CIVIL ACTION NO. 6329

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

SAMUEL R. POTTER

VS.

FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
DEC 30 1971
JAMES R. COONEY, CLERK
BY DEPUTY

DEPOSITION OF ODEEN MARTINDILL

(Taken by Defendants)

ORIGINAL

JO WOLAVER

SHORTHAND REPORTER

ORANGE, TEXAS

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THE STATE OF TEXAS

TO ANY SHERIFF OR CONSTABLE OF THE STATE OF TEXAS, GREETING:

YOU ARE HEREBY COMMANDED THAT YOU SUMMON

ODEEN MARTINDILL, Orange Memorial Hosp. X-ray Dept.

to be and appear before me, **Jo Wolaver**, Notary Public in and for **Orange** County, Texas, or any Notary Public of my designation, in **Office of Odeen Martindill, Orange Memorial Hosp. Orange, Texas**

on the **28th** day of **December** 19 **71**, at **1:15** o'clock **P**. M., and there to make answers under oath to certain oral ~~(written)~~* interrogatories to be propounded to **her** at the instance of the **Defendants, Johns-Manville Products Corp. and Fibreboard Paper Products Corporation** in a certain suit now pending in the ~~Judicial~~ **United States** District Court of **Beaumont** ~~County~~, Texas, wherein **SAMUEL R. POTTER is** Plaintiff(~~s~~), and **FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL are** Defendant(s), being No. **C.A. 6329** on the docket of said Court, and that bring with **her** and produce at said time and place the list of instruments attached hereto,* following, to-wit:

All X-rays in your custody and/or the custody of Orange Memorial Hospital, of Samuel Ralph Potter

and that **she** continue in attendance before me from day to day until discharged by me.

This subpoena is issued under and by virtue of authority of a ~~commission~~ **Notice By Defendants** issued ~~out of the Honorable Judicial District Court of~~ ~~County, Texas~~, and now in my possession.

Herein fail not, but have you then and there before me at said time and place this writ, with your return thereon, showing how you have executed the same.

Witness my hand and seal of office at **Orange** County, Texas, on this the **27th** day of **December** 19 **71**

J. Wolaver

Notary Public in and for Orange County, Texas

*Strike out inapplicable wording.

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OFFICER'S RETURN

Came to hand on the 27 day of December, 19 71, at 8:00 o'clock A. m., and executed by delivering a copy of this subpoena to the within-named (or attorney of record)* at Orange in Orange County, Texas, on the 27 day of December, 19 71, at 2:00 o'clock P. m.

Not executed as to the witness for the following reasons:

I actually and necessarily traveled miles in the service of this Subpoena.

FEES—Summoning Witnesses - $

Mileage - - - - - - - - - -

Total - - - - - - - - - - $

Allen "Buck" Patillo {Sheriff / ~~Constable~~

Orange County, Texas

By Harvey Barron Deputy.

Memorandum of Acceptance of Service—Rule 178.

I hereby accept service of this subpoena on this the day of , 19 .

Witness

*Strike out inapplicable wording.

E-1821

FILE No. C.A. 6329

DEPOSITION SUBPOENA

DUCES TECUM

SAMUEL R. POTTER

VS.

FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL

Issued 27th day of December, 19 71

By Odeen Martindill

RETURN

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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

SAMUEL R. POTTER

VS.

FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL

CIVIL ACTION NO. 6329

NOTICE OF TAKING DEPOSITION ON ORAL EXAMINATION PURSUANT TO RULE 30 OF THE FEDERAL RULES OF CIVIL PROCEDURE

TO: WARD STEPHENSON
Stephenson Building
712 Division Street
Orange, Texas

Attorney for Plaintiff in the above entitled and numbered action:

PLEASE TAKE NOTICE that the Defendants, Johns-Manville Products Corporation and Fibreboard Paper Products Corporation, will take, in the above entitled action, the deposition of Mrs. Odwen Martindill, Custodian of x-rays, Orange Memorial Hospital, Orange, Texas, upon oral examination before a Notary Public in and for the County of Orange, State of Texas, on the 28th day of December, 1971, at 1:15 o'clock p.m. of that day and thereafter from day to day as the taking of said deposition may be adjourned, at the Orange Memorial Hospital, MacArthur Circle, Orange, Texas, at which time and place you are hereby notified to appear and take part in said examination as you may be advised and as may be fit and proper. You are also notified that a subpoena dueces tecum will be issued requiring said witness to produce all x-rays in her custody and/or the custody of Orange Memorial Hospital, of Samuel Ralph Potter for delivery to the United States District Court at Beaumont, Texas.

DATED AT BEAUMONT, TEXAS, this 23rd day of December, 1971.

GORDON R. PATE

GORDON R. PATE
1119 Beaumont Savings Building
Beaumont, Texas

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GEORGE A. WELLER
Beaumont Savings Building
Beaumont, Texas

C E R T I F I C A T I O N

This is to certify that a copy of the above and foregoing Notice of Taking of Deposition was served upon Mr. Ward Stephenson, Stephenson Building, 712 Division Street, Orange, Texas, attorney for Plaintiff, this the 23rd day of December, 1971, by placing the same in a sealed wrapper, addressed to him at the above address, postage prepaid; and a copy of the above and foregoing Notice has likewise been served upon each of the attorneys of record for each of the named Defendants.

GORDON R. PATE
GORDON R. PATE

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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

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

Answers and deposition of ODEEN MARTINDILL, called as a witness by Defendants Johns-Manville Products Corporation and Fibreboard Paper Products Corporation, taken on the 28th day of December, 1971 at 1:30 o'clock P.M. in the office of Odeen Martindill, Orange Memorial Hospital, Orange, Texas, before Jo Wolaver, Official Court Reporter in and for the 163rd Judicial District Court of Orange County, Texas, pursuant to the Notice heretofore issued and the following stipulation and waiver of counsel:

A P P E A R A N C E S:

Ward Stephenson; of the Law Firm of
Stephenson and Thompson,
712 Division Street,
Orange, Texas

Counsel for Plaintiff

JO WOLAVER
SHORTHAND REPORTER
ORANGE COUNTY COURTHOUSE
ORANGE, TEXAS

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Gordon R. Pate, Attorney at Law
1119 Beaumont Savings Building,
Beaumont, Texas

Counsel for Defendant
Johns-Manville Products
Corporation

IT IS STIPULATED AND AGREED by and between counsel for the respective parties hereto that the reading of the deposition by the witness and signing of same by her is waived, and that said deposition, or any part thereof, when so taken, may be used on the trial of this cause with the same force and effect as if the witness were present in Court and testifying in person.

JO WOLAVER
SHORTHAND REPORTER
ORANGE COUNTY COURTHOUSE
ORANGE, TEXAS

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COURT REPORTER'S NOTE: Prior to the commencement of the deposition of the witness, Odeen Martindill, the witness explained the numbering system and dates of the X-rays taken by Orange Memorial Hospital as follows:

THE WITNESS; ODEEN MARTINDILL:

1967 is a C number -- C-1312, 1967, all the C's will be in 1967 -- he had a chest, gall bladder, stomach, chest, and an abdomen. Then he had a repeat gall bladder and IVP, all in '67.

In 1969, E-6205, he had a chest.

In 1970, F-8531, he had a chest.

Then in 1971, G-4482, and he has had two portable chest X-rays.

The '65 film is in here. It is a hand.

(At this point there was an off-the-record (discussion between Mr. Pate and Mr. (Stephenson, after which the following (was dictated in the record):

MR. PATE: Let the record show, by agreement, that we are taking Miss Martindill's deposition as Custodian of the

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X-Ray records of the Orange Memorial Hospital.

ODEEN MARTINDILL,

called as a witness by the Defendants Johns-Manville Products Corporation and Fibreboard Paper Products Corporation, having been duly sworn, testified as follows:

EXAMINATION

BY MR. PATE:

Q Would you give me your name, please.

A Odeen Martindill.

Q Miss Martindill, by whom are you employed?

A Orange Memorial Hospital.

Q And how long have you been employed by Orange Memorial Hospital?

A Since February of 1957.

Q In what capacity, or department, are you employed?

A Chief X-ray Technician of the Radiology Department.

Q In that capacity do you have charge or control of the X-rays that are taken of patients in Orange Memorial Hospital?

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A Yes.
Q Do you have custody and control of certain X-rays that have been taken of Mr. Samuel R. Potter?
A Yes.
Q And at the request of the Court Reporter, have you pulled those X-rays?
A Yes.
Q And do you have them in this package here?
A Yes.
Q May I hand this to the Court Reporter.

MR. PATE: And I will ask her to mark this.

(At this point this Reporter was tendered
(an X-ray envelope containing X-rays, and
(said envelope was marked for identification
(as "Dx-1, 12-28-71, jw", and thereafter
(said X-rays were counted by this Reporter
(and the envelope contained forty-two (42)
(X-rays, and each X-ray was marked in
(white pencil with a circle around such
(number, said X-rays being numbered 1
(through 42, and same are filed as an
(Exhibit under separate cover, with this
(deposition.)

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Q Now, Miss Martindill, you advised us, I believe, that the X-rays are identified by number, according to the year, is that correct?
A Yes.
Q The year 1967 would bear a Number C?
A Yes.
Q It would be preceded by a Number C?
A Yes.
Q The year 1969 would be preceded by a letter E?
A '69, E, yes.
Q And the year 1970 would be preceded by the letter F?
A Yes.
Q And the year 1971 by the letter G?
A Yes.
Q Miss Martindill, have you checked each of the X-rays contained in this envelope which you have handed to the Court Reporter to determine if they were, in fact, X-rays of Samuel Raymond Potter, if they bear the numbers which you have checked?
A Well, at the time they were taken they were checked that they were this patient. Over a number of years I couldn't tell you now, but at the time, with this identical number, we check every patient's work as it is done.

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Q Each patient has a number assigned to him?

A Yes.

Q And these X-rays were made in the usual course of treatment of this patient inthe Hospital?

A Yes.

Q And they have been kept in the course of operating the Hospital's business, is that correct?

A Yes.

MR. PATE: I believe that is all I have.

MR. STEPHENSON: No questions.

(Deposition Concluded)

JO WOLAVER
SHORTHAND REPORTER
ORANGE COUNTY COURTHOUSE
ORANGE, TEXAS

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THE STATE OF TEXAS :

COUNTY OF ORANGE :

I, Jo Wolaver, Official Court Reporter in and for the 163rd Judicial District Court of Orange County, Texas, do hereby certify that the facts as stated by me in the caption hereto are true; that the above and foregoing answers in response to the questions propounded were made before me by ODEEN MARTINDILL, after said witness had been first duly sworn, and the same were thereafter reduced to typewriting by me,and are hereby returned into Court without the same having been read over and subscribed and sworn to by the said witness, in accordance with the agreement of counsel hereinabove set forth.

WITNESS MY HAND this 29th day of December, 1971.

Jo Wolaver

Jo Wolaver, Official Court Reporter,
163rd Judicial District Court of
Orange County, Texas

JO WOLAVER
SHORTHAND REPORTER
ORANGE COUNTY COURTHOUSE
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