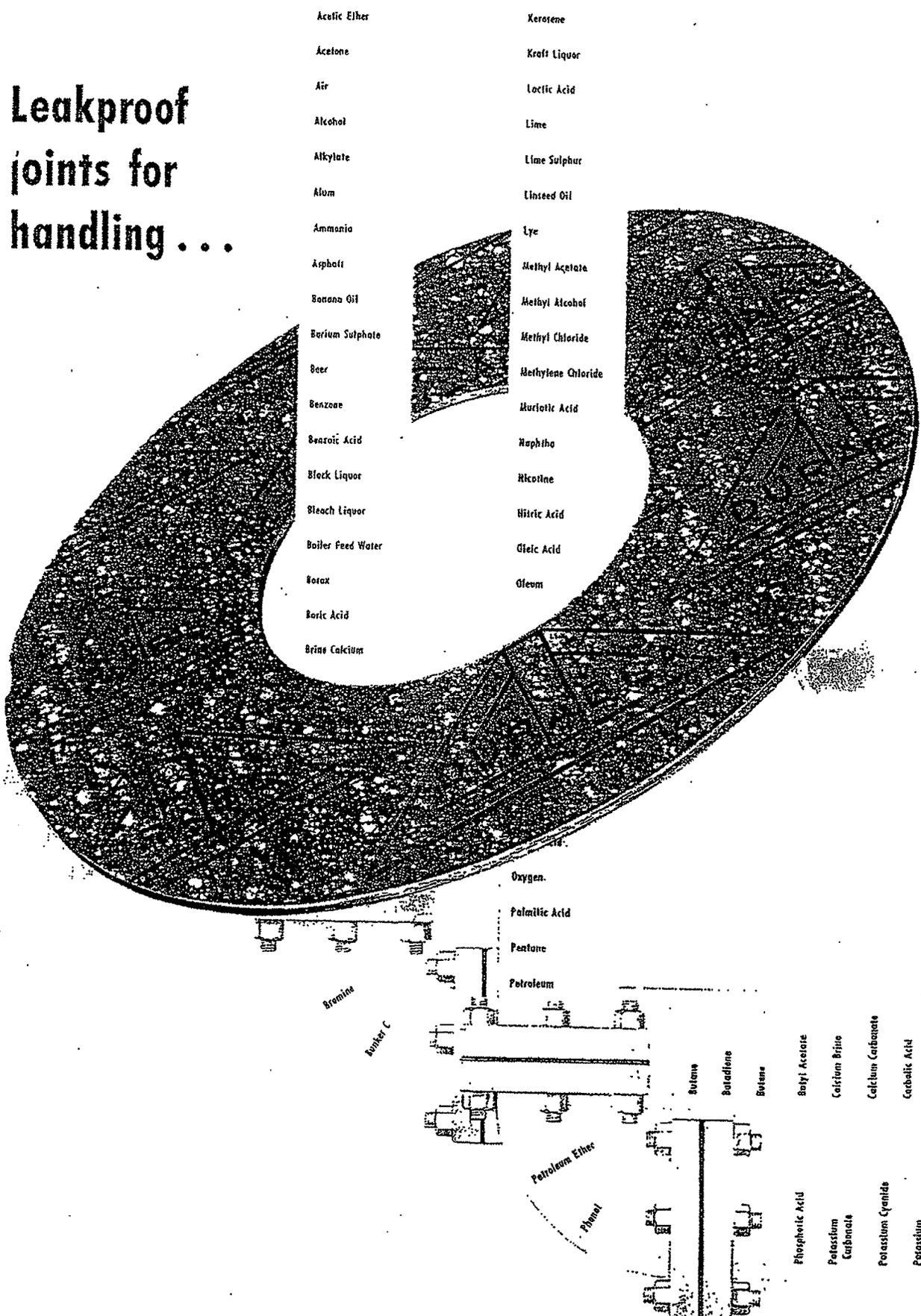
# DURABLA

asbestos sheet and gaskets

**DURABLA MANUFACTURING COMPANY**

114 Liberty Street, New York 6, New York

# Leakproof joints for handling...



# The all-purpose sheet gasket material

DURABLE Homogeneous Compressed Asbestos Sheet Packing is a *single-formula material* that can be used wherever asbestos-sheet gaskets are applicable. It is suitable for a wide range of temperature-pressure combinations.

Produced and marketed for nearly 50 years, DURABLE Sheet has been thoroughly time-tested under actual working conditions in all types of industry. A partial list of the services in which it is being used with proved safety is given below and on the opposite page.

## Selected asbestos fibre

The high quality of DURABLE Sheet results from the use of a greater percentage of selected Canadian asbestos fibre, of the spinning group, than is found in any other gasket material. The asbestos is skillfully compounded with a special binder. Every

square inch of the sheet has uniform density, thickness and asbestos distribution.

DURABLE  $\frac{1}{16}$ " Sheet has a minimum yield point under compression of 44,000 pounds per square inch. (For thinner gauges, this is proportionately higher.) The specific gravity is 1.92. These figures are important to consider in comparing the relative merits of different sheet packings.

## Gauges and stock sizes

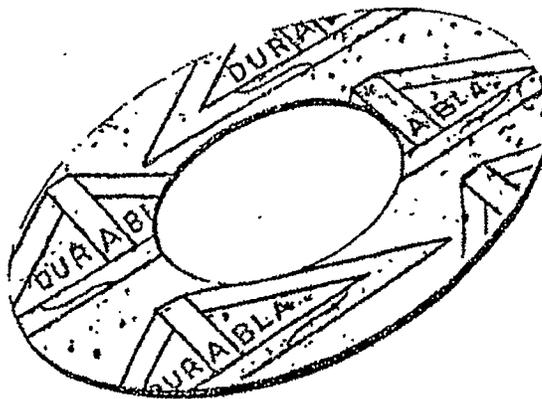
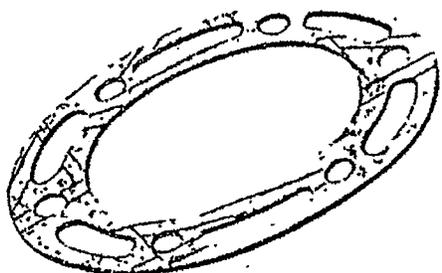
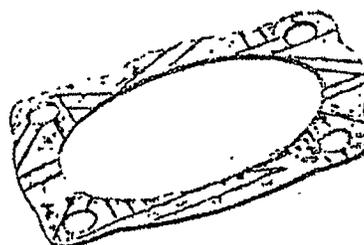
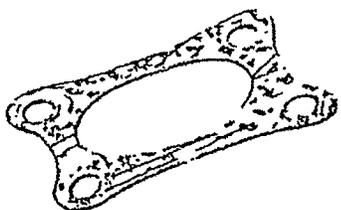
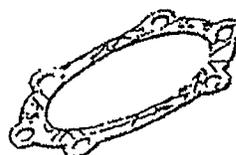
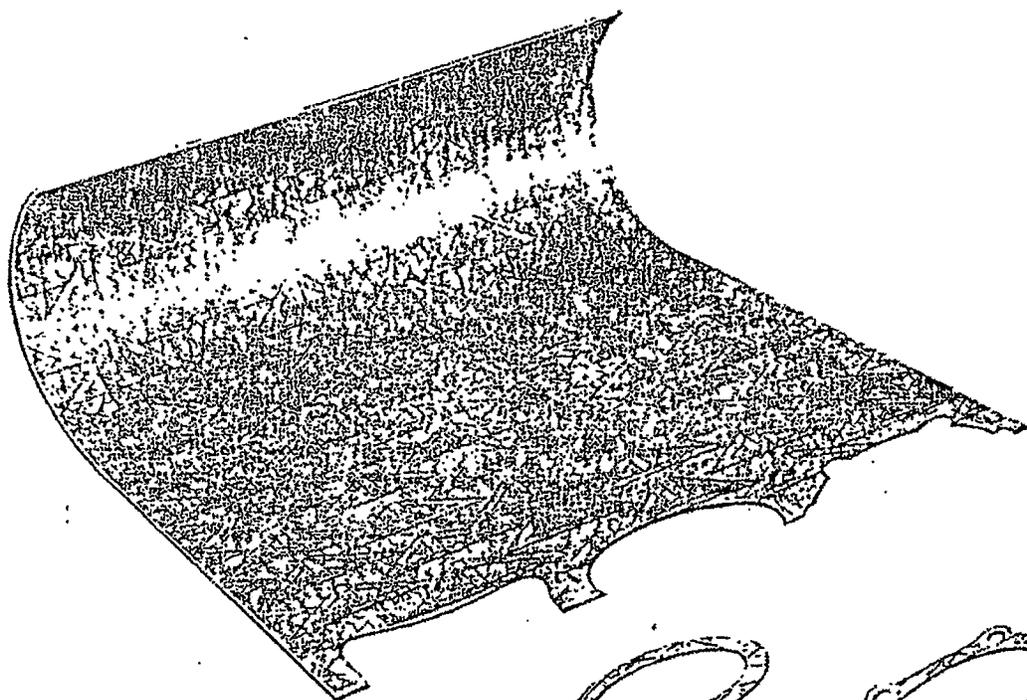
DURABLE Sheet is available in the following eight gauges:  $\frac{1}{160}$ ",  $\frac{1}{64}$ ",  $\frac{1}{32}$ ",  $\frac{1}{16}$ ",  $\frac{3}{32}$ ",  $\frac{1}{8}$ ",  $\frac{3}{16}$ " and  $\frac{1}{4}$ ". Stock sizes (shown in the table below) are made up in standard rolls, properly packed to meet every condition of shipping and storage.

Being homogeneous in construction, the sheets can be tightly rolled and unrolled as often as necessary. When properly stored in standing rolls, it is easy to handle, and occupies little floor space.

Table of stock sizes

Thickness (Inches)	Size of Sheet (Inches)	Number Sheets Per Roll	Approx. Net Weight Per Roll (lbs.)	Approx. Roll Dimensions (Inches)
$\frac{1}{4}$	48 x 144	20	145	49 x 11 x 11
$\frac{3}{16}$	48 x 144	10	145	49 x 11 x 11
	60 x 144	10	190	61 x 11 x 11
	72 x 144	10	220	73 x 11 x 11
$\frac{1}{8}$	48 x 144	5	145	49 x 11 x 11
	60 x 144	5	190	61 x 11 x 11
	72 x 144	5	220	73 x 11 x 11
	120 x 144	5	365	121 x 11 x 11
$\frac{3}{16}$	48 x 144	4	236	49 x 14 x 14
	60 x 144	4	304	61 x 14 x 14
$\frac{1}{4}$	36 x 72	Flot 4 Sheets	176	78 x 38 x 3 Case Size

Castile Polish	Soda	Soda Ash	Sodium Aluminate	Sodium Bicarbonate	Sodium Bisulfite	Sodium Carbonate	Sodium Cyanide	Sodium Hydroxide	Sodium Silicate	Sodium Sulfate	Sodium Sulfide	Sodium Sulfite	Sodium Thioarsenate	Stearic Acid	Sulphuric Acid	Sulphur Dioxide	Tannic Acid	Tar	Tartaric Acid	Vinyl Chloride	Tetrahydrofuran	Toluene	Tri-Sodium Phosphate	Trichloroethylene	Turpentine	Water	Zinc Sulphate



# Gaskets cut from DURABLA Sheet

Durabla Manufacturing Company supplies gaskets in all sizes and shapes. Accurately machine cut from DURABLA Sheet, these gaskets are of uniform quality and workmanship.

List prices and dimensions of stock sizes are given on page 6. Prices for special sizes will be supplied on request.

## High temperature-pressure service

The increasing use of gaskets cut from DURABLA sheet on pressures exceeding 600 pounds and temperatures above 750°F is economically sound. This has been borne out by extensive testing, with gaskets under actual working conditions in flanges, and in actual installations.

These tests have shown that DURABLA Gaskets do not leak or show any signs of creeping or distress at 1650 pounds steam pressure at 850°F — the limit of the test boiler. The gaskets remained tight at 3700 pounds hydraulic pressure at 80°F, both before and after the steam test.

Three of the reasons for the success of DURABLA Gaskets in high temperature-pressure service are as follows:

1. DURABLA Gaskets become fireproof during the first "warming-up" period and will, therefore, withstand the temperature for which the system is designed. After the warm-up, only the asbestos remains between the flanges.

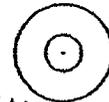
2. They provide a cushioning medium, with sustained resilience or "spring-back," which eases stud and flange strains caused by temperature-pressure variations in service.

3. Because of their high compressional yield point, controlled quality production and uniform distribution of the best obtainable asbestos, thinner gauges can be used. This eliminates the flowing and saturation which occur with heavy gauges.

Note: Data on bolt stresses, gasket pressures and DURABLA "Gasket Proportioning" will be furnished on request.

## No wrong applications

- Because they are all-purpose gaskets, the hazards of wrong application are eliminated. Each shipment is securely tied in bundles of 100 gaskets each, and tagged to show size of gasket, pressure and type of fitting.



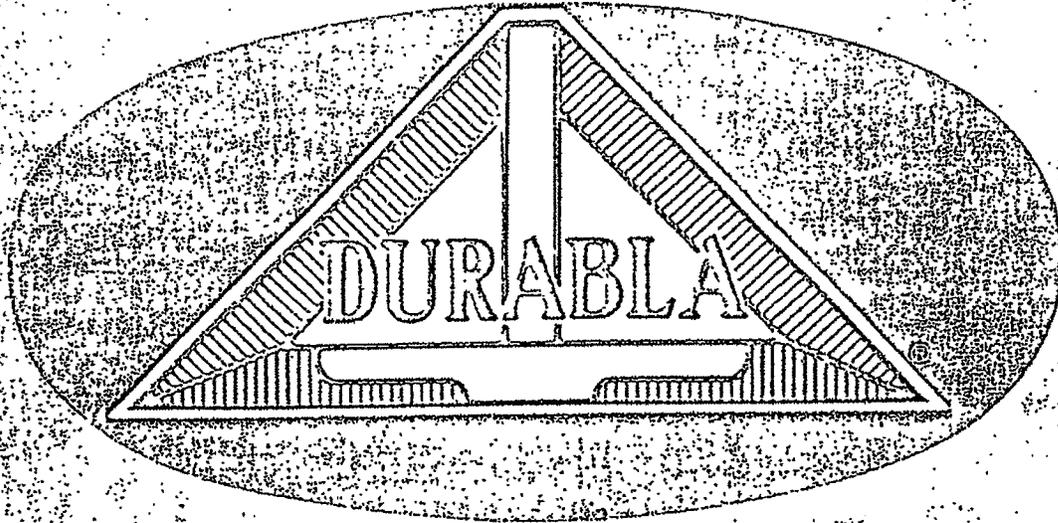
QUANTITY 100

SIZE

" GASKET

Per ASA B16.21-1951 Spec.

FOR 125 LB.  
STANDARD  
FITTING



ASBESTOS GASKET MATERIAL

# EXHIBIT F

**COPY**

1  
2  
3                   IN THE CIRCUIT COURT OF KANAWHA COUNTY  
4   WEST VIRGINIA  
5

6  
7  
8           IN RE:   ASBESTOS

9   CIVIL ACTION  
10    NO. 92-C-8888

11                   BEFORE:   HONORABLE A. ANDREW MacQUEEN  
12  
13  
14

15                   The deposition of DAVID W. MOSER, taken upon oral  
16                   examination, pursuant to notice and pursuant to the  
17                   West Virginia Rules of Civil Procedure, before Jackie  
18                   Boeyink, Court Reporter and Notary Public in and for  
19                   the State of West Virginia, Wednesday, September 22,  
20                   1993, 10:00 a.m., at the offices of Steptoe & Johnson,  
21                   Charleston National Plaza, Charleston, West Virginia.

22   JOHNNY JACKSON & ASSOCIATES, INC.  
23   P.O. Box 1344  
24   Parkersburg, West Virginia

   800-621-1026

## APPEARANCES

1

2

3

SEGAL & DAVIS, L.C. (Scott S. Segal, appearing), 810 Kanawha Boulevard, East, Charleston, WV 25301, Counsel for Plaintiffs.

4

5

NESS, MOTLEY, LOADHOLT, RICHARDSON & POOLE (Robert J. McConnell, appearing), Two Charles Street, Providence, RI 02904-2269, Counsel for Plaintiffs.

6

7

KAY, CASTO, CHANEY, LOVE & WISE (Stephen A. Weber, appearing), Suite 1600, Charleston National Plaza, P.O. Box 2031, Charleston, WV 25327, Counsel for Garlock.

8

9

SHARLOCK, REPCHECK & MAHLER (Cynthia M. Hutchins, appearing), 3280 USX Tower, 600 Grant Street, Pittsburgh, PA 15219, Counsel for Anchor Packing Company, A.W. Chesterton, Greene Tweed, and Durametallic.

10

11

12

GOODWIN & GOODWIN (J. David Fenwick, appearing), P.O. Box 2107, 1500 One Valley Square, Charleston, WV 25328, Counsel for A&I Company and Nitro Industrial Coverings, Incorporated.

13

14

15

LAW OFFICES OF ROBERT E. DOUGLAS (Robert E. Douglas, appearing), Suite 1701, Charleston National Plaza, Charleston, WV 25301, Counsel for LAQ.

16

17

FRANKOVITCH & ANETAKIS (Michael G. Simon, appearing), 337 Penco Road, Weirton, WV 26062, Counsel for John Crane, Incorporated.

18

19

BOWLES, RICE, McDAVID, GRAFF & LOVE (Elizabeth B. Elmore and Anthony A. Damiani, appearing), 1600 Commerce Square, P.O. Box 1386, Charleston, WV 25325-1386, Counsel for Metropolitan Life Insurance Company.

20

21

22

CAMPBELL, WOODS, BAGLEY, EMERSON, McNEER & HERNDON (Carol M. Clayton, appearing), Suite 1400, Charleston National Plaza, Charleston, WV 25328-2393, Counsel for W.R. Grace Company.

23

24

1 LAW OFFICES OF RICHARD A. HAYHURST (M. Catherine McKay,  
2 appearing), 414 Market Street, P.O. Box 86,  
3 Parkersburg, WV 26102-0086, Counsel for FMC  
4 Corporation.

5 STEPTOE & JOHNSON (Susan Basile, appearing), 715  
6 Charleston National Plaza, Charleston, WV 25301,  
7 Counsel for Durabla Manufacturing Company.

8 STICH, ANGELL, KREIDLER & MUTH (Susan M. Hansen,  
9 appearing), The Crossings, Suite 120, 250 Second  
10 Avenue, South, Minneapolis, MN 55401, Counsel for  
11 Durabla Manufacturing Company.

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September 22, 1993

DEPONENT: DAVID W. MOSER

Examination by:	Page
Mr. Segal . . . . .	5
Mr. McConnell . . . . .	84
Mr. Segal . . . . .	102

Exhibits Identified:	Page
Exhibit No. 1 . . . . .	70

1 DAVID W. MOSER, WITNESS, SWORN

2 MR. SEGAL: This will be the 30-B6 deposition  
3 of David Moser pursuant to notice and agreement of  
4 counsel.

5 By agreement, all objections as to any  
6 objection are reserved to any party until such time as  
7 Judge MacQueen has an opportunity to address the  
8 objection, except as to the form of the question.

9 I would appreciate it, if anyone has an  
10 objection, to address the objection, except as to the  
11 form of the question.

12 I would appreciate it, if anyone has an  
13 objection as to the form, that they let me know now so  
14 I can try and address the objection and get it done.

15 Is that okay with everyone?

16 EXAMINATION

17 BY MR. SEGAL:

18 Q. Mr. Moser, my name is Scott Segal, and I am  
19 an attorney who represents some of the plaintiffs in  
20 some litigation pending here in the Circuit Court of  
21 Kanawha County, as well as other places in the State of  
22 West Virginia.

23 Today I am going to be asking you a series of  
24 questions, which you will be required to answer while

1 wide sheet by 12 feet long was more common than a 5-  
2 foot sheet.

3 Q. Now we will test your knowledge of history.

4 Do you recall about what decade they changed  
5 from the 4 by 12 standard size to the 5 by 12?

6 A. Both sizes were always available. It just  
7 became a matter of customer preference. It seems to be  
8 tending toward the larger sheet.

9 Q. Who do you get your sheets from?

10 A. At what time period?

11 Q. Now.

12 A. Durabla Canada.

13 Q. For how long have you gotten them from  
14 Durabla Canada?

15 A. Since 1974.

16 Q. Who did you get them from before 1974?

17 A. Goodyear Canada.

18 Q. In '74 you quit doing business with them.

19 How long had you been getting the sheets from  
20 Goodyear Canada?

21 A. From '69 through '74, or through '73,  
22 actually.

23 Q. Who did you get it from before Goodyear  
24 Canada in '69?

1 A. Goodyear USA.

2 Q. Who did you get it from before them?

3 A. That was the original provider.

4 Q. If we went back to 1911, Goodyear USA was the  
5 original provider?

6 A. Correct.

7 Q. Do you know why sometime around 1969 Goodyear  
8 USA quit providing the sheets and Goodyear Canada  
9 started providing them?

10 A. No, I don't.

11 Q. Was Goodyear USA or Goodyear Canada your  
12 exclusive distributor until 1973, '74?

13 A. They were our exclusive provider, yes.

14 Q. What did I say, distributor?

15 A. Yes.

16 Q. I am sorry.

17 From 1974 until today, has Durabla Canada  
18 been your exclusive provider?

19 A. Yes.

20 Q. You told me seven or eight people own Durabla  
21 Manufacturing; is that right?

22 A. Yes.

23 Q. Can you tell my who they are?

24 A. You mean their individual names?

1 A. No, I don't.

2 Q. In 1983, did you begin making a nonasbestos-  
3 containing gasket?

4 A. Yes, we did. We did not manufacture the  
5 material; we began cutting gaskets from that material.

6 Q. Somewhere in one of these things it says it  
7 was -- here it is. Well, now I can't find it.

8 It has a different name than what we have  
9 talked about. Can you tell me the name?

10 A. Yes. It is called Durlon, D-U-R-L-O-N.

11 Q. Am I correct that Durlon first began being  
12 marketed in 1983?

13 A. Yes.

14 Q. I thought somewhere in one of these it said  
15 that Durlon was being distributed as a result of  
16 certain customers' needs for nonasbestos-containing  
17 gaskets. Do you recall that?

18 A. Yes. I believe there are words to that  
19 effect in one of the pieces of sales literature.

20 Q. I don't know the year of this little booklet  
21 they gave me, but there is a sentence in here that  
22 says, quote, as an example, Durabla's Durlon,  
23 D-U-R-L-O-N, gasket materials were introduced in 1983  
24 to effectively meet industry's need for a nonasbestos

1 gasketing material, period, closed quote.

2 I want to know how you became aware of  
3 industry's need for a nonasbestos gasketing material,  
4 how your company became aware of that?

5 A. Probably from comments fed back to us by our  
6 distributors and the activities of our competitors.

7 Q. How long did it take to develop Durlon?

8 A. Well, I don't know because it was developed  
9 by our supplier.

10 Q. What I want to understand is, obviously, in  
11 1983 some distributor did not walk in your office and  
12 say, Hey, we need a nonasbestos gasket, and you picked  
13 up the phone, and in '83 it would have been Durabla  
14 Canada said, Hey, guys, send me a nonasbestos gasket,  
15 and they suddenly sent you Durlon.

16 There had to be some time to, one, recognize  
17 the need, and two, get Canada cracking on developing  
18 the Durlon product, and I would like to understand that  
19 history, if I may.

20 A. I think that time period would have been a  
21 couple of years from the time when we first encouraged  
22 them to try and develop such a product until they were  
23 able to market, to provide us with one, in other words,  
24 marketable.

1 you should talk to your lawyer about it.

2 All I would ask you is, before you get on  
3 that airplane that you tell this young lady whether or  
4 not you want to read and sign your deposition and tell  
5 her where to mail it, if you do want to read and sign  
6 it.

7 Thanks for being with us today.

8 THE WITNESS: Yes, I would like to review it,  
9 please.

10 (The deposition of DAVID W. MOSER was  
11 concluded.)

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