

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
CASE NOS. 323-879-223909

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I N D E X

1	Witness:				
2	DR. RAY A. HARRON				
3	EXAMINATION:	DIRECT	CROSS	REDIRECT	RE-CROSS
4	by Mr. Johnson		5		91
5	by Mr. Taber		51		
6	by Ms. Bozorth	86			

[REDACTED] -VS- ACends, Inc.,
et al., et al..
Plairtiffs, Defendants.

Deposition of DR. RAY A. HARRON, a witness
herein, taken by the Defendants as upon cross
examination pursuant to the Ohio Rules of Civil
Procedure and Notice as to time and place and
stipulations hereinafter set forth, at the Hilton
Hotel, 8181 Airport Boulevard, Houston, Texas, at
2:00 p.m., on Wednesday, March 3, 1999, before
Gregory D. Crase, a notary public within and for the
State of Florida.

E X H I B I T S

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15	Defense Exhibit 1	Notebook of information on Cuyahoga Group Clients			93

*** Notes ***

APPEARANCES:

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S T I P U L A T I O N S

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It is stipulated by and between counsel for
the respective parties that the deposition of DR.
RAY A. HARRON, a witness herein, called as upon cross
examination by the Defendants, may be taken at this
time and place pursuant to the Ohio Rules of Civil
Procedure and Notice as to time and place of taking
said deposition; that the state qualifications of the
Notary Public were waived; that the deposition was
recorded in stenotypy by the court reporter, Gregory D.
Crase, and transcribed out of the presence of the
witness; and that signature to the said deposition is
expressly waived.

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1 DR. RAY A. HARRON
 2 of lawful age, having been duly sworn, was examined and
 3 testified as follows:
 4 CROSS EXAMINATION
 5 BY MR. JOHNSON:
 6 Q. Could you state your full name for the
 7 record, please?
 8 A. Ray, R-A-Y; middle initial A; last name
 9 Harron, H-A-R-R-O-N.
 10 Q. What's your current professional
 11 address, Dr. Harron?
 12 A. P.O. Box 400, Bridgeport,
 13 S-R-I-D-G-E-P-O-R-T, West Virginia, W-V, 26330.
 14 Q. You have given your deposition before,
 15 have you not?
 16 A. Any deposition?
 17 Q. Yeah, any deposition.
 18 A. Yes, I have, yes, sir.
 19 Q. All right. And you've testified in
 20 court before?
 21 A. Yes, sir.
 22 Q. What was the most recent time you gave a
 23 deposition before today?
 24 A. I'm sorry, I just don't remember.
 25 Q. Can you give me a ballpark as to

1 approximately how long ago it would have been?
 2 A. I would guess in months, probably less
 3 than a year.
 4 Q. Okay.
 5 A. So many of them are settling out that
 6 they schedule 'em, but they don't come to fruition.
 7 Q. And when was the last time approximately
 8 that you testified in court?
 9 A. I think it was in Baltimore, and again
 10 maybe a year ago, something like that.
 11 Q. Okay. And you've had a chance to talk
 12 with Plaintiffs' counsel before we got started today;
 13 correct?
 14 A. I met her approximately half an hour
 15 ago, yes.
 16 Q. Okay. At the risk of going over things
 17 that I suspect you're very well acquainted with, let me
 18 just cover a couple of preliminary points before we go
 19 further. First of all, you understand the testimony
 20 you're giving today is under oath, and it carries the
 21 same significance and responsibilities as if you're
 22 testifying in court before a judge and jury?
 23 A. Yes, sir.
 24 Q. Secondly, if any question that I or
 25 anybody else asks you today is confusing or doesn't

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1 make sense or causes you a problem, will you be sure
 2 and tell us about that so that we can try and clear it
 3 up?
 4 A. Yes, sir.
 5 Q. Do you know of any reason why your
 6 deposition should not proceed at this time?
 7 A. No.
 8 Q. Okay. I'm here on the case of
 9 Mr. [REDACTED]. Did you ever personally meet
 10 Mr. [REDACTED]?
 11 A. Not to the best of my knowledge.
 12 Q. Okay. Could you describe generally what
 13 services you have performed in connection with
 14 Mr. [REDACTED] in this case?
 15 A. To the best of my knowledge, I did a
 16 B-reading on a chest X ray dated 7/8/96, and apparently
 17 I did this B-reading on 1/15/97.
 18 Q. So the X ray itself was dated
 19 July 8th, 1996, and you did your reading in January of
 20 '97; is that correct?
 21 A. Yes, sir.
 22 Q. Have you rendered any further services
 23 in connection with Mr. [REDACTED] case since January of
 24 1997 up until the time of this deposition?
 25 A. Not that I know of.

1 Q. Did you at any time speak with any other
 2 doctors regarding Mr. [REDACTED] condition or his case?
 3 A. Not that I know of.
 4 Q. Okay. Have you at any time spoken with
 5 anyone besides plaintiffs' counsel regarding
 6 Mr. [REDACTED] or his case?
 7 A. Well, not by name, but her secretary --
 8 I believe her name is Carol -- scheduled this
 9 deposition with me. I had a phone conversation with
 10 her about where it was going to be and when it was
 11 going to be and that sort of thing.
 12 Q. Okay. Other than that, have you at any
 13 time had any conversations with anyone besides
 14 Plaintiffs' counsel or someone working with plaintiffs'
 15 counsel regarding Mr. [REDACTED] or his case?
 16 A. Not that I know of right now.
 17 Q. Just so it's clear, is your
 18 January 17, 1997, report the only report that you've
 19 issued in this case?
 20 MS. BOZORTH: Counsel, can you just
 21 repeat your question?
 22 MR. JOHNSON: Yes, I'd be happy to.
 23 Let me make sure I got the date right.
 24 BY MR. JOHNSON:
 25 Q. Like I say, is your January 16, 1997

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1 report the only report you've issued in this case?
 2 A. To the best of my knowledge, yes, sir.
 3 Q. Okay. And that report consists of a
 4 one-page narrative report and a B-reader form; is that
 5 correct?
 6 A. Yes, sir.
 7 Q. At the time that you issued that report,
 8 what material had you reviewed relative to
 9 Mr. [REDACTED]?
 10 A. Probably just chest X ray.
 11 Q. Okay. At any time, have you ever
 12 reviewed any medical records regarding Mr. [REDACTED]?
 13 A. They -- they being Ms. Susan's firm here
 14 -- sent me this little booklet which I received
 15 yesterday. I quickly looked through it last night,
 16 which seems to have sort of a background of his case.
 17 Probably nothing that you don't already have. It's
 18 just his -- his death certificate's in here, some
 19 medical stuff about him, that kind of thing.
 20 MR. JOHNSON: Okay. But before
 21 we're done, I'll take a break at some point
 22 and look through that.
 23 MS. BOZORTH: Sure.
 24 MR. JOHNSON: But why don't we go
 25 ahead and proceed at this point?

1 MR. TABER: Do you mind if I make a
 2 quick objection? Ed Taber, for the record.
 3 Under local rule 21(1), physician's testimony
 4 must be in their report as to each issue on
 5 each subject by 30 days prior to trial. At
 6 this point, it's just been established that
 7 any further material the doctor may have
 8 reviewed was only given to him within the
 9 last two days.
 10 That would be subsequent to the
 11 start of trial, therefore, it is the defense
 12 position, at least on behalf of my
 13 defendants, that the doctor is absolutely
 14 limited to the material contained in his one
 15 report dated January 16, '97, a two-page
 16 report.
 17 And we would object to any evidence
 18 or testimony provided by him other than that
 19 summarized and contained in his January 16th
 20 report. Therefore, specifically we would
 21 object to him testifying at all based on,
 22 pertinent to, or regarding any other medical
 23 record, the ones that he has now had opened
 24 in front of him by his attorney, which were
 25 only provided the last couple of days.

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1 MR. BRUNI: I would like to join in
 2 that objection.
 3 MR. JOHNSON: I would also join in
 4 that objection on behalf of
 5 Pittsburgh-Corning.
 6 MS. BOZORTH: And just to be clear
 7 to you all, I just opened the notebook to the
 8 pages of his report, because these are my
 9 pages of the report (indicating) --
 10 MR. JOHNSON: Okay.
 11 MS. BOZORTH: -- which you can look
 12 at if you need to.
 13 BY MR. JOHNSON:
 14 Q. Other than the notebook you've referred
 15 to, Doctor, have you been provided any further
 16 information or any other materials regarding this case
 17 since the time you issued your report in January of
 18 1997?
 19 A. Not that I know of right now.
 20 Q. Okay. How did you come to be marked for
 21 identification in this case?
 22 A. I have no idea. People send me
 23 X rays from all over the country to read. Read lots of
 24 'em from your place out there at Seattle. Bremerton
 25 Navy yards out there send me films. Films are sent to

1 me. How they get there, I don't know. I just read
 2 them and send them back.
 3 Q. Have you read films at the request of
 4 the Baron & Budd law firm before?
 5 A. Yes, I have.
 6 Q. Do you have an estimate of approximately
 7 how many films you may have read for the Baron & Budd
 8 law firm in the past?
 9 A. Very few.
 10 Q. Okay. Can you give me some kind of
 11 ballpark sense of what very few would be?
 12 A. In the tens, probably less than a
 13 hundred, although I don't want to be held to that exact
 14 number if you found out I read 110 for them or
 15 something, you know, but they're a very insignificant
 16 part of my work.
 17 Q. Do you know if Mr. [REDACTED] X ray was
 18 something you read in isolation or whether it was one
 19 of a number of other X rays that you read?
 20 A. I'm sorry. I don't know that.
 21 Q. Okay.
 22 A. Sometimes they come one at a time.
 23 Sometime they come hundreds with hundreds in a box. So
 24 I just don't know.
 25 Q. Okay. Do you know where you read Mr.

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1 [redacted] X ray, where you were physically?
 2 A. No, sir, I don't.
 3 Q. Okay. How long does it take you to read
 4 and interpret an X ray on the average?
 5 A. It's hard to say. The negative ones are
 6 read very quickly. Positive ones take longer. You have
 7 to compare them, and, you know, I'm not like a machine.
 8 Sometimes you can read faster than other times, but you
 9 know, I don't know. You want a timeframe, like an hour
 10 a day or week or a second or minute, you know. What do
 11 you want?
 12 Q. If you could give me just an estimate of
 13 how many X rays you would generally expect to read in
 14 an hour.
 15 A. Oh, again, that depends on so many
 16 personal factors. I can't -- I don't know that I can
 17 give you an estimate like that. Like I say, I'm not
 18 like a machine. Sometimes you work faster than others.
 19 Depends on the quality of the film. Some are easy to
 20 read. Negative films are read faster than positive
 21 films.
 22 Q. Can you give me a maximum and minimum so
 23 I know whether it's, like, two or two zillion. Or like
 24 what the parameters are?
 25 A. I think a matter of minutes, you know,

1 couple of minutes, five minutes. You know, minutes.
 2 Q. Do you know who took the X ray that you
 3 reviewed --
 4 A. No, sir.
 5 Q. -- in this case?
 6 A. No, I don't.
 7 Q. In terms of your role, do you consider
 8 yourself to have a doctor/patient relationship with the
 9 people whose X rays you reviewed that are sent to you?
 10 A. Absolutely not. I'm being an expert
 11 witness in their litigation -- potential litigation or
 12 claim for a benefit.
 13 Q. Okay. So from your perspective, your
 14 review purely for litigation purposes, not for
 15 treatment and care; correct?
 16 A. Not for treatment and care. I mean,
 17 they can use it for whatever they want, but my feeling
 18 in this is that we do not have a doctor/patient
 19 relationship, any of those folks. Mr. [redacted] and I do
 20 not have a doctor and patient relationship. We have no
 21 confidentiality; otherwise I wouldn't be here talking
 22 to you -- that I'm providing a service as an expert
 23 witness for whatever cause they want to do.
 24 And I've got a couple of people who
 25 just send me films because they want to know where

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1 they're at. Some fellow in Idaho -- I just finished
 2 reading a film on him the other day. So the answer --
 3 no, there's no doctor/patient relationship, and I
 4 consider it an expert report for whatever purpose they
 5 want to use it for.
 6 Q. Okay. And in the case of someone like
 7 Mr. [redacted] where you're communicating with a law firm,
 8 it's your understanding that you're serving as an
 9 expert witness for the purposes of litigation they're
 10 pursuing; correct?
 11 A. Well, I don't think they go to
 12 litigation, most of them. I think they file somehow
 13 with somebody and settle cases. I don't -- I think
 14 very few go to litigation, considering how many films
 15 I've read and how much we have a chance to meet like
 16 this. So I think they use them for some other purpose
 17 besides litigation.
 18 Q. Let me rephrase.
 19 A. Okay.
 20 Q. It's your understanding that you're
 21 reviewing so that the lawyers can pursue some kind of
 22 claim in connection with it?
 23 A. Yes, sir.
 24 Q. Okay.
 25 A. Or defend the claim -- pursue a claim or

1 defend a claim, because it could be lawyers on either
 2 side of it.
 3 Q. Prior to going through the notebook that
 4 was provided to you, did you have any information at
 5 all regarding any asbestos exposure history that
 6 Mr. [redacted] may have had?
 7 A. Not that I know of, no, sir.
 8 Q. Okay. As you sit here now, do you have
 9 any information regarding any asbestos exposure history
 10 Mr. [redacted] may or may not have had?
 11 A. Other than what it said in this little
 12 booklet, no.
 13 THE WITNESS: And I guess you ruled
 14 this booklet out, so no I don't.
 15 MS. BOZORTH: Well, Mr. Taber
 16 really doesn't have the authority right now
 17 to rule it out.
 18 THE WITNESS: Okay.
 19 MS. BOZORTH: He's placed his
 20 objection. So just focus on the question
 21 that -- Mr. Johnson; is that correct?
 22 MR. JOHNSON: Yes.
 23 MS. BOZORTH: -- is asking you, and
 24 just do your best answer.
 25 THE WITNESS: Okay.

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1 MS. BOZORTH: You don't have to
 2 worry about that right now. He's preserving
 3 that to deal with later.
 4 THE WITNESS: Okay. Please repeat
 5 that one more time.
 6 MR. TABER: So we're clear, we have
 7 made the objection. Just to be careful, we
 8 will not waive any of those objections. We
 9 will ask the doctor what he knows about all
 10 that he knows about all that he's reviewed
 11 only to protect our rights. However, we've
 12 retained an objection, and we presume we'll
 13 be given a continuing objection pertaining to
 14 any new records he's received. Agreed?
 15 MS. BOZORTH: I'm just going to
 16 place my objection to that objection to the
 17 extent you want to have to have your cake and
 18 eat it too.
 19 BY MR. JOHNSON:
 20 Q. Subject to and without waiving the
 21 objection, Doctor, what information do you have as you
 22 sit here regarding the asbestos exposure history on the
 23 part of Mr. [REDACTED]?
 24 A. Just what's in this booklet that I
 25 received yesterday. I think FedEx brought it.

1 Q. And what information did you get from
 2 the booklet? Feel free to summarize.
 3 A. I don't know. I have to look at that
 4 time. Armco Steel I think or something.
 5 Q. Subject to and without waiving the
 6 objection -- we're apparently going to proceed that
 7 way --
 8 A. I think here it's Armco Steel as a crane
 9 operator. I guess it's Armco Steel '51 to '91, crane
 10 operator '51 to '91, labor reserve '51 and '52, and
 11 furnace worker.
 12 Q. And what's the tab under which you're
 13 looking for that information?
 14 A. Background sheet.
 15 Q. Okay. As of the time you issued your
 16 January, 1997, report, what information if any did you
 17 have regarding any smoking history on the part of Mr.
 18 [REDACTED]?
 19 A. As far as I know, none.
 20 Q. Okay. Subject to and without waiving
 21 the objection, can you tell me what information if any
 22 you have regarding Mr. [REDACTED] smoking history as you
 23 sit here today?
 24 A. Again, on this background sheet, smoking
 25 history -- '45 to '91, cigarettes one to two packs per

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1 week; from the 1950s to the 1960s, one or two cigars
 2 per month.
 3 Q. Is that the only smoking history you
 4 have ever seen in this case?
 5 A. To the best of my knowledge at this
 6 time.
 7 Q. As of the time you issued your January,
 8 1997, report, what information if any did you have
 9 regarding a history of exposure to other pathogenic
 10 substances besides asbestos on the part of Mr. [REDACTED]?
 11 A. I'm sorry. Say that again. I didn't
 12 get the first part of it.
 13 Q. Sure. As of the time you issued your
 14 January, 1997, report, what information, if any, did
 15 you have regarding any exposure to other pathogenic
 16 substances besides asbestos on the part of Mr. [REDACTED]?
 17 A. Okay. To the best of my knowledge, I
 18 had no information about this person at all.
 19 Q. Okay. Again without waiving and subject
 20 to the objection, do you have any information today
 21 that he had a history of exposure to other pathogenic
 22 substances besides asbestos?
 23 A. Well, you have to understand, I just
 24 kind of quickly thumbed through this thing, and I think
 25 there's something in here about having radiation

1 therapy for a cancer of the left upper lobe of the
 2 lung, I believe, and there may be something in here
 3 about him having a pneumonia some time. But you know,
 4 I'm not really up on this booklet. I just thumbed
 5 through it quickly last night.
 6 Q. Without waiving and subject to the
 7 objection, do you feel sufficiently familiar with
 8 whatever materials you've looked at to render the
 9 opinions you've been asked to render in this case?
 10 MS. BOZORTH: Counsel, I'm just
 11 going to object to the question's being
 12 ambiguous, because he has already rendered
 13 opinions in this case that were rendered
 14 prior to the notebook coming into play. So
 15 that's the basis of my objection. I think
 16 it's --
 17 MR. JOHNSON: Noted.
 18 MS. BOZORTH: Can you repeat the
 19 question, please or read it back, please?
 20 MR. JOHNSON: Go ahead and read it
 21 back.
 22 (The court reporter read the last
 23 question.)
 24 MS. BOZORTH: And I'm going to
 25 object as being misleading, because he has

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1 already rendered his opinion.

2 MR. JOHNSON: Okay. Fine.

3 A. Well, I'm not quite sure what you want
4 here, but I think that when I read this X ray, in all
5 probability, I had no information about this man at
6 all. If I had it, I would not have looked at it. I
7 try to read the films without any type of history. So
8 at that time I had no history.

9 And I feel comfortable in giving my
10 opinion on the basis of this July, '97 -- or pardon me,
11 July, '96, X ray that I read in '97. Now, this booklet
12 of information -- if you're asking me about that, I
13 just read through this so quickly that I'm not ready to
14 be authoritative on anything I read in there last
15 night.

16 Q. Okay.

17 A. If you want to take specific points out
18 of this, I'll be glad to look at those and try to
19 consider --

20 Q. Let me ask this question and see if it
21 clarifies it: Have you been asked to render any
22 further or new opinions in this case regarding
23 Mr. [REDACTED] besides those expressed in your January,
24 1997, report?

25 MS. BOZORTH: I'm just going to

1 place an objection as asked and answered, but
2 you can go ahead and answer that.

3 A. No.

4 Q. Okay. That's fine then. Are you
5 currently certified as a B-reader?

6 A. Yes, sir. I think the last B-reader
7 test I passed was, oh, in like around September of '97,
8 something like that.

9 Q. How many times overall have you
10 recertified as a B-reader?

11 A. Four times. Oh, well, I passed the
12 B-reader four times. The first time was certification.

13 Q. Okay.

14 A. '85 was the first time I took it, and
15 I've had it since then.

16 Q. Have you at any time, in attempting to
17 recertify, failed the B-reader exam?

18 A. On my first recertification, I failed
19 the recert, and then you can just take the certify
20 [sic], which I did and passed that.

21 Q. On any other occasions, have you failed
22 the B-reader exam?

23 A. Way back when this -- do you know the
24 history of the B-reader? First B-readers were people
25 that worked for C-readers, so it was not open to the

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1 general doctor population. Sometime in the late '70s,
2 this was changed, and they were -- they set up this
3 B-reader exam. And people -- doctors who thought they
4 wanted to could go and become a -- I was under contract
5 with various institutions at that time and because of
6 some kind of inclement weather, something, a lot of
7 people didn't show up so I had time off.

8 So I drove down to Morgantown which
9 was very close to where I worked, took the exam, and
10 flunked it. That was sometime in the '70s. It didn't
11 mean anything to me then. So I then went back and took
12 it again until about 1985. They were having a course
13 and examination on Kahawai [phonetic] Island, and I
14 just wanted to go see Kahawai Island, so I went down
15 there and took the course, took the exam, and passed
16 it, and four years later again, and then four years,
17 four years. No, this is the fourth time I've done it,
18 yeah.

19 Q. Okay. Just to make sure I understand
20 everything --

21 A. Okay.

22 Q. -- other than what we've now covered,
23 have you ever failed to pass the B-reader exam?

24 A. No, sir.

25 Q. Okay. Do you have your report in front

1 of you?

2 A. Yes, sir.

3 Q. If we could turn first to what you
4 referred to as, I think, the narrative page of the
5 report.

6 A. Okay.

7 Q. Hang on for just a second. On the face
8 of the report, there is printed the entry "per RH." I
9 think I know, but can you tell me what "per RH" means?

10 A. No, sir.

11 Q. Okay. Do you know whose handwriting
12 that is?

13 A. No, sir.

14 Q. Do you recognize it to be the writing of
15 anybody in your office or anybody that you customarily
16 work with?

17 A. It is not.

18 Q. Okay. Under the section marked chest
19 dated 7/8/96, it says this is a quality three
20 overexposed film. Could you first of all describe what
21 a quality three overexposed film is, what that
22 indicates about the film?

23 A. Well, if you turn to the ILO report,
24 you'll see in the second line there, 1B is film
25 quality. And you have four choices. Quality one is a

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1 film you think is a good quality film and that you read
2 it. Quality two means there are some things that you
3 feel are not proper on the film, but it will not
4 interfere with your reading.

5 Quality three means that there are
6 some things wrong with it, but you'll try to read it
7 the best you can. And of course the last category is
8 unreadable.

9 Q. Okay. Do you recall what specifically
10 was wrong with the film in Mr. [redacted] case that
11 caused you to describe it as a quality three film?

12 A. Well, immediately -- it's still part of
13 1B, immediately next to it, if the film is not a
14 quality one, you have to put down the reason, and in my
15 opinion at that time, I thought the film was
16 overexposed.

17 Q. Do you use any different technique or
18 procedure to read a quality three overexposed film than
19 you would for another, say a quality one X ray?

20 A. Well, you may have to use a bright light
21 probably. That's the only thing I might do
22 differently.

23 Q. Could you describe what that involves?
24 If he were watching a videotape of you doing that
25 technique, what does it involve?

1 A. Just putting a film before a locally
2 bright -- a small, bright light as opposed to on the
3 view box, so it gives more illumination to try to see
4 through the overexposure, basically.

5 Q. Are overexposed X rays darker or lighter
6 than properly-exposed X rays?

7 A. Darker.

8 Q. Okay. And what effect does that have on
9 the reader's ability to see interstitial densities?

10 A. Impairs it. It's hard to see it. In
11 fact, kiddingly, you can say the way to cure asbestosis
12 is take a black film. It's harder to see the
13 interstitial fibrosis.

14 Q. Now, skipping down to impression for a
15 moment on this first page again.

16 A. Yes, sir.

17 Q. You write one, "consistent with
18 asbestosis," and on your B-reader form, down under 4C,
19 "other comments," you checked the box that's marked
20 "consistent with asbestosis."

21 A. Yes, sir.

22 Q. Just so it's clear, when you indicate
23 "consistent with asbestosis," you are not indicating a
24 diagnosis by you of the disease asbestosis; correct?

25 A. Correct.

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1 Q. Okay. You're just indicating that what
2 you see on the X ray is consistent with such a
3 diagnosis?

4 A. Correct.

5 Q. Both on the B-reader form and on the
6 narrative form, you indicate that you saw interstitial
7 densities of a profusion 1/0; correct?

8 A. Yeah. Usually they use the word
9 opacities, but I suppose you could use densities.

10 Q. Okay.

11 A. See if you see in 2B there, it says
12 small opacity. That's a commonly-used word.

13 Q. I'm happy with either one.

14 A. Okay.

15 Q. And under the ILO system as I understand
16 that, one -- what that indicates is that in your
17 opinion you thought that these opacities were at level
18 one, but you seriously considered level zero?

19 A. Well, you know, there have been several
20 modifications, and I think we're currently working
21 under the 1980 modification. And under that one, I
22 think what you're saying is the way it was in the '76
23 modification. In the 1980, I think you're supposed to
24 totally compare them to the standards.
25 So if you have a film that you feel

1 matches of the 1/1 standard X ray, then you call it a
2 1/1. There are definite opacities present, but to a
3 lesser degree than the 1/1 standard, then you say 1/0.
4 So that the 1/1, the 2/2 are, like, right here, that's
5 it. Then the -- the zero -- the in-between categories
6 are kind of like a continuum.

7 A 1/0 means that I feel there was
8 something definitely present, but it's less than 1/1
9 standard, so I call it 1/0. If it starts to be more,
10 but less than 2/2 standard, again we have kind of like
11 a continuum. Like I say, 1/2 or 2/1, you know, that
12 kind of thing.

13 Q. So what you're telling me is that under
14 the 1980 standards, 1/0 is now an intermediate rating
15 between 0/1 and 1/1?

16 A. Correct.

17 Q. You also note on the narrative report
18 "rule out cancer left upper zone and left mid zone and
19 also the left hilum. This is very suspicious." You
20 see that reference?

21 A. Yes, sir.

22 Q. And on the B-reader form, under 4A, you
23 mark "yes" under "any other abnormalities"; correct?

24 A. Yes, sir.

25 Q. And under 4B, you checked two boxes

*** Notes ***

1 under "other symbols." Could you tell me which two
2 boxes you checked and what's the significance of those
3 two boxes?

4 A. "CA" means you think there might be a
5 cancer there or you have some reason to believe a
6 cancer could be present, and "HT" means that you think
7 there's some abnormality in the hilum.

8 Q. Okay. In lay terms, looking at a
9 picture or diagram of the lung, where is the hilum
10 located?

11 A. It's the -- where the vessels are coming
12 out of the heart where the bronchus is split, coming
13 out of -- sort of -- maybe like you could say in the
14 center. But again, the hilum is the hilum, and --

15 Q. I understand.

16 A. -- you know, it's like asking you to
17 describe some legal term like a torte or something in
18 lay language. The hilum's the hilum.

19 Q. Now, you have a written entry on the
20 B-reader form in box 4B where it says "specify." Could
21 you read what you wrote there and explain the
22 significance of it, please?

23 A. "R-O-C-A-L-U, hyphen, L-M-Z and hilum
24 very suspicious." And "rule out cancer of the left
25 upper zone to the left mid zone, and left hilum is very

1 suspicious," meaning, I think, in all probability this
2 is not just -- could be a cancer; this is a cancer.
3 And then I put -- the original ILO form, I suppose --
4 it has in it "patient's physician notified."

5 Well, this individual is not a
6 patient, and I have no way of knowing his physician,
7 and the only contact person I apparently had in this
8 was the attorney to whom we sent the films back. So I
9 crossed out "personal physician" and put "attorney
10 notified on 1/16/97."

11 And any of the people for whom I
12 read films understand that when I put this in and check
13 this thing down below -- see where it says, "see
14 worker -- see personal physician for any comments" --
15 if I check yes, it's the attorney's obligation to -- or
16 if I'm reading for a government agency or something,
17 it's their obligation to contact the individual and
18 tell him he should go see his doctor, basically.

19 Q. Up until the time you got this notebook
20 a few days ago from plaintiffs' counsel, did you know
21 whether or not Mr. [REDACTED] had ever gone to see a doctor
22 in connection with the finding that you made?

23 A. No, sir.

24 Q. Okay.

25 A. Well, not to the best of my knowledge.

*** Notes ***

1 Q. Up until the time you got this notebook,
2 did you know if Mr. [REDACTED] had ever in fact been
3 diagnosed with cancer?

4 A. Not to the best of my knowledge.

5 Q. Okay. And up until the time you got
6 this notebook, did you know whether Mr. [REDACTED] was
7 still living or not?

8 A. Not to the best of my knowledge, no.

9 Q. It is correct, is it not, that the
10 finding that you saw, if indeed it was cancer, is as a
11 potentially life-threatening condition?

12 A. I think anybody living in the United
13 States knows that lung cancer kills people.

14 Q. Okay. And it is also correct, is it
15 not, that lung cancer is a potentially treatable cancer
16 with radiation or chemotherapy or other treatment
17 regimens?

18 MS. BOZORTH: I'm just going to
19 object to the extent that's not in his area
20 of expertise.

21 MR. JOHNSON: That's fine.

22 THE WITNESS: Can we go off the
23 record for a minute?

24 MR. JOHNSON: Sure.
25 (There was an off-the-record

1 discussion.)

2 A. If indeed it involves a hilum here, I
3 think it's no longer a curable disease.

4 BY MR. JOHNSON:

5 Q. In general, you would agree though that
6 lung cancer may in some cases be treatable through
7 various treatment regimens?

8 MS. BOZORTH: Same objection as
9 before.

10 A. You put in "in some cases." Yeah,
11 there's always -- and through these things
12 (indicating), I have found small nodules which were
13 resected and appear to be cured. It is not a very
14 treatable cancer in general.

15 Q. Up until the time you received the
16 notebook, did you know whether there had ever been any
17 effort to treat Mr. [REDACTED] for any cancer?

18 A. Not to the best of my knowledge, no.

19 Q. Now, the three boxes on your B-reader
20 report that say "no asbestosis, consistent with
21 asbestosis, consistent with asbestos-related disease"
22 -- those three boxes are not normally part of the ILO
23 B-reader form; is that correct?

24 A. In 4C, you can write anything you want
25 to write in there --

*** Notes ***

1 Q. Understood.
 2 A. -- anything you feel -- okay. And this
 3 is a form that we use when we're doing work with
 4 lawyers' -- lawyers' offices as a rule. It may slip
 5 out into government agencies or into other places too,
 6 but usually we use this with the lawyers, because
 7 generally nonlegal persons are reviewing these.
 8 Clerical-type people, it's my
 9 understanding, review these, and they just need a way
 10 of quickly triaging cases that they may want to do more
 11 work on as opposed to those that they do not wish to do
 12 more work on. So this is something that we added at
 13 the request of some attorneys, to help their office
 14 personnel.
 15 Q. Okay. Do you recall which attorneys
 16 requested that?
 17 A. I think it was -- Wilson and Bailey in
 18 Weston, West Virginia, were the first ones who asked us
 19 to put some comment in there.
 20 Q. Okay.
 21 A. And we figured this would be a quick,
 22 easy way to do it. Subsequently we've been asked to
 23 not put that in, and they wanted occupational
 24 pneumoconiosis or nothing. And they also changed the
 25 thing there where "date the patient's physician" --

*** Notes ***

1 rewritten them to "date the attorney notified" to the
 2 lawyers. So I don't have to cross that out every time.
 3 Q. The signature on the form, is that a
 4 stamp, or is that an original signature? I understand
 5 we're looking at copies, but --
 6 A. Yeah.
 7 Q. -- did you sign -- if I was looking at
 8 the original, would that be a stamp, or would that be
 9 an original signature?
 10 MS. BOZORTH: If you could tell,
 11 please tell, but you don't have to guess if
 12 you're not sure.
 13 A. I don't know right now.
 14 Q. Do you ever use a stamp to put a
 15 signature on forms or use a photocopy with a signature
 16 already on it?
 17 A. Yes, we do sometimes.
 18 Q. Is there a reason why?
 19 A. Just to make it go faster. If -- if I'm
 20 not around when the secretary types the thing, you
 21 know, it just saves time I guess, basically, although
 22 some attorneys have asked that we don't do that, and we
 23 hand-sign them. You know, we do whatever they ask,
 24 basically.
 25 Q. And just so it's clear, as of the time

1 you issued your January, 1997, report, you personally
 2 had not made a diagnosis of asbestosis in this case;
 3 correct?
 4 MS. BOZORTH: Objection. Asked and
 5 answered. Well, could you read back the
 6 question or you repeat it, whichever is
 7 easier?
 8 MR. JOHNSON: I'm happy to repeat
 9 it.
 10 MS. BOZORTH: Okay. Please.
 11 BY MR. JOHNSON:
 12 Q. As of the time you issued your January,
 13 1997, report, you had not made a diagnosis of
 14 asbestosis in this case; isn't that correct?
 15 MS. BOZORTH: I'm going to object
 16 as confusing, and asked and answered.
 17 Doctor, if at any time you don't totally
 18 understand his question just let him know
 19 that. If you do understand, just please go
 20 ahead.
 21 A. What are you including in the word
 22 "diagnosis" there?
 23 Q. Let me rephrase it. Is it confusing to
 24 you as phrased?
 25 A. No. I just want to make sure that

*** Notes ***

1 you're not trapping me into ruling something out or in
 2 or something that I'm not quite aware of, so tell me
 3 what you mean by "diagnosis."
 4 Q. Let me try and clarify.
 5 A. Okay.
 6 Q. As of the time you issued your January,
 7 1997, report, with regard to the presence or absence of
 8 asbestosis in this patient, the only conclusion you had
 9 reached and stated was that his X-ray findings were
 10 consistent with asbestosis; is that correct?
 11 A. Right.
 12 Q. Okay. And other than that, you had not
 13 reached a separate diagnosis of the disease asbestosis
 14 in this patient; correct?
 15 MS. BOZORTH: Objection. Asked and
 16 answered.
 17 A. Correct.
 18 Q. Okay. Doctor, if I were to ask you to
 19 assume that a patient had a 40 to 140 pack year smoking
 20 history, in your opinion, would that be a sufficient
 21 smoking history to cause a lung cancer in the absence
 22 of any asbestos exposure?
 23 A. Yes, sir.
 24 Q. Okay. When was -- let me rephrase it.
 25 Have you seen Mr. [REDACTED] July, 1996, X ray since the

1 time you issued your report?
 2 A. Not to the best of my knowledge.
 3 MS. BOZORTH: Off the record.
 4 (There was an off-the-record
 5 discussion.)
 6 BY MR. JOHNSON:
 7 Q. Do you have any present recollection of
 8 anything about that X ray other than what's set forth
 9 in your report?
 10 A. No, sir.
 11 Q. Are you acquainted with any medical
 12 literature that links cigarette smoking in and of
 13 itself to findings of small, irregular opacities on
 14 chest X ray?
 15 A. I'm not sure what you mean by
 16 "acquainted." I know that there is literature that
 17 says that.
 18 Q. Do you have an opinion one way or
 19 another as to the quality of that literature?
 20 A. I think that wherever there's as much
 21 money involved as there is in the cigarette industry
 22 and these various large industries, that it's hard to
 23 know what the literature really means. And so in my
 24 opinion from seeing, you know, lots of people, I think
 25 that the primary insult from cigarette smoke is an

1 obstructive one, whereas the insult from the asbestos
 2 exposure or silicosis or any -- some of these
 3 industrial dusts that I've had experience with is more
 4 of a fibrotic one.
 5 Q. Apart from what you just said, do you
 6 have an opinion as to whether cigarette smoking by
 7 itself can be a cause of irregular interstitial
 8 opacities on chest X ray?
 9 MS. BOZORTH: I'm going to object
 10 as asked and answered. He just gave his
 11 answer on that exact question.
 12 A. Well, there's some cigarettes where they
 13 use asbestos filters, I think, so if you're smoking one
 14 of those, then you could get the interstitial fibrosis.
 15 Q. Other than that, do you think there's
 16 any link?
 17 A. My opinion?
 18 MS. BOZORTH: Objection. Asked and
 19 answered.
 20 Q. Yes.
 21 A. No.
 22 Q. Is there any particular medical
 23 literature that you would point to outside of your own
 24 experience to support the proposition that cigarette
 25 smoking does not cause small, irregular opacities on

*** Notes ***

1 chest X ray?
 2 A. I don't believe I could quote you an
 3 article now.
 4 Q. Dr. Harron, approximately how long have
 5 you been reviewing cases at the request of plaintiffs'
 6 counsel in the asbestos litigation?
 7 MS. BOZORTH: Could you clarify
 8 what you mean by "plaintiffs' counsel"?
 9 Q. Lawyers representing claimants in civil
 10 trials in the asbestos litigation.
 11 MS. BOZORTH: I was just trying to
 12 clarify whether you're talking about Baron &
 13 Budd only, but you refined that.
 14 MR. JOHNSON: No. I'm meaning all
 15 plaintiffs' lawyers.
 16 A. You're confining this to just asbestos
 17 or all pneumoconioses?
 18 BY MR. JOHNSON:
 19 Q. Asbestos.
 20 A. Just asbestos. I don't know that I can
 21 answer that. I can tell you when I started classifying
 22 films, but I've classified for some many different
 23 people that I don't know just when this started to
 24 become a plaintiff's legal thing. And frequently --
 25 and sometimes I don't know for whom the lawyers are

1 working with, if they're plaintiffs or defense. They
 2 just send me X rays, and I don't know which side of the
 3 fence they're on. I don't know.
 4 Q. Can you give me a ballpark date or a
 5 best estimate as to when you first started reviewing X
 6 rays for plaintiffs' lawyers in the asbestos
 7 litigation?
 8 MS. BOZORTH: Objection. Asked and
 9 answered.
 10 A. Yeah. I don't know how hard you're
 11 going to try to hold me to this. Right now I'm
 12 thinking that probably sometime in the early '80s for
 13 this firm in Weston, West Virginia. They started
 14 sending a lot of these down. But again, I'm just
 15 guessing here. I don't -- I don't really keep track of
 16 that.
 17 Q. Okay.
 18 MS. BOZORTH: And Doctor, I'll just
 19 remind you, you don't have to guess.
 20 THE WITNESS: Okay.
 21 MS. BOZORTH: If you can give a
 22 reasonable approximation, please do, but I
 23 don't think anybody wants you to guess here
 24 today.
 25 A. I'm sorry. Then I'll take that back.

*** Notes ***

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1 The answer is no, I can't tell you that.
 2 BY MR. JOHNSON:
 3 Q. Just to clarify my questions, when I ask
 4 for a ballpark estimate or best estimate, I'm assuming
 5 only that you have a better idea than I do when I have
 6 no idea at all. So I'm just trying to elicit whatever
 7 you can tell me on the subject. If I'm asking for a
 8 ballpark estimate, I mean it to be clear that I
 9 understand you've already told me you can't remember
 10 the exact date. But I am entitled to find out at least
 11 as much as you can tell me about it, so that's what I
 12 mean to ask.
 13 A. Okay. Then I'll have to add to that
 14 that I don't want any other lawyers not present here
 15 but later on in other trials to pull out one sentence
 16 out of context here and quote it. All attorneys are
 17 not as nice as you three, and I've had -- when I try to
 18 do something like you're asking now and we seem to be
 19 all in good spirits, later on it comes up taken, you
 20 know, a few words out of context, and trying to make a
 21 big deal out of it, you know. So if they're going to
 22 use this answer, they got to use all this stuff that's
 23 recorded relative to this, okay?
 24 MS. BOZORTH: I think he's
 25 saying -- and Counsel, correct me if I'm

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1 wrong, but I think he's saying -- when he's
 2 talking about a ballpark estimate, he's
 3 saying something other than a guess. If
 4 that's not something more than a guess, let
 5 him know.
 6 THE WITNESS: Okay.
 7 MS. BOZORTH: That's all. Maybe I
 8 didn't say that right. You'll clarify, I'm
 9 sure.
 10 MR. JOHNSON: Let me ask a
 11 different question instead.
 12 BY MR. JOHNSON:
 13 Q. Doctor, do you have an estimate, any
 14 kind of estimate as to how many cases you have reviewed
 15 X rays in the asbestos litigation?
 16 A. No.
 17 Q. Can you give me an idea of whether it's
 18 dozens or hundreds or thousands or something else?
 19 A. Hundreds of thousands probably.
 20 You mean classified under this ILO system?
 21 Q. Yes.
 22 A. Oh, I probably classified over the years
 23 somewhere between six and seven hundred thousand cases.
 24 I first started doing this in '61.
 25 Q. And do you have again any ballpark

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1 estimate as to what percentage or how many or what
 2 number out of those six hundred or seven hundred
 3 thousand cases would have been associated with
 4 litigation or claims made by plaintiffs' lawyers?
 5 MS. BOZORTH: I'm going to object
 6 as compound.
 7 A. No, sir, I don't.
 8 MS. BOZORTH: Because I think -- I
 9 would ask that you --
 10 MR. JOHNSON: Just to clarify,
 11 although I don't want to get too bogged down
 12 in semantics, the doctor earlier had some
 13 confusion over my use of the word
 14 "litigation." So I wanted to include both
 15 what he understands to be claims and what he
 16 understands to be litigation, because it was
 17 my impression from his earlier answer that he
 18 was associating litigation with trials.
 19 MS. BOZORTH: Okay. And it wasn't
 20 clear to me from your question whether you
 21 were talking about anything related to
 22 plaintiff or defense work or just plaintiffs'
 23 work.
 24 MR. JOHNSON: I meant it to be
 25 plaintiffs and having had that conversation.

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1 I will quickly rephrase it.
 2 MS. BOZORTH: Thank you.
 3 BY MR. JOHNSON:
 4 Q. Doctor, can you give me your best
 5 estimate as to what percentage or how many of these six
 6 hundred to seven hundred thousand B-reading
 7 examinations that you have done were associated with
 8 work for plaintiffs' lawyers pursuing some claims or
 9 civil litigation?
 10 A. No, I can't. Sorry.
 11 Q. Can you tell me whether in your
 12 estimation it would have been more or less than half?
 13 A. Probably less than half, because, you
 14 know, initially everybody was interested in coal
 15 workers' pneumoconiosis, and then later the silicosis
 16 and then the asbestosis, but it doesn't matter to me
 17 what the people are interested in. I just have to read
 18 the film the best I can and render my opinion.
 19 As I was telling Ms. Susan here
 20 earlier, we picked up a case of berylliosis through
 21 this classification system so that you're classifying
 22 abnormalities on an X ray. It doesn't necessarily mean
 23 they're due to one particular substance or another.
 24 MS. BOZORTH: Doctor, I think he's
 25 just asking --

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1 MR. TABER: Don't interrupt him.
 2 MS. BOZORTH: I think he's asking
 3 about these claims.
 4 A. The answer is no, I don't know how many.
 5 It's been -- the answer's no, okay?
 6 MS. BOZORTH: If I was mistaken and
 7 you were asking him about the world of cases,
 8 he's evaluated versus asbestos, then I was
 9 wrong, but I believe that's unclear at this
 10 point in the record.
 11 MR. JOHNSON: I realize that I'm
 12 being unbelievably subtle and tricky today.
 13 MS. BOZORTH: I'm not trying to say
 14 that, Counsel.
 15 MR. JOHNSON: It's fine. It's
 16 fine. It's not important.
 17 MS. BOZORTH: Let the record
 18 reflect everyone is smiling at this point.
 19 BY MR. JOHNSON:
 20 Q. Do you know whether or not you have
 21 reviewed cases of other persons who were employed at
 22 the Armco Steel plant in Ohio?
 23 A. Right now I don't know.
 24 Q. Okay. I assume you don't based on your
 25 earlier answer, but for the record, do you know or have

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1 any information how it is that Baron & Budd came to
 2 select you as opposed to some other B-reader in this
 3 case?
 4 A. I have no idea.
 5 MR. JOHNSON: If we could go off
 6 the record for just a second, I don't believe
 7 I have any other further questions at this
 8 time, but I'd like to at least glance through
 9 the notebook to make sure there's nothing in
 10 there I don't know about.
 11 (There was a brief recess.)
 12 BY MR. JOHNSON:
 13 Q. Let me ask a couple of quick questions,
 14 and I think I'm done, subject to whatever anybody else
 15 asks. Doctor, do you have an estimate as to how much
 16 income you have derived over the years in connection
 17 with doing B-readings or expert consultations in the
 18 asbestos litigation?
 19 A. No, sir.
 20 Q. Can you give me a ballpark estimate so
 21 if I know -- I can know whether it's more than five
 22 dollars, more than five hundred dollars, more than five
 23 zillion dollars?
 24 A. It's more than five hundred and less
 25 than five zillion.

*** Notes ***

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1 Q. Okay. Can you please give me whatever
 2 ballpark estimate you can give me in terms of how much
 3 income you have derived?
 4 A. No, no, I couldn't.
 5 Q. Is it your testimony you have no idea
 6 whatever as to how much income you've derived in giving
 7 B-reads and expert consultation in connection with the
 8 asbestos litigation?
 9 A. Yes, sir.
 10 Q. Okay. Consistent with that, could it
 11 have been more than ten million dollars?
 12 MS. BOZORTH: Objection. Calls for
 13 speculation.
 14 A. No.
 15 Q. Okay. Could it have been more than five
 16 million dollars?
 17 MS. BOZORTH: Same objection.
 18 A. I doubt it.
 19 Q. Could it have been more than three
 20 million dollars.
 21 A. Over a lifetime? Well, again, your
 22 question was very specific. You said "asbestos
 23 litigation."
 24 Q. That's my specific question.
 25 A. I doubt it, but I don't know.

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1 Q. Is it more than a million
 2 dollars -- or let me rephrase it. Could it be more
 3 than a million dollars?
 4 MS. BOZORTH: Objection.
 5 A. It could be, yes, over a lifetime now,
 6 professional lifetime.
 7 Q. Can you give me an estimate in any one
 8 year as to how much the most income you received in a
 9 year through expert consulting in connection with the
 10 asbestos litigation was?
 11 A. No, I don't think so. Not right now
 12 anyway.
 13 Q. Do you know --
 14 A. I mean, I'm sure -- no, I can't.
 15 Q. Do you know that if -- do you know if
 16 you have ever received more than three hundred thousand
 17 dollars in income in any one year through the providing
 18 of consulting services in connection with the asbestos
 19 litigation?
 20 MS. BOZORTH: Objection. Asked and
 21 answered.
 22 A. I don't know. Now, this is gross income
 23 --
 24 Q. Yes.
 25 A. -- not net income.

*** Notes ***

1 Q. Gross income.
 2 A. Probably, but I'm not sure. Yeah, I
 3 would say probably, yes.
 4 Q. If you wanted to figure out how much
 5 income you had received year by year through providing
 6 consulting services in connection with the asbestos
 7 litigation, how would you go about doing that?
 8 A. I don't think I could do it.
 9 Q. Why not?
 10 A. Well, because I don't know what's going
 11 through to asbestos litigation. You know, I'm just
 12 asked to read films, and I don't know where it's going
 13 when I read them.
 14 Q. Okay.
 15 A. My fees have changed over the years. I
 16 started out reading these for, I think, \$1.99, and now
 17 I think with the narrative we're charging \$20, and so,
 18 you know, and I don't know when the fees went up. So I
 19 don't think I could figure that out.
 20 Q. What records if any have you maintained
 21 regarding the work you've done in connection with
 22 litigation and doing B-reader examinations and
 23 providing expert consultation?
 24 A. I personally have not maintained any.
 25 My secretary knows whom she bills, but again, we don't

1 always know it's for asbestos.
 2 Q. Okay. Does your office maintain any
 3 kind of records as to what services are performed and
 4 what fees or monies are received in connection with
 5 providing services in a case such as in this?
 6 A. She would know, or I assume she would be
 7 able to resurrect, a copy of the bill that was sent to
 8 Ms. Susan's company relative to this reading.
 9 Q. Okay. Okay. And would that paperwork,
 10 to the extent she has it, be in your offices in West
 11 Virginia?
 12 A. Ycs.
 13 Q. Okay. Has anyone subpoenaed or --
 14 A. Pardon me. It probably would not be,
 15 saying that on Mr. --
 16 THE WITNESS: What's his name?
 17 MS. BOZORTH: [REDACTED]
 18 A. -- on Mr. [REDACTED] that we charged two
 19 dollars or ten dollars or whatever. I think we were
 20 charging ten back then, but I'm not sure. It would say
 21 for Baron & Budd, so many cases -- you know, assuming
 22 they sent a bunch of cases, such and such overall bill,
 23 you know that type of thing.
 24 Q. Has anybody subpoenaed or requested the
 25 production of those records at any time, the records

*** Notes ***

1 that contain the financial information about what
 2 services you performed and how much income was
 3 received?
 4 A. I'm not sure whether they have or not.
 5 We had a lot of records subpoenaed by some group in New
 6 Orleans there, and some few years back, but I don't
 7 know whether they got financial records or just
 8 so-called, quote, medical records relative to the
 9 asbestos. I'm not sure just what all they took. We
 10 just gave 'em whatever they wanted.
 11 Q. When was the last time you recall going
 12 through any kind of document production in connection
 13 with the asbestos litigation?
 14 A. For the asbestos litigation?
 15 Q. Yes, asbestos litigation.
 16 A. What do you mean "document"?
 17 Q. Where somebody subpoenaed or requested
 18 records from you and you had to go through the process
 19 of having somebody pull the records and produce them.
 20 A. Oh, God, that comes in daily by the arm
 21 loads, you know. They're always asking for our records
 22 on so and so, you know.
 23 Q. Okay.
 24 A. Most of the time, we don't have them,
 25 'cause we don't maintain any records. This film was

1 read, I'm sure, and the material all sent back to Baron
 2 & Budd, and we have no other record other than on such
 3 and such a date Baron & Bill -- Baron & Budd was billed
 4 so much for so many cases, something of that effect.
 5 Q. Is there a reason you don't maintain any
 6 records on these?
 7 A. These are not patients. These are not a
 8 medical record. If they were patients, that would be
 9 different. We would have a record.
 10 MR. JOHNSON: Okay. I have no
 11 further questions at this time, subject to
 12 whatever anybody else has.
 13 CROSS EXAMINATION
 14 BY MR. TABER:
 15 Q. Dr. Harron, my name is Ed Taber, and I
 16 represent a couple of defendants in these asbestos
 17 cases. I'm going to confine my questions to general
 18 medical issues a little bit, your background, and Mr.
 19 [REDACTED]'s case.
 20 MS. BOZORTH: Excuse me. Not to be
 21 hypertechical, but are you just representing
 22 one defendant here today?
 23 MR. TABER: I believe that is true
 24 based on the course we went through
 25 yesterday, but I'm not sure the scope of his

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1 identification, so I'm not sure.
2 MS. BOZORTH: Off the record.
3 (There was an off-the-record
4 discussion.)
5 BY MR. JOHNSON:
6 Q. Doctor, just for my own, curiosity,
7 we're in Texas today and your offices are in West
8 Virginia. How is it that we happened to do your depo
9 here?
10 A. Because I'm here.
11 Q. Okay. Are you retired, on vacation or
12 --
13 A. Well, we were on our way to
14 Nevada --
15 Q. Okay.
16 A. -- with some other family members, and
17 my wife and I drove down --
18 Q. Okay.
19 A. -- and some drove up from Houston to --
20 and we all met in Dallas.
21 Q. Okay.
22 A. And my brother had a heart attack in
23 Dallas.
24 Q. I see.
25 A. So that kind of ruined the trip.

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1 Q. I see.
2 A. And we're down here right now. He just
3 had it just over a week now.
4 Q. Okay.
5 A. Not quite knowing what to do next.
6 Q. Okay. I'm sorry to hear about your
7 family.
8 A. Thank you.
9 Q. When were you first contacted by the
10 Baron & Budd firm with regard to Mr. [REDACTED] case?
11 A. I don't know. A few days ago, week ago
12 maybe, something. I don't know what timeframe you
13 want.
14 Q. Okay.
15 A. They didn't contact me. They called my
16 office, and my girls told me.
17 Q. Have you been asked to come to Cleveland
18 to testify at the trial of Mr. [REDACTED] case?
19 A. No.
20 Q. Okay. Have you been asked to come to
21 Cleveland to testify any time in the next few months?
22 A. No.
23 Q. Okay. Have you read chest X rays for
24 any Baron & Budd plaintiffs that worked at Armco other
25 than Mr. [REDACTED]?

*** Notes ***

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1 MS. BOZORTH: I'm just going to
2 object as I believe having been asked and
3 answered previously.
4 A. I don't know.
5 Q. Okay. I'm going to read you a few
6 names, and I want you to tell me if any of them sound
7 familiar to you, i.e., if you know that you've read
8 films for any of these people. Number one is [REDACTED]
9 [REDACTED]
10 A. You're going to read 'em all, or you
11 going to ask me one at a time?
12 Q. There are only about ten names, I'll ask
13 you individually if you know these people or have ever
14 read any films on them to your knowledge.
15 MS. BOZORTH: I'm just going to
16 place an objection to the extent you're
17 asking about other individuals, and he's here
18 for Mr. [REDACTED]
19 MR. TABER: Right.
20 Q. [REDACTED]
21 A. I don't recall.
22 Q. I'm reading you people that all worked
23 at Armco Steel, Middletown, Ohio, for your reference.
24 [REDACTED]
25 A. Don't recall.

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1 Q. [REDACTED]?
2 A. Don't recall.
3 Q. [REDACTED]?
4 A. Don't recall.
5 Q. [REDACTED]?
6 A. Don't recall.
7 Q. [REDACTED]?
8 A. Don't recall.
9 Q. Do you advertise your services as an
10 expert witnesses?
11 A. No, sir.
12 Q. Okay. Have you ever?
13 A. No, sir.
14 Q. Okay. What fields do you hold yourself
15 out to your medical peers as an expert?
16 A. I'm board-certified in radiology and
17 nuclear medicine.
18 Q. Any other fields?
19 A. That's all that I'm board-certified in.
20 Q. Okay. And so it's clear, you do not
21 hold yourself out to your medical peers as an expert in
22 fields other than radiology --
23 MS. BOZORTH: Objection.
24 Q. -- and nuclear medicine?
25 MS. BOZORTH: Objection.

*** Notes ***

1 A. I'm not sure I totally understand your
 2 question. I'm a doctor, you know.
 3 Q. Right.
 4 A. I have some long-time people that I'm
 5 treating for other diseases, non -- you know, long-term
 6 friends and things like that.
 7 Q. Okay. Did you ever do a residency in
 8 anything other than radiology?
 9 A. No.
 10 Q. Okay. Does your letterhead reflect any
 11 specialty other than radiology?
 12 A. No, sir.
 13 Q. Okay.
 14 A. And nuclear medicine.
 15 Q. Okay. Your primary practice is
 16 radiology, correct?
 17 A. Right.
 18 Q. Okay. If one of your medical peers
 19 asked you what you are expert in, would you tell them
 20 anything other than radiology and nuclear medicine?
 21 MS. BOZORTH: Objection.
 22 A. Again, I don't know exactly what you're
 23 driving at or what you're asking me. I mean, you know,
 24 I think I know a lot about medicine --
 25 Q. Okay.

1 A. -- in a lot of different fields
 2 and --
 3 Q. Which field?
 4 A. Just general medicine, you know.
 5 Q. Let me just ask it simply, and you
 6 answer it the best you can. Are you an expert in any
 7 fields other than radiology and nuclear medicine?
 8 A. What field do you want to ask me about?
 9 Q. Well, Doctor, with all due respect, it's
 10 a pretty simple question, and use your definition of
 11 the term "expert" and please answer as best you can.
 12 MS. BOZORTH: I'm going to place
 13 the same objection I did before.
 14 A. I don't know that I can answer that
 15 question, because I'm not sure what you mean by "other
 16 fields." I'm not sure what you mean by "expert." My
 17 license reads I can practice medicine and surgery.
 18 Q. Okay. Do you have advanced training
 19 beyond a one-year rotating internship in any fields
 20 other than radiology and nuclear medicine?
 21 A. No.
 22 MS. BOZORTH: Could you just read
 23 back the previous question for me?
 24 (The court reporter read the last
 25 question.)

*** Notes ***

1 MS. BOZORTH: Thank you.
 2 A. Well, okay. After thinking about that,
 3 I have to retract the answer I gave you and no. What do
 4 you mean by advanced training?
 5 BY MR. TABER:
 6 Q. Well, you're not an expert in oncology;
 7 correct?
 8 A. I did radiation therapy for almost three
 9 decades.
 10 Q. Okay. When did you stop --
 11 A. Now, do you mean -- okay. Go ahead.
 12 Q. When did you stop doing radiation
 13 therapy?
 14 A. 1987.
 15 Q. Okay. What's your current medical
 16 practice broken down by specialty?
 17 A. I'm basically retired. I don't do
 18 medicine anymore.
 19 Q. Okay. Where do you currently live, your
 20 residence?
 21 A. My legal residence?
 22 Q. Right.
 23 A. Farnsworth [phonetic], Texas.
 24 Q. Okay. Do you have an Ohio license?
 25 A. No.

1 Q. Do you have a medical license that's
 2 active in any state?
 3 A. Yes.
 4 Q. Okay. Which state?
 5 A. New York, North Carolina, Florida,
 6 Mississippi, Louisiana, Texas, New Mexico, California,
 7 and West Virginia.
 8 Q. Okay. When did you retire?
 9 A. It's been about a year and a half ago --
 10 Q. Okay.
 11 A. -- two years, something like that. Two
 12 years ago maybe.
 13 Q. Okay. And did you move when you
 14 retired?
 15 A. What do you mean "move"?
 16 Q. Well --
 17 A. I move all the time.
 18 Q. Right. I understand that you used to
 19 practice in West Virginia.
 20 A. I still do.
 21 Q. Okay. How --
 22 A. This type of practice. Not medical
 23 work. I read films --
 24 Q. Okay.
 25 A. -- and do this kind of stuff in West

*** Notes ***

1 Virginia, this --
 2 Q. Okay.
 3 A. -- pneumoconiosis work --
 4 Q. Okay.
 5 A. -- in West Virginia.
 6 Q. You're no longer a practicing physician
 7 since your retirement? Is that what you're saying?
 8 A. I don't take just any medical patient
 9 that comes along.
 10 Q. Okay.
 11 A. I may have some long-term people that
 12 I'll see as a courtesy, don't even bill them or bill
 13 any of their third parties or anything.
 14 Q. Okay. Do you have active privileges to
 15 admit a patient at any hospital?
 16 A. Well, radiologists don't admit patients.
 17 Q. So the answer would be --
 18 A. I do not.
 19 Q. Do you have the ability to write a
 20 medical prescription currently?
 21 A. Yes.
 22 Q. Okay. If you were to see a patient now,
 23 say next week, where would you see them?
 24 A. Depends on where they are.
 25 MS. BOZORTH: Objection.

1 Q. Okay. Do you have a medical office
 2 where you treat patients physically, you see them?
 3 A. I don't see patients anymore.
 4 Q. Okay.
 5 A. Like I said --
 6 Q. Okay.
 7 A. -- you know, I take care of some old
 8 people that are basically friends.
 9 Q. Okay. And this is just done out of
 10 favors, things like that?
 11 A. Courtesy.
 12 Q. Okay.
 13 A. But my licenses are all active.
 14 Q. Okay. It would be fair to say then that
 15 given your retirement, less than half your time is
 16 spent practicing medicine?
 17 MS. BOZORTH: Objection.
 18 Mischaracterizes his previous testimony.
 19 MR. TABER: He said he was retired.
 20 BY MR. TABER:
 21 Q. You can answer.
 22 A. Well, semi, you know. I'm trying to
 23 tell you the best I can, and you're -- I don't know
 24 what you're after here, but I don't take patients
 25 anymore.

*** Notes ***

1 Q. Okay.
 2 A. And basically what I do now relative to
 3 my background is --
 4 Q. Uh-huh.
 5 A. -- just what I've done since
 6 1961 --
 7 Q. Okay.
 8 A. -- is seeing pneumoconiosis time work.
 9 Q. Okay. And since your retirement, you
 10 spend less than half of your time doing that type of
 11 medical work. Is that fair?
 12 MS. BOZORTH: Objection.
 13 A. Yes.
 14 Q. Okay. And do you a lot of what, golf,
 15 things like that?
 16 MS. BOZORTH: Objection.
 17 A. Traveling.
 18 Q. Okay. Do you do any teaching?
 19 A. No, not now.
 20 Q. To clarify what was asked before, when
 21 you read a film like reading Mr. [redacted] film, you
 22 can't diagnosis a patient with asbestosis simply and
 23 solely based on the film alone; is that correct?
 24 MS. BOZORTH: Objection. That's --
 25 Q. You can answer. It's a simple question.

1 MS. BOZORTH: Can you repeat the
 2 question please or reread it?
 3 MR. TABER: I'll reword it.
 4 BY MR. TABER:
 5 Q. Doctor, based on a film alone like the
 6 film read for Mr. [redacted], can you diagnose a patient
 7 with asbestosis in the absence of any other materials?
 8 A. No.
 9 Q. Okay. How many films did you review for
 10 Mr. [redacted]?
 11 A. I have no idea.
 12 MS. BOZORTH: Objection. Asked and
 13 answered.
 14 Q. Okay. Your report only mentions one.
 15 Do you know if there were other films for this patient
 16 that you reviewed?
 17 MS. BOZORTH: Objection. Asked and
 18 answered.
 19 A. I don't know.
 20 Q. Okay. How do you link this ILO report
 21 that's dated July 8th of '96, as the date of the X ray
 22 with Mr. [redacted]? Do you have a copy of the report in
 23 front of you?
 24 A. Right.
 25 Q. How do you relate that to

*** Notes ***

1 Mr. [REDACTED]?
 2 A. His name is on it.
 3 Q. Where?
 4 A. Up in the top left.
 5 Q. Oh, I see. It's cut off of mine.
 6 A. It's handwritten?
 7 MS. BOZORTH: The part where it
 8 says "Worker's Social Security number" is
 9 blank; right.
 10 A. Right.
 11 Q. And the identification number would
 12 typically have an X-ray film number on it, and that's
 13 blank also?
 14 MS. BOZORTH: Would you just
 15 clarify --
 16 A. Where are you talking about?
 17 MS. BOZORTH: -- what you're
 18 referring to?
 19 Q. Top column, right hand, it says
 20 "Identification."
 21 A. No.
 22 Q. What does identification indicate?
 23 A. Oh. That's facility identification.
 24 Q. I see.
 25 A. Facility that took it. When you're

1 doing coal workers' pneumoconiosis.
 2 Q. Uh-huh.
 3 A. It has to be done in a facility that's
 4 passed a certain type of inspection.
 5 Q. Okay.
 6 A. And it's mandatory from the Coal
 7 Workers' Program that you have a NIOSH-approved
 8 facility and you get a five-digit number.
 9 Q. Okay.
 10 A. For example, my number is [REDACTED], easy to
 11 remember.
 12 Q. There a reason why this form is blank as
 13 to that identification?
 14 MS. BOZORTH: Objection.
 15 A. I don't know, you know.
 16 Q. Is there a reason why the Social
 17 Security number is not filled in?
 18 A. I don't know.
 19 Q. Is it typically filled in, the Social
 20 Security number?
 21 A. What does "typically" mean?
 22 Q. Well, you've done hundreds of thousands
 23 of these. Is that typically filled in in the ones you
 24 have done in order to link up the patient with the
 25 read?

*** Notes ***

1 A. They're not patients.
 2 Q. Okay. The claimant with the reading?
 3 A. Frequently they're not.
 4 Q. Okay. Is there a way that you can tell
 5 whether this was a portable AP film or a normal film?
 6 A. What's normal film?
 7 Q. As opposed to portable.
 8 A. What's a normal?
 9 Q. Can you tell if this is a portable?
 10 A. I doubt it. I usually put quality three
 11 positions in portable films, but I don't know at this
 12 point.
 13 Q. Okay.
 14 A. Well, I guess I should ask, "What do you
 15 mean by 'portable'?" That has a very specific meaning
 16 to me as a radiologist. What do you mean by portable.
 17 Q. Right. Typically that would be a
 18 patient on his back or a union screening in a trailer
 19 or something like that, as opposed to a standing view
 20 done in a radiology department at a hospital.
 21 A. I have no way of telling.
 22 Q. All right. Have you had occasion to
 23 participate in union screenings?
 24 A. I read films which I'm sure come from
 25 union screenings.

1 Q. Okay.
 2 A. Well, I'm not sure. I read films that
 3 are sent to me from every different kind of thing that
 4 you can think of.
 5 Q. Okay. You are familiar with the way a
 6 union screening is conducted using chest films?
 7 A. No, sir.
 8 Q. You mentioned that this patient had a
 9 left, upper lobe mass; is that correct?
 10 A. Well, that's what I've written down
 11 here.
 12 Q. Okay.
 13 A. Left upper to left mid zone.
 14 Q. Okay.
 15 A. I don't think -- not lobe, zone.
 16 Q. Okay. What's the difference between
 17 zone and lobe? Well, strike the question. I know the
 18 difference. You mentioned under zones on your ILO
 19 report for Mr. [REDACTED] on the six-block graph, you have
 20 the top two lung zones blank. Is that fair to say,
 21 that you did not see any opacities in the right and
 22 left upper zones of his lungs?
 23 A. I did not see any small opacities
 24 consistent with pneumoconiosis.
 25 Q. Okay. Would it be fair to say then that

*** Notes ***

1 did he not have any, as you say, small opacities in the
 2 area of the tumor that you saw?
 3 A. Wait a minute. Say the question again.
 4 Q. Sure. Would it be fair to conclude that
 5 based on the film you read, Mr. [REDACTED] did not have any
 6 small interstitial opacities in the area where you saw
 7 a mass?
 8 MS. BOZORTH: Objection.
 9 A. No.
 10 THE WITNESS: Go ahead. I'm sorry.
 11 Object.
 12 Q. That would not be correct?
 13 THE WITNESS: Wait. Let her make
 14 her objection.
 15 MS. BOZORTH: I'm just placing an
 16 objection because the form talks about
 17 "consistent with pneumoconiosis," and you're
 18 asking him non-pneumoconiosis questions.
 19 MR. TABER: Okay.
 20 BY MR. TABER:
 21 Q. Can you tell me based on this form
 22 whether he had any small interstitial opacities in the
 23 area where you also saw a suspicious tumor or
 24 suspicious lesion?
 25 MS. BOZORTH: Same objection.

1 A. Well, apparently I didn't see them if
 2 they're there.
 3 Q. Okay.
 4 A. I must not have thought at the time that
 5 there were any up there.
 6 Q. Okay. So then the answer to my question
 7 is that you did not see any small interstitial
 8 opacities in the area where you saw the suspicious
 9 tumor?
 10 MS. BOZORTH: Objection.
 11 Mischaracterizes previous testimony.
 12 MR. TABER: I think that's what he
 13 said.
 14 BY MR. TABER:
 15 Q. But can you answer that question?
 16 A. Say it again.
 17 Q. Sure. I think you just said this, but I
 18 want to be clear: Based on this film and the ILO
 19 report you have, did you not see any small opacities in
 20 the area where you saw the suspicious mass?
 21 MS. BOZORTH: I really do have to
 22 object.
 23 MR. TABER: You have done so.
 24 MS. BOZORTH: He previously talked
 25 about --

*** Notes ***

1 MR. TABER: Wait, wait, wait --
 2 MS. BOZORTH: In response to your
 3 questions, he said "consistent with
 4 pneumoconiosis," and now you're changing and
 5 asking and non-pneumoconiosis questions based
 6 on an ILO form --
 7 BY MR. TABER:
 8 Q. Doctor --
 9 MS. BOZORTH: -- that talked
 10 about --
 11 BY MR. JOHNSON:
 12 Q. Doctor, if I am vague in my question,
 13 will you correct me and ask me to rephrase the
 14 question, Doctor?
 15 A. Why don't I just tell you what I saw?
 16 Q. Thank you. But I want you to answer the
 17 question if you can. If you can't answer it, tell me
 18 that. But the way this works is, you know, you've been
 19 through a depo before. If you can answer the question,
 20 you're under an obligation to do it. Can you answer
 21 that question?
 22 A. My report indicates that I saw no small
 23 opacities consistent with pneumoconiosis in either
 24 upper lung zone.
 25 Q. Right. And as a follow-up to that, the

1 upper lung zone was where you saw the suspicious lesion
 2 as well; correct?
 3 A. Apparently, I thought it was in the
 4 upper and extending to the middle or the mid zone, or
 5 it was in the mid zone extending to the upper zone.
 6 Q. Okay. Did you see any evidence of
 7 emphysema in this patient?
 8 A. I did not indicate that I did.
 9 Q. Okay. If you did, is there a place on
 10 the ILO form where that would be typically noted?
 11 A. That's an obligatory symbol that's
 12 indicated by "EM" --
 13 Q. Okay.
 14 A. -- about halfway through the column.
 15 Q. Okay. Doctor, just a few questions that
 16 pertain to background for reading this film.
 17 Would you agree with me that there are over a hundred
 18 causes for parenchymal fibrosis?
 19 A. Parenchymal fibrosis in all of the lungs
 20 in all areas?
 21 Q. No, just in any area of the lung.
 22 A. Say it again, now.
 23 Q. Would you agree with me that there are
 24 well over one hundred known causes of fibrosis in the
 25 parenchyma, lungs?

*** Notes ***

1 A. There are a lot of causes. I don't know
2 if I ever counted them. I don't know if I can say the
3 hundred part, but there are a number of causes of
4 interstitial fibrosis in all of the lungs.

5 Q. Okay.

6 A. And all types of fibrosis.

7 Q. Right. What other causes could there be
8 for Mr. [REDACTED] fibrosis other than asbestos?

9 MS. BOZORTH: Objection. Calls for
10 speculation.

11 A. So do you want me to guess?

12 Q. Yes.

13 MS. BOZORTH: Well, I'm going to
14 ask that you not guess. If you have some
15 reasonable basis for saying what its cause
16 was -- but if you don't, don't guess.

17 A. Well, you've got irregular opacities in
18 the lower chest.

19 Q. Okay.

20 A. There are a few diseases that cause
21 this. Rheumatoid lung, some of the other collagens
22 like scleroderma.

23 Q. Uh-huh.

24 A. Aspiration.

25 Q. Radiation?

1 A. Radiation to all four lower lung zones?
2 Yeah, it could cause it.

3 Q. Okay. How about pneumonia?

4 A. Pneumonias in all four areas? Could.

5 Q. Okay.

6 A. There are a handful of diseases.

7 Q. Okay. Doctor, would you agree with me
8 that a 1/0 reading is considered by many radiologists
9 including B-readers as essentially a normal reading?

10 MS. BOZORTH: Objection.

11 A. No.

12 Q. No?

13 A. I would not agree with that.

14 Q. Okay. Would you agree with me that many
15 groups, including the American Thoracic Society, would
16 consider a 1/0 not to be consistent with asbestosis?

17 A. No, I would not agree to that.

18 Q. Okay. Do you consider the American
19 Thoracic Society authoritative?

20 A. I don't know how a society can be
21 authoritative.

22 Q. Do you belong to that group?

23 A. No. You have --

24 Q. Would you consider -- well, back up.

25 You're familiar with their statement on diagnosing

*** Notes ***

1 asbestosis, are you not?

2 A. Yes, sir.

3 Q. Okay. Do you disagree with that
4 statement?

5 A. No. Do you know what it says?

6 Q. I do.

7 A. What? Repeat it. Read it.

8 Q. I believe the American Thoracic Society
9 mid 1980s criteria for diagnosing asbestosis requires
10 an abnormal chest X ray of ILO classification 1/1 or
11 greater.

12 A. I don't believe it says that.
13 Start with the top of that paragraph. Something to the
14 effect that in order to make the diagnosis of --

15 Q. Okay.

16 A. -- asbestosis, you have to have exposure
17 and latency, period.

18 Q. Okay.

19 A. It would also be helpful if -- and they
20 list a whole bunch of other things.

21 Q. Well, it says what it says. But you
22 don't disagree with that point in general?

23 MS. BOZORTH: Objection.

24 Mischaracterizes his previous testimony. He
25 already told you what he thought about 1/0

1 versus 1/1.

2 A. By definition 1/0 is abnormal.

3 Q. Okay.

4 A. That's not my definition. That's the
5 definition of the ILO, International Labor

6 Organization, that made this whole business up, adopted
7 by the National Institute of the Occupational Safety
8 and Health in the United States. 1/0 is abnormal.

9 Q. Okay. It's at the lower limit of
10 abnormal, isn't it?

11 A. It's abnormal.

12 Q. Well, the ILO classification is 12
13 different stages; right?

14 A. There are 12 different boxes to be
15 checked there or that may be checked, yes.

16 Q. Uh-huh. And all zeros is normal; right?
17 0/0?

18 A. Correct.

19 Q. Okay. 1/0, as you've classified Mr.
20 [REDACTED] is certainly in the lower end of the spectrum,
21 isn't it?

22 A. I don't know what you mean by the lower
23 end and the higher end. If you're telling me one is a
24 lower number than two, I agree with you.

25 Q. Okay. What does the zero mean in 1/0?

*** Notes ***

1 A. In 1/0?
 2 Q. Uh-huh.
 3 A. It means, as I answered before to Mr.
 4 Johnson's question, that when you compare the subject
 5 film with the 1/1 ST standard, you felt that there was
 6 -- that there were less opacities than in the 1/1
 7 standard.
 8 Q. Okay. The fact that this film quality
 9 is three and overexposed is significantly less reliable
 10 than a good quality film, isn't it?
 11 A. That's true.
 12 Q. Okay. And most of the films you read
 13 are better quality than this one, aren't they?
 14 MS. BOZORTH: Objection.
 15 A. I don't know that I can answer that
 16 question.
 17 Q. Okay. You would obviously prefer to
 18 have a better quality film?
 19 MS. BOZORTH: Objection.
 20 A. The general trouble with an overexposed
 21 film is you tend to lose some of the opacities, so that
 22 is why I said he's a 1/0.
 23 Q. Uh-huh.
 24 A. If I had quality one film, maybe I would
 25 say he was a 1/1 or 1/2. Who knows?

1 Q. Uh-huh.
 2 A. But --
 3 Q. You didn't see any pleural plaques or
 4 any pleural findings whatsoever on this patient;
 5 correct?
 6 A. Correct.
 7 Q. You didn't see any CVA blunting?
 8 A. If I -- I didn't indicate that I did,
 9 no.
 10 Q. Uh-huh. Doctor, were you ever ordered
 11 by a court to produce any financial records with regard
 12 to expert review?
 13 MS. BOZORTH: Objection. Asked and
 14 answered and vague.
 15 A. Not that I can recall right now.
 16 Q. Is silicosis an interstitial lung
 17 disease?
 18 A. Yes.
 19 Q. So I'm clear, Doctor, as I follow up to
 20 my prior questions, absent other material, you would
 21 not be able to link asbestos exposure with this
 22 patient; correct?
 23 MS. BOZORTH: Objection. What do
 24 you mean absent other material?
 25 MR. TABER: Like a history of PFTS

*** Notes ***

1 or the things normally used to diagnosis
 2 asbestosis.
 3 BY MR. TABER:
 4 Q. Without anything other than this ILO
 5 form, you would not be able to diagnosis asbestosis;
 6 correct?
 7 MS. BOZORTH: I'm going to object
 8 as ambiguous, vague, and confusing. Doctor,
 9 if you understand that --
 10 MR. TABER: I'll withdraw the
 11 question. I think you're right. I think
 12 we've covered that already.
 13 BY MR. JOHNSON:
 14 Q. Doctor, based on this one film for this
 15 one patient that you read, you would have no basis to
 16 connect any lung cancer in this patient to asbestos
 17 exposure; is that correct?
 18 MS. BOZORTH: Objection.
 19 A. Say that -- I'm not sure I -- just on
 20 the basis of this film, could I say that this lung
 21 cancer may be related to asbestos exposure? Is that
 22 what you're asking me?
 23 Q. Almost. And I'll rephrase.
 24 Doctor, based on the one film that you read for
 25 Mr. [REDACTED], you would not be able to say that his lung

1 cancer was probably caused by exposure to asbestos. Is
 2 that a correct statement?
 3 MS. BOZORTH: Can you read back the
 4 question, please?
 5 (The court reporter read the last
 6 question.)
 7 MS. BOZORTH: Go ahead.
 8 A. What's "probably" mean?
 9 BY MR. TABER:
 10 Q. How do you define it?
 11 A. No. It's your question. Five percent?
 12 Ten percent?
 13 Q. That's a pretty simple word.
 14 A. No, it's not simple at all.
 15 50 percent; 90 percent; what's "probable"?
 16 Q. Okay.
 17 A. If you want me to discuss what I can get
 18 out of this piece of paper I have in front of me here,
 19 I'll discuss it. But if you want me to answer your
 20 specific --
 21 Q. I think it's a pretty clear question.
 22 A. If you want a yes or no answer, you've
 23 got to tell me what "probably" means.
 24 Q. 50.1 percent.
 25 A. More than half, okay. I guess the

*** Notes ***

1 answer would have to be no.

2 Q. Thank you. Doctor, I'm going to ask you
3 a hypothetical question based on the experiences you've
4 set forth for me. I'm going to represent to you that
5 this patient did indeed eventually develop lung cancer
6 and that it was diagnosed sometime in 1996. And I'm
7 going to represent to you without waiving any prior
8 objections that alleged exposure to asbestos, if that
9 occurred, would have been between the years of 1945 and
10 sometime in the 1970s. Given that hypothetical
11 situation before you, doctor, my question is this:

12 THE WITNESS: wait a minute. Let's
13 get this off. Your questions are hard to
14 understand.

15 (There was a brief recess.)

16 BY MR. TABER:

17 Q. Let me rephrase so we're clear. We've
18 had a small interruption. Doctor, hypothetical
19 question. I'm going to ask you to assume that
20 Mr. [REDACTED] was indeed diagnosed with lung cancer in
21 1996, and I'm also going to ask you to assume that his
22 alleged exposure to asbestos, if any, would have
23 occurred between the years of 1945 and sometime in the
24 1970s.

25 Given this hypothetical, my

1 question to you is: If his exposure stopped on
2 February 9th of 1969, in other words, if he was still
3 exposed between 1945 and '69 to asbestos, would he
4 probably have had the same medical course that he
5 eventually did?

6 MS. BOZORTH: I'm going to object.

7 The --

8 MR. TABER: Let's just get an
9 answer.

10 MS. BOZORTH: -- hypothetical is
11 internally inconsistent. You've set forth
12 two opposite things in your hypothetical, and
13 it calls for speculation.

14 MR. TABER: Okay.

15 BY MR. TABER:

16 Q. Let me ask it simpler, and then you tell
17 me --

18 A. Please do.

19 Q. -- if it's a fair question. I'm
20 hypothetically representing to you that Mr. [REDACTED]
21 developed lung cancer in 1996.

22 A. Wait a minute now. He developed in '96
23 or was diagnosed --

24 Q. Diagnosed in 1996, thank you. And I'm
25 going to represent to you hypothetically that it's been

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1 alleged he was exposed to asbestos beginning in 1945.
2 My question is this: If that alleged asbestos exposure
3 had terminated as of February 9th, 1969, would he have
4 still had the same medical course?

5 MS. BOZORTH: I'm going to object
6 as totally speculative.

7 A. Well, maybe with some discussion, it
8 will help elucidate what -- first of all, the
9 unfortunate thing, you cannot terminate an asbestos
10 exposure. How can you terminate it? You can't. The
11 fibers get stuck in there, and they stay in there.

12 So the fact that the person is no
13 longer having ambient exposure to it does not mean his
14 body doesn't have exposure to it. The exposure is
15 ongoing. We know that asbestos-exposed persons at best
16 have five times the incidence of lung cancer. Some
17 have much higher incidences, so that the fibers are in
18 there. They're continuing to do their dirty work.

19 Q. Doctor --

20 A. Subsequently, cancers will develop.

21 Q. I'm not asking for you to preach to us.

22 A. I'm not preaching. I'm trying to review
23 this, and I don't think that I can answer your
24 specific, narrow, speculative question.

25 Q. Okay.

1 MS. BOZORTH: I'm going to object
2 to Counsel's argumentative use of the word
3 "preaching."

4 MR. JOHNSON: Fine. I simply want
5 to get this over with so I can get back on
6 the plane.

7 BY MR. JOHNSON:

8 Q. Doctor, if Mr. [REDACTED] was exposed for
9 asbestos between '45 and '69, would he have similar
10 risk of developing lung cancer as if he had been
11 exposed between '45 and '72?

12 A. I think so, yes.

13 MR. TABER: Okay. That's all I'm
14 asking. All right. Phone people, I think
15 I'm done.

16 MR. BRUNI: No questions here.
17 Thank you.

18 MR. TABER: Can we go off the
19 record for just a minute?

20 MS. BOZORTH: Sure.

21 (There was a brief recess.)

22 MS. BOZORTH: I am following up on
23 the questions of Mr. Johnson and Mr. Taber at
24 this point as part of the discovery
25 deposition.

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DIRECT EXAMINATION

BY MS. BOZORTH:

Q. Dr. Harron, would it be usual or unusual to find signs of pneumonia in the right and left mid and lower zones in the lungs?

A. I think to find that much pneumonia is not very usual. No, that's beyond usual.

Q. And I'd like to clarify some of your testimony earlier. I believe you at one point talked about approximately six hundred to seven hundred thousand -- testified about six hundred to seven hundred thousand ILO forms that you have filled out in your career since 1961. Is that what you said before?

A. I -- this is a question that the lawyers have asked me in the past, and I try -- initially I couldn't answer it. Then I got down and started thinking about it, and I tried to estimate how many films I have classified, not always filling out an ILO. Sometimes we just dictated the narrative, and I'm guessing that from 1961 until now it's somewhere in that neighborhood of films that I have classified.

Q. And were all of those asbestos films?

A. No, of course not.

Q. What other types of films did it include?

A. Well, the big things in our area were coal workers' pneumoconiosis, silicosis, and asbestosis. Like I said, I picked up one case that proved on spectrographic analysis to be berylliosis, so the classification system is a classification system. The scarring can be caused by different mechanisms.

Q. Of those six hundred, approximately seven hundred thousand readings you were talking about before, when you gave that estimate, did that include readings you've done on behalf of the government?

A. Oh, yeah. In fact, they probably have been my biggest single customer.

Q. In your opinion to a reasonable degree of medical probability -- or strike that. Do you have an opinion as to whether smoking causes interstitial fibrosis?

MR. TABER: Objection, Susan. Just so we don't have to keep interrupting you, and I know I made this at the beginning of discovery, but if you would give us a continuing objection to any opinions not contained in his report, then we wouldn't have to interrupt you both during what you're doing now, whatever you call it, and also the preservation part of it.

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I would suggest that, but in the absence of that, I will have to object each time a question is asked that asks for an opinion not contained in his two-page report.

MS. BOZORTH: I will give you that continuing objection. And I am simply following up on questions that was asked --

MR. TABER: Okay.

MS. BOZORTH: -- that were asked by defense counsel --

MR. TABER: Fair enough.

MS. BOZORTH: -- during their questioning.

BY MS. BOZORTH:

Q. In your opinion, does smoking cause interstitial fibrosis?

A. I think that Mr. Johnson asked that question basically, and I think it does not.

Q. And what in terms of your schedule would prevent you from testifying in Cleveland within the next few weeks at a trial?

A. Well, I just have some things already scheduled, and I still right now have the unknown of what's going to happen with my brother. He has no other family to look after him right now, so I'm not

sure what we're going to have to do with him.

Q. When you do your consulting work and evaluate and interpret the X rays, are you using your medical background and expertise when you do that?

A. Of course.

Q. Are you using your background as a radiologist when you do that?

A. Yes.

Q. Are you relying on your background as a B-reader when you do that?

A. Well, that's what I'm doing is

B-readings, yes.

Q. So would it be fair to say even though you don't have your current medical -- a current medical practice, you still are utilizing your medical background in the work you do now? Is that fair to say?

A. Yes, that's fair to say. I guess when I said I'm not practicing medicine anymore, I mean I'm not taking medical -- patients for medical care. In other words, I'm not taking patients anymore. I'm doing this consulting work, which is medical work for, you know, various individuals and entities.

Q. And would you agree that the tendency, if any, in reading a film quality three that is

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1 overexposed would be to actually under-read the
 2 opacities on the X ray?
 3 MR. JOHNSON: Objection. Leading.
 4 Q. You can answer if you understand.
 5 A. Well, you would under-read the
 6 profusion. You tend to under-read the profusion in
 7 that.
 8 MS. BOZORTH: That's all the
 9 questions I have for you at this time,
 10 Dr. Harron. Is there any follow-up?
 11 MR. JOHNSON: Just one area, maybe
 12 one question.
 13 RE-CROSS EXAMINATION
 14 BY MR. JOHNSON:
 15 Q. Dr. Harron, would it be correct that
 16 essentially all of the six hundred to seven hundred
 17 thousand B-readings which you've estimated that you've
 18 done did not involve B-readings in the context of a
 19 physician/patient relationship?
 20 A. No, that would not be correct, because
 21 many of them were done at a clinic that I service.
 22 It's a general medical clinic owned through different
 23 corporations, you know, but it's my understanding it
 24 was ultimately owned by the United Mine Workers of
 25 America. And I started working for them late in -- in

1 1961, and they wanted all their films classified so
 2 that any routine patient who came through that clinic
 3 for a chest X ray, the films were classified.
 4 Then sometimes with medical
 5 patients in the hospital. I covered a number of
 6 hospitals in my time, and generally you would not
 7 classify hospital patients, but occasionally they would
 8 ask for it, so I would. So it's been, you know, people
 9 who might be considered regular patients as well as
 10 people sent in by lawyers, by companies, by government
 11 agencies, and sometimes just films.
 12 The biggest order I ever got was
 13 NIOSH. They sent me about six thousand films in one
 14 shot. The films were decades old. Why they wanted 'em
 15 all classified, I don't know, but they wanted 'em
 16 classified.
 17 Q. Was there a point in time at which the
 18 readings you were doing became predominantly if not
 19 exclusively reading outside of a physician/patient
 20 relationship?
 21 A. I'd say in the past couple -- past year,
 22 two years, something like that, as I gradually withdrew
 23 from, you know, general medicine, taking patients so to
 24 speak.
 25 Q. And is it correct that essentially all

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1 of the readings that you have done at the request of
 2 lawyers or law firms did not involve a
 3 physician/patient relationship?
 4 A. All of them or essentially --
 5 Q. Essentially all of the readings that you
 6 have done at the request of lawyers or law firms did
 7 not involve a physician/patient relationship?
 8 A. That's true.
 9 MR. JOHNSON: Okay. I think that's
 10 all I have.
 11 MR. TABER: Any phone questions?
 12 MR. BRUNI: No thanks.
 13 (Defendant's Exhibit 1 was marked
 14 for identification.)
 15 (Deposition concluded at 4:40 p.m.)
 16
 17
 18 (Signature expressly waived.)
 19
 20
 21
 22
 23
 24
 25

1 CERTIFICATE
 2 STATE OF OHIO :
 3 COUNTY OF BUTLER :
 4 I, Jane Anne Fitch, the undersigned, a duly
 5 qualified and commissioned Notary Public within and for
 6 the State of Ohio, do hereby certify that before giving
 7 of the aforesaid deposition, the said witness was by
 8 Gregory D. Crase, a Notary Public within and for the
 9 State of Florida, first duly sworn to depose the truth,
 10 the whole truth, and nothing but the truth; that the
 11 foregoing deposition was given at the said time and
 12 place and was taken in all respects pursuant to
 13 agreement of counsel hereintofore set forth; that said
 14 deposition was taken in stenotypy by Gregory D. Crase,
 15 and transcribed into typewritten form under my
 16 supervision; that signature to the transcribed
 17 deposition is waived; that I am neither relative,
 18 attorney, nor employee of any party or their counsel
 19 and have no interest in the result of this pending
 20 action.
 21 IN WITNESS WHEREOF, I hereunto set my hand
 22 and official seal of office at Hamilton, Ohio, this
 23 day of *March* 2009.
 24 *Jane Anne Fitch*
 25 My Commission Expires May 6, 2001.

*** Notes ***