

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

1 Q. Yes.

2 A. A -- this area and Texas, Kansas.

3 MR. KILBOURNE: That's all I have at this time.

4 MR. WALTZ: No questions.

5 MR. MURRAY: I just want to find out the names of
6 those products.

7 MR. WALTZ: You want to pass these around or -- I
8 can go through them and read them to you.

9 MR. WALTZ: I have some.

10 MR. PALLIS: I have some questions.

11 MR. WALTZ: Could you identify who you represent?

12 MR. PALLIS: Mark Pallis, Celotex.

13 EXAMINATION BY

14 MR. PALLIS:

15 Q. Sir, I think you testified that one of your
16 suppliers of asbestos fiber was Carey Canada, was that
17 right?

18 A. Yes.

19 Q. What is the basis of that knowledge, is it
20 something you heard?

21 A. No. I made purchases myself.

22 Q. What was the earliest date you made a
23 purchase from Carey Canada?

24 A. I don't know.

25 Q. Would it -- can you approximate, would it
26 have been shortly after you arrived?

27 A. I believe 1968, '69, would have been the
28 earliest.

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

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

5 Q. And what year would that have been?

6 A. I don't recall.

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

9 A. No. Mid-70's.

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

12 A. I don't know.

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

16 A. They were used at the other plants.

17 Q. What's the basis of that knowledge?

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

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

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

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

27 Q. Okay. And you're not sure?

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

1 Johns-Manville.

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

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

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

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

15 Q. Right.

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

18 Q. Right.

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

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

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

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

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

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

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

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

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

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

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

18 Q. You recall seeing any warnings prior to that?

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

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

24 A. No.

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

27 A. Yes.

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

1 questions at this point.

2 MR. WALTZ: Who do you represent?

3 MR. SATTLER: Fibreboard.

4 EXAMINATION BY

5 MR. SATTLER:

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

8 A. Yes.

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

12 A. Correct.

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

16 A. Yes.

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

20 A. Yes.

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

26 A. I have no idea.

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

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

3 FURTHER EXAMINATION BY

4 MR. PALLIS:

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

8 A. A -- an outfit called Atlas Asbestos.

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

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

14 Q. Any other manufacturers?

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

16 MR. MURRAY: I have a couple of questions.

17 EXAMINATION BY

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

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

22 A. Yes.

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

25 A. Yes.

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

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

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

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

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

7 A. (Witness nods head.)

8 Q. Is that right?

9 A. Yes.

10 Q. And what sizes did the buckets come in?

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

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

15 A. One-gallon pail.

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

18 A. 15 or 16.

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

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

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

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

3 A. Wall texture.

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

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

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

15 A. Correct.

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

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

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

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

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

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

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

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

10 THE WITNESS: Okay.

11 MR. WALTZ: -- of the distributors?

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

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

18 MR. MURRAY:

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

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

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

19
1 they had asbestos in products or not?

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

4 Q. Okay.

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

8 Q. Where is Railway Supply located?

9 A. San Jose, I believe.

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

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

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

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

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

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

26 Q. Who would be the most knowledgeable?

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

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

3 A. Uh-huh.

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

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

9 Q. Does Joe Vola still work for Kelly Moore?

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

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

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

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

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

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

27 A. Lahabra Products?

28 Q. Yeah.

1 A. No.

2 Q. And where actually, physically is your
3 office?

4 A. San Carlos.

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

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

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

11 A. Man by the name of S-v-~~o~~-n-d, S-t-u-b-b. ^{Sup's}

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

14 A. 987 Commercial Street.

15 Q. That's in the office building?

16 A. Corporate office building.

17 Q. Second floor?

18 A. Yes.

19 MR. MURRAY: Thank you, sir.

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

22 FURTHER EXAMINATION BY

23 MR. PALLIS:

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

27 A. No.

28 Q. Well, are you aware if Kelly Moore was

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

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

4 Q. Were other people doing purchasing other than
5 you?

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

8 Q. Were there other people at PACO doing
9 purchasing?

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

13 MR. PALLIS: Fine, thanks.

14 FURTHER EXAMINATION BY

15 MR. KILBOURNE:

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

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

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

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

27 There was a cut-off date of, I want to say June
28 18th of '78, where we could no longer sell and we recalled

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

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

6 MR. KILBOURNE: I have no further questions.

7 MR. WALTZ: Who do you represent?

8 MS. ROSACK: H. K. Porter Company.

9 EXAMINATION BY

10 MS. ROSACK:

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

13 A. Used several grades.

14 Q. What grades were they?

15 A. 7 RF, 97 RF, 10. I think those are Carey
16 grades. 7-RF 9, 7-9-10

17 7 MS, I think that was a grade. Something, 7 FO 4,
18 I think that's a Johns-Manville grade.

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

21 And there was a RG ¹⁴⁴1144. I think a rubber grade
22 144. That's a long time ago, I can't remember.

23 MS. ROSACK: Thank you.

24 FURTHER EXAMINATION BY

25 MR. SATTLER:

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

1 containers for them.

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

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

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

12 A. I think that question was asked.

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

15 MR. SATTLER:

16 Q. The paint is the only additional product?

17 A. Yeah.

18 MR. SATTLER: Thank you.

19
20 (Whereupon the deposition was adjourned at 12:30)
21

22
23 _____
DATE

DOUGLAS MERRILL
24
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