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1-13-76

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

JAMES ROY DeROCCO and ANDREW V. CAROLLO,

Plaintiffs,

vs.

FORTY-EIGHT INSULATION, INC., a corporation, et al,

Original Defendants,

vs.

WHEELING-PITTSBURGH STEEL CORPORATION, et al,

Additional Defendants,

vs.

UNARCO INDUSTRIES, INC., et al,

Additional Defendants.

FILE COPY

No. 7880 July Term, 1974
2281 July Term, 1974

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J-M 83

DEPOSITION OF DR. KENNETH WALLACE SMITH, a witness called by the plaintiffs for examination, in accordance with the Pennsylvania Rules of Civil Procedure, taken by and before Richard E. Powers, a Registered Professional Reporter and a Notary Public in and for the Commonwealth of Pennsylvania, at the law offices of Stein & Winters, 520 Frick Building, Pittsburgh, Pa., on January 13, 1976, at 10:00 o'clock a.m.

POWERS & GARRISON
COURT REPORTERS
513 SECOND AVENUE
PITTSBURGH, PA. 15219
PHONE: (412) 263-2088

APPEARANCES:

For the Plaintiffs: McArdle, Henderson, Caroselli, Spagnolli & Beachler by Thomas W. Henderson, Esq., and William R. Caroselli, Esq.

For Forty-Eight Insulation: Meyer, Darragh, Buckler, Bebenek & Eck by David Patterson, Esq.

For Vimasco Corp.: Burns, Manley & Little by James F. Manley, Esq.

For Gustin-Bacon: Bagley, Weaver & Sydor by R. Kenneth Willman, Esq.

For Eagle-Picher Ind., Inc.: Rosenberg, Kirshner & Kaleugher by Michael D. Berlin, Esq.

For Pittsburgh Corning Corp.: Dickie, McCamey & Chilcote by Randall J. McConnell, Esq.

For Owens-Corning Fiberglass Corp.: Egler & Reinstadtler by Robert J. Pfaff, Esq.

For Johns-Manville Products Corp.: Stein & Winters by Daniel B. Winters, Esq.

For Benjamin Foster: Lancaster, Mentzer, Coyne & Duffy by Charles J. Duffy, Jr., Esq.

For United Steelworkers of America: Murovich, Reale & Fossee by Chester S. Fossee, Esq.

For Unarco Ind., Inc.: Thomson, Rhodes & Grigsby by James Hartline, Esq.

For Celotex Corp.: Jones, Gregg, Creehan & Gerace by Robert C. Jones, Esq.

For George V. Hamilton: Brandt, McManus, Brandt & Malone by Mark K. McNally, Esq.

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inhalation of diatomaceous earth, particulate matter, and that form of pneumoconiosis that develops therefrom?

A. The first one that I can recall reading was published by Legge-Rozencranz about 1931, '32. There might have been earlier studies by Dr. Lanza for the U. S. Public Health Service, but I can't be certain of that. But the ones that I can affirm are the Legge-Rozencranz in the very early 1930's.

Q. And some of the asbestos studies that we referred to earlier came before the studies of Legge and Rozencranz in '31 or '32, or whenever it was?

A. The British textile studies published by Merriweather probably were initiated in the late '20s.

Q. Where was, at least in the late '40s and early '50s, diatomaceous earth mined by Johns-Manville?

A. A town called Lompoc, California, roughly 150 miles north of Los Angeles, was the prime source of soil.

Q. Can you describe when and where a certain strike occurred relative to the Lompoc, California, operation, and what result of it was in terms of the product known as Celite?

A. It was a lengthy strike which occurred in Lompoc in late '50 or early '51. You asked what happened after

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the strike?

Q Yes.

A The mine and mill were closed down by the State of California because of the health hazard, inhalation of diatomaceous earth, and allowed to reopen under an injunction by the State that we had to perform the operations under controlled conditions, take dust counts frequently at all locations, and report them to the State.

The State and the U. S. Public Health Service came in and reviewed our health practices and the medical program, reviewed and interpreted the x-rays; and, as far as products were concerned, we developed what came to be known as the caution label.

Hugh Jackson, who worked for me, and I used the Manufacturing Chemists Association format in developing a label that went on every package or bag of material, saying that Celite is the trademark for Johns-Manville diatomaceous earth products. Avoid breathing this dust. I forget the exact wording. Breathing this dust may be [illegible]. Inadequate dust controls are impossible, use respirators approved by the U. S. Bureau of Mines for [illegible] producing dust.

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I think the general type of precaution. It went on all of our Celite products immediately after the resumption of work in 1951 at Lompoc.

Q. What went into the decision by Johns-Manville and who was a part of that decision-making process to formulate the warning that you described and to implement the warning being placed on the Celite product?

A. Well, Hugh and I recommended the use of the label to my boss, C. W. Hite, and to the division manager, Arthur Elcenbast, who was the senior vice president in charge of that division; and, with the approval of the president and the senior officers, he put it on all invoices and labels of his division's products.

Q. About what time, or if you can give us the year specifically do that, was the caution label placed on the Celite product, the warning that reflects the inhalation of diatomaceous earth?

A. 1952, I would believe.

Q. Do you know, during these times were there any discussions with respect to the placement of warnings on any asbestos-containing products, especially asbestos-containing insulation products?

A. We had suggested the use of a caution on the warning

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label.

Q. Who are "we"?

A. Hugh Jackson and I. I will correct myself. Not a warning label. There are three classifications of labels under the Manufacturing Chemists Association: a warning; or if the hazard was a little greater, caution; and for a greater hazard, danger. For all of our JM products we used the word, "Caution," and we had verbally, and probably in writing, recommended the use of a caution label on bags of asbestos fiber and later, as the thing progressed, onto asbestos-containing products.

Q. When were the suggestions, recommendations, with respect to the placement of warning or caution labels on the asbestos-containing insulation products, as best you can tell?

A. For insulation products that would be about the time of the Lompoc strike in '51, '52.

Q. To whom were you communicating these kinds of recommendations, that is, the individuals within the corporate structure, and what were the responses that you were getting?

A. I'm indicating to C. W. Hite and the division vice presidents for these asbestos-containing or Celite-containing products where these products were being

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developed and, through them, to the officers at the corporate level. As far as the responses were concerned --

Q. Excuse me, Dr. Smith. Are you referring again to the Mr. Hite and Don Hinmon that you mentioned earlier?

A. There would be Hite, Hinmon, Elcenbast, the vice president of the Transit Pipe Division. I don't recall his name at the moment.

Q. What were the responses that you were getting to this kind of recommendation, and from whom were you getting these responses?

A. The response was -- and this is my interpretation of the response -- "Yes, we recognize the hazard. What is it going to cost us to do this and what are the potential hazards of assuming a label in workmen's compensation or public liability or such things as that," which would be decisions at the corporate level.

Q. Did you discuss during the times of your tenure as chief medical officer of Canadian Johns-Manville and medical director of Johns-Manville Corporation with any corporate lawyers the kinds of things that you have indicated that you discussed with other corporate officers, such as Mr. Hinmon, Mr. Hite, Mr. Eaton and others?

A. Yes. I apologize for omitting that. We were in constant

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CIVIL DIVISION

493-4004726

JAMES ROY DeROCCO and ANDREW V. CAROLLO,

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POWERS & GARRISON
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513 SECOND AVENUE
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PHONE: (412) 263-2090

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A. I'll have to go back. The names on the list and the times of their appointments to various titles I can't recall exactly, but one was D. L. Hinmon, Don Hinmon. There was J. B. Jobe, Ward Burleson, Tom Eaton. They were involved in the insulation field in the States, and Randall Gardner was their counterpart in the Canadian Products Division throughout Canada.

Q. Would this have been in the time frame of the middle to late '40s to the early '50s?

A. Late '40s to the middle '50s, yes.

Q. Were these individuals knowledgeable or were they made knowledgeable by you with respect to the hazard of asbestos generally?

A. They were knowledgeable, quite definitely.

Q. Let's go to the time when you first became employed as medical director of Johns-Manville Corporation. When was that?

A. The exact month I can't recall, but it would be probably the end of '52 or early '53.

Q. What were your duties and responsibilities in connection with your job as medical director of Johns-Manville Corporation?

A. Primarily to develop and administer programs for the

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JEFFERSON CIRCUIT COURT
COMMON PLEAS BRANCH
SEVENTH DIVISION

THE LOUISVILLE TRUST COMPANY, administrator of the estate of WILLIAM VIRGIL SAMPSON

VS

JOHNS MANVILLE CORPORATION

DEPOSITION
OF
DR. KENNETH WALLACE SMITH

4/21/76

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J-M 83



E. BERYL MACMILLAN
Special Examiner
County of Essex
Windsor, Ontario