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IN THE SUPERIOR COURT
OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

IN RE: Asbestos Litigation

Limited to:	Case No:	09C-01-021
Raymond Attwood	Case No:	09C-2-063
Duane Weaver	Case No:	08C-04-087
Alyce Riess	Case No:	09C-07-303
Anna Hartgrave		

Videotaped Deposition of Thomas R. Madden
February 14, 2012
At 10:00 a.m.

Taken At:
Sheraton Charlotte Airport
Charlotte, North Carolina

Corbett Reporting - A Veritext Company
300 Delaware Avenue - Suite 815
Wilmington, DE 19801

Reported by LeShaunda Cass-Byrd, CSR, RPR

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1 identification.)

2 Q. (By Mr. Thompson) This is a copy of a
3 Material Safety Data Sheet that we received from
4 Reichhold. It's BR 000015 through 16. And when you
5 have had an opportunity to take a look at it, just let
6 me know.

7 A. That is 000015 --

8 Q. Correct.

9 A. -- and through 00016?

10 Q. Right.

11 A. (Witness complies.) Yes, sir. Yes, sir.
12 I'm seeing the document.

13 MS. SPARDONE: What number are we on?

14 I'm sorry, what number?

15 MR. THOMPSON: That is 12.

16 MS. SPARDONE: Okay.

17 Q. (By Mr. Thompson) Now, you have seen
18 Exhibit 12 before, have you not?

19 A. Yes, sir, I have.

20 Q. That is a Material Safety Data Sheet for
21 Reichhold Chemicals phenolic molding compounds and
22 carries a date of January 1980, correct?

23 A. Yes.

24 Q. And specifically, it's a Materials Safety

1 Data Sheet for asbestos phenolic molding compounds
2 sold by Reichhold, correct?

3 A. Asbestos-containing phenolic molding
4 compounds, yes.

5 Q. Reichhold Chemicals phenolic compounds that
6 contain asbestos in their formulation, correct?

7 A. Correct. And those numbers are listed on
8 this MSDS.

9 Q. I see that, and they are -- the copy I
10 have, I don't know whether you've got a better copy
11 than I do --

12 A. No.

13 Q. -- but we'll just run through those.
14 These are product numbers of Reichhold,
15 correct?

16 A. Correct.

17 Q. And the first one is 25310?

18 A. Yes.

19 Q. And sometimes I see them written where they
20 are all written together with no hyphens, but here we
21 have hyphens, so --

22 A. Well, correctly when -- if it was a
23 Reichhold-generated document, it should be -- it
24 should be hyphenated. The phenolic molding people

1 hyphenated theirs. Some of the other divisions just
2 ran their product group together. So either way, it's
3 correct, but for this group they seem to use the
4 hyphen.

5 Q. More often?

6 A. More often, yes.

7 Q. You are not saying people involved with the
8 phenolic molding operation did not run all of the
9 numbers together at times?

10 A. They did at times, but it would be the same
11 number. We -- like 25310, sometimes it would be
12 25-310. It's the same product.

13 Q. Right. In other words, 25310 and 25-310 is
14 the same product?

15 A. To the best of my knowledge.

16 Q. All right. These are asbestos-containing
17 phenolic molding compounds, correct?

18 A. Yes.

19 Q. 25310, correct?

20 A. Yes.

21 Q. 25346?

22 A. Yes.

23 Q. 25347?

24 A. Yes.

1 Q. 25398?

2 A. Okay. It was either 398 or 388. I can't
3 read --

4 Q. There's 388 first, and then there is 25398.

5 A. Yes, I see it. Yes.

6 Q. And then 25397?

7 A. Yes.

8 Q. And 25506?

9 A. Yes.

10 Q. And it says all colors because these were
11 manufactured in different colors so that they would
12 reflect when made into parts by the customer different
13 colored parts; is that basically right?

14 MS. SPARDONE: Object to form.

15 THE WITNESS: Yeah. The colored
16 portion of it, normally these would be
17 just -- just black. The colored portion
18 would be at the request of the customer. I
19 want a green-colored compound or a compound
20 that when it cured was green or orange or
21 whatever.

22 Q. (By Mr. Thompson) And this Material Safety
23 Data Sheet, or MSDS, if we can refer to it that way
24 sometimes, covers a number of product formulations

1 which would include asbestos as one of the raw
2 materials and ingredients in those products?

3 A. That is correct.

4 Q. This sheet states that, quote, The compound
5 may contain up to 51 percent by weight bound asbestos
6 fibers, unquote.

7 True?

8 A. Correct.

9 Q. So Reichhold's asbestos phenolic molding
10 compound had up to 51 percent asbestos; is that
11 correct?]

12 MS. SPARDONE: Object to form.

13 THE WITNESS: Okay. You're talking
14 about a wide variety of these, and so when
15 they did this MSDS, rather than say, okay,
16 310 had X quantities at lower material
17 charge and 25346 had Y, they just lumped it
18 together and said that the high --
19 apparently, reading from this, that it's --
20 that one of these products may have had
21 51 percent by weight bound asbestos. [

22 Q. (By Mr. Thompson) And in fact, this
23 document says that, quote, Fine dust may occur when
24 handling the asbestos phenolic molding compounds,

1 unquote.

2 True?

3 A. Are you reading from Section 5?

4 Q. Does that not say fine dust where it talks
5 about fine dust on Page 2 of the document? Find dust
6 may occur when handling.

7 Do you see that?

8 A. Yes.

9 Q. And then it says, Use a respirator at all
10 times when handling to avoid breathing dust.

11 Do you see that? That is the next
12 sentence.

13 A. Yes, I'm sorry. Yes, I do.

14 Q. Wear gloves when handling. It also says
15 that, correct?

16 A. Yes.

17 Q. Wash before smoking or eating; is that
18 correct?

19 A. Yes.

20 Q. And then where it says spill or leak
21 procedures, it says, Vacuum or sweep up. Use sweeping
22 compound to avoid generating dust.

23 Did I read that correctly?

24 A. Yes.

1 Q. How would you vacuum it up to avoid dust?

2 MS. SPARDONE: Object to form.

3 THE WITNESS: The standard says that
4 they want you to vacuum up any materials
5 containing asbestos as a -- as a raw
6 material.

7 Q. (By Mr. Thompson) It says vacuum or sweep
8 up, and then it says, Use sweeping compound to avoid
9 generating dust.

10 Do you see that?

11 A. Yes.

12 Q. And the sweeping compound would only be
13 applicable if you were sweeping it up, right?

14 A. Yes. Well, perhaps you could -- you could
15 put that on -- I mean, you can put that on and then go
16 ahead and vacuum it up.

17 Q. It says, Ventilate area well -- or areas
18 well. I think it's area. It's kind of hard to wear.
19 Wear respirator if dust is generated.

20 Do you see that?

21 A. Yes.

22 Q. Did I read those correctly?

23 A. Yes, you did.

24 Q. And then under Section 8 it says, Special

1 Protection Information.

2 A. Yes.

3 Q. Do you see that on Page 2 of the document?

4 A. Yes.

5 Q. It says: Respirator for nuisance dust and
6 if asbestos fibers released.

7 Did I read that correctly?

8 A. Yes.

9 Q. Now, I read some of your other testimony,
10 and I believe you've testified in the past that the
11 only -- this is the only Material Safety Data Sheet
12 relating to phenolic molding compounds manufactured by
13 -- that contained asbestos that were made by Reichhold
14 Chemicals that you've read; is that right?

15 A. This is the only one I have read that has
16 been produced as part of this document group.

17 Q. Well, have you ever -- okay.

18 Are you able to produce another Material
19 Safety Data Sheet relating to asbestos-containing
20 phenolic molding compounds other than this one dated
21 January 1980?

22 A. No, I'm not able to do that. But I will
23 tell you that I --

24 Q. No, just --

1 MS. SPARDONE: It's okay.

2 Q. (By Mr. Thompson) Thank you. I know you
3 have an explanation, and I trust that you will work it
4 in. But I -- you've answered my question.

5 You have testified in the past that you
6 remember seeing and reading Material Safety Data
7 Sheets for asbestos phenolic molding compounds made by
8 Reichhold back in the day -- to use your phrase -- or
9 back in, you know, maybe even the early '70s.

10 Is that your testimony?

11 A. Yes.

12 Q. Okay. You haven't seen one of those
13 documents for many years, have you?

14 A. No, sir, I haven't.

15 Q. In fact, did you ever even really see
16 documents like that?

17 A. I drafted them.

18 MS. SPARDONE: Object to form.

19 Q. (By Mr. Thompson) You drafted them?

20 A. I certainly did.

21 Q. And you drafted them at company
22 headquarters in White Plains, New York?

23 A. Yes.

24 Q. Because that is what you were doing back

1 then, you were working in safety and hazardous
2 material issues, correct?

3 A. Correct.

4 Q. Now, the White Plains, New York, corporate
5 headquarters was not sold in 1986, was it?

6 A. No, sir.

7 Q. In fact, is Reichhold still based in White
8 Plains, New York?

9 A. No, sir.

10 Q. Where is it based?

11 A. RTP, Research Triangle Park, in North
12 Carolina.

13 Q. Okay. Is that near us now?

14 A. Oh, it's about a four-hour ride.

15 Q. Okay. When did Reichhold move its
16 corporate headquarters from White Plains, New York?

17 A. They started that transition in '88 or '89,
18 and it was over a period of I think two years, perhaps
19 even three years.

20 Q. Now, when you drafted these Material Safety
21 Data Sheets back in the '70s, as you say, you were
22 working within the legal department of Reichhold
23 Chemicals, correct?

24 A. Yes, I was.

1 Q. Do you have any explanation today as to why
2 the legal department of Reichhold Chemicals would not
3 have retained these Material Safety Data Sheets if
4 they really did exist?

5 MS. SPARDONE: Object to form.

6 THE WITNESS: As of -- well, you
7 know, this division was sold in 1986, and
8 so everything that Reichhold had, my
9 understanding, went to the purchaser, which
10 I believe was BTL. And if you've sold a
11 division and you no longer have that
12 business, there is no reason to retain
13 documents unless they are required by law.

14 Q. (By Mr. Thompson) Well, Reichhold
15 Chemicals company headquarters in White Plains, New
16 York, where you worked from late 1971 to early 1972
17 onward, until June of 1984, was corporate headquarters
18 for all divisions of Reichhold Chemicals, correct?

19 A. It changed over a period of time. And let
20 me explain that a little bit.

21 We went through a phase -- Reichhold
22 Chemical, when I say "we," I mean Reichhold
23 Chemicals -- went through a phase where we separated
24 the product lines and created divisions, and the

1 A. Yes, sir.

2 Q. And there was only one unit that was
3 responsible for health and safety that reported to
4 this general counsel, correct?

5 A. Yes.

6 Q. All right. And you say that you drafted
7 these Material Safety Data Sheets back in the early
8 '70s?

9 A. Yes.

10 Q. And yet, nobody can seem to find them
11 today. Don't you find that strange?

12 A. Not after --

13 MS. SPARDONE: Object to form.

14 THE WITNESS: Not after 38 years, no.
15 Selling a division and the multiple moves
16 with corporate headquarters, no, I don't
17 find that -- I'm totally surprised the
18 number of documents that were produced,
19 obviously from White Plains and from
20 different parts of the company and
21 obviously some from suppliers or whomever.
22 I think it is quite an accomplishment to
23 have all these documents after this period
24 of time, the ones that we see.

1 Q. (By Mr. Thompson) And I'm going to ask you
2 this. Was Exhibit 12, which is Bates stamp Pages
3 000015 and 16 --

4 A. Yes.

5 Q. -- was that even drafted in January of
6 1980, or was that drafted later on to somehow assist
7 Reichhold Chemicals in litigation?

8 MS. SPARDONE: Object to form,
9 argumentative, assumes facts.

10 MR. THOMPSON: I'm asking him a
11 question.

12 MS. SPARDONE: Same objection.

13 THE WITNESS: Well, I take this on
14 its face that this was an existing Material
15 Safety Data Sheet, and it was published, if
16 that is a 1, of 1/80, I represent that.

17 Q. (By Mr. Thompson) Well, I think in other
18 places you've testified January 1980. So would that
19 be --

20 A. January '80, 1/80, yes.

21 Q. 1/80?

22 A. Yes, January '80, yes.

23 Q. Okay. Now, January of 1980, you are
24 working under the general counsel in White Plains, New

1 York, at corporate headquarters, right?

2 A. Yes.

3 MS. SPARDONE: Asked and answered.

4 Q. (By Mr. Thompson) Now, you say you drafted
5 these Material Safety Data Sheets in the early '70s.
6 Did you draft this Material Safety Data Sheet in
7 January of 1980?

8 A. No, probably someone in my group did.

9 Q. So you don't really know who did this,
10 correct --

11 A. We --

12 MS. SPARDONE: Object to form.

13 Q. (By Mr. Thompson) -- who drafted
14 Exhibit 12?

15 MS. SPARDONE: Object to form.

16 THE WITNESS: It would be someone in
17 my group.

18 Q. (By Mr. Thompson) Okay. Now --

19 MR. THOMPSON: Take a short break.

20 THE VIDEOGRAPHER: We are going off
21 the record. The time is 2:06 p.m.

22 (A recess was taken.)

23 THE VIDEOGRAPHER: The time is

24 2:14 p.m. We are on the record.

1 Q. (By Mr. Thompson) Okay, Mr. Madden. We
2 have taken a short break.

3 So looking at Exhibit 12.

4 A. Oh, 15 and 16. Yes, sir, I see 15 and 16.

5 Q. That is dated January 1980, as we have
6 stated, correct?

7 A. Yes, sir.

8 Q. And that is some nine years after, or more,
9 after the 1971 memo from your boss was sent around
10 with regard to asbestos hazards and the use of
11 asbestos in Reichhold Chemicals manufacturing
12 processes, correct?

13 A. Correct.

14 Q. Now, during this time, this nine years,
15 Reichhold determined that the economic advantages of
16 asbestos were greatly outweighed by any problems
17 caused by its use, correct?

18 MS. SPARDONE: Object to form.

19 Q. (By Mr. Thompson) And by "problems," I
20 mean problems with the regulatory agencies.

21 A. Not problems. Just the -- what it would
22 take to comply with the regulations as they were
23 issued and -- over the years.

24 MR. THOMPSON: It's going to be

1 formulation, correct?

2 A. Correct.

3 Q. So if we look at the products at the top
4 reference in the boxes in the upper right-hand part,
5 it says, Phenolic molding compound numbers -- and then
6 we are dealing with hyphens again -- 25000 through
7 25-799 except Nos. 25-310, 25-346, 25-347, 25-388,
8 25-398, 25-197, and 25-506.

9 Do you see that?

10 A. Yes, I do.

11 Q. And those would be the products, those ones
12 we just listed after the word except, are the ones --
13 are the asbestos-containing ones that are listed on
14 Exhibit 12, correct?

15 A. Seem to be, yes.

16 Q. All right. And they do not include the
17 additional asbestos-containing phenolic molding
18 compounds that are listed on Exhibit 15, correct?

19 A. Let me just see 15 again real quick.

20 Q. Sure.

21 A. I'm sorry.

22 Q. The first paragraph of the second page.

23 A. Yes.

24 Q. Those 90 prefix?

1 A. Right. Okay. That is what I thought. No,
2 they are not listed there.

3 Q. Okay. So if we take a look back at
4 Exhibit 12A, it says, This applies to phenolic molding
5 compound numbers 25000 through 25799, correct?

6 A. Correct.

7 Q. And those would be the
8 nonasbestos-containing phenolic molding compounds,
9 right?

10 A. Should be correct.

11 Q. As made on January 1980 -- in January 1980.
12 Now, if we look back at Exhibit 16, and I
13 will pass this to you.

14 Q. (By Mr. Thompson) Those refer to 25158 and
15 25170, correct?

16 A. Yes, they do.

17 Q. And those are numbers between 25000 through
18 25799, correct?

19 A. Yes.

20 Q. So Exhibit 12A conveys a full suppression
21 that all of these product numbers between 25000 and
22 25-799 were nonasbestos, when we clearly know there
23 were some products that came within that product --
24 that number range that were asbestos, correct?

1 MS. SPARDONE: Object to form,
2 mischaracterizes --

3 MR. THOMPSON: I'll have it reread if
4 you want.

5 MS. SPARDONE: -- prior testimony,
6 assumes facts, overbroad and vague.

7 THE WITNESS: No, I think they're --
8 I think they're definitely consistent, and
9 I will tell you why. Again, I mentioned
10 this before, you know, products come and
11 products go. Likewise, just for lack of
12 customer, you know, acceptance or, you
13 know, you really can't manufacture them on
14 a commercial scale. Plus, they may have
15 very well been superceded by asbestos
16 reformulations.

17 So no, I would take these documents
18 to be consistent with each other.

19 Q. (By Mr. Thompson) Well, okay.

20 A. Are you talking June -- I mean, you're
21 talking June 4, 1973, and January 1980.

22 Q. Well, we can agree on this, at least, that
23 as of January 1980, any products that previously
24 contained asbestos that came within that range would

1 not be referred to by -- or encompassed by 12A, right?

2 MS. SPARDONE: Object to form.

3 THE WITNESS: Well, the numerical
4 block goes from 25000 through 25799. So I
5 think it's consistent; otherwise, you'd
6 have except, hypothetically, 25 -- you
7 know, 25158, which we no longer make, or
8 25170, which is now asbestos free. So I
9 think they're consistent. If they're --

10 Q. (By Mr. Thompson) You don't know that
11 25170 is asbestos free as of that date, do you?

12 A. No, I do not.

13 Q. That was just an example that you were
14 giving?

15 A. Yes.

16 Q. Okay. So if a product was
17 asbestos-containing, a phenolic molding compound
18 product that had asbestos in its formulation prior to
19 January 1980, we wouldn't be able to determine that
20 from looking at either Exhibit 12 or Exhibit 12A,
21 right?

22 A. That is correct.

23 Q. And -- or Exhibit 15 for that matter,
24 correct?