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IN THE SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MIDDLESEX COUNTY
Case No. MID-L-7891-10AS

ARMIN THOMA and PATRICIA
LOU THOMA,

Plaintiffs,

vs.

A.R. WINARICK, INC., et al.,

VOLUME V

Testimony taken before Judge McCormick in
the above-captioned matter at the Middlesex County
Courthouse, 56 Paterson Avenue, Courtroom 303, New
Brunswick, New Jersey before Lisa Forlano, CCR, CRR,
RMR, and Notary Public, on Wednesday, February 15,
2012, commencing at 9:00 a.m.

Job No. NJ379535

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1 THE COURT: May I have the appearances,
2 please.
3 MR. MAIMON: Good morning, Your Honor.
4 Moshe Maimon from Levy Phillips for the
5 Plaintiffs.
6 MS. KAGAN: Good morning, Your Honor.
7 Leah Kagan from Levy Phillips for the
8 Plaintiffs.
9 MR. LASH: Arthur Lash, O'Toole,
10 Fernandez for R.T. Vanderbilt. Mr. Savoth
11 will be here momentarily.
12 MR. RADCLIFFE: Tom Radcliffe for R.T.
13 Vanderbilt.
14 MR. PICINI: Rich Picini for Union
15 Carbide Corporation.
16 MR. TERRY: Michael Terry for Union
17 Carbide.
18 THE COURT: Did you decide on the order
19 for today?
20 MR. RADCLIFFE: We're going to finish
21 Mr. Kelse.
22 THE COURT: It was up to you, so you've
23 agreed on that?
24 MR. MAIMON: Yes.
25 MR. RADCLIFFE: Yes.

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1 Your Honor.
2 THE COURT: Okay.
3 MR. MAIMON: Thank you.
4 THE COURT: I don't know how much
5 longer you have, I'm just thinking about lunch
6 breaks.
7 MR. MAIMON: Let me go a little longer,
8 Judge, because there is an area that I'd like
9 to cover, and I'll see how quickly we go, but
10 certainly by 12:30 we should take a lunch
11 break.
12 THE COURT: Give me a hi sign.
13 MR. MAIMON: Thank you.
14 May I have the question read back,
15 Judge?
16 THE COURT: I think that would be
17 helpful for all of us.
18 MR. MAIMON: Thank you.
19 (At which time the following question
20 was read back by the reporter:
21 "Question: And based on the assumption
22 that the talc that he described contained 50
23 or more percent tremolite and anthophyllite,
24 based on his testimony as he described it, did
25 you assess whether or not his exposure to that

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1 talc product was a substantial factor in
2 causing his mesothelioma?")
3 MR. RADCLIFFE: Same objection.
4 THE COURT: Same ruling.
5 THE WITNESS: Yes.
6 BY MR. MAIMON:
7 Q And what conclusion, did you reach, Dr.
8 Moline?
9 MR. RADCLIFFE: Same objection.
10 THE COURT: Same ruling, overruled.
11 THE WITNESS: That his exposures to the
12 talc were caused as mesothelioma -- were a
13 factor in his mesothelioma.
14 BY MR. MAIMON:
15 Q Now, can you explain to the members of
16 the jury the process that you went through in making
17 this assessment in reaching your conclusion? What
18 did you do in order to reach that conclusion?
19 A Well, I went through his medical
20 records to determine that there was pathology that
21 showed that he had mesothelioma. There was. I went
22 through his work history as was described by Mr.
23 Thoma himself. I did not have the opportunity to
24 meet Mr. Thoma. I certainly would have liked that
25 opportunity, but he was undergoing treatment and

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1 unable to travel to New York at that time. But I
2 went through his occupational history and learned
3 that the talc -- he had described that there was
4 talc. That was one of the constituents of paint.
5 The beauty of occupational medicine is you learn all
6 sorts of things that you never knew; and one of them
7 is what goes into making the paint. And as a result
8 of that, I looked at some of the literature related
9 to talc exposure that has been published. There
10 have been a number of studies that have been from
11 the Upstate New York region. There have been
12 studies from the actual mine or the company where my
13 understanding is that the talc arose from. That was
14 used in the paint that he had the exposure to.
15 Q And with regard to those types of
16 studies, as an expert in occupational medicine, can
17 you tell us, is it important to look, if we have
18 substance, look at the population that is involved
19 in mining or milling that substance?
20 A Typically we look at the folks that
21 have the most exposure because you go to the people
22 who have the highest level of exposure to see if
23 they're developing a disease in the same way --
24 there's a controversy right now about cell phones.
25 This is what I think about. And where is the first

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1 study that's been done, and I don't have an opinion
2 yet about cell phones, but the first study that was
3 done was done in Motorola, the company that makes
4 cell phones, because they were looking at the
5 workers over many, many years. So they're looking
6 at the folks who have the exposure. So you go to
7 the mine or the mill where the product is being made
8 and you look to see is there disease in this mine or
9 mill at a rate that's higher than you would expect
10 in the population. And then you also look and see,
11 are there differences in this particular mine or
12 mill that could be compared to other mines or mills
13 in other parts of the country, other parts of the
14 world, and are the diseases that we're seeing in
15 this mine or mill different from what we're seeing
16 in this particular mine or mill.
17 Q With regard to the published literature
18 about the Upstate New York mines, and specifically
19 the Gouverneur Talc mines, which supplied the
20 Vanderbilt products, are there asbestos diseases
21 associated with exposure to asbestos that are seen
22 in elevated rates?
23 A Yes.
24 Q And can you tell us what those are?
25 A There are studies that show that there

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1 occupational medicine does. What was the common
 2 exposure that all of these seven folks had when they
 3 all present with this very rare tumor? All seven of
 4 these individuals all had one thing in common that
 5 we know of, which is that they worked in the same
 6 place.
 7 Q Now, you mentioned earlier today that
 8 one of the things that you compare to is just the
 9 population at large. And is that what you're
 10 talking about, the rates of mesothelioma in the
 11 general population being one in a million and then
 12 looking at what was taking place at Gouverneur Talc?
 13 A Correct.
 14 Q What else do you look at when you're
 15 trying to see whether this facility has an elevated
 16 rate of mesotheliomas?
 17 A You would look at neighboring -- you
 18 would look at the same type of industry to see is
 19 this is something that is due to being involved in
 20 the talc industry in general. Or is it this
 21 particular location.
 22 Q Let me ask it this way, are you saying
 23 that talc, the mineral talc, causes mesothelioma?
 24 A No.
 25 Q What are you saying causes

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1 mesothelioma, and specifically with regard to Mr.
 2 Thoma's case that you told us that the exposure to
 3 the Vanderbilt talc was a significant contributing
 4 factor to his mesothelioma?
 5 A The asbestos that was contained within
 6 the talc.
 7 Q Is that the tremolite and the
 8 anthophyllite?
 9 A Correct.
 10 Q And with regard to -- withdrawn.
 11 Within the published literature,
 12 outside of the Gouverneur Talc population, are there
 13 mesotheliomas reported for other talc facilities in
 14 other areas, countries, different parts of the
 15 United States?
 16 MR. RADCLIFFE: Objection.
 17 THE COURT: Basis?
 18 MR. RADCLIFFE: It's outside the scope
 19 of her report.
 20 MR. MAIMON: I don't know if that
 21 specific sentence was there, Judge.
 22 THE COURT: I'd have to look at the
 23 report.
 24 MR. RADCLIFFE: I have it.
 25 THE COURT: It's not specifically

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1 mentioned in the report, but I don't think
 2 it's so outside the parameters and the
 3 substance of the report to be objectionable.
 4 So I'll overrule the objection.
 5 BY MR. MAIMON:
 6 Q Do you remember the question?
 7 A Can you read it back.
 8 (At which time the following question
 9 was read back by the reporter:
 10 "Question: Within the published
 11 literature, outside of the Gouverneur Talc
 12 population, are there mesotheliomas reported
 13 for other talc facilities in other areas,
 14 countries, different parts of the United
 15 States?")
 16 THE WITNESS: There are mesotheliomas
 17 reported within New York State. There are no
 18 mesotheliomas reported from looking at talc,
 19 miners, millers, at any other location,
 20 whether it be Vermont, whether it be Italy,
 21 France, Austria, Australia. There are a few
 22 more countries. But it's been looked at
 23 extensively throughout the world, and apart
 24 from Upstate New York, there have not been any
 25 mesotheliomas reported in the literature that

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1 I am aware of.
 2 BY MR. MAIMON:
 3 Q And what significance is that to you,
 4 Doctor, when you look at this case dealing with
 5 somebody exposed to the talc from Upstate New York?
 6 MR. RADCLIFFE: I'm going to object.
 7 It's outside the scope of her report.
 8 THE COURT: Although not specifically
 9 addressed, I think it is well within the
 10 general nature of the report. So I overrule
 11 the objection.
 12 THE WITNESS: There is something in
 13 Upstate New York in the talc that's been
 14 identified as tremolite and anthophyllite,
 15 forms of asbestos in the mines that cause
 16 mesothelioma. We have individuals who
 17 developed and died from mesothelioma from this
 18 particular part of the country, from this
 19 particular part of the state. And asbestos
 20 causes mesothelioma. I mean, it's one of
 21 these -- it's right there in front of you.
 22 BY MR. MAIMON:
 23 Q With regard to the --
 24 MR. RADCLIFFE: Excuse me, may we
 25 approach about an issue? I apologize.