

VIDEOTAPED DEPOSITION
LOWELL D. GRAVES

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

KENNETH C. LANG and
JOAN A. LANG, his spouse,
Plaintiffs,
- vs - Index Number
I2006-11337

AII ACQUISITION CORP.,
f/k/a HOLLAND FURNACE COMPANY, et al.,
Defendants.

Videotaped deposition of LOWELL D.
GRAVES, taken pursuant to Notice, in the offices of
JACK W. HUNT & ASSOCIATES, INC., 1420 Liberty
Building, Buffalo, New York, on June 15, 2007,
commencing at 10:27, before LORI K. BECK, CSR, RDR
CRR, Notary Public.

JACK W. HUNT & ASSOCIATES, INC.

1 SMITH, MURPHY & SCHOEPPERLE, LLP,
2 By LYNN D. GATES, ESQ.,
3 786 Ellicott Square Building,
4 Buffalo, New York 14203,
5 Appearing for the Defendants,
6 Certain-Teed Corporation and
7 Union Carbide Corporation.
8 DAMON & MOREY LLP,
9 By PETER S. MARLETTE, ESQ.,
10 1000 Cathedral Place,
11 298 Main Street,
12 Buffalo, New York 14202-4096,
13 Appearing for the Defendant,
14 Insulation Distributors, Inc.
15 WEINER LESNIAK, LLP,
16 By ANDREW WARSHAUER, ESQ.,
17 888 Veterans Memorial Highway,
18 Suite 540,
19 Hauppauge, New York 11788,
20 Appearing for the Defendant,
21 Peerless Industries, Inc.
22 UNDERBERG & KESSLER LLP,
23 By COLIN D. RAMSEY, ESQ.,
1900 Main Place Tower,
Buffalo, New York 14202,
Appearing for the Defendant,
Rochester Industrial Insulation,
Inc.
HURWITZ & FINE, P.C.,
By V. CHRISTOPHER POTENZA, ESQ.,
1300 Liberty Building,
Buffalo, New York 14202,
Appearing for the Defendant,
Weil-McLain.

PRESENT: JOSEPH P. RIZZO, CLVS,
Videographer.

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1 APPEARANCES: LIPSITZ & PONTERIO, LLC,
2 By JOHN P. COMERFORD, ESQ.,
3 135 Delaware Avenue, 5th Floor,
4 Buffalo, New York 14202,
5 Appearing for the Plaintiffs.
6 McGIVNEY & KLUGER, P.C.,
7 By AMANDA N. KNAPP, ESQ.,
8 One Lincoln Center, Suite 1010,
9 110 West Fayette Street,
10 Syracuse, New York 13202,
11 Appearing for the Defendants,
12 AII Acquisition Corp. and
13 Pecora Corporation.
14 FELDMAN, KIEFFER & HERMAN, LLP,
15 By MARK S. NEMETH, ESQ.,
16 The Dun Building, Suite 400,
17 110 Pearl Street,
18 Buffalo, New York 14202,
19 Appearing for the Defendants,
20 Alray Construction Corp.,
21 R.E. Hebert and Company, Inc., and
22 Columbia Boiler Company.
23 DAMON & MOREY LLP,
By BARBARA L. SCHIFELING, ESQ.,
1000 Cathedral Place,
298 Main Street,
Buffalo, New York 14202-4096,
Appearing for the Defendant,
Baltimore Ennis Land Company, Inc.,
a/k/a Belci, f/k/a Gibson Homans.
GOLDBERG SEGALLA LLP,
By SUSAN E. VAN GELDER, ESQ.,
665 Main Street, Suite 400,
Buffalo, New York 14203,
Appearing for the Defendants,
Nebel's Manufacturing Company,
Burnham LLC and Hercules Chemical
Company, Inc.

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1 (STIPULATIONS: Waive filing and signing of
2 the transcript, waive Oath of the Referee,
3 reserve all objections until trial, with
4 exception of objections as to form.)
5
6 The following were marked for Identification:
7 GRAVES EXH. 1 Notice for Videotaped
8 Examination Before Trial.
9 GRAVES EXH. 2 letter dated October 23,
10 2003; attached Certificate of
11 Records.
12 GRAVES EXH. 3 Cautions Used On Packages of
13 Asbestos-Containing Products.
14 GRAVES EXH. 4 color photocopy, "43"
15 Finishing Cement.
16 GRAVES EXH. 5 color photocopy, One-Cote
17 Cement.
18 GRAVES EXH. 6 color photocopy, Super "66"
19 Insulating Cement.
20 GRAVES EXH. 7 color photocopy, One-Cote
21 Cement.
22 GRAVES EXH. 8 color photocopy, "43"
23 Finishing Cement.

Page 5 1 (The following portion of the proceedings 2 were not videotaped at the request of counsel.) 3 MS. VAN GELDER: Susan Van Gelder from 4 Goldberg Segalla. 5 Certain of my clients may not have been 6 served with the Summons and Complaint or any 7 Amended Summons and Complaint in this action, and 8 my appearance today on their behalf does not waive 9 any of their affirmative defenses, including those 10 related to proper service of process and any 11 jurisdictional affirmative defenses. 12 MR. COMERFORD: John Comerford. 13 I did raise -- I did receive a letter from 14 Susan indicating that one of her clients may not 15 have been properly served. 16 I did respond by letter providing an 17 affidavit of service showing that they were served. 18 Either way, I'm confident we can work it 19 out. 20 MR. COMERFORD: Let's put the normal 21 asbestos stipulations on first. 22 John Comerford on behalf of the estate of 23 Kenneth Lang.	Page 7 1 EXAMINATION BY MR. COMERFORD: 2 3 Q. Good morning, Mr. Graves. 4 A. Good morning. 5 Q. My name is John Comerford. I'll -- 6 I'll have a few questions for you this morning. 7 Would you please introduce yourself to the 8 jury? 9 A. My name is Lowell D. Graves, as I just 10 said. 11 I'm from Florida via Missouri, via Ohio, via 12 Indiana. 13 Q. And, sir, where were you born? 14 A. Rushville, Indiana. 15 Q. And I just want to ask you a few 16 background questions, if I may. 17 What's your date of birth? 18 A. September 5, 1937. 19 Q. And how old does that make you, sir? 20 A. 69, almost 70. 21 Q. And I'm just going to touch on your 22 educational background, if I may. 23 Where did you graduate from high school?
Page 6 1 An objection by one Defendant may be relied 2 upon by -- by all other Defendants. 3 All objections are preserved to the time of 4 trial except as to form, so if there is a form 5 objection to any of my questions, ask counsel to 6 please articulate it. 7 There are a number of Exhibits here today. 8 I will have them annexed to Mr. Graves' testimony, 9 the deposition testimony here. 10 Any other -- Susan Van Gelder already put 11 one objection on. Any other comments or objections 12 before we start? 13 If we could. Joe? 14 (Videotaping of the following proceedings 15 commenced at the request of counsel.) 16 (Videotaping of proceedings commenced at 17 10:27.) 18 19 L O W E L L D. G R A V E S, 850 Fort Pickens 20 Road, Unit 1330, Pensacola Beach, Florida, 32561, 21 after being duly called and sworn, testified as 22 follows: 23	Page 8 1 A. St. Bernard High School in Cincinnati, 2 Ohio. 3 Q. And did you go to work shortly after 4 you graduated? 5 Or let me -- strike that. 6 Did you attend college, sir? 7 A. I did. 8 Q. What university? 9 A. University of Cincinnati. 10 Q. And what year did you graduate? 11 A. 1960. 12 Q. And what did you obtain your degree in? 13 A. Bachelor of Science, industrial 14 management. 15 Q. And, sir, did there come a time when 16 you began to work after college? 17 A. Yes. 18 Q. And can you give me a thumbnail sketch 19 of your work sort of after college up to the 20 present? 21 I know that covers a little bit of time, but 22 real generally, if you could. 23 A. After I got out of college, I went back

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1 with the firm that I was with during college,
2 Cincinnati Butcher Supply Company.

3 And shortly thereafter, I went into the
4 Army.

5 And when I got out, I -- shortly thereafter
6 that, I went with Eagle-Picher Industries.

7 Q. And what years did you work for
8 Eagle-Picher Industries, sir?

9 A. I started in 1962 through March of
10 1983.

11 Q. And before we talk about Eagle-Picher,
12 can you tell me what you -- what you've done since
13 you left Eagle-Picher?

14 A. In 1983, I went with a small, privately
15 held company that manufactured specialty insulation
16 products in Joplin, Missouri, and was president and
17 chief operating officer until I took
18 semi-retirement in 2002 and stayed on part-time
19 until 2004.

20 And I am now serving as a manager and sales
21 consultant to that company.

22 Q. And this company that you -- you left
23 in 2004, what -- what was its name?

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1 A. Its name was PK Insulation
2 Manufacturing Company in Joplin, Missouri.

3 Q. What is -- do they have the same name
4 today, sir?

5 A. They changed their name about four
6 years ago -- three or four years to Fiberlite
7 Technologies, Incorporated.

8 Q. Sir, let's focus for a minute on the
9 Eagle-Picher company.

10 You were there, again, from approximately
11 1962 to 1983?

12 A. Yes.

13 Q. And I'm going to focus on the
14 Eagle-Picher company a little bit.

15 Where was that company located?

16 A. In Cincinnati, Ohio.

17 Q. And what type of business was that
18 company involved in?

19 A. Well, they were a multi-faceted
20 company in several things.

21 The one I was associated with was the
22 manufacture of industrial insulation.

23 Q. And could you describe your work duties

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1 with Eagle-Picher starting around 1962?

2 A. In '62, I was hired as the manager of
3 order department and customer service.

4 Couple years later, I was made
5 administrative assistant but continued to oversee
6 the order department.

7 A couple years after that, I was named
8 manager of national account sales.

9 Sometime later, I was named vice --
10 assistant vice -- assistant sales manager.

11 And ultimately vice-president of sales until
12 '76.

13 Q. What years, just so we're clear, did
14 you work as a sales manager?

15 Approximately.

16 A. I'm sorry?

17 Q. Did you -- you worked in sales then?

18 A. Yes.

19 Q. And what years, approximately, did you
20 work in sales for Eagle-Picher?

21 A. Well, really the whole time, but
22 outside sales from, say, '64, '65 on.

23 The order department was under the auspices

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1 of sales, so I really was involved in -- in the
2 sales the whole time.

3 Q. And can you give me an idea of --
4 starting around '64 to, we'll say, '75 -- I guess
5 that would be an 11-year time period.

6 What were your day-to-day -- day-to-day
7 responsibilities?

8 A. Well, depending on whatever my title
9 may have been during that period of time, it would
10 be to field travel, call on customers, work with
11 our regional salespeople.

12 Contact customers by phone, make sales
13 quotations.

14 And again, oversee the internal affairs of
15 the sales department.

16 Q. And real briefly, you touched on
17 earlier the type of business Eagle-Picher was in.
18 I just need you to expand upon that a little bit.

19 Was Eagle-Picher a manufacturing company?

20 A. Yes.

21 Q. And what type of products, generally,
22 were they manufacturing?

23 A. Well, our basic products were what's

3 (Pages 9 to 12)

1 called mineral fiber insulation.

2 We actually made mineral fiber and then took
3 the fiber and put it into various forms of
4 products, such as block -- what's called insulating
5 block, board, blanket, pipe insulation, and
6 cements.

7 Q. Generally speaking, these mineral fiber
8 insulation products, where would they be used?

9 A. They would be used primarily in the
10 power and process industry and any high-temperature
11 original equipment manufacturing.

12 Q. Focussing on these products, did they
13 ever contain asbestos?

14 A. They did.

15 Q. And which products, if you can, was
16 manufactured by Eagle-Picher which contained
17 asbestos?

18 A. The only products that we had asbestos
19 fiber in were the thermal insulating cements.

20 Q. And can you tell me a little bit about
21 the cements?

22 By that, did they have a trade name?

23 A. We -- we had several, but -- but we had

1 two that over 90 percent of the sales dealt with.

2 And that was the One-Cote cement and
3 Super 66 cement.

4 Q. Let's focus on those two products, if
5 they were about 90 percent of the --

6 A. Okay.

7 Q. -- the product share for Eagle-Picher.
8 We'll start with the One-Cote.

9 How was that packaged?

10 A. It was packaged in a Kraft paper bag
11 with a moisture barrier in it.

12 Q. Did you say "a moisture barrier"?

13 A. Moisture barrier.

14 Q. And using your hands or any other way,
15 what were the size or shape of the -- of the bags?

16 A. Well, the -- the One-Cote, which was
17 the finishing cement, I would say would be about
18 like this, two foot high, maybe 18 inches wide, and
19 maybe six inches wall, gusset, thickness.

20 Q. Sure.

21 A. The Super 66 cement, being a higher
22 fiber product, would have been slightly larger than
23 that.

1 Q. What's the -- what do you mean by "a
2 higher fiber product"?

3 What does that mean?

4 A. A higher mineral fiber insulation in it
5 to give it higher temperature application degree.

6 Q. And how is the Super 66 packaged, sir?

7 A. It was packed in the same type of bag
8 but did not have a moisture barrier.

9 Q. And focussing on the One-Cote, what, if
10 anything, would be on a package of One-Cote?

11 What would -- what would it say, if
12 anything?

13 A. It would -- it would give the name of
14 the manufacturer, the -- the trade name of the
15 product, mixing instructions, and that type of
16 thing.

17 Q. Same question for the Super 66.

18 A. Yes.

19 Q. Essentially the same answer if my
20 question to you is what was the packaging like,
21 what did it say on the packaging?

22 A. It -- it would be the same thing.

23 It would be the Eagle-Picher name, the name

1 Super 66 cement, how to mix it, that type of thing.

2 And -- and -- and it was also stamped
3 with -- with production date codes.

4 Q. Focussing on the One-Cote cement, for
5 what years do you remember that product containing
6 asbestos?

7 A. Which product are you --

8 Q. One-Cote.

9 A. One-Cote.

10 One-Cote had asbestos fiber in it to
11 some percent -- they were -- they were always
12 varying the percentages to make the product better
13 or -- or more customized for a client.

14 But it contained asbestos from the time it
15 was introduced, to the best of my knowledge, up
16 until 1971.

17 Q. When you say "introduced," do you know
18 what year it was introduced, approximately?

19 A. Yes. It would be in the '40s, '50s.

20 Q. At least -- was it asbestos-containing
21 when you started?

22 A. Yes.

23 Q. Okay. And you started, again, in what

1 year?

2 **A. 1962.**

3 Q. Did there -- I would ask the same
4 series of questions for the Super 66.

5 Do you -- do you know what years or time
6 period that insulating cement -- may I call it
7 that?

8 Is that a fair --

9 **A. It is an insulating cement.**

10 Q. What years did that insulating cement
11 contain asbestos?

12 **A. That product had asbestos in it from
13 the time it was introduced to the marketplace,
14 again, until '70 -- 1971.**

15 Q. And do you know, based on your review
16 of documents and your work with the company, when
17 Super 66 was first introduced into the marketplace
18 by Eagle-Picher?

19 **A. Again, I would go back to in the '40s,
20 early '50s.**

21 Q. Focussing on the -- and briefly,
22 because I do think you already touched on this. --
23 the One-Cote, did it have a typical application?

1 **temperatures, more in the high-temp to refractory
2 area, over other insulation and used very heavily
3 and predominantly with our -- with our block
4 insulation.**

5 Q. Sir, in particular case, I represent a
6 gentleman named Kenneth Lang, who has now passed
7 away, who worked on residential boilers.

8 At any time, did you ever call on any
9 residential boiler companies when you were selling
10 insulating cements?

11 **A. Yes.**

12 Q. What residential boiler companies as
13 you sit here today do you remember coming into
14 contact with or -- or making contact with?

15 **A. Several, because all of them were
16 potential customers or -- or candidates for sales.**

17 **I personally called on some, and then all of
18 our salespeople would call on them on a regular
19 basis.**

20 **I may not have been with them, but we as a
21 company would be calling on literally all of them.**

22 Q. And when you say "all of them," can you
23 give me any examples?

1 How was it -- what was it typically used
2 for?

3 **A. It was primarily used for finishing.**

4 **It was a smooth -- it smoothed out finish as
5 a smooth finish, and it would go directly to
6 fittings, piping fittings like Ts and valves and so
7 on.**

8 **Or it could be put over other insulation as
9 a finishing coat giving it a hard-surface
10 protection as well as thermal properties.**

11 Q. And just so we're clear, if we go back
12 into time -- we'll say 1967 or so -- and we open up
13 a bag of, we'll say, One-Cote, what did it look
14 like?

15 Was it dry? Was it wet?

16 **A. It is a dry mixture of fiber, Portland
17 cement, clay, rust inhibitors.**

18 **And it had kind of an off-white to gray
19 color.**

20 Q. Same question for the Super 66.

21 What was it generally used for? What type
22 of application?

23 **A. The 66 was used primarily for higher**

1 What do you mean by "all of them," if you
2 can give me some examples?

3 **A. Well, any -- any -- any boiler company.**

4 **The large ones that put in power generation
5 equipment as well as the smaller ones who made
6 commercial boilers, packaged boilers, and so on.**

7 Q. If I had to focus you on, we'll say,
8 residential boilers, smaller boilers -- not the
9 huge power plant boilers that maybe Combustion
10 Engineering or B&W was involved in, but smaller
11 ones that you might see in either homes or churches
12 or restaurants, things of that nature -- can you
13 know -- as you sit here today, do you know any
14 manufacturers that you may have called upon?

15 **A. You want me to name some?**

16 Q. If you can, the ones you remember.

17 **A. Burnham Boiler, Bryant Steam,
18 Weil-McLain, Peerless, American Standard.
19 That's some that I would recall.**

20 Q. And --

21 **A. Some of which I called directly on and
22 some of which I didn't.**

23 Q. And some that you called upon, the

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1 names you gave, what decade would that have been,
2 sir?

3 **A. It would have been mid-'60s until I**
4 **left.**

5 **Till the early '80s.**

6 Q. Did there come a time, sir, when you,
7 Lowell Graves, the gentleman here today -- you
8 individually became aware of the potential health
9 hazards of asbestos?

10 **A. Yes.**

11 Q. And when did you learn, sir, that there
12 may be a problem associated with asbestos and --
13 and health?

14 **A. In May -- in May of '64.**

15 Q. And how did you learn that?

16 **A. The gentleman who I reported to, our**
17 **general sales manager, attended a meeting in**
18 **Denver, Colorado.**

19 **It was a NIMA meeting which is National**
20 **Insulation Manufacturers Association. It was a**
21 **trade association.**

22 **And he attended that meeting, and it was**
23 **announced during the meeting that Johns-Manville**

Page 22

1 **was going to adopt a caution label on all of their**
2 **products that contained asbestos.**

3 **So when he returned from the meeting, he**
4 **sent out an internal document -- a letter, internal**
5 **correspondence -- to the key people like**
6 **production, research/development, general manager,**
7 **and -- stating that Johns-Manville was going to**
8 **adopt this caution labelling system, that he**
9 **recommended that we do the same thing.**

10 **And I saw that document as it was circulated**
11 **throughout our department.**

12 Q. And this gentleman that went to this
13 meeting, do you remember his name?

14 **A. John Harrington.**

15 Q. And do you remember the first time you
16 met Mr. Harrington?

17 **A. He hired me in 1962.**

18 Q. And what was his background with the --
19 with the Eagle-Picher company?

20 **A. At that time, he was general sales**
21 **manager.**

22 Q. And did you actually work with him?

23 **A. Yes.**

Page 23

1 Q. Did -- how did you interact with him or
2 work with him?

3 **A. Well, I --**

4 Q. In -- in what capacity?

5 **A. I reported to him when I was hired as**
6 **the -- as the sales department manager and customer**
7 **service.**

8 **So I reported to him, so I worked with him.**

9 Q. This memo he sent out -- is it fair for
10 me to call it a memo or a letter, this document he
11 sent out after he -- he came back from Colorado?

12 Did you actually -- were you one of the
13 recipients of that document?

14 **A. I was not a recipient of the document,**
15 **but we circulated what was called a correspondence**
16 **file.**

17 **And all the people involved saw that**
18 **document.**

19 Q. Were you one of those people that saw
20 that -- that document?

21 **A. Absolutely.**

22 Q. And as you sit here today, can you tell
23 me sort of the sum and substance? What did it

Page 24

1 generally say?

2 You know, I know we're a number of years
3 later, but what do you remember being on that
4 document?

5 **A. Well, it was just an internal**
6 **correspondence to, like I said, the key people in**
7 **the -- in our division stating that he attended the**
8 **NIMA meeting and that Johns-Manville -- one of the**
9 **subjects they brought up was the concern -- their**
10 **concerns about asbestos fiber.**

11 **And since they were miners of fiber and knew**
12 **far more about asbestos fiber than we did -- all we**
13 **did was buy it and put it in some of our products.**

14 **-- we felt their position was something that**
15 **we should study very closely and probably follow**
16 **suit.**

17 Q. And just so we're clear, NIMA, you -- I
18 want to confirm what that stands for.

19 What's the name of that organization?

20 **A. NIMA is the National Insulation**
21 **Manufacturers Association.**

22 Q. And do you know what companies made up
23 NIMA?

6 (Pages 21 to 24)

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1 **A. Johns-Manville.**

2 MR. MARLETTE: Object to form.

3 THE WITNESS: Johns -- the ones that I know
4 for sure would be Johns-Manville, Owens-Corning,
5 Phillip-Carey, Baldwin-Ehret-Hill.

6 MS. VAN GELDER: I didn't hear the last one.

7 THE WITNESS: 48 Insulation.

8 MR. COMERFORD: Baldwin-Ehret-Hill, he said.

9 THE WITNESS: And there's probably others,
10 but I --

11 BY MR. COMERFORD:

12 Q. Well, I've got to ask you a funny
13 question.

14 Eagle-Picher, who you worked for. Were they
15 a member of NIMA?

16 **A. Yes.**

17 Q. Okay. How do you know that
18 Eagle-Picher was a member of NIMA?

19 **A. I just knew that they were, and we'd**
20 **get NIMA quarterly reports and -- I never attended**
21 **one of their meetings during that period of time,**
22 **but John Harrington was our representative.**

23 **And they held meetings at least once a year**

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1 **and oftentimes twice a year.**

2 Q. As you sit here today looking back in
3 time into '64, do you know what events sort of
4 precipitated this May meeting in '64 out in
5 Colorado?

6 Did anything happen, as far as you could
7 see?

8 **A. What events in our company?**

9 Q. No. We'll say just in America.

10 I mean, do you know why they met? Did --
11 was anything reported?

12 What -- what sparked that meeting, if
13 anything?

14 MR. NEMETH: Objection.

15 THE WITNESS: Well, I don't -- I don't
16 believe meeting was called for a special meeting.
17 It was a regularly scheduled NIMA meeting, which
18 they would meet so -- every so often and discuss
19 things in the trade that might be of good
20 information to all the manufacturers.

21 And during whatever the agenda may have
22 been, one of the topics was Johns-Manville's
23 position on this labelling.

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1 BY MR. COMERFORD:

2 Q. Well, let me -- let me change
3 directions a little bit.

4 Was a decision made shortly after this
5 meeting by Eagle-Picher to change its labelling
6 procedure?

7 **A. Yes.**

8 Q. And could you tell me what happened?

9 **A. Well, everybody agreed, everybody**
10 **meaning the people that were in -- in control at**
11 **that time -- manufacturing, research, general**
12 **management, and sales management -- that we should**
13 **immediately adopt an -- a caution label and start**
14 **putting it on the bags of cement.**

15 Q. And generally speaking, what did this
16 cautionary label refer to?

17 **A. It -- I'm sure it was copied from what**
18 **Johns-Manville read off they were going to state,**
19 **but it -- it cautioned the people that the product**
20 **contained asbestos and -- and that you should avoid**
21 **breathing the dust, that it may be harmful to your**
22 **health.**

23 Q. And do you know what

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1 asbestos-containing products Eagle-Picher decided
2 to place this cautionary label on?

3 **A. We put them on all of the thermal**
4 **insulating cements.**

5 Q. Did that include -- just so we're
6 clear, what specific products did that include?

7 **A. Well, that would include the Super 66,**
8 **the One-Cote, Eagle 43, and all the other cements**
9 **that -- again, that were -- very small part of our**
10 **sales, but it -- it went on all bagged cement**
11 **product.**

12 Q. And do you know what time period the --
13 this warning started going on the bags?

14 **A. This would have been in -- in June of**
15 **'64.**

16 Q. And for how long did the warning go on?

17 **A. It was on the label until the asbestos**
18 **fiber was taken out of the product, which would**
19 **have been 1971.**

20 Q. And so this meeting was sometime in --
21 in May out in Colorado, and then approximately,
22 just so we're clear, how much time did it take
23 Eagle-Picher to actually put this cautionary label

7 (Pages 25 to 28)

1 on its bag?

2 **A. I would say a month.**

3 Q. And how was that warning actually put
4 on the bag?

5 **A. Well, initially, because we had so many**
6 **bags already preprinted, a stick-on, glue-on type**
7 **label was made, copied, and affixed to the bag.**

8 **Eventually, when bags were reordered, that**
9 **caution statement was printed on the bag.**

10 Q. Did Johns -- strike that.

11 Did Eagle-Picher, during this time period,
12 have any, you know -- were there competitors
13 selling insulating cement that would compete with
14 either Eagle-Picher 66 or the One-Cote cement?

15 **A. I'm sorry? Repeat --**

16 MR. MARLETTE: Object to form.

17 BY MR. COMERFORD:

18 Q. I'll rephrase the question.

19 You mentioned Eagle-Picher 66, and you
20 mentioned One-Cote cement today, correct?

21 Were there any products out there that were
22 competitive products being manufactured by
23 different companies?

1 **like, and you try to get a hold of their literature**
2 **to stay up with them or ahead of them.**

3 **I mean, it's just a competitive-type thing.**

4 **So I would seek a lot of manufacturers'**
5 **products in my travels in the field or in a**
6 **distributor's warehouse.**

7 Q. Focussing on these finishing cements,
8 was there one company -- let's put Eagle-Picher to
9 the side, but one company that had a real lion's
10 share of the market, that -- that had a -- more of
11 a strangle hold on it than others?

12 MR. NEMETH: Objection, form.

13 THE WITNESS: Yes, in my opinion, there was.

14 BY MR. COMERFORD:

15 Q. And which one was that?

16 **A. Johns-Manville.**

17 Q. And I want to focus a little bit on the
18 two cements you mentioned.

19 One was 352?

20 **A. Yes.**

21 Q. And what was the other one?

22 **A. 450.**

23 Q. 450. Okay.

1 **A. Yes.**

2 Q. And can you give me a few examples of
3 those?

4 **A. Almost all of the companies I named**
5 **that attended the NIMA meeting actually**
6 **manufactured or resold those cement products.**

7 **Super 66 and One-Cote would be ours.**

8 **Phillip-Carey made MW-1, MW-50.**

9 **Johns-Manville marketed a product 352 and**
10 **450. They used a lot of numbers. 450 was a**
11 **finishing cement like Super 66. 352 was a cement**
12 **like One-Cote.**

13 Q. Let me focus on Johns-Manville for --
14 for a little bit just so we're clear here.

15 You never worked for that company, correct?

16 **A. I did not.**

17 Q. Is there a reason Lowell Graves knows
18 what Johns-Manville is making if he didn't work for
19 Johns-Manville?

20 **A. Well, in -- in your travels or going**
21 **through distributors' warehouses, you would see**
22 **competitive products, and you always kind of make a**
23 **note of what's on the bag and what they looked**

1 Do you remember a time -- strike that.

2 Did you on occasion see the -- the

3 Johns-Manville insulating cements out in the field?

4 **A. Yes.**

5 Q. And what time period did you see those
6 products, those competitive -- competitive
7 products?

8 **A. Mid-'60s to mid-'70s.**

9 Q. And just so we're clear, for what
10 reason would you see those products or -- or take
11 an interest in them?

12 **A. Well, number one, they're a competitor,**
13 **and so you'd -- if you see it, you kind of check it**
14 **out, see what's on the bag, see what -- see what**
15 **kind of mixing constructions they have, is their**
16 **coverage better than ours, those types of things.**

17 **And then, of course, you have access to**
18 **their literature, so you were just interested in**
19 **who you're competing with and what -- what products**
20 **are out there.**

21 Q. Did there come a time, sir, when you
22 began seeing a cautionary notice on the
23 Johns-Manville bags regarding this insulating

1 cement?

2 **A. Yes.**

3 Q. And can you compare what -- the
4 warning -- not word for word, but the warning that
5 Johns-Manville had on their bags to what
6 Eagle-Picher had on their bags?

7 **A. If I recall, it was identical to ours,**
8 **because we adopted theirs.**

9 Q. Sir, I want to -- I have some
10 Exhibits here that I want to show you. The first
11 is marked Graves 4.

12 And again, these will all be -- will all be
13 attached to the transcript.

14 I first want to show you Graves 4. May I
15 slide that to you, sir?

16 What is that a picture of?

17 **A. It is a picture of an Eagle-Picher 43**
18 **finishing cement bag.**

19 Q. And just so we're clear, the -- the
20 actual -- well, strike that.

21 Is that a fair and accurate depiction of
22 what the -- that bag looked like in the '60s and
23 early '70s?

1 **A. Yes.**

2 Q. And the bag itself, though, would the
3 size be different than what you're holding?

4 **A. I would say it would be twice as large**
5 **as this.**

6 Q. Okay. Let me hand you -- and if you
7 can, you can hold that picture up so the camera
8 sees it.

9 That's Eagle-Picher 43, sir --

10 **A. Yes.**

11 Q. -- finishing cement?

12 Let me hand you what has been marked
13 Graves 5, sir.

14 What is that a picture of?

15 **A. May I put this down?**

16 Q. Please.

17 **A. Eagle-Picher One-Cote cement.**

18 **It is a picture of the bag of the product.**

19 Q. Have you seen that before?

20 **A. Oh, yes.**

21 Q. In what capacity?

22 **A. Sold a lot of it.**

23 **Saw it manufactured, bagged, and sold.**

1 Q. Is that Exhibit -- and again, what
2 number is that Exhibit, sir? I'm sorry.

3 **A. 5?**

4 Q. Is that a --

5 **A. I'm -- 5, I guess. Graves 5.**

6 Q. Is that a fair and accurate depiction
7 of what the -- that bagged product, the One-Cote,
8 looked like during the '60s and early 1970s?

9 **A. Yes.**

10 Q. Let me hand you what has been marked
11 Graves 6.

12 And thanks. Hold that up, One-Cote cement.

13 Let me hand you what has been marked
14 Graves 6, if you can, sir. There's two
15 Exhibit tabs. I'm sorry about that.

16 What is that a picture of, sir?

17 **A. Eagle-Picher Super 66 insulating**
18 **cement.**

19 Q. Have you ever seen that bag before?

20 **A. Yes.**

21 Q. Is that a fair and accurate depiction
22 of what the bag looked like?

23 **A. It is.**

1 Q. Is that a fair and accurate depiction
2 of what the bag looked like during the 1960s and
3 early '70s?

4 **A. Yes.**

5 Q. If you can hold that up for the camera.
6 Thank you, Mr. Graves.

7 I'm going to hand you what has been marked
8 Exhibit 3. Okay, sir?

9 If you could just look at that for a second,
10 read it to yourself, and tell me what, if anything,
11 it says.

12 But let's just get familiar with it first.

13 **A. It's a copy of the caution label that**
14 **appeared on the Eagle-Picher thermal insulating**
15 **cement bags.**

16 Q. Do you remember that being on the bags?

17 **A. Yes.**

18 Q. Just so we're clear, can you read the
19 warning into the record that is on that
20 Exhibit that you remember being on the bag starting
21 in June of 1964?

22 **A. The statement says "Caution" in bold,**
23 **colon:**

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This product contains asbestos fiber. Inhalation of asbestos in excess -- in excessive quantities over long periods of time may be harmful. If dust is created when this product is handled, avoid breathing the dust. If adequate ventilation control is not possible, wear respirators approved by U.S. Bureau of Mines for pneumoconiosis product -- producing dust.

I probably crucified that word, but --

Q. Pneumoconiosis is hard to say. I'm not sure I'm saying it right either, Mr. Graves, but let me ask you this:

Do you have a specific recollection as you sit here today of the warning you just read into the record being on the bags of Eagle-Picher Super 66?

A. I do.

Q. And approximately when did that start?

A. In 1964.

Q. Same question for One-Cote.

Do you have a specific recollection of that cautionary notice being on the One-Cote?

A. Yes.

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Q. And when did that start?

A. In 1964.

Q. Thanks, sir.

Sir, I asked a question earlier about this 1964 meeting out in Colorado and if you were generally aware if -- if anything sort of precipitated that meeting putting NIMA on notice of the potential health hazards of asbestos.

And I'm not sure if you understood my question, so let me -- let me rephrase it, okay?

Near or around 1964, were there any reports in -- in medical, scientific, or -- or any newspapers regarding the potential health hazards of asbestos that you remember?

MR. POTENZA: Form.

THE WITNESS: None that I know of.

BY MR. COMERFORD:

Q. Well, have you ever heard of any doctors who were doing any work during the 1960s reporting their findings?

MR. MARLETTE: I'm going to object to form.

Are you talking about now does he know about any or did he know about any back in 1964?

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MR. COMERFORD: Did he know about any back in 1964.

Good objection.

BY MR. COMERFORD:

Q. In the '60s, did you ever hear of any doctors who were generally reporting about the health hazards of asbestos?

MS. VAN GELDER: Form.

THE WITNESS: In the '60s, yes, but not in '64.

BY MR. COMERFORD:

Q. What did -- what physician do you remember?

His name by any chance do you remember?

A. Well, I recall in the mid-'60s five or six of Dr. Selikoff's coming out with research data that apparently had been going on for quite some time.

And it surfaced around the mid-'60s that -- the -- the potential hazards of asbestos.

Q. And do you know how you became aware of that information?

A. It -- it came to our office.

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I don't know exactly how we got it, but it was circulated to all the people involved in our division as well as general management.

Q. And do you -- you know, because that information came in, do you know regarding Dr. Selikoff -- did that go into any decision-making regarding the use of the warning?

MR. MARLETTE: Object to form.

THE WITNESS: Well, we had already made the decision to use the warning prior to our knowledge of this -- of this research that he had done.

BY MR. COMERFORD:

Q. Do you know from what region of the country this Dr. Selikoff came from?

A. I think up in the Northeast.

Mount Sinai Hospital or Mount Sinai Research or -- I know he's associated with Mount Sinai.

MR. COMERFORD: Sir, I don't have any further questions today. I'm sure there'll be some follow-up.

But I appreciate your time today.

And what I thought I would do, Defendants, is suspend the video, let you guys talk, and then

10 (Pages 37 to 40)

1 we'll bring Mr. Graves in for any follow-up.

2 MS. VAN GELDER: That's fair.

3 (A recess was then taken at 11:01.)

4 (On the record at 11:11.)

6 EXAMINATION BY MR. MARLETTE:

8 Q. Good morning, Mr. Graves.

9 A. **Good morning.**

10 Q. My name is Peter Marlette, and I
11 represent one of the Defendants in the -- in this
12 case, and I just have a question or two for you.

13 You said that at least to your knowledge,
14 that Eagle-Picher started putting asbestos in the
15 One-Cote cement and in the Super 66 sometime in the
16 '40s or early '50s.

17 Is that correct?

18 A. **That's correct.**

19 Q. Okay. And to your knowledge -- and you
20 were actually at the company at that point. -- they
21 took asbestos out of the -- those two products
22 sometime in 1971; is that right?

23 A. **Yes, all asbestos fiber was removed in**

1 '71.

2 Q. Do you know exactly when that was in
3 1971 that Eagle-Picher took asbestos out of its
4 products?

5 A. **I don't remember the exact date, but it
6 was probably in early '71 when the decision was
7 made to go asbestos-free.**

8 Q. Okay.

9 MR. MARLETTE: That's all I have.

10 Thank you.

12 EXAMINATION BY MR. POTENZA:

14 Q. Mr. Graves, my name is Chris Potenza.
15 I represent one of the Defendants in this action.
16 I just have a question for you.

17 The focus of your testimony today was on two
18 specific products, a product called One-Cote and a
19 product called Super 66.

20 In the time that you worked for Eagle-Picher
21 from -- I believe it was '62 to '83, how many
22 products did the company have?

23 A. **We had several mineral fiber products.**

1 **Block insulation, board insulation, blanket
2 insulation, pipe insulation, specialty OEM
3 manufactured products.**

4 **We were what was considered to be a -- a
5 full-line mineral fiber insulation manufacturer.**

6 Q. If you -- can you approximate for me at
7 all the number of different products that -- that
8 your company sold during that time period?

9 I know that may be a difficult question to
10 narrow it down, but to the best you can, give us an
11 approximation of -- of the number of products your
12 company distributed in that time period.

13 A. **12 to 15.**

14 Q. Total?

15 A. **Yes.**

16 Q. Are those types of products or -- or
17 actual different products themselves?

18 A. **That would be types of products.**

19 Q. Okay. Total number of products that
20 your company had.

21 A. **Of the insulation division?**

22 Q. Everything.

23 A. **Well, I -- if you're talking about**

1 **Eagle-Picher Industries, that's one thing.**

2 **If you're talking about the insulation
3 division, that's another.**

4 Q. Give me -- can you give me numbers for
5 both?

6 A. **Eagle-Picher Industries, thousands of
7 products.**

8 **The insulation division, 25.**

9 Q. Okay.

10 MR. POTENZA: Thank you.

11 MR. COMERFORD: I think we're all set,
12 Mr. Graves.

13 I don't have any follow-up.

14 (Proceedings of 06/15/07 were then concluded
15 at 11:15 on Videotape Number 1.)

17 * * *

Page 45 1 STATE OF NEW YORK) 2 ss: 3 COUNTY OF ERIE) 4 5 I DO HEREBY CERTIFY as a Notary Public in and 6 for the State of New York, that I did attend and 7 report the foregoing deposition, which was taken 8 down by me in a verbatim manner by means of machine 9 shorthand. Further, that the deposition was then 10 reduced to writing in my presence and under my 11 direction. That the deposition was taken to be 12 used in the foregoing entitled action. That the 13 said deponent, before examination, was duly sworn 14 to testify to the truth, the whole truth and 15 nothing but the truth, relative to said action. 16 17 18 19 ----- 20 LORI K. BECK, 21 CSR, RDR, CRR, 22 Notary Public. 23	Page 47 1 INDEX TO WITNESSES 2 Witness Examination Page 3 LOWELL D. GRAVES BY MR. COMERFORD: 7 4 BY MR. MARLETTE: 41 5 BY MR. POTENZA: 42 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23
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