IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

SAMUEL R. POTTER, Plaintiff,	
VS.	C.A. NO. 6329
FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL, Defendants.	

PRE-DEPOSITION PROCEEDINGS

(ORIGINAL)

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SEP 11 1970
DAVID E. [illegible], CLERK
BY DEPUTY Myra Barton

Taxable Costs: $ 17.30
Paid by Plaintiff

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KEMPER W. STEPHENSON, 1958
WARD STEPHENSON
MARLIN THOMPSON

Law offices of **STEPHENSON AND THOMPSON**

STEPHENSON BUILDING / 712 DIVISION STREET
ORANGE, TEXAS 77630 / 883-9396

August 3, 1970

Dahl and Reed
Court Reporters
507 Houston First Savings Building
Houston, Texas 77002

Re: Samuel R. Potter vs. Fibreboard Paper Products Corporation et al

Gentlemen:

In accordance with our telephone conversation on this date, this will confirm the taking of the deposition of Dr. Daniel E. Jenkins on August 11, 1970, at 1:30 p.m. in his office in the Baylor College of Medicine, Texas Medical Center in Houston.

Yours truly,

Ward Stephenson

Ward Stephenson

WS:jb
Encl. Notice

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WARD STEPHENSON
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Law offices of STEPHENSON AND THOMPSON

STEPHENSON BUILDING / 712 DIVISION STREET
ORANGE, TEXAS 77630 / 883-9396

August 3, 1970

Mr. James R. Cooney
Clerk, U. S. District Court
Federal Building
Beaumont, Texas 77701

Re: Civil No. 6329, Samuel R. Potter vs. Fibreboard Paper Products Corporation et al

Dear Mr. Cooney:

We are enclosing for filing in this case notice of taking oral deposition of Dr. Daniel E. Jenkins on August 11, 1970 at 1:30 p.m.

Yours truly,

STEPHENSON & THOMPSON

Marlin Thompson

MT:jb
Encl.

cc:
Mr. George E. Duncan
Mr. W. N. Arnold, Jr.
Mr. Robert E. Barnes
Mr. Charles S. Pipkin
Mr. Dale Dowell
Mr. George A. Weller
Mr. Gerald P. Coley
Mr. James W. Mehaffy
Mr. Ben L. Reynolds
Mr. Gordon R. Pate
Mr. George E. Murphy
Mr. Frank E. Bean
(W/Encl.-CERTIFIED MAIL, RETURN RECEIPT REQUESTED)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

SAMUEL R. POTTER	:	
VS.	:	CIVIL NO. 6329
FIBREBOARD PAPER PRODUCTS CORPORATION ET AL	:	

NOTICE OF TAKING ORAL DEPOSITION
OF DR. DANIEL E. JENKINS, M. D.

TO: THE DEFENDANTS AND INTERVENOR IN THE ABOVE ENTITLED AND NUMBERED CAUSE AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

Please take notice that at 1:30 p.m. on the 11th day of August, 1970, at the offices of Dr. Daniel E. Jenkins, Baylor College of Medicine, Texas Medical Center, in the City of Houston, Texas, the plaintiff in the above entitled action will take the deposition of Dr. Daniel E. Jenkins, M.D., upon oral examination, pursuant to the Federal Rules of Civil Procedure, before a notary public or before some other officer authorized to administer oaths by law.

The oral examination of said witness will continue from day to day until completed.

You are invited to attend and cross-examine.

DATED:

August 3, 1970

STEPHENSON AND THOMPSON
712 Division Street
Orange, Texas 77630

By _____
Marlin Thompson, for
Ward Stephenson

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CERTIFICATE OF SERVICE BY MAIL

I, Ward Stephenson, hereby certify that a true and correct copy of the foregoing instrument was, on this the 3rd day of August, 1970, mailed by certified mail, return receipt requested, to the following named attorneys:

Mr. George E. Duncan
Attorney at Law
P. O. Box 3708
Beaumont, Texas 77704
Attorney for Defendant
PITTSBURGH CORNING CORPORATION

Mr. W. N. Arnold, Jr.
Attorney at Law
Fulbright, Crooker, Freeman,
Bates & Jaworski
Bank of the Southwest Bldg.
Houston, Texas 77002
Attorney for Defendant
ARMSTRONG CONTRACTING AND
SUPPLY CORPORATION

Mr. W. N. Arnold, Jr.
Attorney at Law
Fulbright, Crooker, Freeman,
Bates & Jaworski
Bank of the Southwest Bldg.
Houston, Texas 77002
Attorney for Defendant
PHILIP CAREY CORPORATION

Mr. Robert E. Barnes
Attorney at Law
P. O. Box 5098
Beaumont, Texas 77706
Attorney for Defendant
RUBEROID COMPANY, A DIVISION
OF GAF CORPORATION

Mr. Charles S. Pipkin
Attorney at Law
P. O. Box 1632
Beaumont, Texas 77704
Attorney for Defendant
COMBUSTION ENGINEERING, INC.

Mr. Dale Dowell
Attorney at Law
707 Beaumont Savings Bldg.
Beaumont, Texas77701
Attorney for Defendant
OWENS-CORNING FIBERGLAS
CORPORATION

Mr. George A. Weller
Attorney at Law
P. O. Box 350
Beaumont, Texas 77704
Attorney for Defendant
FIBREBOARD PAPER PRODUCTS
CORPORATION

Mr. Gerald P. Coley
Attorney at Law
Vinson, Elkins, Searls & Connally
First City National Bank Bldg.
Houston, Texas 77002
Attorney for Defendant
UNARCO INDUSTRIES, INC.

Mr. James W. Mehaffy
Attorney at Law
San Jacinto Building
Beaumont, Texas 77701
Attorney for Defendant
STANDARD ASBESTOS MANUFACTURING
AND INSULATING COMPANY

Mr. Ben L. Reynolds
Attorney at Law
Royston, Rayzor and Cook
877 San Jacinto Building
Houston, Texas 77002
Attorney for Defendant
EAGLE-PICHER INDUSTRIES, INC.

Mr. Gordon R. Pate
Attorney at Law
1119 Beaumont Savings Bldg.
Beaumont, Texas 77701
Attorney for Defendant
JOHNS-MANVILLE PRODUCTS
CORPORATION

Mr. George E. Murphy
Attorney at Law
615 San Jacinto Building
Beaumont, Texas
Attorney for Intervenor
NATIONAL SURETY CORPORATION

Mr. Frank E. Bean
Attorney at Law
Room 2010, 500 Jefferson Street
Houston, Texas 77002
Attorney for Defendant
ARMSTRONG CORK COMPANY

Ward Stephenson, by Marlin Thompson

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IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

SAMUEL R. POTTER, Plaintiff,

VS. C.A. NO. 6329

FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL, Defendants.

APPEARANCES:

For the Plaintiff:

Messrs. Stephenson & Thompson
Attorneys at Law
712 Division Street
Beaumont, Texas
By: Mr. Ward Stephenson

For Armstrong Contracting and Supply Corporation and Philip Carey Corporation:

Messrs. Fulbright, Crooker, Freeman, Bates & Jaworski
Attorneys at Law
Bank of the Southwest Building
Houston, Texas
By: Mr. W. N. Arnold, Jr.

For Ruberiod Company, A Division of GAF Corporation and Combustion Engineering, Inc.:

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Mr. Robert E. Barnes
Attorney at Law
P. O. Box 5098
Beaumont, Texas

For Owens-Corning Fiberglas Corporation:

Mr. Dale Dowell
Attorney at Law
707 Beaumont Savings Building
Beaumont, Texas

For Fibreboard Paper Products Corporation and Standard Asbestos Manufacturing and Insulating Company:

Mr. George A. Weller
Attorney at Law
P. O. Box 350
Beaumont, Texas

For Unarco Industries, Inc.:

Messrs. Vinson, Elkins, Searls & Connally
Attorneys at Law
First City National Bank Building
Houston, Texas
By: Mr. Gerald O. Coley

For Eagle-Picher Industries, Inc.:

Messrs. Royston, Rayzor & Cook
Attorneys at Law
San Jacinto Building
Houston, Texas
By: Mr. Ben L. Reynolds

For Johns-Manville Products Corporation and Pittsburgh Corning Corporation:

Mr. Gordon R. Pate
Attorney at Law
Beaumont Savings Building
Beaumont, Texas

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Also Present: Dr. Daniel E. Jenkins

BE IT REMEMBERED that on this the 11th day of August, 1970, at 1:42 p.m., the aforementioned counsel met at the office of Dr. Daniel E. Jenkins, Baylor College of Medicine, 1200 Moursund, Houston, Texas, for the purpose of taking the deposition of Dr. Daniel E. Jenkins in the above-styled and numbered cause, and the following proceedings were had:

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MR. WELLER: Would you make that statement for the record, Mr. Stephenson?

MR. STEPHENSON: Yes. I just asked Gordon Pate, and I wanted to get the general opinion of everyone. The doctor sometime back in this case gave answers to written interrogatories submitted by myself, and cross interrogatories. I beg your pardon. That was in the trial of the State Workmen's Compensation case.

MR. REYNOLDS: Not in this case.

MR. STEPHENSON: It was in this case, in Potter's matter, but not in this present proceeding.

What is the wish of the group about that, then?

MR. BARNES: Of what?

MR. STEPHENSON: About the deposition. Have you all had a chance to read them?

What I am driving at is this. If we could agree to use this deposition -- because it's strictly about Potter -- it would save us probably 45 minutes time.

MR. WELLER: Well, I want to get it on the record. I believe you stated that we

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are going to be limited to examination of the doctor until 3:00 o'clock. It's now fifteen minutes to 2:00, and I do not on behalf of Fibreboard and speaking for all the other defendants who are present -- and I will give two more appearances -- we are not in a position to agree and stipulate as to any time limit for the taking of this deposition or the cross examination of the witness. Therefore, we do not consent to any restrictions whatever upon the right of cross examination of the doctor in this case.

MR. STEPHENSON: What I am trying to state is, we will have to arrange another time to come back if you are going to be as lengthy in this one as you usually are.

MR. WELLER: Well, all I am saying is that the deposition was pursuant to notice, and we would have the right to assume -- we have come over here from -- most of us -- a lot of us from Beaumont and taken the time off, and there's seven defendant lawyers represented here, and I do not think that we ought to be restricted as to time or be forced to come back at some future time.

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MR. STEPHENSON: George, you know how depositions go. They are from day to day and time to time. If you all want to call it off and set another time or have it set under the Court's direction, it's all right with me. The only thing I was trying to do is make it known if you wanted to speed this up and try to get whatever you want in today, it would be fine. If you have this objection, let's take it under the Court's direction.

MR. WELLER: I am making the statement that we do not agree to take a partial deposition or to use a partial deposition in the trial of this case without the full and complete cross examination to which we are entitled.

MR. STEPHENSON: The rest of you all understand this? I am not trying to cut anybody off. I am saying that the doctor has to be with his patients beginning at 3:00. If we want to go forward and go as far as we can today and come back another time, if you wish to ask additional questions, we will have to set it like we do in every deposition I know. If you want to try and set some date when the doctor can sit down with us for four hours, three hours,

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whatever it takes, we will do that.

MR. PATE: Being as it's a quarter to 2:00, I think it's obvious that we cannot complete it by 3:00.

MR. STEPHENSON: I had an appointment with the doctor earlier this morning, and he got tied up and couldn't get with me at all to go over any of the slides.

MR. WELLER: I would move we adjourn the deposition until such date that the doctor can sit where he can be available for a sufficient time of cross examination. I see that you have a number of medical articles there. Perhaps you are going to try to develop those. I just know from experience in this case that depending on his direct examination, it may take a rather full and complete cross examination. I wouldn't want to go into it unless we are going to complete it today.

MR. STEPHENSON: Would there be any particular day within the next couple of weeks, Doctor, that you could give us, say maybe an afternoon?

DR. JENKINS: I think so. Sure. We can arrange it.

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MR. STEPHENSON: Would you all prefer to do it that way?

MR. REYNOLDS: Yes.

MR. ARNOLD: I think it would be better, and it would be better on the doctor.

MR. PATE: He wouldn't be under pressure to get through.

MR. STEPHENSON: He hasn't had an opportunity at all to look into this, and I have talked to him about 20 minutes beforehand trying to get some slides lined up in order and so forth.

MR. PATE: It would probably suit him better.

MR. COLEY: Seems like when you break these up, you get repetition the second time.

MR. STEPHENSON: That's the reason I made it known that we wouldn't be able to go on until 5:00 or 6:00 o'clock.

MR. PATE: How are we going to arrive at the afternoon?

MR. STEPHENSON: Could you tell us, or would you need to look at your book and see?

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DR. JENKINS: I would need to look at my calendar, but I would be glad to do so. What would be a time convenient with you gentlemen?

MR. WELLER: That's hard to say.

MR. ARNOLD: Anything except the 19th. We have two scheduled that day, anyway.

MR. WELLER: I couldn't come the 20th. The 19th I have got a conflict.

MR. ARNOLD: Why don't you leave it like this, you and Mr. Weller agree on a date, and I think that we can make ourselves here, at least here in Houston, agreeable. You fellows in Beaumont that have to come 90 or a hundred miles, you agree on the date.

MR. WELLER: If that Friday is agreeable that week, that's good enough -- following the 19th.

MR. REYNOLDS: The 19th is on a Tuesday, I believe.

MR. PATE: The 19th is on a Wednesday.

MR. ARNOLD: You have got two over here that day.

MR. PATE: We couldn't do it that

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day.

MR. WELLER: Could you do it the 18th?

MR. REYNOLDS: That's all right.

MR. STEPHENSON: I think so.

MR. COLEY: I'm going to be in trial for sure.

MR. WELLER: Well, Tuesday or Friday of that week.

MR. COLEY: Friday I will be through.

MR. ARNOLD: Friday is all right with me.

MR. STEPHENSON: Doctor, does that suit your calendar? On the --

DR. JENKINS: On the 18th, then?

MR. WELLER: No. It would be the the 21st, I think.

MR. COLEY: The 21st.

MR. PATE: It would be the 21st.

DR. JENKINS: I think I will be tied up with a meeting out at NASA that day. Could we pick another alternative than the 21st?

MR. WELLER: What about the following week?

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MR. REYNOLDS: That's past the pre-trial.

MR. PATE: But that's not in this case. Friday the 28th? We could do it tentatively, and everybody get back and check their calendar.

MR. COLEY: That would be all right with me.

MR. ARNOLD: Would you check that day, the 28th?

DR. JENKINS: The 21st and 28th.

(Whereupon a short recess was taken.)

MR. PATE: What does it look like, Doctor?

DR. JENKINS: The 28th is fine.

MR. PATE: What time of day would you suggest?

DR. JENKINS: Anytime it's convenient with you.

MR. WELLER: Why don't we start earlier? Is the morning all right?

DR. JENKINS: Either one.

MR. PATE: Remember that is pre-trial. Better start in the afternoon.

(Whereupon an off the record discussion was had.)

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MR. WELLER: You want to start at 1:00 o'clock?

MR. STEPHENSON: 1:30.

MR. ARNOLD: That will give the doctor a chance to --

MR. WELLER: 1:30 on Friday the 28th.

MR. BARNES: I want to make sure that the appearances are down there. My name is Robert E. Barnes, and I am appearing in behalf of the defendant, Ruberoid, and also Mr. Charles S. Pipkin is appearing on behalf of Combustion Engineering.

MR. WELLER: I am George Weller and I have the appearances. I am appearing for Mr. Mehaffy.

MR. BARNES: I would like a copy of the proceedings, and also Mr. Pipkin would like a copy.

MR. PATE: I am appearing on behalf of myself and George Duncan, too.

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THE STATE OF TEXAS:

COUNTY OF HARRIS:

I, RONALD D. MILLER, a court reporter and notary public in and for the State of Texas, County of Harris, do hereby certify that the above and foregoing 13 pages constitute a full, true and correct transcript of the proceedings had as shown in the caption hereto.

Ronald D. Miller

Ronald D. Miller, Court Reporter
and Notary Public in and for
Harris County, Texas

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