TF-5525

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

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PETE A FAIRL,

Plaintiff,

vs.

No. 296985

WESTERN MacARTHUR COMPANY, et al.,

Defendants.

DEPOSITION OF DOUGLAS MERRILL

COPY

Taken before LOUIS G. ZANDONELLA, a Certified Shorthand Reporter, License No. C-5002 and A Notary Public in and for the County of Contra Costa, State of California

October 8, 1984

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PLAINTIFF'S EXHIBIT

UC-5164

Union Carbide trial exhibit UC-5164: Deposition of Douglas Merrill (Kelly-Moore/PACO) on Asbestos Fiber Suppliers... Published by AsbestosClaims.Law
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Q. Yes.
A. A -- this area and Texas, Kansas.
MR. KILBOURNE: That's all I have at this time.
MR. WALTZ: No questions.
MR. MURRAY: I just want to find out the names of those products.
MR. WALTZ: You want to pass these around or -- I can go through them and read them to you.
MR. WALTZ: I have some.
MR. PALLIS: I have some questions.
MR. WALTZ: Could you identify who you represent?
MR. PALLIS: Mark Pallis, Celotex.

EXAMINATION BY

MR. PALLIS:
Q. Sir, I think you testified that one of your suppliers of asbestos fiber was Carey Canada, was that right?
A. Yes.
Q. What is the basis of that knowledge, is it something you heard?
A. No. I made purchases myself.
Q. What was the earliest date you made a purchase from Carey Canada?
A. I don't know.
Q. Would it -- can you approximate, would it have been shortly after you arrived?
A. I believe 1968, '69, would have been the earliest.

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Q. And I think you indicated you stopped using Carey Canada because a strike came about in Canada?

A. That was the reason we were buying from Union Carbide, yes.

Q. And what year would that have been?

A. I don't recall.

Q. Can you estimate? Would it have been shortly after you started buying it?

A. No. Mid-70's.

Q. Do you have any knowledge as to whether purchases were made from Carey Canada before you arrived?

A. I don't know.

Q. Do you have any knowledge as to whether Carey Canada supplies were just used at Redwood City or whether they were used at other plants?

A. They were used at the other plants.

Q. What's the basis of that knowledge?

A. A -- I've seen the records, the purchasing records for the other plants.

Q. But you didn't purchase for the other plants, did you?

A. Yes. On some occasions we would split railcars. They would be redirected to another plant.

I don't know for sure if that was Carey Canadian or Johns-Manville. But cars coming out of Canada was -- it was common to split cars.

Q. Okay. And you're not sure?

A. I'm not sure whether it was Carey or

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Johns-Manville.

Q. And were you buying Johns-Manville at the same time you were buying Carey Canada?

A. Not normally. We would, as I recall from my experience from '68 there on, that we were buying Carey Canadian, then we went to Johns-Manville and then we went to Union Carbide. I think that was basically the sequence.

Q. Well, I thought you stated that during the Canadian strike you bought from Union Carbide, and I'm a little confused because now you believe that the sequence was Carey Canada, J-M and then Union Carbide?

A. Well, I had stated earlier that we started Union Carbide because of a strike situation.

Q. Right.

A. And you asked me if that was the -- what date that was, I think.

Q. Right.

A. But I'm not sure of the sequence before Union Carbide whether we were.

Q. So, you could have used -- the sequence could have been Carey Canada, Union Carbide, J-M?

A. I don't know. I'm just trying to, you know, give you my best judgment on it.

Q. And again I'm a little confused. You did buy some J-M during the time you bought Carey Canada?

A. It's possible. I don't know that as a fact.

Q. And I think you said that you don't have a

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specific recollection of receiving warnings from the Carey Canadian Company but you did from J-M and Union Carbide. That doesn't preclude that -- strike that.

That you recall receiving, specifically receiving warnings from J-M and Union Carbide and you don't have a specific recollection of warnings coming from Carey Canada. But then -- it's possible, is it not, that you -- you did receive warnings from Carey Canada that you don't recall?

A. Yes, it is possible. And my recollection is that Carey Canadian was in early years and Johns-Manville and Union Carbide and that sort of ties in with that.

Q. And you say the asbestos came in paper bags and it's your recollection that the bags had warnings on them; is that right?

A. I recall seeing after 1972, warnings on asbestos bags, pure asbestos bags, yes.

Q. You recall seeing any warnings prior to that?

A. I don't recall it, no. I would not -- in my position would not normally be looking at the bags that much.

Q. So you can't describe a Carey Canadian bag to me, can you?

A. No.

Q. Is then a Carey Canadian bag could have had a warning on it prior to that time and you wouldn't know?

A. Yes.

MR. PALLIS: I don't think I have any further

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questions at this point.

MR. WALTZ: Who do you represent?

MR. SATTLER: Fibreboard.

EXAMINATION BY

MR. SATTLER:

Q. In 1960, Kelly Moore purchased PACO Textures; is that right?

A. Yes.

Q. And from the time you purchased PACO Textures until today, the registered trademark of PACO Textures has appeared on those products; is that correct?

A. Correct.

Q. And that particular trademark has in bold print PACO, spelled P-A-C-O, and in smaller print, Textures?

A. Yes.

Q. And that particular registered trademark is on all of the exhibits that we have here in front of us today?

A. Yes.

Q. When you purchased your raw asbestos from the various companies, which you have discussed, and let's perhaps take it at one plant at a time. For example, when the plant was still located at Richmond, how did the asbestos get to the Richmond plant?

A. I have no idea.

Q. Do you know how it got to any of the plants? How it was transported from the various producers to you?

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MR. PALLIS: I have one further follow-up question.

FURTHER EXAMINATION BY

MR. PALLIS:

Q. Other than the three suppliers that you mentioned that supplied you with asbestos, are there any other suppliers that you can think of?

A. A -- an outfit called Atlas Asbestos.

Q. Do you recall what years you used their supplies?

A. No, I don't. That was used in the paint products, it wasn't in my area. A -- again, I think that was in early 70s.

Q. Any other manufacturers?

A. That's all I'm aware of.

MR. MURRAY: I have a couple of questions.

EXAMINATION BY

MR. MURRAY: John Murray, represent U.S.G.

Q. You've brought with you some boxes which indicate on the label that they're for ready-mix, a semi-liquid. I mean like a paste; is that right?

A. Yes.

Q. Did you also have this material which came in buckets?

A. Yes.

Q. And you haven't brought buckets with you?

A. I don't have any. These are one of a kind, they're, just happen to have --

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Q. Did the buckets for the various products have the same labeling on them, that is, on the boxes?

A. Yes. They had stripes around them but they had the same -- same size, same caution on it.

Q. And for the same time period they would have the same warning as far as the asbestos, also?

A. (Witness nods head.)

Q. Is that right?

A. Yes.

Q. And what sizes did the buckets come in?

A. It was a five-gallon pail. And we filled it with 60 pounds of material, I believe.

Q. And did you have a smaller container besides the --

A. One-gallon pail.

Q. And how many pounds would fill into the one-gallon?

A. 15 or 16.

Q. During what period of time did the warnings appear on these various products with the warning with respect to asbestos?

A. Beginning in 1970 -- well, I think it was the end of 1972, until the asbestos was taken out of that product.

I have said that, you know, we used it up to 1978, but in some cases we took it out much earlier then that. And if we would of taken it out of a product, we would of taken it -- the label off.

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Q. Do you recall the first product that had the asbestos removed from it?

A. Wall texture.

Q. And do you recall in what year the product had asbestos removed from it?

A. Well, we had a situation where we offered two types of asbestos. Two types of wall texture, one with asbestos and one without. I think that we were getting some early success like within the first couple years, like 74, successfully selling a wall texture product without asbestos. But we also had one that had asbestos. And it was sort of a customer choice.

Q. And the ones which did not have asbestos in them would not have had a warning on them?

A. Correct.

Q. And the wall texture which did have asbestos would have the warning on it?

A. What we actually did, we blocked out the label.

Q. So what you imprinted in the printing process you left the warning on it and then if it didn't have any asbestos you just blocked it out?

A. We weren't that concerned about having it on there even if it didn't have the asbestos, so we were -- we felt we labeled everything and -- because of the caution of the dust and that.

So it is conceivable we may have had products without asbestos but still had the label on it.

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Q. Can you tell me what the names of the distributors which handled the PACO products that were not Kelly Moore stores?

A. Well, I don't have a lot of experience in that end of it. Our primary marketing was through company owned stores and we went from direct sales to contractors to running all the accounts.

MR. WALTZ: Try and answer his question. His question is do you know the names --

THE WITNESS: Okay.

MR. WALTZ: -- of the distributors?

THE WITNESS: Railway Supply -- well, I don't know that we sold asbestos contained products even to Railway Supply, so I don't know the names of anyone really.

I just know of some distributors that we've sold to but that's more recent years.

MR. MURRAY:

Q. So that in other words, these might be companies that would be purchasing Kelly Moore products but you don't have a specific recollection at this time whether some of those products they bought had asbestos?

A. Right. We didn't really have a long-term exclusive distributorships we sold people and they resold it. But again, the main emphasis was through our own company stores.

Q. What were the names of the stores that you -- that Kelly Moore sold products to, whether you know that

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they had asbestos in products or not?

A. It wouldn't have been sold to the store, it would have been a direct sale from the factory.

Q. Okay.

A. Railway Supply was one I mentioned. There were a couple in Oregon, and a -- I can't remember their names.

Q. Where is Railway Supply located?

A. San Jose, I believe.

Q. That's the only store you can recall here in Northern California that would ever purchase anything from the Kelly Moore factory?

A. Well, in recent years I know we sold some items to, I think it's Pacific Supply. And again, I don't know if it had asbestos or not.

Q. Pacific Supply is a chain; is that right?

A. Yeah, but we only -- I think we are selling in a couple of their yards. And I'm not sure why. I think it had something to do with running their own trucks or something. That's the only name I can really recall.

Q. Is there a place at Kelly Moore where this kind of information might be located?

A. Well, not really for prior to 1978. Our records really don't go back that far. It would be kind of personal knowledge of people in sales.

Q. Who would be the most knowledgeable?

A. Best person right now is vice president of marketing. His name is William Harrison.

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Q. And he is -- he's been with the company for a long time?

A. Uh-huh.

Q. And who else works in his department and would have a similar kind of knowledge as far as you know?

A. There is no one else in his department, really. That goes back and goes back into the drywall area.

Q. Does Joe Vola still work for Kelly Moore?

A. No. I guess -- I think that name goes back prior to acquisition. I don't know if he ever worked for Kelly Moore. I think he's tied in with prior to 1960 somehow.

Q. Okay. As far as you know he's never worked with you?

A. I know who he is. I've heard the name. And that's the first I heard as far as Kelly Moore. I think he had ties with PACO prior to Kelly Moore getting into it.

Q. Okay. During the time that you've worked with Kelly Moore, have you had any dealings with LaHabre Products Company.

A. No. I'm aware of them but I have no dealings with them.

Q. You haven't, as far as you know, purchased any terms for resale since you've been with the company?

A. Lahabra Products?

Q. Yeah.

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A. No.

Q. And where actually, physically is your office?

A. San Carlos.

Q. Is it -- is it in the plant or is it in the office building?

A. It's in the factory office building, 1015 Commercial Street.

Q. And who is your superior, specifically at this point?

A. Man by the name of S-v-o-n-d, S-t-u-b-b.

Q. And where is -- I'm sorry, where is Mr. Stubb's office?

A. 987 Commercial Street.

Q. That's in the office building?

A. Corporate office building.

Q. Second floor?

A. Yes.

MR. MURRAY: Thank you, sir.

MR. PALLIS: I've got two quick questions, if I may.

FURTHER EXAMINATION BY

MR. PALLIS:

Q. Sir, did you ever hear that PACO had been purchasing asbestos fiber from Union Carbide from 1963 up through a time indefinite but past when you started?

A. No.

Q. Well, are you aware if Kelly Moore was

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purchasing Kelly Moore or PACO was purchasing any asbestos fiber from Union Carbide at the time you started?

A. I don't recall it. You know they could have.

Q. Were other people doing purchasing other than you?

A. Yes. The paint people had their own purchasing department.

Q. Were there other people at PACO doing purchasing?

A. I had a person, a clerical person, doing the purchasing for me but I wasn't aware of all the purchasing. I just don't recall.

MR. PALLIS: Fine, thanks.

FURTHER EXAMINATION BY

MR. KILBOURNE:

Q. In 1978, when the asbestos -- the decision was made to remove the asbestos from the product, what was done with the existing product?

A. A -- it was sold up until whatever the cut-off date was that was set by the Consumer Product Safety Commission.

And I've said, March of '78 was the last time we used asbestos and that was the last product to be used up.

Many of the products were ceased to be manufactured with asbestos at the end of '77, and those stocks were completed by that time.

There was a cut-off date of, I want to say June 18th of '78, where we could no longer sell and we recalled

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everything back that was -- that was in the system. And as I recall, there wasn't very much at all. It had all been out of the system by June of '78.

In the case of San Carlos we had used up all of our asbestos in 1977.

MR. KILBOURNE: I have no further questions.

MR. WALTZ: Who do you represent?

MS. ROSACK: H. K. Porter Company.

EXAMINATION BY

MS. ROSACK:

Q. Do you know the grade of asbestos that you used in your products?

A. Used several grades.

Q. What grades were they?

A. 7 RF, 97 RF, 10. I think those are Carey grades.

7 MS, I think that was a grade. Something, 7 FO 4, I think that's a Johns-Manville grade.

There was -- Union Carbide had what they call a HPO. I think it was high purity opened.

And there was a RG ~~1144.~~ 144. I think a rubber grade 144. That's a long time ago, I can't remember.

MS. ROSACK: Thank you.

FURTHER EXAMINATION BY

MR. SATTLER:

Q. Mr. Merrill, just for clarification, we kind of flew through rather quickly some of the products that we have here that you at least brought the bags or

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containers for them.

There were at least 13 of them here. All of those products contained asbestos until 1978; is that right?

A. I didn't say that, no. 1978 was the last time that we used asbestos at all. And a -- we discontinued it prior to that date. But these products or these bags at the time that they were in use with a caution label on it, had asbestos in it.

Q. Okay. And were there other products in addition to these products that you brought with you today that had asbestos in them?

A. I think that question was asked.

MR. WALTZ: It's been asked. The paint, we've been through that twice now.

MR. SATTLER:

Q. The paint is the only additional product?

A. Yeah.

MR. SATTLER: Thank you.

(Whereupon the deposition was adjourned at 12:30)

DATE DOUGLAS MERRILL

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