

100

Photos

1 CASE NUMBER 920608CCN2038	2 INVESTIGATOR ID 8 9 2 9	3 OFFICE CODE 8 13 0	COMPLAINT
4 ACCIDENT DATE 9 0 1 1 1 8	5 IDI INITIATED 9 2 0 6 1 5	EPIDEMIOLOGIC INVESTIGATION REPORT JUL 28 1992	

6 SYNOPSIS OF ACCIDENT OR COMPLAINT This investigation was initiated through a consumer complaint forwarded from a Wisconsin Senator's office. The complaint dealt with a furnace which was causing alleged health problems due to a foul odor in the home, fumes and spreading soot. The problems began in 1990. The furnace had been installed in 1988. Repeated service calls and examination by the area utility has not revealed any solution or explanation to the problem.

7 LOCATION Home	8 CITY Neshkoro	9 STATE WI
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10a FIRST PRODUCT Propane Furnace	11a TRADE/BRAND NAME/MODEL Lennox Industries, Inc., Dallas, TX G14Q3-60-19
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10b SECOND PRODUCT Air Purifier	11b TRADE/BRAND NAME/MODEL Space Gard #2200 Research Products, Poynette, WI
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12 AGE OF VICTIM 9 9 9	13 SEX	14 DISPOSITION 9 No Injury	15 INJURY DIAGNOSIS 0 No Injury	7 1
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16 BODY PART No Injury	17 RESPONDENTS 9 9 Complainant	18 INVESTIGATION TYPE 1 On-Site	19 TIME SPENT 1 X H X 10.0
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20 ATTACHMENTS Multiple	21 CASE SOURCE 9 Complaint	22 REVIEWED BY 0 7 8 1 3 0 2 2 0 2 2 2
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23 PERMISSION TO DISCLOSE NAMES (NON-NRIS CASES ONLY)
 CPSC may disclose my name CPSC may not disclose my name

24 Narrative ATTACHED	25 REGIONAL DIRECTOR REVIEW DATE
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MFR/PRVLR NOTIFIED *Jun 6/5/98*

No Comments made

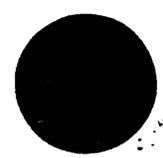
Comments attached

Excisions/Revisions

Firm has not requested further notice



920608CCN2038



IDI #920608CCN2038

SUMMARY:

This investigation was initiated through a referral from Senator Kohl's office. The complaint dealt with a furnace which allegedly caused health difficulties due to the emission of fumes throughout the home.

Investigation revealed that the furnace which had been installed in 1988 to replace, an older, less efficient furnace began to cause an alleged "sooting" problem in 1990. Complainant began to notice soot on the walls of her home along with a foul smelling odor at that time.

Repeated service calls and examinations by heating contractors have not produced any solution or explanations to the problem.

PRE-INCIDENT:

Complainant installed the subject propane furnace in her 11 year old on 8/18/88. She replaced the furnace presently being used in the home hoping for greater energy efficiency with a newer model. She did not experience any problem with the furnace that was replaced.

Complainant's home was built in 2 separate sections, each having separate living quarters in a side-by-side arrangement. The sections share a common wall, however doorways allow for access to either section. The home was built in this manner because it allowed the owner's mother to live comfortably on the other side of the home. The home is occupied by complainant, her mother and her husband.

The home shares the same heating and hot water system for both sides of the home. It also shares a common wall with doorways between the 2 sections. One section measures 24' x 36' and one section measures 24' x 28'. The home has a full basement.

Complainant did not experience any problems with the furnace system from the date of installation until 1990.

The original installers of the furnace, Zuehl's Heating and Air Conditioning, came to the home in 1990, due to a complaint that the furnace was causing heavy sooting within complainant's home on the walls and flooring. Complainant stated that there was also a foul

odor in the home. When the service invoices for the furnace were requested from the heating contractor's attorney, I was told that they were in the possession of complainant's attorney. I requested all available invoices and was given copies which are attached as Exhibit C. The 2 invoices supplied to me are both dated prior to 1990.

INCIDENT:

Complainant stated that she initially contacted the installing contractor when a "v" shaped black mark was found on a wall behind a bedroom door. The mark, located above a register was described as being 3 feet in height and 3 feet in width with the larger portion of the "v" toward the floor. The black substance was described as "very gooey".

POST INCIDENT:

Complainant stated that eventually this substance began to turn curtains, other walls and windows black. She stated that when she tried to clean the areas she would find that they were stained.

Complainant stated that the first time that she contacted the heating contractor. He examined the furnace and could offer no explanation to the problem. As a result of this initial service call, the primary heat exchanger was replaced. The heating contractor's attorney indicated that the reason it was decided to replace the heat exchanger was because the manufacturer had authorized the replacement and the heating contractor did not want the furnace to cause any future problems. It was not replaced because the heating contractor knew that the problem was being caused by the heat exchanger. The only invoices available which show work performed on the furnace are attached as Exhibit C. In complainant's deposition, she indicates that employees from Zuehl's Heating and Air Conditioning were out to her home on approximately four occasions, and that a representative of the Lennox company visited the home once, however an invoice was not generated on every visit as much of the work was done free of charge.

The attached invoices show an invoice for difficulty with the furnace air filter in June of 1989, along with the replacement of the furnace air bonnet by a different heating contractor in November of 1990. When I questioned the attorney for Zuehl's Heating and Air Conditioning with regard to additional invoices, he responded that I have all applicable invoices.

Complainant stated that she had contacted a different heating contractor in November of 1990 in an attempt to try and get the problem fixed. The furnace air bonnet was replaced at this time. Complainant contacted a different company and in 12/90 had

all of the ductwork in the home cleaned and sealed. She stated that this was the final work performed on the furnace. She stated that this did seem to improve the problem but did not totally alleviate the problem. During this same period in late summer of 1990, in an effort to determine the substance content, complainant contacted a laboratory requesting that the air coming from the furnace be tested. She took samples by placing cheese cloth on top of the air ducts and leaving them for approximately two weeks. At the end of two weeks she mailed the samples to the laboratory and they seem to indicate in their report (attached as Exhibit D) that there "is a distinct association between the cheese cloth samples taken from your air ducts and the insulation removed from the plenum of your system". Meaning that the substance found on the cheese cloth, appears to match the sample complainant sent of a portion of her furnace filter. However, the test results indicate that the sample consists of 96-98% cellulose and 2% particulate.

Complainant stated that she has never performed any maintenance on the furnace herself. She does "flip the ignition switch off and on when the furnace cuts out." She further stated that she had the air filter replaced 3 times since its installation in November of 1990.

The furnace developed an additional problem recently in that the furnace ceases to operate for no reason. Complainant stated that she then flips the ignition switch to restart the furnace. The furnace ceased operation on the following dates: March 26th and 28th; April 3rd, 12th, 13th, 25th and 26th; and, May 4th, 14th and 15th. Complainant stated that heating contractors she has dealt with in the past refuse to come to her home for service calls due, in part, to their knowledge of the pending lawsuit she is involved with in connection with the original installer of the furnace.

Complainant stated that her mother had raised canaries prior to the furnace problem, but has since had 30 canaries die and now has only 3 remaining birds.

Complainant stated that she did have the area utility come to her home to determine if there was a carbon monoxide problem, however when I contacted the Wisconsin Power & Light Company, who is the area utility service, I was told that they have no records of any service calls on the subject home. They do recall being contacted by complainant's attorney with regard to work performed, but at that time a paperwork search turned up nothing. The serviceman who had visited the home is no longer an employee of the utility. When asked if the lack of documentation could indicate that no problem had been found by the serviceman, I was told that it is standard operating procedure to document any problem found, and therefore,

one would assume that nothing relating to a CO problem had been found in the home by the serviceman. Complainant had indicated to me that the utility had checked the home on 2-3 occasions and nothing was ever found with regard to an excessive CO problem. The utility could offer no explanation as to the reason for the sooting.

MEDICAL CONDITION:

Complainant stated that she is suffering from irritability and shortness of breath as a result of the furnace problems, however she has never sought any medical attention. She stated that both her mother and husband have suffered eye infections and are more irritable, however she does not presently plan on taking them to the doctor.

ADDITIONAL INFORMATION:

This investigator participated in the examination of the subject furnace with both the plaintiff's and the defendant's attorneys. Contact was made with the original installer of the furnace at that time, and his attorney. At that time I was told that air quality testing was performed, but that the results were not available at this point. Should they become available in the future, I will attach them as an addendum to this report.

The attorney for the defendant heating contractor could offer no real explanation to the problem except to indicate that the filter for the furnace may have been sprayed too heavily with "Filter Coat", which is a filter spray which is supposed to be sprayed onto the filter to trap fine pollutants. However, this product was examined and found to be full and complainant denied using the product. This product, manufacturer by Research Products Corporation, Madison, WI, contains the following: Hydrocarbon Oil, an Anti-Microbial agent, a polyethylene thickener, methylene chloride and a propellant.

On the date of this investigation a tar or pitch type substance was found on the outside of the bottom grating beneath the secondary heat exchanger. A slight sooty substance could also be seen in the various cracks and crevices within the furnace. Complainant indicated that she had already washed down the furnace and ductwork once. The attorney for the heating contractor stated that the fact that the soot was found on the bottom grate cover indicates that the cold air returning to the furnace is carrying the substance. He stated that the majority of the sooting had been found on the cold air rather than the warm air ducts.

Complainant claims that she is unable to get the ceiling of her home clean. A photo was taken of the ceiling which had "light brown" markings, however the markings were not distinct enough to show up on the photograph.

Complainant claimed that many of her clothes had to be cleaned due to soot. She also stated that dishes kept in plastic bags in her cupboards are also found to become sooty.

The basement area of the home where the furnace is found consists of an "L" shaped recreation room area. The furnace is located in a separate room along with the washer and dryer and a sink and toilet. No woodworking equipment or supplies were noticed as being stored by the furnace.

Due to the limited information available at the present time, in the form of test results, the information gained as a result of this investigation is inconclusive at this point. Should additional information become available an addendum to this report will be written. At this point, both plaintiff's and defendant's attorneys, complainant, the utility company and the original installation contractor could not offer a concrete explanation to this problem, though any additional information gained will be forwarded.

Please note that the exhibit attached contain complainant's deposition taken in connection with the pending lawsuit pertaining to this matter. Due to the original length of the deposition, only those portions which dealt with the subject at hand were included with this report.

PRODUCT INFORMATION:

FURNACE:

Manufacturer: Lennox Industries, Inc.
Dallas, TX

Model: G1403-60 Pulse Furnace

Size: 60,000 BTU

Serial Number: 588D40075

Type: Propane Forced Air

AIR FILTER:

Manufacturer: Research Products
Poynette, WI

Model: Space Gard

Type: High Efficiency-#2200

REGULATIONS:

Furnace plate indicates conformance with ANSI Z21.64b-1987

ATTACHMENTS:

- Exhibit A-Amended Summons and Complaint
- Exhibit B-Answer and Cross Claim
- Exhibit C-Service Invoices
- Exhibit D-Sample Report from AIRsearch
- Exhibit E-Deposition
- Exhibit F-Copies of photos from Complainant's attorney
- Exhibit G-Photographs of Furnace
- Exhibit H-Diagram of furnace and ductwork

1/27

STATE OF WISCONSIN

CIRCUIT COURT

WAUSHARA COUNTY

HOLLIS THAYER and ELAINE THAYER
and STELLA WACHOLTZ,
Plaintiffs,

LOUIS W. SULLIVAN,
Secretary of U.S. Department of
Health and Human Services,

91CV34
Case No. ~~90 CV 4844~~

and

WAUSHARA COUNTY,

Involuntary Plaintiffs,

vs.

GERALD ZUEHLS and GENERAL CASUALTY
INSURANCE COMPANY OF WISCONSIN and
LENNOX INDUSTRIES INC.,
Defendants.

FILED
PEGGY KLIMKE

JAN 28 1992

AMENDED SUMMONS

~~CIRCUIT COURT~~
WAUSHARA CO., WIS.

THE STATE OF WISCONSIN to each
person named above as a Defendant:

YOU ARE HEREBY NOTIFIED that the plaintiff named above has
filed a lawsuit or other legal action against you. The complaint
which is attached, states the nature and basis of the legal
action.

Within 20 days of receiving this summons, you must respond
with a written answer, as that term is used in Chapter 802 of the
Wisconsin Statutes, to the Complaint. The court may reject or
disregard an answer that does not follow the requirements of the
statutes. The answer must be sent or delivered to the court,
whose address is:

Clerk of Courts
Waushara County Courthouse
209 Saint Marie Street
Wautoma, WI 54982

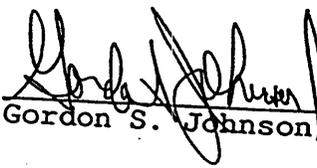
and to GONYO & JOHNSON, plaintiff's attorneys, whose address is

Exhibit A

naming of the additional party hereto, it is believed to be necessary that the trial would have to be adjourned.

Dated this 27th day of January, 1992.

GONYO & JOHNSON


Gordon S. Johnson Jr.

Post Office Address:

124 N. Wisconsin
P.O. Box 151
Berlin, WI 54923
(414) 361-3311

STATE OF WISCONSIN

CIRCUIT COURT

WAUSHARA COUNTY

HOLLIS THAYER and ELAINE THAYER
and STELLA WACHOLTZ,
Plaintiffs,

LOUIS W. SULLIVAN,
Secretary of U.S. Department of
Health and Human Services,

91 CV 34
Case No. 90-CV-4844

and

WAUSHARA COUNTY,

Involuntary Plaintiffs,

vs.

GERALD ZUEHLS and GENERAL CASUALTY
INSURANCE COMPANY OF WISCONSIN and
LENNOX INDUSTRIES INC.,
Defendants.

FILED
PEGGY KLIMKE

JAN 28 1992

CIRCUIT COURT
WAUSHARA CO., WIS.

AMENDED COMPLAINT

The above named plaintiffs, by their attorneys, GONYO &
JOHNSON, alleges as follows:

PREFATORY ALLEGATIONS

1. Reallege and incorporates herein all of the allegations
of paragraphs No. 1-22 of the Complaint filed herein on December
6, 1990.

2. The defendant, Lennox Industries, Inc. ("Lennox"), is a
foreign corporation who is registered to do business in the State
of Wisconsin and has a agent for service of process of CT
Corporation Systems, located at 44 E. Mifflin Street, Suite 1000,
Madison, Wisconsin 53703.

3. Lennox manufactures the Lennox Pulse Furnace, which is
part of the defective HVAC system on the property.

CAUSE OF ACTION NUMBER ONE

(Negligence)

4. Reallege and incorporates herein the allegations of paragraphs 1-3, and all the allegations of the original complaint.

5. Lennox was negligent in manufacturing the Lennox Pulse Furnace, and it did not use ordinary care to ensure that the product would not create an unreasonable risk of injury or damage to the plaintiffs.

6. The plaintiffs have suffered severe and permanent personal injuries from the Lennox Pulse Furnace, causing them damage by way of the past and future medical bills, permanent disability and pain and suffering. The plaintiffs, Elaine Thayer and Stella Wacholtz have suffered property damages as a result of the defective Lennox Pulse Furnace; have had to expend or will expend substantial sums to clean such house; have lost the use and enjoyment of such property and may have to replace the Lennox Pulse Furnace.

7. The damages of the plaintiffs herein are the direct and proximate result of the negligence of Lennox.

CAUSE OF ACTION NUMBER TWO

(Breach of Contract)

8. Reallege and incorporates herein the allegations of paragraphs 1-3, and all the allegations of the original complaint.

9. Lennox gave a life-time warranty on the Lennox Pulse Furnace in accordance with the purchase of such furnace by the plaintiffs, and agreed by contract to make such furnace in a workman-like manner, and gave an implied and express warranty of fitness for the particular purpose with respect to the furnace.

10. Lennox has breached its warranty of both express and implied.

11. The plaintiffs' damages as alleged above are the reasonable and foreseeable consequences of the breaches of warranty of the defendant, Lennox.

CAUSE OF ACTION NUMBER THREE

(Strict Liability)

12. Reallege and incorporates herein the allegations of paragraphs 1-3, and all the allegations of the original complaint.

13. Lennox was in the business of manufacturing furnaces such as the Lennox Pulse furnace herein at the time that the Lennox Pulse Furnace was purchased by the plaintiffs.

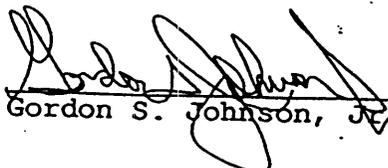
14. Lennox expected that the Lennox Pulse Furnace would reach the plaintiffs without substantial change and the Lennox Pulse Furnace did in fact reach the plaintiffs without substantial change.

15. The defects in the Lennox Pulse Furnace were the cause of the plaintiffs' damages alleged herein.

WHEREFORE, the plaintiffs demand judgment against the defendants for the amount set by the jury for their medical bills, disability and pain and suffering, cleaning costs, repair and the replacement of the Lennox Pulse Furnace, together with the costs and disbursements hereof, and such other relief as the court shall deem just and equitable.

Dated this 21st day of January, 1992.

GONYO & JOHNSON


Gordon S. Johnson, Jr.

Post Office Address:
124 N. Wisconsin
P.O. Box 151
Berlin, WI 54923
(414)361-3311

2/5

STATE OF WISCONSIN

CIRCUIT COURT

WAUSHARA COUNTY

HOLLIS THAYER, et al.,

Plaintiffs,

v.

Case No. 91-CV-34

GERALD ZUEHLS, et al.,

Defendants.

ANSWER AND CROSS CLAIM TO THE AMENDED COMPLAINT

The defendants, Gerald Zuehls and General Casualty Company of Wisconsin, by their attorneys, Winner, Wixson & Pernitz, by Scott G. Pernitz answers the plaintiffs' Amended Complaint as follows:

ANSWER

1. Reallege and incorporate in its entirety all of the allegations contained in the original Answer filed by these defendants on January 2, 1991.
2. Admit the allegations contained in paragraphs 2 and 3 of the Amended Complaint.

CAUSE OF ACTION NUMBER ONE

(Negligence)

3. Reallege and incorporate herein paragraphs 1 through 2 above.
4. Deny the allegations contained in paragraphs 5, 6, and 7.



EXHIBIT B
920608 CCN2038

CAUSE OF ACTION NUMBER TWO

(Breach of Contract)

5. Reallege and incorporate paragraphs 1 through 4 above.
6. Admit the allegations contained in paragraph 9.
7. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 10 and 11 and therefore deny the same and put said plaintiffs to their proof thereof.

CAUSE OF ACTION NUMBER THREE

(Strict Liability)

8. Reallege and incorporate paragraphs 1 through 7 above.
9. Admit the allegations contained in paragraphs 13 and 14.
10. Deny the allegations contained in paragraph 15.

CROSS CLAIM

For their Cross Claim against the defendant Lennox Industries, Inc., the defendants, Gerald Zuehls and General Casualty Company of Wisconsin, allege as follows:

1. The plaintiffs have filed an action alleging that the defendant Zuehls was negligent and the defendant Lennox was negligent and that the negligence of each was a substantial factor in producing certain injuries and damages claimed by them. This negligence has been specifically denied.
2. That in the event that it is determined that Zuehls was negligent and Lennox was negligent, and that their negligence caused injuries and/or damages to the plaintiffs, then, in that event, these cross claiming defendants will be entitled to contribution and/or indemnification against the defendants Lennox Industries, Inc.

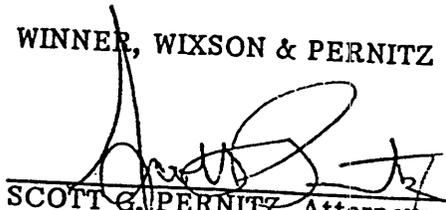
WHEREFORE, the defendants, Gerald Zuehls and General Casualty Company of Wisconsin demand Judgment as follows:

- A. For an order dismissing the plaintiffs' Amended Complaint;
- B. For Judgment on their Cross Claim;
- C. For their costs and disbursements.

Dated this 5th day of February, 1992.

WINNER, WIXSON & PERNITZ

By:


SCOTT G. PERNITZ, Attorneys for the
Defendants Gerald Zuehls and General Casualty
Company of Wisconsin

P.O. Box 2626
Madison, WI 53701-2626
(608)257-0257

ZUEHLS HEATING
& AIR CONDITIONING
PRINCETON, WI 54968
295-3434

JOB INVOICE
3011

CUSTOMERS ORDER NO		DATE ORDERED
ORDER TAKEN BY		DATE PROMISED <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.
BILL TO		PHONE
ADDRESS		MECHANIC
CITY		HELPER
JOB NAME AND LOCATION		<input type="checkbox"/> DAY WORK <input type="checkbox"/> CONTRACT <input type="checkbox"/> EXTRA
DESCRIPTION OF WORK		

ELAINE THAYER
N. 22nd Ave Rt #1 Box 294
Lake Keshkono, WI

8-3-88
293-4473

2-4-88 call to 22nd
turn right 3 lanes on left

QUANT.	DESCRIPTION OF MATERIAL USED	PRICE	AMOUNT
	Install Lennox LP G14G3-60 pulse furnace & one HS19-311 Lennox high efficiency central air conditioner.		
	Installed	\$ 3750 ⁰⁰	
	Paid 8-19-88		
	J. Zuehl		

- installed

HOURS	LABOR	AMOUNT	TOTAL MATERIALS
	MECHANICS @		TOTAL LABOR
	HELPERS @		
I hereby acknowledge the satisfactory completion of the above described work:		TOTAL LABOR	TOTAL
SIGNATURE		DATE COMPLETED	

EXHIBIT

KW 9/3/91
920160800N2038



AIRResearch
INCORPORATED

September 18, 1990

Mrs. Elaine Thayer
N22 Ave Rt 1 Box 2940
Neshkora, WI 54960

Dear Elaine:

Enclosed please find the analytical results of the bulk insulation sample from the plenum of your HVAC system. It is the hypothesis of AIRResearch, Inc. that there is a distinct association between the cheese cloth samples taken from your air ducts and the insulation removed from the plenum of your system.

Our industrial hygiene consultant recommends the manufactures possibly replace the duct-work and assist you in cleaning your home that has sustained abuse from the suspect material being emitted from your HVAC system.

We wish you good luck in resolving this issue. Please call if we can be of further assistance.

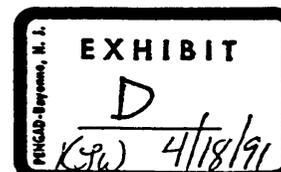
Sincerely,

Susan Burgmeier-Rohr
Susan Burgmeier-Rohr, BSN, RN
President

SBR:kma

enclosures

920608CCN2038



AIRresearch, INC.
 2969 N. 114th Street
 Kauawatoso, WI 53222
 (414) 476-3131
 FAX 476-1595

BULK SAMPLE ANALYSIS REPORT
 90-01568

CLIENT: ELAINE THAYER SAMPLES RECEIVED: 29 AUGUST 1990 VIA MAIL
N. 22 AVE. RT. 1 BOX 2940 SAMPLES ANALYZED: 29 AUGUST 1990
NESHKORO, WI 54960 ANALYST: ARTHUR WARNEKE
 JOB: PRIVATE HOME ANALYST: *Arthur Warneke*

Comments:

SAMPLE #	ASBESTOS	NON-ASBESTOS FIBER	MATRIX	LAB DESCRIPTION
1	DUCTFILTER NONE OBSERVED	90% FG, TRACE CE	10% MLM,gs,pt	GREY ASSOCIATED

HRV: Chryostile
 MOS: Amosite
 ROC: Crocidolite
 REM: Tremolite
 CTN: Actinolite
 NTH: Anthophyllite

FG: Fibrous Glass
 CE: Cellulose
 Syn: Synthetic Fiber
 H: Hair
 rs: Resinous material

Ver: Vermiculite
 Per: Perlite
 Gyp: Gypsum
 gs: Glass shot
 pt: Particulate

PL-M: Paint like material
 MLM: Mixed limestone material
 Qu: Quartz
 Cal: Calcite
 SC: Silicates

*sample analyzed as a split sample. Results reported represent professional observations of a certified, experienced asbestos analyst using Polarized Light Microscopy and dispersion stain technique. Quantitation is by comparison estimation which has an accepted range of variance of +/- 10%. Results reflect condition of specimen and do not imply condition of any other materials. analysis according to EPA 600/MA-82-020 Test Method.

BULK SAMPLE ANALYSIS REPORT
90-01485

Research, INC.
69 N. 114th Street
Wauwatosa, WI 53222
14) 476-3131
X 476-1595

CLIENT: MRS. ELAINE THAYER SAMPLES RECEIVED: 15 AUGUST 1990 Via MAIL
N.22 AVE RT 1 BOX 2940 SAMPLES ANALYZED: 15 AUGUST 1990
NESHKOSO, WI 54960 ANALYST: Arthur Warneke
HOME FURANCEE ANALYST: *Arthur Warneke*

Comments:

SAMPLE #	ASBESTOS	NON-ASBESTOS FIBER	MATRIX	DESCRIPTION
HOT AIR DUCT	NONE OBSERVED	98% CE	2% pt	BROWN PILED WOVEN
COLD AIR RETURN	NONE OBSERVED	96% CE, TRACE FG 2% SYN	2% pt	BROWN WOVEN

HRV: Chrysotile
MOS: Amosite
ROC: Crocidolite
REM: Tremolite
CTN: Actinolite
NTH: Anthophyllite

FG: Fibrous Glass
CE: Cellulose
Syn: Synthetic Fiber
H: Hair
rs: Resinous material

Ver: Vermiculite
Per: Perlite
Gyp: Gypsum
gs: Glass shot
pt: Particulate

PL-M: Paint like material
MLM: Mixed limestone material
Qu: Quartz
Cal: Calcite
SC: Silicates

*Sample analyzed as a split sample. Results reported represent professional observations of a certified, experienced asbestos analyst using Polarized Light Microscopy and dispersion stain technique. Quantitation is by comparison estimation which has an accepted range of variance of +/- 10%. Results reflect condition of specimen and do not imply condition of any other materials. Analysis according to EPA 600/MA-02-020 Test Method.

1 STATE OF WISCONSIN: CIRCUIT COURT: WAUSHARA COUNTY:

2 HOLLIS THAYER, ELAINE THAYER,
3 and STELLA WACHOLTZ, Plaintiffs,

4 LOUIS W. SULLIVAN,
5 Secretary of U.S. Department of
6 Health and Human Services,
7 and
8 WAUSHARA COUNTY,
9 Involuntary Plaintiffs,

Case No. 90-CV-4884

vs.

10 GERALD ZUEHLS and GENERAL CASUALTY
11 COMPANY OF WISCONSIN, Defendants.

12 Deposition of ELAINE S. THAYER, above-named
13 Plaintiff, taken on the 18th day of April, 1991, at 2:10
14 p.m., held in the offices of Gonyo & Johnson, 124 North
15 Wisconsin Street, Berlin, Wisconsin, before me, Karla J.
16 Willeford, Registered Professional Reporter and Notary
17 Public, pursuant to stipulation of counsel, in a certain
18 action now pending before the Circuit Court of Waushara
19 County, State of Wisconsin, wherein the parties are as set
20 forth above.

21
22
23 HENES, PHILLIPS & WILLEFORD
24 COURT REPORTING SERVICE
25 APPLETON/OSHKOSH
(414) 733-1835

920608CCN2038
EXHIBIT E

1 Q Likewise, when you went down to Mt. Sinai in Milwaukee in the
2 spring of 1988, that was before you had the furnace put in,
3 wasn't it?

4 A That's right.

5 Q So none of those problems you believe were related to the
6 furnace --

7 A No.

8 Q -- is that correct?

9 A No, that has nothing to do with the furnace.

10 Q Okay. So narrowing things down, other than Dr. Osicka, is
11 there any other doctor that you have seen for any problem
12 that you believe is related to the furnace?

13 A No.

14 MR. JOHNSON: You're talking about an M.D. now;
15 is that correct?

16 MR. PERNITZ: We'll break it down.

17 Q Talking about an M.D. for starters and your answer is he's
18 the only medical doctor you've seen?

19 A That's right.

20 Q Have you seen any other person for any kind of treatment that
21 you feel is related to the furnace?

22 A We've seen the psychiatrist.

23 Q And who was that?

24 MR. JOHNSON: For the record, he's a
25 psychologist.

THE WITNESS: Sorry.

1

2 A And I don't remember his name.

3 Q Okay. Earlier, when we were looking at the medical records
4 and you pointed to the Theda Clark record, you said that's
5 for Hollis?

6 A That's right.

7 Q In other words, you didn't see anyone at Theda Clark --

8 A No, I did not.

9 Q -- for yourself? Okay. So in looking at the Answers to your
10 Interrogatories, this would be a misprint where you listed
11 Dr. Haig as being one of your doctors? I've got what's
12 titled "Elaine Thayer's Answers to Defendants' First Set of
13 Written Interrogatories." I show you that. That would be
14 your signature?

15 A Yeah, that's right.

16 Q Okay. So maybe we can double-check this. You were asked to
17 give the names of your doctors. Dr. Haig is not your doctor,
18 is he?

19 A No.

20 Q And Dr. Kagen likewise --

21 A I went to him and -- but I didn't actually see him.

22 Q Well, he saw your husband, didn't he?

23 A He saw my mother and took one look at my husband.

24 Q But not yourself?

25 A Nope.

1 Q And Dr. Meckelberg?

2 A He saw my husband and my mother.

3 Q So that gets us down to Dr. Osicka, who we've discussed, and

4 Dr. O'Donnell, who is the psychologist you went to in

5 January?

6 A That's right.

7 Q Are there any other doctors that you've seen in connection

8 with any problem that you believe is related to the furnace?

9 A No.

10 Q Okay. In terms of Dr. Osicka, other than giving you

11 medication for your chemical poisoning, is he giving you any

12 treatment for any other problem?

13 A Hypertension.

14 Q Okay. How long has he treated you for hypertension?

15 A The last two years.

16 Q And what treatment do you get? Medication?

17 A Yes.

18 Q So you're on medication for your hypertension and you're on

19 medication for your chemical poisoning. Are you on any

20 medication for any problem that you believe is related to the

21 furnace?

22 A That I don't know.

23 Q All right. Are you receiving any treatment that you're aware

24 of for any problems with your lungs?

25 A That I'd have to find out from the doctor.

1 Q All right. As we sit here today, you can't tell me of
2 anything?
3 A No, I can't tell you.
4 Q Are you receiving any treatment for any problem related to
5 your memory?
6 A What are they going to do for a memory? I don't know.
7 Q Okay. My question is, are you seeing anyone or getting any
8 treatment for the memory problem you told me you have?
9 A No.
10 Q And likewise are you seeing anyone or getting any treatment
11 for the problem you described as being quick tempered?
12 A No.
13 Q Okay. Let's talk about Dr. O'Donnell then. You saw him,
14 according to his record, on January 23, 1991.
15 A That's right.
16 Q In Milwaukee; is that right?
17 A Yes.
18 Q And, in fact, you and your mom and your husband all went
19 there together; true?
20 A That's right.
21 Q And you were sent there by your attorney?
22 A That's right.
23 Q Do you know what the purpose of going to this doctor was?
24 MR. JOHNSON: I object, attorney/client
25 privilege.

1 MR. PERNITZ: I didn't ask her --
2 MR. JOHNSON: I object.
3 Don't answer the question.
4 MR. PERNITZ: -- to relate any conversation --
5 Q What's your understanding of why you went to this doctor?
6 MR. JOHNSON: Again I'm going to object and
7 advise you not to answer.
8 Q Who made the appointment for you to see this doctor?
9 A I guess I did. I don't remember exactly.
10 Q Where did you get the name of this doctor?
11 MR. JOHNSON: Object, attorney/client privilege.
12 Q When you went to see Dr. O'Donnell, do you recall filling out
13 a questionnaire?
14 A Yes.
15 Q Okay. I show you what's attached to his report. Is this
16 your handwriting on the questionnaire?
17 A Yes, it is.
18 Q And in here you wrote testing for mental/physical problems
19 from incorrectly installed Lenox furnace; is that right?
20 A Must be, I wrote it.
21 Q And the question was who suggested you contact us and you
22 wrote Gordon Johnson, attorney; is that right?
23 A Must be, I wrote it.
24 Q All right. And then you also listed six chemical poisoning
25 as an ongoing health problem; is that correct?

1 A Yes.

2 Q And then you listed --

3 A That's not my handwriting.

4 Q Okay. That was my next question. There are six medications
5 listed on the bottom. Do you know who provided that
6 information?

7 A No, I don't.

8 Q Do you recognize the names of those drugs?

9 A That's -- that's a water pill.

10 Q The second one, L A S I X?

11 A Lasix and that's Xanax, that's for nerves.

12 Q X A N A X?

13 A And that is the blood pressure pill.

14 Q C A L A N?

15 A Calan. The rest of them, I don't know.

16 Q To the best of your knowledge are you on all six of those
17 drugs?

18 A I have -- not that one, this one I have, this one I have. I
19 don't have any of those, just Lasix and Calan.

20 Q Presently?

21 A Uh-huh.

22 Q Yes?

23 A Yes.

24 Q On the day you were in there, is it possible you were taking
25 all six drugs?

- 1 A No, I don't take them all at one time.
- 2 Q You alternate or what's the situation?
- 3 A Yes, I have a certain period of time I take them in.
- 4 Q All right. Have you been back to see Dr. O'Donnell since the
5 date of this evaluation?
- 6 A No.
- 7 Q Have you seen any other psychologists?
- 8 A No.
- 9 Q Do you have any plans of seeing one?
- 10 A No.
- 11 Q Have you read Dr. O'Donnell's report?
- 12 A I've read it, but I don't remember reading it.
- 13 Q Did you take any documents with you when you went to see him,
14 in other words --
- 15 A No.
- 16 Q -- any paperwork to show him?
- 17 A No.
- 18 Q All right. So whatever he got from you about your problems
19 would be things you told him out of your memory?
- 20 A That's right.
- 21 Q Have we covered all the medical care and treatment that
22 you've had that you believe is related to this furnace
23 problem?
- 24 A We've covered a lot of medical things, but not the problem.
- 25 Q I know we haven't talked about the furnace, but my question

1 is, have we covered all the medical treatment?
2 A Yes.
3 Q All right. At the present time are you having any physical
4 symptoms related to your lungs?
5 A Shortness of breath.
6 Q Okay. Anything else?
7 A Not that I notice.
8 Q Have you experienced shortness of breath prior to the
9 installation of this furnace?
10 A Not like it is now.
11 Q Okay. You experienced it before, but you think now it's
12 worse?
13 A Yes.
14 Q All right. Can you give me an example of when you
15 experienced shortness of breath?
16 A When I turn the furnace on.
17 Q Okay, meaning if you went home today and turned on your
18 furnace, you would then start experiencing shortness of
19 breath?
20 A Yes.
21 Q Would it make any difference what you were doing physically?
22 A No.
23 Q Sitting, standing, walking, working, it doesn't matter?
24 A No.
25 Q And that is still ongoing?

- 1 A Yes.
- 2 Q All right. Other than shortness of breath, do you have any
3 physical symptom that you believe is connected with your
4 lungs?
- 5 A I don't know how to answer that question.
- 6 Q Okay. I guess I'm just asking in general if there's any
7 other problem that you're having at the present time. You
8 told me that this doctor says you have scarring and black
9 spots on your lungs. What I'm trying to find out, does that
10 cause you any physical problem, any pain, any -- well,
11 shortness of breath is a problem. Is there anything else or
12 is that it, shortness of breath?
- 13 A Shortness of breath, that's all I know.
- 14 Q So you don't have any pain or anything like that associated
15 with your lungs?
- 16 A Not that I know of, that I haven't experienced any yet.
- 17 Q Do you experience shortness of breath when you're out of your
18 house?
- 19 A No.
- 20 Q Do you experience it, say, if you walked up a set of steps?
- 21 A No.
- 22 Q So the only time you experience it is when you go home and
23 turn on the furnace?
- 24 A That's right.
- 25 Q Does it make any difference if you're on heating or cooling?

1 A It makes no difference.

2 Q It occurs both on heating and cooling?

3 A Yes.

4 Q Does it occur every time you turn the furnace on?

5 A Yes.

6 Q Has Dr. Osicka or anyone given you any explanation as to why

7 you're having that problem?

8 A No.

9 Q Do you have any understanding as to why you're having that

10 problem?

11 A Nope.

12 Q In your Answers to your Interrogatories, Question No. 5, you

13 said you're making a claim for loss of earning capacity.

14 Have you been evaluated by anyone with respect to a loss of

15 earning capacity? In other words, have you been seen by any

16 professional?

17 A Professional what?

18 Q Well, there are people, such as vocationalists, that evaluate

19 those types of problems. Have you seen anyone like that?

20 A No.

21 Q Are you claiming that the furnace has affected your ability

22 to work and earn money?

23 A Yes. As far as shortness of breath, yes.

24 Q If I understand your earlier testimony, your chemical skin

25 problem has put you on permanent disability?

1 A Yes.

2 Q So it would be fair to say because of that problem you're not
3 able to go back to work?

4 A Right.

5 Q Okay.

6 A But I could be able to walk and do stuff outside.

7 Q Well, for now I'm just talking about employment.

8 A Uh-huh.

9 Q You have to say yes or no.

10 A Yes.

11 Q You'll have to put your glasses back on again. No. 10, I
12 want to make sure we don't have a mistake here. You said you
13 were presently receiving Workers' Compensation benefits. I
14 think earlier you told me you weren't.

15 A I am receiving Social Security disability.

16 Q When you said Workers' Compensation benefits in your Answers
17 here, that would not be correct?

18 A I don't know the difference between Workers' Comp and Social
19 Security disability.

20 Q You don't know the difference?

21 A No.

22 Q When you get a check, do you know where the check comes from?

23 A From the government.

24 Q From the Department of Social Security?

25 A That's where it's coming from.

1 Q In reading Answer No. 6, you refer to employment at Berlin
2 Chapman's. That, again, is the same --
3 A Same company as I'm talking about before.
4 Q All right. According to this you started construction on
5 your house in June of 1979; is that right?
6 A That's right.
7 Q And you finished it two years later in June of 1981?
8 A That's right.
9 Q Who was involved in constructing the house?
10 A We did it ourselves.
11 Q And when you say we, who do you mean? You and your husband?
12 A Myself, my husband, my brother, my cousin, family. We had a
13 professional block layer.
14 Q During the two years that the house was being erected, where
15 did you live?
16 A Across the street in the house I was living in when I got
17 married.
18 Q All right. When was it that you got married to Hollis?
19 A June 6, 1975.
20 Q So you had lived together with him across the street for the
21 four years --
22 A Four years.
23 Q -- before you started building your new house?
24 A That's right.
25 Q When you constructed this home, were all of the construction

1 materials new or did you incorporate any used materials?
2 A They were new.
3 Q And where did you purchase the lumber from?
4 A Kaufman Building Center.
5 Q And where are they located?
6 A They were located here in Berlin.
7 Q What type of furnace did you have installed when you first
8 built the house in 19 --
9 A Milwaukee Gas furnace.
10 Q And was that a gas furnace?
11 A That's gas furnace.
12 Q Was that LP gas or natural gas?
13 A LP gas.
14 Q Did you have any problems with that furnace during the period
15 of time you owned it?
16 A No.
17 Q And when was it you decided to change that furnace to
18 something else?
19 A Because we heard Lenox was so self-efficient.
20 MR. JOHNSON: He asked when, not why. The
21 question was when did you make the decision to change
22 furnaces.
23 A (Continued) In -- oh, great. It was the fall of the year.
24 MR. JOHNSON: Perhaps the question would be
25 simpler if you asked when she replaced it.

1 Q In your Answers you indicate you had a new furnace put in in
2 August of '88. Does that help you?
3 A Yes.
4 Q How did you decide to choose a Lenox? Based on advertising?
5 A Yes.
6 Q And how did you decide to choose Mr. Zuehls?
7 A Well, I figured he was closest to our house.
8 Q And did you have him come out and give you an estimate before
9 the work was done?
10 A He came out and looked at it.
11 Q Did he give you a price?
12 A Told us \$3,750.
13 Q Now, if I understand it, you and your mother own the land the
14 house is on?
15 A That's right.
16 Q And you and your mother own the house?
17 A That's right.
18 Q And your husband is not an owner of either?
19 A Nope.
20 Q He's not?
21 A He's not an owner of either.
22 Q What kind of house is this?
23 A Duplex.
24 Q Do you know what the total square footage is of the whole
25 house, both sides?

1 problems?

2 A In the spring.

3 Q Okay. We're now into the spring of 1989?

4 A That's right.

5 Q When in the spring of '89 did you first notice a problem?

6 A February or March.

7 Q And what problem did you notice?

8 A A black V behind a door.

9 Q On the wall or --

10 A That's right.

11 Q Was it somewhere in relationship to a register?

12 A Right above a register.

13 Q Was this a register where hot air came out?

14 A That's right.

15 Q How big was the V or how would you describe it?

16 A It was 3 feet up V, very gooey.

17 Q Let me describe what you've done with your fingers. You've

18 got the V upside down with the wide part towards the bottom

19 or the floor?

20 A Yes.

21 Q About 3 feet wide?

22 A Yes.

23 Q It went up and came to a point?

24 A It went up. I don't know if it came to a point really.

25 Q And about how high up on the wall did it go?

1 A 5 feet.

2 Q You said this was a black mark on the wall?

3 A Black gooey substance.

4 Q Did you have that type of substance anywhere else in the
5 house?

6 A Eventually I found it all the way through the house.

7 Q For the first time you noticed it, you just noticed this one?

8 A That's right.

9 Q And where was it?

10 A Located in a hallway into the kitchen.

11 Q The hallway leading to the kitchen?

12 A Yes.

13 Q And you said it was behind a door. What did the door --

14 A My bedroom door.

15 Q So it was in the hallway, but your bedroom door would cover
16 it up when the bedroom door was opened?

17 A When it was opened, yes.

18 Q What did you do when you noticed the spot on your wall?

19 A Tried to clean it off.

20 Q Did it come off?

21 A Not very easily.

22 Q But it came off?

23 A It stained the wall.

24 Q What was the surface of the wall?

25 A It was white --

1 Q I mean was it painted wood?
2 A No; it was like a satin 4 by 8 sheet design panel.
3 Q I don't know --
4 A It has a satin texture to it.
5 Q Do you know what the material of the panel was made out of?
6 A No, I don't.
7 Q It's not drywall?
8 A No, it's not.
9 Q When did you next notice any other problem?
10 A When my curtains started turning black.
11 Q All right.
12 A Windows begin to get black.
13 Q When did you notice that, what time of the year are we?
14 A It just started happening all at once. It continued.
15 Q Okay.
16 A There was no specific time when anything happened, it just
17 continued.
18 Q Well, we're talking in terms of the time frame, February or
19 March of '89?
20 A This all happened February, March, April, May, June, July,
21 and August, right on down.
22 Q When did you first contact anyone at the Zuehls?
23 A I don't remember the date when I contacted him.
24 Q Who did you talk to?
25 A Either his wife or it was Jerry.

1 Q All right. And did they come out to the house?
2 A Yeah, they came out to the house.
3 Q Do you remember who came out?
4 A Jerry.
5 Q All right. Was he alone or with someone?
6 A He had somebody with him, I think.
7 Q And what problems did you show him?
8 A I showed him the whole house.
9 Q Okay. What was in the house at that time that he could see?
10 A This black oily greasy substance.
11 Q Do you remember what month that was that he came out?
12 A No, I don't.
13 Q Did he give you any explanation for what might be causing
14 that?
15 A Not really.
16 Q Do you remember anything about what he said?
17 A More or less hinted I was a dirty housekeeper.
18 Q You said he hinted. I guess my question is, do you have a
19 memory of anything specific that he said to you?
20 A No. He very seldom ever said anything very plainly.
21 Q What do you mean by that?
22 A Evasive.
23 Q All right. You said he hinted about your housekeeping. How
24 would you describe your housekeeping?
25 A I was a good housekeeper.

1 Q Okay. Do you recall how much time he spent at your house on
2 that first occasion?
3 A I would be guessing saying 20 minutes.
4 Q Did he look at the furnace while you were there?
5 A Yeah.
6 Q Okay.
7 A He lifted the door.
8 Q Did he find anything wrong that you're aware of?
9 A Not that I know of. If he did, he didn't say.
10 Q Okay. When is the next time you contacted anyone in
11 connection with the furnace?
12 A I don't remember all the dates, but I did contact down into
13 Iowa.
14 Q Who did you contact in Iowa?
15 A Todd Robinson, I think his name was.
16 Q And who is he with?
17 A Lenox Company.
18 Q All right. Was that after the time when Jerry was out at
19 your house?
20 A Yes.
21 Q And you called Todd Robinson. What did you tell him?
22 A The same thing I told Jerry.
23 Q Which was what?
24 A That I was having black substance in the house and the house
25 was turning black.

1 Q And how many times were people from Lenox out there?
2 A Once.
3 Q And you said they sent a young kid. Do you know his name?
4 A No, I don't.
5 Q What did this kid do?
6 A He was running around the house with a little gadget in his
7 hand. I don't know what the gadget was.
8 Q Was it your understanding he was taking air samples?
9 A I don't know what he was taking.
10 Q Did he explain to you what he was doing?
11 A It didn't make any sense.
12 Q He told you something, but it didn't make any sense?
13 A Yeah, it didn't make any sense at all.
14 Q Do you have any idea what he told you?
15 A No, I don't.
16 Q When you say a young kid, how old a person are we talking
17 about?
18 A I would say 18, 19.
19 Q Okay. And how long was he there?
20 A 15 minutes, 20 at the most.
21 Q Now, at some point in time Zuehls came out and changed some
22 parts on your furnace; is that right?
23 A Yeah, they changed the -- supposedly have changed the heating
24 element.
25 Q Did the problem get better or worse or stay the same after

1 they changed --

2 A It stayed the same.

3 Q -- the heating element? Other than changing the heating
4 element, did they make any changes to the furnace after he
5 installed it?

6 A Not that I know of.

7 Q Did the guy from Lenox make any changes on your furnace?

8 A Not that I know of.

9 Q Did you ever have anyone make any changes on your furnace?

10 A Yes.

11 Q Who was that?

12 A Condon Total Comfort out of Ripon.

13 Q Is that C O N D O-N?

14 A That's right.

15 Q And when did you contact them?

16 A November.

17 Q '89?

18 A '90.

19 Q Well, let me just take you back because we were in the spring
20 of 1989. Do you know roughly when it was when the Lenox kid
21 came out?

22 A No, I don't.

23 Q Was that in '89?

24 A Yes.

25 Q And do you know roughly when it was --

1 A I think it was '89. I'm not sure.

2 Q Do you know when it was when Zuehls made the change of the
3 heating element?

4 A No, I don't.

5 Q Going into the summer of 1989, I assume you ran your air
6 conditioner?

7 A Yes.

8 Q Did you have any problems when you ran the air conditioner?

9 A A black substance was still coming.

10 Q You had black stuff coming on air conditioning?

11 A Yes.

12 Q Going then into the fall of '89, back into the heating
13 season, was there any change? Was it the same?

14 A No change.

15 Q Okay. Were there any other contacts you had with anyone in
16 the fall of '89?

17 A No.

18 Q All right. You then went almost a year to November of '90
19 before you got ahold of Ripon Condon Total Comfort?

20 A That's right.

21 Q Why did you contact them?

22 A To see if I could get the problem fixed.

23 Q During that year had you had any further contacts with Todd
24 Robinson down in Iowa?

25 A Yes.

1 Q And --

2 A And also from Milwaukee, there was a man up there. I can't
3 remember what his name was.

4 Q What company was he connected with?

5 A Lenox.

6 Q Okay. And what did he do?

7 A Just talked on the phone, said that they would make -- that
8 Zuehls would make good for it.

9 Q At some point Lenox offered to put in a whole new furnace,
10 didn't they?

11 A Yes, they did.

12 Q What was your response to that offer?

13 A I said I wouldn't mind it but they're not moving anything out
14 of the house, otherwise I'd lose the case, and I told them
15 no.

16 Q So they offered to give you a new furnace and you told them
17 no?

18 A That's right.

19 Q And the reason you told them no was what?

20 MR. JOHNSON: I'm going to object. We're
21 talking about settlement negotiations here.

22 I'm going to advise you not to answer.

23 Q What you just testified, you didn't want them taking your old
24 furnace away --

25 MR. JOHNSON: I should have objected to the

1 MR. PERMITZ: That's the basis for my request.

2 MR. JOHNSON: Doesn't short circuit the 30-day
3 time period for request of production of documents.

4 Q How did you come to select Ripon Condon Total Comfort?

5 A Opened the telephone book.

6 Q They weren't recommended by any particular person?

7 A No.

8 Q You mentioned you had some conversations with a Milwaukee
9 Lenox representative. Did he ever come to your house?

10 A No.

11 Q Did he ever send anyone to your house?

12 A No.

13 Q Have we covered all the people that came to your house
14 between 1989 and November of 1990?

15 A Yes.

16 Q In November of '90 what did Ripon Condon Total Comfort do for
17 you?

18 A They took it apart, cleaned it.

19 Q Anything else?

20 A Yeah, they did a lot more work on it.

21 Q Do you know what they did?

22 A No; I didn't stand right by them.

23 Q Did you get a bill from them?

24 A Yes, I got a bill from them.

25 Q Did you pay that?

1 A Yeah, I had to pay it.

2 Q How much was the bill?

3 A I don't know. Gordon has got it.

4 MR. JOHNSON: I believe that's in the

5 Interrogatories.

6 Q \$273 --

7 A That's for sealing the pipes.

8 Q Okay. What do you mean by sealing the pipes?

9 A Sealing the duct work.

10 Q Okay. What was sealed? What did they do?

11 A All the hot air, cold air duct works. They came in and

12 cleaned them and sealed them.

13 Q What do you mean by sealed?

14 A I don't know what they do with sealing. They sealed it.

15 Q Okay. Did you watch them do it?

16 A No, I did not watch them do it.

17 Q Okay.

18 A I heard them do it.

19 Q How do you know they sealed the duct work?

20 A You could hear the flush, shh, shh through the pipes.

21 Q They were putting something inside your ducts?

22 A They were sealing the pipes.

23 Q Is that what you were charged \$273 for?

24 A That's right.

25 Q Was there additional work beyond the \$273 that they did?

1 present time?

2 A I can't measure a dirt.

3 Q Well, you said it appears on the walls. Does it appear
4 frequently, does it appear --

5 A I can wash my windows every other day and it still comes.

6 Q And when you say it, you're still talking about this black
7 substance?

8 A Black substance.

9 Q Has anyone identified what the black substance is?

10 A Through Air Research in Milwaukee.

11 Q And who are they?

12 A An analysis.

13 Q What did they tell you about the black substance?

14 A It's all on the papers that Gordon has got.

15 Q That wasn't my question. My question is, what did they tell
16 you?

17 A I don't remember.

18 Q Who contacted Air Research?

19 A I did.

20 Q And how did you get their name?

21 A Out of a telephone book, looking for chemists.

22 Q Why were you looking for a chemist?

23 A Because I wasn't getting any satisfactory answers.

24 Q Okay. And when did you contact Air Research?

25 A I don't remember the date.

1 Q How many times did they come to your house?
2 A We did it through the mail.
3 Q What is it that you did?
4 A Took samples, cheese cloth samples, on top of the air ducts
5 and part of the filters of the furnace.
6 Q Okay. What else? Is that it?
7 A As far as I remember it is.
8 Q So you cut off a piece of your filter from the furnace?
9 A Just pulled the corner, small part.
10 Q What was the other thing, you said you put cheese cloth --
11 A Yes.
12 Q -- on your air ducts?
13 A Yes.
14 Q Which ducts did you put them on?
15 A Hot and cold.
16 Q How many of them did you put it on?
17 A All of them.
18 Q How long did you leave the cheese cloth on?
19 A Two weeks at the most.
20 Q And then at the end of two weeks you did what, gathered them
21 up and mailed them to Milwaukee?
22 A Took them off, sent them in.
23 Q How did you package them?
24 A In plastic Ziplock bags and brown envelopes sealed.
25 Q So you sent these to them and then they sent you a report?

1 A That's right.

2 Q What were their findings?

3 A I don't remember.

4 MR. PERNITZ: Do you have that?

5 MR. JOHNSON: Yeah. I'm going to get a copy.

6 MR. PERNITZ: Let's take a five-minute break.

7 (Short recess)

8 MR. PERNITZ: Mark that.

9 (Air Research report marked Exhibit 1)

10 BY MR. PERNITZ:

11 Q We've had her mark as Exhibit No. 1 a letter written to you
12 by a Susan Bergmeyer dated September 18, 1990; is that
13 correct?

14 A That's right.

15 Q This is from Air Research, Incorporated; true?

16 A That's right.

17 Q Attached to this is what's called a Bulk Sample Analysis
18 Report and it says they received some samples on August 15,
19 1990, and on the second sheet it says they received some on
20 August 29, 1990.

21 A Yes.

22 Q So apparently you sent in samples on two different occasions?

23 A That's right.

24 Q Do you remember what you sent them on the 15th of August?

25 A That was the cheese cloth.

- 1 Q All right. And on the 29th of August what did you send?
2 A That was the corner sample out of the filter.
3 Q Were those the only two times you sent them any samples?
4 A It's the only two times I remember.
5 Q Is this the only report you have from them?
6 A As far as I remember.
7 Q Have you done any sampling since the Ripon people were in
8 doing work?
9 A No.
10 Q Did you have any sampling done by any other group or any
11 other people?
12 A Just Paul Petta helped me.
13 Q Who is Paul Petta?
14 A He worked for Wisconsin Power & Light.
15 Q And what did he do?
16 A He checked for whatever you call that funny odor in the
17 house, radon or whatever, carbon monoxide poisoning, whatever
18 you want to call it.
19 Q He checked for radon --
20 A Whatever that is called.
21 Q For some odor?
22 A Yes.
23 Q Did he take air samples?
24 A He had a meter.
25 Q Did he ever give you a report?

1 A He said I was safe. So far as that, it was good. That was
2 verbal.

3 Q So whatever that he was testing for, he said you were okay?
4 A Yes.

5 Q All right. Anyone else that did any testing in your house?
6 A Nope.

7 Q Do you know when it was when Paul Petta was there?
8 A Paul Petta was there several times and I can't give you all

9 the dates because I don't remember them.

10 Q Would it have been prior to when you sent the samples into
11 Air Research?

12 A He was with me with this one. He was helping me with this
13 one.

14 Q Paul Petta was helping you --

15 A With getting the sample.

16 Q What help did he give you? What did he do?
17 A He went up in the plenum and caught the corner of the filter.

18 Q Are there any other people that you've had contact with in
19 connection with your furnace problem?
20 A Not that I remember.

21 Q To help your memory, you did send in a complaint to the
22 Attorney General's Office, is that right, Consumer
23 Protection?

24 A That was in the very beginning.

25 Q And I'll just show you a consumer complaint that you made out

1 and sent in. Is that your writing on there?
2 A Yes, it is.
3 Q Did you file any other such complaints with any other
4 agencies other than this one?
5 A No; just the guy from Channel 5 news.
6 Q And who was that?
7 A I can't think of his name right now. I think he's on 5.
8 Q Channel 5 out of what city?
9 A Green Bay.
10 Q What kind of guy is this? Like a consumer protection guy?
11 A Yes. He checks into problems.
12 Q So you wrote him a letter?
13 A Yes.
14 Q Did he take any action on your letter?
15 A He gave me to the company you just showed me.
16 Q He directed you to the Consumer Complaint Division?
17 A Yes.
18 Q All right. Did you have Attorney Milton Spoehr representing
19 you for a period of time?
20 A Just in the beginning.
21 Q And then apparently you switched attorneys?
22 A Uh-huh.
23 Q So he's no longer your attorney?
24 A No, he isn't.
25 Q Are there any other people that you have had contact with in

1 connection with your furnace problem?

2 A Oh, I've talked to several different Lenox dealers, but
3 they've never come into the house.

4 Q Who have you talked to?

5 A One from Waupaca. I can't tell you his name. I went and
6 talked to him.

7 Q Did you ask him to do anything for you?

8 A No; I asked him if they had any problems like that.

9 Q What did he tell you?

10 A They've never encountered anything like it.

11 Q Has anyone ever told you they experienced this kind of
12 problem?

13 A No.

14 Q In all your contacts with all of the people we've discussed,
15 has anyone ever told you that they had seen a similar
16 situation?

17 A Paul Petta ran into one.

18 Q What did he tell you?

19 A But that was not with Lenox or anything else. I can't
20 remember the conversation. All I know, he said he ran into
21 something similar to this.

22 Q Other than that, has anyone ever told you that they had seen
23 such a problem?

24 A No.

25 Q Now, you mentioned your shortness of breath. When did you

1 make them available to us?

2 A Yeah, I can make them available to Gordon.

3 Q When did you take the pictures?

4 A I don't remember the day I took them all the way through.

5 Q So you took them over time?

6 A Over a time period.

7 Q How many pictures do you have?

8 A One whole roll of film is shot because my camera got shot.

9 Q How many pictures did you take?

10 A One was a 24 exposure and that's shot.

11 Q What do you mean by shot? The pictures didn't turn out?

12 A The gook, whatever you want to call the black substance, got
13 into my camera.

14 Q All right. To back up to my question, how many photographs
15 do you presently have in your safe?

16 A Most likely 15, 20.

17 Q And on the photographs have you indicated the date that the
18 pictures were taken?

19 A No, I did not. I just circled the problem.

20 Q Circled on the picture?

21 A Yes.

22 Q Would you be able to tell, from looking at the photographs,
23 when they were taken?

24 A No. I took the date off my camera.

25 Q Your camera has the ability to print a date?

1 A Yes. I had that taken off.
2 Q When did you last take pictures? What would be the most
3 recent one?
4 A It would be two weeks ago.
5 Q And would that photograph be part of the group that you have
6 in your safe?
7 A Yeah, it's still in the camera.
8 Q It's still in the camera. What did you take a picture of two
9 weeks ago?
10 A The wall in my mother's kitchen.
11 Q And what does that show?
12 A Discoloration, permanent discoloration.
13 Q What color is it?
14 A What was white is now a rotten looking brown.
15 Q Has anyone else taken pictures for you?
16 A Nope.
17 Q In your Answers to Interrogatories you list some people as
18 witnesses. I think we've covered most of these, but maybe
19 there's a few I can ask you about. Starting from the
20 bottom -- and we're looking at your Response to No. 12 --
21 Mike from Condon Total Comfort would have been the guy that
22 came out and did the work --
23 A That's right.
24 Q -- in 1990 and we talked about Sue from Air Research?
25 A That's right.

1 Q You've listed Grace Keller, your sister. What is she a
2 witness to?
3 A Becoming ill in the home.
4 Q She became ill in the home?
5 A Uh-huh.
6 Q Yes?
7 A Yes.
8 Q And what happened to her?
9 A She got sick.
10 Q By that you mean -- what? -- she had a headache?
11 A Headaches, nausea.
12 Q And when was that?
13 A She comes out on weekends mostly, likely every weekend.
14 Q My question is, when did she get sick?
15 A I don't know the weekends. I don't know the dates.
16 Q Did she get sick once or more than once?
17 A More than once.
18 Q Do you know how many times she got sick?
19 A No.
20 Q Has she ever seen a doctor?
21 A No, I don't know if she's seen a doctor.
22 Q You don't know if she has?
23 A No.
24 Q And what physical symptoms has she had? Headaches, you said?
25 A Headaches, nausea.

1 Q And how long does it last?
2 A As long as she's in the house.
3 Q When she goes home, it goes away?
4 A That's right.
5 Q When was the last time she had that problem?
6 A I don't know. I didn't ask her.
7 Q So you don't know?
8 A No, I don't know. I didn't ask her.
9 Q Okay. Paul Petta we've talked about. Who are Robert and
10 Alice Rosey --
11 A Rosey.
12 Q -- R O S E Y?
13 A They're just casual friends that come into the home.
14 Q What would they be a witness to?
15 A Well, they could testify that I wasn't a dirty housekeeper
16 and they could testify to the blackness of the home.
17 Q Okay.
18 A The same with Lawrence and Lee Krueger of Oshkosh.
19 Q K R U E G E R?
20 A That's right.
21 Q And are they friends or relatives or what?
22 A Friends.
23 Q You've also listed --
24 A Helen Hill is my sister.
25 Q Right.

1 A And June Wacholtz is my sister-in-law. She came into the
2 home one time, she sat down, she got sick, and she up and
3 left and she hasn't come back since.

4 Q When was that?

5 A Last fall.

6 Q So it was June that got sick last fall?

7 A That's right.

8 Q And what about Helen Hill, what is she a witness to?

9 A The smell got to her. She became ill.

10 Q This is the first time you've mentioned the smell. Has there
11 been a problem with an odor?

12 A Yes.

13 Q When did you first have a problem with the odor?

14 A I don't remember the dates. I just know it was there.

15 Q Has the problem of odor been there all along or is this a new
16 problem?

17 A No, it was there all along.

18 Q So the odor has been consistent all along with the black
19 material?

20 A That's right.

21 Q Has anyone given you any explanation as to what's causing the
22 odor?

23 A I haven't got too many explanations for anything.

24 Q That wasn't my question. Has anyone given you an explanation
25 for the odor?

1 A No.

2 Q When Paul Petta tested for odor, apparently he couldn't find
3 a source for the odor, could he?

4 A No.

5 Q What does it smell like?

6 A It's a sickening smell.

7 Q Do you know when it was that you first noticed that smell?

8 A No, I don't.

9 Q Was it in connection with when you first saw that black mark
10 behind the door?

11 A No, I don't remember the smell then, but later on.

12 Q Does the smell continue to be present?

13 A At times, yes.

14 Q If I went to your house today, would I smell it?

15 A No.

16 Q Does it only appear when you have the furnace on?

17 A Yes.

18 Q If the furnace is off, you don't have the odor?

19 A That's right.

20 Q Do you have the odor with the air conditioning?

21 A I haven't noticed it with the air conditioning as much as I
22 have with the furnace.

23 Q These are all the witnesses that you've listed in your
24 Answers. Are you aware of any others?

25 A Not that I can recall offhand.

1 Q Okay.

2 A I do have people in and out of the house, but....

3 Q Well, other than Grace Keller, June Wacholtz --

4 A Wacholtz.

5 Q -- and Helen Hill, has anyone else had any physical problem
6 from being in your house?

7 MR. JOHNSON: Other than the plaintiffs?

8 Q (Continued) I mean other than the people involved in the
9 lawsuit.

10 A Not that I know of. They never said anything.

11 Q Now, attached to your Answers to Interrogatories were some
12 receipts and things. The first one is from John's Custom
13 Clean dated October 4, 1990, which apparently is an estimate
14 for doing cleaning in your house?

15 A Yes.

16 Q Have you had that work done?

17 A No; I can't afford to.

18 Q So what they did was they typed up an estimate for doing the
19 work but the work has not yet been done?

20 A No, it hasn't.

21 Q All right. Then you have some receipts for dry-cleaning, I
22 believe that is.

23 A Yes, that is.

24 Q And can you tell me what this is all about?

25 A That's my coats, down filled coats. That was all black.

1 These are my drapes, bedspreads. That was all black. I
2 can't read that one myself.

3 Q Okay. Let me just stop you there. These were all dated,
4 looks like, September of 1990?

5 A September and October.

6 Q Okay.

7 A Most of it was my clothes, stuff that I didn't want ruined,
8 wedding dresses.

9 Q All right. So you had a number of things dry cleaned is what
10 you're telling me?

11 A Yes, I have. That black didn't want to come out.

12 Q So I understand it, your claim in this case is that the
13 furnace --

14 A It went through everything.

15 Q You'll have to let me finish the question. You believe that
16 the furnace made these clothes dirty and that's why you had
17 to have them cleaned?

18 A That's right.

19 Q Then you've got a bill here from a place called Leather Rich.
20 What's that?

21 A That was a leather jacket, deer skin jacket.

22 Q What did they do? Cleaned it?

23 A That's right.

24 Q This was in the fall of '90; is that right?

25 A That's right.

1 Q Is there any particular reason why it was that in September
2 and October of '90 you were having all these things cleaned?
3 A Because I didn't want them wrecked any more than they already
4 were.
5 Q And then what is this one --
6 A That's my fur coat.
7 Q There's no description. What work was done?
8 A It was cleaned.
9 Q Okay.
10 A The black was taken out of it.
11 Q Then you've got a bill from Matthew Schultz?
12 A Yes. That's for the electric organ to be cleaned. It
13 wouldn't play anymore.
14 Q He indicates a service call for 50 and then cleaning of organ
15 for 80 and then repairing a Lesley. That's a Lesley speaker?
16 A That's right.
17 Q What was wrong with the speaker?
18 A It wouldn't even turn or work or whatever you want to call
19 it.
20 Q Do you know why not?
21 A Because it was all black and gummed up, just like everything
22 else is black and gummed up.
23 Q Then you've got one --
24 A Collegiate, that was cleaned and oil, wouldn't work anymore.
25 Q Then you've got one here?

1 A Calculator.

2 Q And that was for -- what? -- cleaning again?

3 A Yes.

4 Q And then you've got a proposal from Carpet Land?

5 A Yep. I shampoo my carpets every six weeks.

6 Q My question is, Carpet Land is an estimate for doing --

7 what? -- recarpeting the entire duplex?

8 A That's on my side, yes, the carpet that is shot.

9 Q This is just an estimate for your side?

10 A Uh-huh.

11 Q Yes?

12 A Yes.

13 Q You don't have an estimate for your mother's side?

14 A She just put in a brand-new one.

15 Q Okay. How old is the carpet in your house?

16 A Well, it will be ten years old.

17 Q It's the original carpet?

18 A It's the original carpet. There was nothing wrong with it

19 before.

20 Q The proposal you have here dated October 2, 1990, this

21 carpeting has not been purchased, has it?

22 A That's right.

23 Q Then you've got some phone bills listed here. What do they

24 represent?

25 A That's the calls I made to and from Iowa, Milwaukee to Lenox.

1 Q Can you tell me which ones -- Marshalltown, Iowa, all of
2 those would be Lenox?

3 A Yes.

4 Q Then there's some to Texas.

5 A Lenox.

6 Q What about Lafayette?

7 A Lafayette, no. Marshalltown, Iowa, Fort Worth, Texas,
8 there's some here that was marked with Milwaukee.

9 Q We've got two different numbers for Milwaukee. Are both of
10 those Lenox in Milwaukee?

11 A This here, 311, that is Air Research and --

12 THE WITNESS: Is it?

13 MR. JOHNSON: Yes. It's consistent with Exhibit
14 No. 1.

15 Q Okay, 311 is Air Research.

16 A And Waukesha would be the guy that I talked to out from,
17 whatever his name was, Lenox.

18 Q Okay. And then you've got one here with Berlin, Appleton --

19 A Iola is the guy I called for cleaning the organ.

20 Q Okay. Are there any others on here that relate to this?

21 A And this one.

22 Q Okay. You're pointing to one in Iowa?

23 A I'd have to have mine because I got them all wrote down in
24 red at home. Here we go. There's a lot of them here. Here
25 is where I started drawing lines through them.

1 Q Where you've drawn lines or circled, those are the ones you
2 believe are related?

3 A Them are the ones I did do, talked to them guys, Milwaukee.
4 Most of them are marked except for this first batch.

5 Q Okay. And, if I understand it, everything in this group of
6 bills has been paid except for the John's Custom Clean
7 estimate and the carpeting estimate?

8 A That's right.

9 Q Besides the bills we have here in this grouping, do you have
10 any other bills that you claim are related to your furnace
11 problem?

12 A They just may end up gutting out my whole house, that's all.

13 Q What I'm talking about --

14 A Other than that, I can't answer the question. I don't know
15 of any yet.

16 Q Is there anything else you have paid that you're aware of?

17 A I don't know.

18 Q Again, that would include the \$273 we already talked about?

19 A Uh-huh, plus the 500-some dollars from Condon.

20 Q Well, beyond that. I thought earlier you told me that the
21 \$273 you have listed in your Answers --

22 A The 273 was from New Life. It's called New Life. They're
23 cleaners.

24 Q Okay.

25 A 500-some dollars through Condon to come out and fix the

1 furnace.

2 Q Okay. We haven't talked about New Life. Who are they?

3 A They're cleaners of pipes.

4 Q Okay.

5 A Air duct cleaners.

6 Q And where did they come from?

7 A Fond du Lac.

8 Q So in your Answer to No. 22, where you listed \$273 for Ripon

9 Condon, that's wrong, it would be 500-something?

10 A 500-and-something. I forgot what it is.

11 Q And 273 is for the --

12 A New Life.

13 Q All right. Any other bills that you've paid?

14 A I don't remember of any other bills I've paid.

15 Q Other than the material you've supplied me already and the

16 letters back and forth between you and Lenox, are you aware

17 of any other written materials that relate to your furnace

18 problems?

19 A No. Most of this was done on the phone.

20 Q Okay. Now, in terms of your mother, has she experienced any

21 health problems that you feel are related to the furnace?

22 A Yes.

23 Q What types of problems has she experienced?

24 A She's passed out for no reason at all.

25 Q All right. Anything else?

1 A I can't answer those questions for her.

2 Q I understand we're going to be asking her directly, what I'm
3 asking is, based on your observations and your relationship
4 with her, are you aware of any problems she's having?

5 A Yes, I'm aware of a lot of problems in the home. Irritation.

6 Q What do you mean by irritation?

7 A Agitation.

8 Q Your mother gets agitated?

9 A Yes, irritability.

10 Q All right. Anything else that you've seen or experienced?

11 A She's not as steady on her feet as she used to be.

12 Q Anything else?

13 A Her eyes, she has infections in them.

14 Q Had she had infections in her eyes before you had the Lenox
15 furnace?

16 A No.

17 Q Do you take her to her doctors appointments?

18 A Yes, I do.

19 Q Do you go in with her when the doctor sees her?

20 A Not always. Only when they dilate her eyes.

21 Q Any other problems that you're aware of that she's having?

22 A Not that I know of offhand.

23 Q Okay. How about your husband?

24 A A lot of problems.

25 Q Okay. Tell me what he's got.

1 A He's been having many strokes.

2 Q When did he have his first stroke?

3 A Four or five years ago.

4 Q That was way before you had the furnace, isn't it?

5 A Yes, it was before that, but he did real good. He had a
6 great recovery out of it.

7 Q Okay. When did he have a stroke after that?

8 A He's been having them all the time.

9 Q And who does --

10 A In August he was in the hospital.

11 Q For what kind of problem?

12 A At that time it was a prostate problem, but we took him in,
13 he was so disoriented and everything else.

14 Q August of '90?

15 A Uh-huh.

16 Q Yes?

17 A Yes.

18 Q You said that was for a prostate problem?

19 A Uh-huh.

20 Q You're not claiming that's caused by the furnace, are you?

21 A No.

22 Q Can you tell me what problems he's having at the present time
23 that you're claiming are caused by the furnace?

24 A I believe his eyes didn't heal from surgery with the black
25 stuff flying in the air.

1 Q When did he have surgery?
2 A February of '90.
3 Q All right. Any other problems that you feel are related?
4 A Yes; he's very badly tempered.
5 Q All right. Any others?
6 A He goes wandering off on me, which he never did before.
7 Q What do you mean by that?
8 A Takes off and goes.
9 Q Walking?
10 A Walking.
11 Q Meaning -- what? -- outside he'll go for a walk?
12 A He just takes off and goes somewheres when I'm not watching
13 him.
14 Q All right.
15 A When he gets one of these so-called small strokes, he just is
16 gone. He's not with his mind.
17 Q All right. Anything else?
18 A That's all I can think of. That's enough for watching.
19 Q Do you likewise take him to his doctors appointments?
20 A Yes, I do.
21 Q Do you go in when he sees the doctor?
22 A I take him in so he can get into the room, yes.
23 Q Do you tell the doctor about his problems?
24 A Yes, I do when he doesn't answer them right.
25 Q So you sit and help with giving the history?