

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

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4 NORMAN HOPKINS and MARLENE
5 HOPKINS,

6 Plaintiffs,

7 vs. No. 408556

8 ASBESTOS DEFENDANTS (BHC),

9 Defendants.

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15 DEPOSITION OF DAVID MAXWELL

16 (Pages 1 to 48)

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19 Taken before SANDRA M. LEE

20 CSR No. 9971

21 May 9, 2003
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1 DEPOSITION OF DAVID MAXWELL

2
3 BE IT REMEMBERED, that pursuant to Notice, and
4 on the 9th day of May 2003, commencing at the hour of
5 10:11 a.m., in the offices of Aiken & Welch, Inc., One
6 Kaiser Plaza, Suite 505, Oakland, California, before me,
7 SANDRA M. LEE, a Certified Shorthand Reporter,
8 personally appeared DAVID MAXWELL, produced as a witness
9 in said action, and being by me first duly sworn, was
10 thereupon examined as a witness in said cause.

11 ---o0o---

12
13 ANGELO L. BUTLER, Brayton Purcell, 222 Rush
14 Landing Road, Novato, California 94948, appeared on
15 behalf of the Plaintiffs.

16
17 EUGENE C. BLACKARD, Archer Norris, 2033 N. Main
18 Street, Suite 800, Walnut Creek, California 94596,
19 appeared on behalf of the Defendant Graybar Electric
20 Company, Inc.

21
22 KAREN C. PAK, Bennett, Samuelson, Reynolds &
23 Allard, 1951 Webster Street, Suite 200, Oakland,
24 California 94612, appeared on behalf of the Defendant
25 Slakey Brothers, Inc.

1 SIMON KISCH, Bishop, Barry, Howe, Haney &
2 Ryder, 2000 Powell Street, Suite 1425, Emeryville,
3 California 94608, appeared on behalf of the Defendant
4 Red Devil, Inc.

5
6 SHEILA FLANAGAN, Burnham & Brown, 1901 Harrison
7 Street, 11th Floor, Oakland, California 94612, appeared
8 on behalf of the Defendants Borg-Warner Automotive,
9 Inc., and York International Corporation.

10
11 STEPHANIE W. SHAFFER, Jackson & Wallace, 55
12 Francisco Street, Suite 600, San Francisco, California
13 94113, appeared on behalf of the Defendant DAP Products.

14
15 JENNIFER J. LEE, McKenna, Long & Aldridge,
16 Steuart Street Tower, One Market Plaza, Suite 2700, San
17 Francisco, California 94105, appeared on behalf of the
18 Defendants Certainteed Corporation, Union Carbide
19 Corporation and California Federal Bank.

20
21 JANE S. BLUMBERG, Prindle, Decker & Amaro, 369
22 Pine Street, Suite 800, San Francisco, California 94104,
23 appeared on behalf of the Defendant American Standard,
24 Inc.

25

1 CHRISTOPHER W. BROWN, Roger, Scott & Helmer,
2 1001 Marshall Street, Suite 400, Redwood City,
3 California 94063, appeared on behalf of the Defendant
4 Superior Boiler.

5
6 CONSTANCE S. NELSON, Stevens, Drummond &
7 Gifford, 1910 Olympic Boulevard, Suite 250, Walnut
8 Creek, California 94596, appeared on behalf of the
9 Defendants Domco Floor Products and Pneumo Abex
10 Corporation.

(Plaintiff's Exhibits A and B was marked for identification.)

(Defendants' Exhibit Nos. 1 through 3 were marked for identification.)

DAVID MAXWELL,
sworn as a witness,
testified as follows:

EXAMINATION BY MR. BUTLER:

Q. Good morning, sir. My name is Angelo Butler. I'm with the firm of Brayton Purcell, and I represent Norman Hopkins and Marlene Hopkins.

Would you please state and spell your last name?

A. Maxwell, M-a-x-w-e-l-l.

Q. Are you currently employed, Mr. Maxwell?

A. Yes.

Q. Who is your employer?

A. Graybar Electric Company.

Q. Have you had your deposition taken before?

A. Yes.

Q. When was the last time you had your deposition taken?

A. Approximately one year ago.

Q. Do you recall who were the parties involved in

1 that deposition?

2 **A.** No, I do not.

3 **Q.** Was that an asbestos-related matter?

4 **A.** Yes.

5 **Q.** How many times have you had your deposition
6 taken, Mr. Maxwell?

7 **A.** Twice.

8 **Q.** Given that, I will go over just a couple of the
9 admonitions. I'm sure Counsel has already told you and
10 given you an overview of what to expect.

11 Briefly, this is a legal proceeding. You're
12 under oath here today. Even though we're in a
13 relatively informal setting, the deposition testimony
14 you give today has the full force and effect as if you
15 were giving it in a court of law. You may be subject to
16 the penalties of perjury for untruthful testimony.

17 Do you understand that?

18 **A.** Yes.

19 **Q.** Anything that you say today or anyone else in
20 the room says while we are on the record will be taken
21 down by the court reporter. Within a fairly short time
22 afterwards, you'll be provided with a written transcript
23 and have a chance to review that transcript, and at that
24 time, if you wish, you can make any changes you feel are
25 necessary.

1 However, I feel I need to caution you that any
2 substantive changes from a yes to a no or other markedly
3 contrasting testimony can and probably will be commented
4 on should the case go to trial.

5 Do you understand that?

6 **A.** Yes.

7 **Q.** If there are any questions that you do not
8 understand or you would like a clarification on, please
9 state so, and I will try to rephrase that and to be more
10 succinct in my question. If you go ahead and answer the
11 question, I will assume that you understood the
12 question.

13 Do you understand that?

14 **A.** Yes.

15 **Q.** Have you taken any medication in the last 24
16 hours?

17 **A.** No.

18 **Q.** Is there anything that you feel would affect
19 your ability to give your best testimony today?

20 **A.** No.

21 **Q.** Can you think of any reason why this deposition
22 should not go forward, Mr. Maxwell?

23 **A.** No.

24 **Q.** I need to get a little of your background.

25 Would you summarize your education, please?

1 **A.** I have a Bachelor's degree in business from
2 California State University Sacramento.

3 **Q.** Have you had any postgraduate --

4 **A.** No.

5 **Q.** -- course work?

6 Have you attended any technical schools?

7 **A.** No.

8 **Q.** What is your title at Graybar Electric?

9 **A.** Vice president, Comm/Data sales.

10 **Q.** Could you repeat that again?

11 **A.** Vice president, Comm/Data sales.

12 **Q.** What are your job duties and responsibilities
13 as vice president of Comm/Data sales?

14 **A.** I'm responsible for our sales and customer
15 service for our western communication district.

16 **Q.** What comprises the western communication
17 district, what areas?

18 **A.** 11 of the 13 western states, including West
19 Texas.

20 **Q.** I'd like to ask you a little bit about your
21 experience after you graduated from Sacramento State.

22 Could you summarize your work history since
23 then?

24 **A.** I worked for approximately one year with A
25 Dakin, D-a-k-i-n, & Company as a credit supervisor. I

1 joined Graybar in 1985 as Graybar's financial manager.

2 Q. What were your duties as financial manager with
3 Graybar in 1985?

4 A. Primarily the extension of credit and accounts
5 receivable collections.

6 Q. As a financial manager in 1985 with Graybar,
7 did you maintain lists of your customers at that time?

8 A. I received reports listing customers.

9 Q. What information regarding those customers were
10 contained in the list?

11 A. Invoices rendered, balances outstanding, prior
12 year's sales, current year's sales.

13 Q. How long were you employed as financial manager
14 for Graybar after 1985?

15 A. Approximately through 1991.

16 Q. What was your next assignment after financial
17 manager?

18 A. Branch manager.

19 Q. What were your duties as branch manager
20 beginning in approximately 1991?

21 A. Responsible for all sales and logistics for the
22 Greater Bay Area.

23 Q. Does the Greater Bay Area include also Fresno?

24 A. No.

25 Q. Fresno would be included in what area?

1 **A.** Fresno would be its own market service serviced
2 by our branch in Fresno.

3 **Q.** How long were you employed as a branch manager?

4 **A.** Approximately one year.

5 **Q.** After that one-year service, what did you do
6 next?

7 **A.** General manager, international.

8 **Q.** What were your job duties as general manager,
9 international?

10 **A.** Responsible for all sales and service and
11 logistics for the Asian market.

12 **Q.** How long were you the general manager,
13 international?

14 **A.** Approximately seven years.

15 **Q.** What was your last year as general manager,
16 international?

17 **A.** 1999.

18 **Q.** What did you do after that?

19 **A.** Left the company and worked for another
20 company.

21 **Q.** Which company was that?

22 **A.** Golden State Lumber.

23 **Q.** What was your job title at Golden State Lumber?

24 **A.** Chief operating officer.

25 **Q.** As chief operating officer, what were your

1 duties?

2 **A.** Responsible for all facets of the company,
3 including sales, marketing and administration and
4 logistics.

5 **Q.** How long were you with Golden Gate (sic)
6 Lumber?

7 **A.** Approximately two years.

8 **Q.** What did you do after leaving Golden Gate (sic)
9 Lumber?

10 **A.** Golden State.

11 **Q.** Golden State Lumber.

12 **A.** Returned to Graybar.

13 **Q.** What was your job title when you returned to
14 Graybar?

15 **A.** Corporate account manager.

16 **Q.** You began as corporate account manager in 2001?

17 **A.** Correct.

18 **Q.** What was your duties -- what were your duties
19 and responsibilities as corporate account manager?

20 **A.** National -- national sales.

21 **Q.** Could you say a little bit more about that,
22 national sales?

23 **A.** Working with the Fortune 1,000, negotiating
24 agreements to serve those companies.

25 **Q.** How long were you corporate account manager?

1 A. Approximately eight months.

2 Q. And after those eight months, did you become
3 the vice president of Comm/Data sales?

4 A. Yes.

5 Q. Mr. Maxwell, is it your understanding today
6 you're appearing representing Graybar Electric as person
7 most knowledgeable?

8 A. Yes.

9 Q. In addition, are you being offered today as the
10 custodian of records?

11 **MR. BLACKARD:** Let me say for the record that
12 Mr. Maxwell is not being offered as the custodian of
13 records today. No such person exists for Graybar.
14 However, Mr. Maxwell is here to provide you with the
15 information you require on the document retention policy
16 and the documents we produced today.

17 **MR. BUTLER:** This would be a good time to
18 review the exhibits that have been previously marked.

19 Marked as Exhibit A is the notice of taking
20 deposition and request for production of documents.
21 Exhibit A is a ten-page document with attached proof of
22 service and service list.

23 Marked as Plaintiff's Exhibit B is the letter
24 rescheduling the date of this deposition, a one-page
25 document with the service list and a broadcast report

1 reflecting the facsimile transmittals.

2 Additionally, Mr. Blackard has brought with
3 him, and which have been marked, three documents.
4 Defendants' Exhibit 1 is Defendant Graybar Electric's
5 written objections to plaintiff's notice of the
6 deposition of Graybar Electric Company's custodian of
7 records and person most knowledgeable.

8 Defendants' Exhibit 2 is Graybar's records
9 retention policy.

10 Exhibit 3 is a two-page document -- excuse
11 me -- a three-page document titled "The Graybar Story."

12 **BY MR. BUTLER:**

13 Q. Mr. Maxwell, I'd ask you to take a look at
14 what's been marked as Plaintiff's Exhibit A.

15 A. Yes.

16 Q. Have you seen this document before, Mr.
17 Maxwell?

18 A. Yes.

19 Q. Did you review this document alone or with
20 someone?

21 A. Alone.

22 Q. After reviewing that document, did you take
23 steps to respond to the document?

24 A. Yes.

25 Q. What steps did you take in preparation for

1 responding to this document?

2 **A.** Relative -- there's different sections, of
3 course, in the document, but one step was to discuss
4 with our operations manager in Fresno relative to any
5 documents or data relative to the time period specified.

6 **Q.** Your documents manager in Fresno, who is that
7 person?

8 **A.** Andre Hardaman.

9 **Q.** Can you spell Mr. Hardaman's -- could you spell
10 his last name?

11 **A.** H-a-r-d-a-m-a-n.

12 **Q.** You stated earlier that Fresno is its own
13 market area.

14 Is Mr. Hardaman part of that Fresno office?

15 **A.** Correct.

16 **Q.** What did you ask Mr. Hardaman to do?

17 **A.** I requested that he conduct -- conduct a search
18 and a review to obtain any documents, any information,
19 any written data, any Microfiche any microfilm, any data
20 whatsoever, from the time period specified, 1945 to
21 1983.

22 **Q.** Did you direct any other personnel or employees
23 of Graybar to do anything in response to this notice?

24 **A.** No.

25 **Q.** Did you contact anyone outside the Fresno

1 office and direct them to do anything in response to
2 this notice?

3 **MR. BLACKARD: Let me object to the extent it**
4 **calls for attorney-client communications.**

5 **BY MR. BUTLER:**

6 **Q.** You may answer, Mr. Maxwell.

7 **A.** Yes.

8 **Q.** Who is that that you --

9 **A.** Our corporate counsel.

10 **Q.** Is that Mr. Blackard here?

11 **MR. BLACKARD: Well, let me just clarify for**
12 **the record, I do represent Graybar. However, there is**
13 **also a legal department at home office.**

14 **BY MR. BUTLER:**

15 **Q.** In your direction to Mr. Hardaman, did you give
16 him any parameters with regard to the years for his
17 search?

18 **A.** Yes.

19 **Q.** What were those parameters?

20 **A.** 1945 to 1983.

21 **Q.** Did Mr. Hardaman, if you know, direct any other
22 personnel or employees of Graybar Electric to do a
23 search for those records asked for in the notice?

24 **A.** I do not know the methodology he employed.

25 **Q.** What did Mr. Hardaman tell you in response to

1 your direction to search for records?

2 **A.** No information or documents existed, which is
3 consistent with our records retention policy.

4 **Q.** Graybar's records retention policy has been
5 marked as Defendants' Exhibit 2.

6 Tell me, please, Mr. Maxwell: How is it with
7 regard to the records retention policy that you expected
8 no records would be found?

9 **A.** I did not -- I did not have any preconceived
10 expectations. However, our records retention policy is
11 very clear in terms of duration we will maintain and
12 safeguard certain documents.

13 **Q.** What kinds of records are maintained at the
14 Fresno office?

15 **MR. BLACKARD: Currently?**

16 **BY MR. BUTLER:**

17 **Q.** First currently.

18 **A.** Currently there would be invoice records,
19 accounts payable records, accounts receivable records,
20 to summarize, administrative records, personnel records.
21 It would be quite an exhaustive list relative to all
22 documents that would be required to run an operation.

23 **Q.** Did the Fresno office maintain similar records
24 in 1945?

25 **MR. BLACKARD: Calls for speculation.**

1 **THE WITNESS: I do not know.**

2 **BY MR. BUTLER:**

3 **Q.** You've indicated you didn't expect the search
4 for records to be productive.

5 With regard to the records kept between 1945
6 and 1983, at what time do you believe those records were
7 purged or destroyed in the Fresno office?

8 **A.** Again, it's predicated based on the documents
9 themselves relative to the time frame that those
10 documents would be maintained.

11 **Q.** You gave a list of some of the records that are
12 currently kept at the Fresno office, such as invoices.

13 Are invoices -- are invoices purged or
14 destroyed routinely in the Fresno office during the time
15 period before 1983? If you know.

16 **A.** I don't personally know in that time period,
17 1983.

18 **Q.** The records related to products, customers,
19 personnel and services from 1945 to 1983, those records
20 related to the Fresno area, would they be kept anywhere
21 other than the Fresno office?

22 **MR. BLACKARD: The question is overbroad and**
23 **calls for speculation.**

24 **BY MR. BUTLER:**

25 **Q.** Did you understand my question?

1 **A.** Could you repeat the question, please?

2 **Q.** With regard to invoices, accounts receivable,
3 personnel records and the like, those records that are
4 currently kept or maintained by the Fresno office, prior
5 to 1983, would those records for the Fresno office or
6 Fresno area be kept anywhere other than the Fresno
7 office?

8 **MR. BLACKARD:** Same objections.

9 **THE WITNESS:** Generally speaking, no. However,
10 certain -- in certain document categories, it is likely,
11 as an example, some degree of personnel listing relative
12 to any employees or retirees may be maintained at our
13 corporate office. If, in fact, there are any documents
14 that are currently maintained, they would be at our
15 corporate office. I would need to refer to the records
16 retention policy specifically to answer that question
17 and have discussion with our corporate office.

18 **BY MR. BUTLER:**

19 **Q.** Are you familiar currently with the records
20 retention policy with regard to those records maintained
21 by the corporate office?

22 **A.** Generally speaking, yes.

23 **Q.** You stated earlier that you directed Mr.
24 Hardaman to do a search for those records requested in
25 the notice.

1 Again, you're saying you did not make any
2 additional requests or other requests of persons outside
3 the Fresno office?

4 **A.** Correct.

5 **Q.** Having just stated the possibility that there
6 are records related to the Fresno office that may exist
7 at the corporate office, why is it you did not make any
8 efforts to secure those records from the corporate
9 office?

10 **MR. BLACKARD:** I need to object in that the
11 question misstates his testimony. He testified that
12 certain categories of documents may exist at the
13 corporate office.

14 Go ahead.

15 **BY MR. BUTLER:**

16 **Q.** Simply, why didn't you check in with corporate
17 to see if there were any Fresno records there from the
18 period 1945 to 1983?

19 **A.** I did not believe there would be any documents
20 maintained other than perhaps the possibility of
21 personnel records.

22 **Q.** You did review the notice, Exhibit A, in this
23 matter, Mr. Maxwell, correct?

24 **A.** Correct.

25 **MR. BUTLER:** At this time, I would reserve my

1 right to further depose you regarding any records that
2 were not produced from the corporate office that would
3 be responsive to the notice.

4 MR. BLACKARD: Counsel, I'll tell you, you can
5 reserve whatever you want. I will also stand by my
6 written objections which have been made an exhibit to
7 this deposition.

8 BY MR. BUTLER:

9 Q. Mr. Maxwell, do you know how long -- the
10 current records retention policy you produced appeared
11 to be dated June 13th, 2002.

12 Do you know how long it's been in effect?

13 A. The records retention policy, the most recent
14 document, our current revision, is dated, as you
15 described, June 13th, 2002.

16 Q. Do you know if the records retention policy
17 that was in effect before 1983 -- would that policy
18 still be available to review?

19 A. I do not know.

20 Q. In the records retention policy, Defendants'
21 Exhibit 2, would that record retentions policy reflect
22 those documents and records that would be maintained or
23 kept by the Fresno office?

24 A. Yes.

25 Q. Do you know what records or categories of

1 records Mr. Hardaman would have reviewed or searched for
2 in response to this notice and your direction?

3 **MR. BLACKARD:** It's been asked and answered.

4 (Addressing witness) Go ahead.

5 **THE WITNESS:** Again, in the context of my
6 instructions to Mr. Hardaman, I asked him -- I
7 purposefully left it open-ended to produce any document
8 whatsoever, any information whatsoever, during the time
9 period 1945 to 1983.

10 **BY MR. BUTLER:**

11 **Q.** Did Mr. Hardaman tell you specifically what he
12 had done in an effort to secure or look for those
13 records?

14 **A.** He did not describe, nor did I ask for his
15 methodology.

16 **MR. BUTLER:** May we go off the record a moment?

17 (Recess taken.)

18 **BY MR. BUTLER:**

19 **Q.** Mr. Maxwell, in reviewing Defendants' Exhibit
20 2, the records retention policy, there's a category 3
21 here for sales and general operations.

22 Do you know if Mr. Hardaman looked for those
23 records with respect to this category sales and general
24 operations?

25 **A.** Yes. He was asked to look for any and all

1 documents.

2 Q. There's a category 3.5 for written agreements
3 that reflect there's a 20-year retention period.

4 Are you stating that there was a search for
5 written agreements, and there were no written agreements
6 existing from 1945 to 1983?

7 **MR. BLACKARD: Asked and answered.**

8 **THE WITNESS: Correct.**

9 **BY MR. BUTLER:**

10 Q. Do you know if corporate would have custody of
11 any written agreements from the time period 1945 to
12 1983?

13 **MR. BLACKARD: Calls for speculation.**

14 **THE WITNESS: I do not have any personal**
15 **knowledge of such.**

16 **BY MR. BUTLER:**

17 Q. Are there any branch offices that would have
18 records related to Fresno during the 1945 to 1983
19 period, any branch offices other than the Fresno office?

20 **A. I do not believe so.**

21 Q. Is the Fresno office responsible for any other
22 offices other than the -- any other areas other than the
23 Fresno area?

24 **MR. BLACKARD: I want to object. "Responsible"**
25 **is a little vague.**

1 (Addressing witness) Do you understand the
2 question?

3 **THE WITNESS:** Yes.

4 And the answer will be somewhat vague. They're
5 responsible for that general market area, which would
6 include surrounding cities. And to provide a little
7 further clarification, we have a branch in Modesto
8 that's responsible for that market area, and we have a
9 branch in Bakersfield that's responsible for that area
10 and also Santa Barbara. So if you envision those plats
11 on a map, Fresno would have a circular mark of
12 responsibility in between those points.

13 **BY MR. BUTLER:**

14 **Q.** Would any of those offices, such as the Modesto
15 office, have any records responsive to this deposition
16 notice?

17 **A.** I would not believe they would.

18 **Q.** During the years 1945 to 1983, those offices
19 that you just mentioned, the Modesto office and others,
20 were they in existence?

21 **A.** They were in 1983. I cannot comment the year
22 that they started prior to 1983.

23 **Q.** What is the relationship between Fresno and
24 those other offices, the Modesto office and the two
25 other offices you mentioned; is there a relationship

1 there?

2 **MR. BLACKARD:** Question is vague.

3 **(Addressing witness)** Go ahead.

4 **THE WITNESS:** In terms of management, each area
5 is independent from a management standpoint. The way
6 the company is structured, each branch is its own profit
7 center and managed as such.

8 **BY MR. BUTLER:**

9 **Q.** Would those offices share customer lists,
10 service the same customers, be of assistance to the same
11 customers?

12 **A.** No.

13 And I will add that the company policies are
14 very clear. Each market has a responsibility for
15 specific zip codes, and by design, the policy is
16 designed as such so there is no competition between
17 profit centers for the same customers. However, of
18 course, there could be a customer with a headquarters in
19 one market area that may have a branch office across the
20 country, in which case multiple locations could serve
21 that multi-location customer.

22 **Q.** Mr. Maxwell, are there any current employees in
23 the Fresno office employed at the Fresno office before
24 1983?

25 **A.** Not to my knowledge.

1 Q. Would Mr. Hardaman have produced those records
2 to you of those employees that were employed by the
3 Fresno office between 1945 to 1983 if they existed?

4 A. I did not request that information.

5 Q. Mr. Maxwell, do you know if there are any
6 catalogues maintained at the Fresno office related to
7 the period 1945 to 1983?

8 A. As part of the review and research by Mr.
9 Hardaman, he was asked to produce any and all documents
10 relative to that time frame. He replied there were
11 none. And catalogues would have been consistent with
12 that information.

13 Q. Did you specifically discuss catalogues or
14 brochures with Mr. Hardaman?

15 A. No.

16 Q. Would catalogues or brochures related to the
17 1945 to 1983 period be maintained by the corporate
18 office?

19 A. In the corporate office, there are catalogues.
20 They're maintained from a historical and archivable
21 perspective.

22 Q. Did you make a request of the corporate office
23 for any catalogues related to the 1945 to 1983 period?

24 **MR. BLACKARD: Let me just say that catalogues**
25 **are the subject of objections, which has been marked as**

1 Defense Exhibit 1.

2 THE WITNESS: No.

3 MR. BUTLER: I would reserve my right to
4 further depose you about any catalogues or brochures
5 maintained by the corporate office related to this
6 notice of taking deposition.

7 MR. BLACKARD: I would refer Counsel to written
8 objections, which have been marked as an exhibit,
9 Defense Exhibit No. 1.

10 BY MR. BUTLER:

11 Q. Would there be a list of catalogues available
12 to Mr. Hardaman in the Fresno office related to the
13 period 1945 to 1983?

14 MR. BLACKARD: Calls for speculation.

15 THE WITNESS: I do not believe so. In
16 referring to our records retention policy, catalogues
17 are not generally maintained, because they are to be
18 discarded after -- after -- after use, meaning when a
19 new catalogue is reissued with current products, the old
20 catalogue, by virtue of our records retention policy, is
21 discarded.

22 BY MR. BUTLER:

23 Q. You stated that the corporate office may
24 maintain or keep some catalogues or brochures for
25 archival or historical purposes.

1 Do you know if the Fresno office does the same,
2 maintain catalogues for archival or historical purposes?

3 **MR. BLACKARD:** It's been asked and answered.

4 **THE WITNESS:** I was -- the reply based on my
5 request for information was that we had no documents or
6 data or information whatsoever from the time period 1945
7 to 1983.

8 **MR. BUTLER:** Again, I reserve my right to
9 further depose you regarding catalogues, brochures,
10 archival documents kept at the Fresno office that are
11 subsequently produced related to the 1945 to 1983
12 period.

13 **BY MR. BUTLER:**

14 **Q.** Mr. Maxwell, if we were to go through each and
15 every category in the deposition notice, is it fair to
16 say that you did not review with Mr. Hardaman the
17 request in each and every category of the deposition
18 notice?

19 **MR. BLACKARD:** Well, the question lacks
20 foundation and assumes facts there was a reason to do so
21 in the first instance.

22 **MR. BUTLER:** I can ask it a little bit better.

23 **BY MR. BUTLER:**

24 **Q.** Did you review with Mr. Hardaman this
25 deposition notice?

1 **A.** Could you define further in terms of the
2 deposition notice?

3 **Q.** Simply I'll refer you to page 5 of Exhibit A.

4 **A.** Are you asking --

5 **Q.** Go ahead.

6 **A.** -- relative to each specific number, was each
7 number read and discussed?

8 **Q.** Yes. With Mr. Hardaman.

9 **A.** No.

10 **Q.** Any of those categories from 1 to 23, were any
11 of those categories discussed specifically with Mr.
12 Hardaman?

13 **MR. BLACKARD:** The question assumes facts that
14 there was a reason to discuss each and every category in
15 the deposition notice with Mr. Hardaman.

16 **THE WITNESS:** The answer is no. And I'll refer
17 back to my earlier testimony in the context that the
18 instruction was clear, that if there was any information
19 whatsoever, data or documents, any information, that he
20 was to obtain it, disclose it, and in which case, it
21 would have been presented -- in which case if it
22 pertained to any of these categories, we would have
23 discussed it in greater detail. So based on his comment
24 that there was no information, documents or data, I did
25 not believe it was necessary, then, to review these

1 **specific numbers.**

2 **BY MR. BUTLER:**

3 **Q.** Did Mr. Hardaman discuss any documents or
4 materials that he did find that he feels unsure of, if
5 they were in compliance with your directives?

6 **A.** No.

7 **Q.** Do you know how long Mr. Hardaman searched for
8 any documents and materials that you asked?

9 **MR. BLACKARD:** The question has been asked and
10 answered.

11 **THE WITNESS:** No, I do not.

12 **BY MR. BUTLER:**

13 **Q.** Do you know if he spent more than a day?

14 **MR. BLACKARD:** Calls for speculation.

15 **BY MR. BUTLER:**

16 **Q.** Do you know if he personally did a search for
17 these records or documents?

18 **A.** I do not know.

19 **Q.** Mr. Maxwell, is there any policy in place with
20 regard to the search for records or documents pursuant
21 to the kind of request you made of Mr. Hardaman?

22 **MR. BLACKARD:** The question is vague and calls
23 for attorney-client privileged information.

24 **(Addressing witness)** To the extent you can
25 answer it without responding about anything that's been

1 discussed by either corporate counsel or myself, you can
2 do so.

3 THE WITNESS: I'm not aware of one.

4 BY MR. BUTLER:

5 Q. Does the Fresno office maintain personnel
6 records of those folks who were employed by Graybar
7 Electric between 1945 and 1983?

8 A. To the extent there were and still are
9 employees working in that location in that time period,
10 there may be data, but typically that information is
11 maintained at corporate -- our corporate office.

12 MR. BUTLER: Again, I reserve my right to
13 further depose you regarding any records responsive to
14 our notice of taking deposition and request for
15 production of documents that may be those records that
16 may be maintained by corporate.

17 BY MR. BUTLER:

18 Q. Mr. Maxwell, do you know if the Fresno office
19 currently has customers that have been customers with
20 the Fresno office before 1983?

21 MR. BLACKARD: Calls for speculation.

22 THE WITNESS: I don't personally have knowledge
23 of such, but it's possible.

24 BY MR. BUTLER:

25 What documents would reflect the history of

1 customers at Graybar Electric -- what documents that
2 would be retained by, say, the Fresno office -- what
3 documents would reflect the, if you will, length of
4 service for that particular customer?

5 MR. BLACKARD: Question assumes facts that
6 those documents exist.

7 THE WITNESS: I'm personally not aware of any
8 document or any record that we utilize on any consistent
9 basis that measures the starting date of our business
10 relationship with any customer.

11 BY MR. BUTLER:

12 Q. Are there any reports that reflect that a
13 particular customer has been a customer for a particular
14 length of service?

15 MR. BLACKARD: The question is overbroad and
16 vague as to time and lacks foundation.

17 THE WITNESS: No reports of which I'm aware.

18 BY MR. BUTLER:

19 Q. Are records maintained by the Fresno office
20 electronically?

21 MR. BLACKARD: Currently?

22 MR. BUTLER: Thank you.

23 BY MR. BUTLER:

24 Q. First currently.

25 A. Yes.

1 **Q.** Are there any records maintained by the Fresno
2 office electronically concerning business customers,
3 personnel between 1945 and 1983?

4 **A.** Not to my knowledge.

5 **Q.** Do you know if Mr. Hardaman would have made an
6 electronic search or a search for electronic records?

7 **MR. BLACKARD:** The question has been asked and
8 answered.

9 **THE WITNESS:** My request was to produce any
10 information, which he said there was none, and I would
11 believe it would be very unlikely.

12 **MR. BUTLER:** Again, I reserve my right to
13 further depose you should any electronically maintained
14 records or information be subsequently produced.

15 **THE WITNESS:** I might add as, well relative to
16 our records retention policy, electronic records are
17 also included in terms of the duration that such
18 categories of information are maintained.

19 **BY MR. BUTLER:**

20 **Q.** Which category is that in the records retention
21 policy?

22 **MR. BLACKARD:** Counsel, for the record, we
23 should count the number of pages this document is since
24 it was just marked as an exhibit. Let me do that real
25 quick.

1 **THE WITNESS: Section 9 titled "Electronic**
2 **Records."**

3 **BY MR. BUTLER:**

4 Q. Do you know when that category for electronic
5 records was first maintained or introduced into the
6 records retention policy?

7 A. I personally do not know.

8 **MR. BLACKARD: Pursuant to my last comment,**
9 **this is a 12-page document.**

10 **BY MR. BUTLER:**

11 Q. Directing your attention to category 9.4 under
12 category 9 for electronic records, it says that
13 "Computer files that replace paper files must be
14 retained for as long a period as the records they
15 replace."

16 Does that mean that if a computer file is made
17 to replace a paper file, such as we discussed before,
18 regarding written agreements, would those computer files
19 reflect the old paper files -- let me ask that a little
20 bit differently.

21 Before I do that, I noticed that, for instance,
22 under Section 7 for human resources, 7.2, regarding
23 written contracts, including labor and union agreements,
24 it says they are to be retained for 20 years.

25 Do you know if when a computer file replaces a

1 paper file, are the original paper files reflected in
2 the computer file? Maybe I should ask a more
3 foundational question.

4 At this time, do you know which computer
5 files -- excuse me -- what paper files have been
6 replaced by computer files?

7 **MR. BLACKARD: The question is overbroad and**
8 **vague as to time and calls for speculation.**

9 **BY MR. BUTLER:**

10 **Q.** Mr. Blackard has a good point there.

11 Mr. Maxwell, between the years 1945 and 1983,
12 do you know which paper files were replaced by computer
13 files?

14 **A.** I'm not aware there were any.

15 **Q.** There could be some computer files that have
16 replaced paper files?

17 **MR. BLACKARD: Calls for speculation.**

18 **THE WITNESS: There could be.**

19 **BY MR. BUTLER:**

20 **Q.** You did not direct Mr. Hardaman to make a
21 search of computer files that may contain information
22 related to the 1945 to 1983 period?

23 **MR. BLACKARD: The question lacks foundation**
24 **and has been asked and answered.**

25 **THE WITNESS: No. That's not correct. I**

1 specifically asked for any and all information. And
2 with respect to electronic records, it was -- that
3 evolution was a technological evolution wherein some
4 computer files replaced documentary information, for
5 example, electronic data, and those written records no
6 longer exist. So the policy records retention policy
7 simply states if accounts receivable would have
8 maintained them for a finite number of years, simply
9 because it's in the electronic medium, it would be
10 maintained for the exact amount as the paper file.

11 **BY MR. BUTLER:**

12 Q. Moving along, Mr. Maxwell, directing your
13 attention to page 8 of the notice, under the category
14 "Information Sought," under category 3, do you have any
15 information in response to this category? It says "All
16 information PERTAINING TO any and all
17 asbestos-containing products designed, manufactured,
18 sold and/or distributed by YOU between 1945 to 1983,
19 inclusive, including product types, model numbers, brand
20 names, trade names and other related information."

21 A. We do not possess any information.

22 Q. Do you have any personal knowledge related to
23 this category?

24 **MR. BLACKARD:** Let me object. He's not here to
25 provide personal knowledge but corporate knowledge. To

1 the extent he has personal knowledge that he has
2 obtained beyond conversations with counsel, I'll allow
3 him to answer the question.

4 THE WITNESS: I do not have any personal
5 knowledge other than to say that I was aware that in a
6 very limited finite number of stock-keeping units,
7 historically there were some products distributed that
8 contained asbestos-containing products. Again, a very
9 limited number.

10 BY MR. BUTLER:

11 Q. How is it that you have that bit of information
12 or that bit of knowledge?

13 A. Discussions with corporate counsel.

14 MR. BLACKARD: Which you're not supposed to
15 disclose, but that's okay. No harm, no foul.

16 BY MR. BUTLER:

17 Q. Similarly, did you have any discussion on that
18 topic with any staff other than corporate counsel, any
19 employees other than corporate counsel?

20 A. No.

21 Q. When did you first start working for Electric,
22 what year?

23 A. 1985.

24 Q. In 1985, did you have any conversations with
25 Graybar Electric employees other than corporate counsel

1 related to information asked for in category 3?

2 **A.** No.

3 **Q.** Moving along to category 4, similarly, it asks
4 for "All information PERTAINING TO and/or identifying
5 the product formulas of any and all asbestos-containing
6 products designed, manufactured, sold and/or distributed
7 by YOU between 1945 and 1983, inclusive, including all
8 component parts of YOUR asbestos-containing products."

9 Do you have any personal information related to
10 this category?

11 **A.** No, I do not.

12 **Q.** In 1985, did you have any discussions with
13 employees of Graybar Electric other than corporate
14 counsel that's responsive to this category?

15 **A.** None.

16 **Q.** Category 5, same question, do you have any
17 personal information?

18 **A.** I do not have any personal information other
19 than to state as a matter of policy relative to our
20 standard terms and conditions of sales, all warranties,
21 material safety data sheets, et cetera, would be passed
22 on to all of our customers.

23 **Q.** We've discussed this earlier, but you have no
24 records at this time or are not producing any records
25 related to this category or any of the categories here?

1 **MR. BLACKARD:** Let me object. As the question
2 has been posed, it's argumentative. We have indicated
3 that we have produced all documents that are responsive
4 to the extent such documents exist, with the exception
5 of the documents which are the subject of written
6 objection attached as Exhibit 1.

7 **BY MR. BUTLER:**

8 **Q.** Mr. Maxwell, are you producing any documents or
9 information related to category 5?

10 **A.** No.

11 **Q.** Do you have any personal information or
12 personal knowledge related to category 6 on page 8 here?

13 **A.** I do not.

14 **Q.** Have you spoken with any employees of Graybar
15 Electric related to information that would be responsive
16 to category 6?

17 **MR. BLACKARD:** The question lacks foundation
18 and assumes facts that there's a reason to conduct such
19 a conversation.

20 **BY MR. BUTLER:**

21 **Q.** Currently have you spoken with anyone at
22 Graybar Electric other than corporate counsel related to
23 information asked for in category 6?

24 **A.** No.

25 **Q.** Way back in 1985, do you recall any

1 conversations with Graybar employees other than
2 corporate counsel that would be -- that would reveal
3 information responsive to category 6?

4 **MR. BLACKARD:** The question assumes there was
5 any information that is responsive to category 6.

6 **Objection; lacks foundation.**

7 **BY MR. BUTLER:**

8 **Q.** Any conversations with anyone that revealed
9 some information responsive to category 6?

10 **MR. BLACKARD:** Same objection.

11 **MR. BUTLER:** This is back in 1985.

12 **THE WITNESS:** None.

13 **BY MR. BUTLER:**

14 **Q.** Category 7, do you have any personal knowledge
15 that would be responsive to information asked for in
16 category 7?

17 **A.** No.

18 **Q.** Moving to category 8, do you have any personal
19 knowledge that would be responsive to the information
20 requested in category 8?

21 **A.** No.

22 **Q.** Same question for category 9.

23 **A.** No.

24 **Q.** Same question with regard to category 10.

25 **A.** No.

1 **Q.** How about category 11, which asks for "All
2 information PERTAINING TO the date on which YOU first
3 became aware that there were health risks associated
4 with exposure to ASBESTOS and/or asbestos-containing
5 products"?

6 **MR. BLACKARD:** And I assume, Counsel -- are you
7 done?

8 **MR. BUTLER:** Yes.

9 **MR. BLACKARD:** I'm assuming you mean the
10 corporate request, not him personally?

11 **MR. BUTLER:** Ask it both ways.

12 **BY MR. BUTLER:**

13 **Q.** In your corporate capacity, Mr. Maxwell, do you
14 have any information pertaining to the dates when you
15 first became aware there were health risks associated
16 with exposure to asbestos and/or asbestos-containing
17 products?

18 **A.** Relative to the corporation, I don't have that
19 information.

20 **Q.** How about personally; do you have any
21 information responsive to category 11?

22 **A.** Other than what one would pick up on a daily
23 basis, no special knowledge, and I cannot recall the
24 date when I first was made aware there were health risks
25 associated with ACP.

1 Q. Generally, what information do you have with
2 regard to category 1?

3 **MR. BLACKARD: Calls for speculation.**

4 **BY MR. BUTLER:**

5 Q. I'm asking what you know.

6 A. Personally?

7 Q. Yes.

8 **MR. BLACKARD: Let me object that the question**
9 **is irrelevant, that it's not calculated to lead to the**
10 **discovery of admissible evidence. I'm trying not to**
11 **make that objection very often.**

12 **(Addressing witness) But if you have any**
13 **information to move this along...**

14 **THE WITNESS: I don't have any -- I'm not aware**
15 **of any information I would personally have that's not**
16 **available to the general public.**

17 **BY MR. BUTLER:**

18 Q. Have you had any conversations with any Graybar
19 Electric employees that would reveal information
20 responsive to category 12?

21 **MR. BLACKARD: The question lacks foundation,**
22 **assumes facts not in evidence.**

23 **THE WITNESS: No personal knowledge, although I**
24 **will refer back to my earlier testimony that relative to**
25 **our company policy, standard terms and conditions of**

1 sales, that any and all warranties that are given us by
2 the manufacturer, including any documents such as
3 material safety data sheets, would have been passed on
4 to any and all customers that purchase that
5 manufacturer's products.

6 **BY MR. BUTLER:**

7 Q. When you directed Mr. Hardaman to do his search
8 for records and information, did you discuss or use the
9 word "asbestos" at all?

10 A. Relative to his search for information,
11 documents, data, no.

12 Q. Specifically what did you ask or direct Mr.
13 Hardaman to do?

14 **MR. BLACKARD: It's been asked and answered.**

15 **BY MR. BUTLER:**

16 Q. Could you answer?

17 A. Conduct a thorough research, review and
18 inspection to produce any data, documents, information
19 whatsoever from the time period 1945 to 1983.

20 **MR. BLACKARD: That's the last time he's going**
21 **to answer that question.**

22 **BY MR. BUTLER:**

23 Q. Moving to category 13, have you produced any
24 information responsive to category 13?

25 A. I do not have any information.

1 **Q.** With regard to the remaining categories, 14
2 through 19, you're not producing any information
3 responsive to those categories today; is that correct?

4 **MR. BLACKARD:** The question assumes there's any
5 information to provide in those categories, so I object
6 because it lacks foundation. To the extent he can
7 answer, I'll let him do so.

8 **THE WITNESS:** That is correct.

9 **BY MR. BUTLER:**

10 **Q.** Looking at category 18, it asks for "All
11 information PERTAINING TO and/or identifying the
12 distributors of YOUR asbestos-containing products in
13 Fresno, California, between 1945 and 1983, inclusive."

14 In your directions to Mr. Hardaman, what was
15 your expectation as to where he would look for that
16 information?

17 **MR. BLACKARD:** The question assumes facts and
18 calls for speculation.

19 **BY MR. BUTLER:**

20 **Q.** If you didn't use the word "asbestos" in your
21 discussions with Mr. Hardaman about all these
22 categories, 18 and 19 and others, asking specifically
23 about asbestos-containing products, how is it that you
24 expected him to find that information if it existed?

25 **A.** Understanding our records retention policy and

1 to the extent that our management employees are required
2 to comply with that policy, it did not surprise me when
3 I gave him an open-ended question to produce any
4 documents, data, information whatsoever from the time
5 period 1945 to 1983 that he produced none.

6 **MR. BUTLER: May we go off the record a moment?**

7 **(Recess taken.)**

8 **BY MR. BUTLER:**

9 Q. Mr. Maxwell, Defense Exhibit 3 is "The Graybar
10 Story."

11 How is it that you're producing that today?

12 **MR. BLACKARD: The record should reflect that**
13 **the document was in possession of counsel and has been**
14 **produced pursuant to your request for production of**
15 **documents.**

16 **BY MR. BUTLER:**

17 Q. Mr. Maxwell, are there some current customers
18 serviced by the Fresno office that were customers before
19 1983?

20 **MR. BLACKARD: It's been asked and answered.**

21 **THE WITNESS: I'm not personally aware of any**
22 **customers. It is possible.**

23 **BY MR. BUTLER:**

24 Q. Given the records that are currently maintained
25 by the Fresno office, is it possible to identify those

1 customers that, indeed, have been doing business with
2 the Fresno office before 1983?

3 **MR. BLACKARD: Calls for speculation, assumes**
4 **facts.**

5 **THE WITNESS: I'm not aware of any reports that**
6 **would provide that information so we could in turn**
7 **provide it to you.**

8 **BY MR. BUTLER:**

9 **Q.** How about records; are there some records that
10 a staff person or employee in the Fresno office could
11 refer to that would show that a current customer had
12 been doing business before 1983?

13 **MR. BLACKARD: Calls for speculation, lacks**
14 **foundation.**

15 **THE WITNESS: I'm not aware of any existing**
16 **records. And, in fact, if there were such records, I**
17 **would have expected those would have been produced as**
18 **requested, and the reply is there were none.**

19 **MR. BUTLER: I don't have any more questions,**
20 **Mr. Maxwell.**

21 **For the record, I must reserve my right to**
22 **reconvene this deposition of the person most**
23 **knowledgeable and custodian of records deposition given**
24 **the inability of you to answer some of the questions**
25 **I've posed regarding the existence of records at the**

1 Fresno office or the corporate office or lack thereof.

2 MR. BLACKARD: Let me just say I object to the
3 use of the phrase "inability to answer questions." Each
4 question was answered to the best of this witness's
5 knowledge. I wasn't counting them, but I think you
6 reserved your right five times to redepose this witness.

7 To the extent that you have a right to do so, correct.

8 MR. BUTLER: Very good.

9 MR. BLACKARD: Anybody else have any questions?

10 Thank you.

11 (Whereupon the deposition was adjourned at

12 11:24 a.m.)

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16 SIGNATURE OF WITNESS
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1 STATE OF CALIFORNIA)

2) ss.

3 COUNTY OF ALAMEDA)

4
5 I, SANDRA M. LEE, do hereby certify:

6 That DAVID MAXWELL, in the foregoing deposition
7 named, was present and by me sworn as a witness in the
8 above-entitled action at the time and place therein
9 specified;

10 That said deposition was taken before me at
11 said time and place, and was taken down in shorthand by
12 me, a Certified Shorthand Reporter of the State of
13 California, and was thereafter transcribed into
14 typewriting, and that the foregoing transcript
15 constitutes a full, true and correct report of said
16 deposition and of the proceedings which took place;

17 IN WITNESS WHEREOF, I have hereunder subscribed
18 my hand this 26th day of May 2003.

19
20 SANDRA M. LEE, CSR NO. 9971
21 State of California
22
23
24
25

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