

FILE NAME: Cape Asbestos (CAPE)

DATE: 1983 Apr 21

DOC#: CAPE119

DOCUMENT DESCRIPTION: Legal - Deposition of John Neil Clarke [Legal - Tibbs Case Exhibit 17]

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ELECTRONICALLY FILED - 2023 Oct 18 11:39 AM - RICHLAND - COMMON PLEAS - CASE#2023CP4001759

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF McLEAN

LOIS J. THACKER, et al.

Plaintiff

v.

UNR INDUSTRIES, INC, et al.

Defendants

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Deposition of MR JOHN NEIL CLARKE, produced, sworn
and examined the 21st day of April 1983 at the offices of Messrs
Linklaters & Paines, Barrington House, 59-67 Gresham Street,
London, EC2V 7JA, England.

Walter H. Clark, of 24 Chancery Lane, London WC2A 1LS,
England, acted as Reporter.

1 services, to one of our subsidiary companies. If I can then
2 turn to the case of the Anglo American, I think the normal
3 term that would tend to be used would be "associated companies"
4 because they would be gold mines or coal mines in which Anglo
5 American or its investment companies had an investment
6 interest and retain an investment interest, and to which the
7 Anglo American Corporation might supply, and normally does
8 supply, very high level technical services.

9 Q Charter Consolidated Services provides services to some
10 corporations in which Charter does not own stock?

11 A Absolutely, yes.

12 Q And those you call clients?

13 A We call those client companies.

14 Q Then it also provides services to corporations in which
15 Charter does own stock?

16 A Yes.

17 Q What do you call those?

18 A Client companies, or in some cases they would be subsidiary
19 companies, or in some cases they would be companies in which
20 we also had an investment. We regard them all as client
21 companies. The only distinction is whether we have an
22 investment or whether we don't. In terms of the provision
23 of services, it makes no difference.

24 Q And the difference between a subsidiary and a company in which
25 you have an investment is in terms of stock ownership or some
26 other quantitative difference. What is the difference?

27 A The position of subsidiary is purely the distinction when the
28 shareholding interest exceeds 50.01 per cent.

1 Q Do you know if Anglo American provides services to corporations
2 in which it has no ownership interest?

3 MR POLAK: At the present time?

4 A I can't speak for the present time, because I have no direct
5 or intimate knowledge. During the period when I had knowledge
6 when I was in Johannesburg, I can't immediately think of an
7 instance where it supplied services to a company in which it
8 did not have an investment interest. That does not mean to
9 say that there was not one; merely that I have no knowledge of
10 it.

11 MR WALKER: You are a member of the board of Cape Industries?

12 A I am at the current time, yes.

13 Q How long have you been? In other words, when did you first
14 start?

15 A I joined the board of Cape Industries early in 1980.

16 Q And have you been on it ever since?

17 A I have.

18 Q Are you on the board of any of its subsidiaries?

19 A I am not.

20 Q Have you ever been?

21 A I have not.

22 Q How did it come to be that you are on the board of Cape?

23 A When I became managing director of Charter in 1979 Cape was
24 Charter's largest industrial subsidiary company, and I had
25 relatively little knowledge of its business. I thought as
26 chief executive of Charter I should know and understand the
27 business as best I can; it was an important investment
28 interest for Charter; and I talked to the chairman of Cape

1 about this, and he in fact suggested that I should join the
2 board of Cape and then I would be able to see at first hand
3 what the business of the company was about as a non-executive
4 director.

5 Q Who was the chairman of the board of Cape?

6 A The chairman of the board of Cape at that time was Lionel
7 Stopford Sackville. If I may, I would like just to correct
8 my previous answer, because I had assumed, I think, it was
9 only in May 1980 that Geoffrey Higham became the chairman of
10 Cape; but in fact the person I talked to was Geoffrey Higham,
11 who was the managing director of Cape. My former colleague,
12 Lionel Stopford Sackville, was about to retire from the chair.

13 Q So which part of your answer did you correct, then?

14 A The part I would like to correct is I think I said I talked
15 to the chairman of Cape. In fact, I talked to Geoffrey
16 Higham, who was the managing director of Cape and who I knew
17 would take over as the chairman of Cape.

18 Q How did you know that?

19 A It was known that Lionel Stopford Sackville would retire from
20 the chairmanship of Cape, and I knew from my colleagues who
21 were on the Cape board that Geoffrey Higham was intended to
22 take over as the chairman from him.

23 Q By whom was Geoffrey Higham intended to take over?

24 A I don't understand the question.

25 Q You talked to Higham apparently in late 1979 or early 1980?

26 A Just so. Yes.

27 Q And at that time Higham was managing director, he was on the
28 board, but he was not chairman of the board; is that true?

1 A That is correct.

2 Q And you said you learned from your colleagues that it was
3 intended that when Stopford Sackville retired from the board
4 of Cape and therefore ceased being its chairman it was
5 intended that Higham would become chairman of the board; is
6 that true?

7 A It was intended that he would become chairman.

8 Q And my question is: Who intended this?

9 A The board of Cape Industries.

10 Q Which members of the board did you learn from that Higham
11 was intended to be the next chairman?

12 A From my charter executive colleagues who were directors of
13 Cape Industries at that time, and also from the other non-
14 executive directors of Cape.

15 Q Who were your colleagues at Charter that were on the Cape
16 board?

17 A John Richardson and Francis Howard.

18 Q Did you personally talk to the other Cape board members before
19 you went on the board?

20 MR POLAK: What about?

21 MR WALKER: About anything.

22 A No, I think not. I might well have talked to Messrs Richard-
23 son and Howard, but not about this specific subject. My only
24 recollection is discussing it with Geoffrey Higham.

25 Q Did even Higham himself know he was going to be the next
26 chairman of the Cape board?

27 A He would have been aware of that.

28 Q Did he tell you that?

1 A He did not tell me that.

2 Q So you learned from either Richardson or Howard that the board
3 of Cape -- strike that. You learned in late 1979 or early
4 1980 from either Richardson or Howard or both that the board
5 of directors of Cape intended that Geoffrey Higham would be the
6 next chairman of the board after Stopford Sackville stopped
7 serving as chairman; is that correct?

8 A Correct. May I just give you an understanding of this which
9 might assist you?

10 Q You may.

11 A I would have returned to become managing director of Charter.
12 I would be aware, because it was known to me, that Lionel
13 Stopford Sackville was retiring as chairman of Cape. As
14 managing director of Charter I had to make an assessment of
15 all of Charter's investment positions. I would have said to
16 Messrs Richardson and Howard: "Now, I understand that Lionel
17 is retiring as the chairman of Cape. Who is going to succeed
18 him?". They would say to me: "It has been discussed.
19 Geoffrey Higham is the person who is going to take over".

20 Q At that time was Higham a Charter employee?

21 A He was not a Charter employee. He was a non-executive
22 director.

23 Q A non-executive director of Charter or Cape?

24 A A non-executive director of Charter.

25 Q He is currently a Charter employee; is that correct?

26 A He is an executive director of Charter. He is employed by
27 Charter Consolidated Services. In fact, he is on a contract
28 of secondment from Cape Industries.

1 Q Is that a written contract?

2 A It is an exchange of letters, which amounts to a written
3 contract.

4 Q One letter from each company, or more than one?

5 A It would be one letter from Charter Consolidated Services to
6 Cape Industries, so far as I know. I have no knowledge of any
7 other letters.

8 Q Who prepared the letter from Charter to Cape concerning this
9 contract of (and I know I will butcher the word) secondment?

10 A Secondment. It would have been prepared by the personnel
11 consultant of Charter on Charter's behalf.

12 Q And then is there some type of acceptance by Cape?

13 A There would be a letter of acceptance by Cape.

14 Q Have you seen the specific letter as it regards Geoffrey
15 Higham?

16 A I have seen the specific letter from Charter to Cape. I have
17 not seen, to my knowledge, the response from Cape.

18 Q Does the Charter to Cape letter basically set forth all the
19 terms, so that you would anticipate that all Cape would have
20 done is say "We acknowledge this situation"?

21 A The letter from Charter would certainly set out the terms.
22 I can't speak to the acknowledgement from Cape, because I
23 haven't seen it.

24 Q What I mean is: Would you anticipate that about all they
25 would do is accept or reject, or do you think they would have
26 said "Well, we don't like that deal, but why don't we do it
27 under this deal"?

28 A It would be left to the personnel consultant of Charter. If