

FILE NAME: Kaiser Gypsum (KG)

DATE: 1999 Jan 19

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DOCUMENT DESCRIPTION: Legal - Deposition of Brentwood Crosby

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON¹
 2 IN AND FOR THE COUNTY OF KING
 3 -----
 4 JOHN E. CRUM and MARILYN J.)
 5 CRUM, a married couple,)
 6 vs. Plaintiffs,) No. 98-2-24915-3SEA
 7 THE E. J. BARTELLS COMPANY,)
 8 et al.,)
 9 Defendants.)
 10 -----
 11 Videotaped Deposition Upon Oral Examination
 12 of
 13 BRENTWOOD CROSBY
 14 -----
 15 10:20 a.m.
 16 January 19, 1999
 17 1201 Third Avenue.
 18 Seattle, Washington
 19
 20
 21
 22
 23
 24 Cheryl Macdonald, CCR
 25 Court Reporter
 License No. MACDOCA457LC

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 25 ALSO PRESENT: KEITH PAYNE, Videographer

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1 (Marked Deposition Exhibits 1 - 7.)⁴
 2 THE VIDEOGRAPHER: My name is Keith Payne.
 3 My address is 2127 Second Avenue, No. 305, Seattle,
 4 Washington 98121. My phone number is 206-233-1306.
 5 I'm the video specialist for Royal Video Productions
 6 whose principal place of business is 950 Northwest
 7 Firwood Boulevard, Issaquah, Washington 98027. Royal
 8 Video's phone number is 425-391-6809.
 9 I'll be the operator of the audio/video
 10 equipment for the deposition of Brent Crosby being
 11 videotaped at the offices of Weinstein and Bergman,
 12 1201 Third Avenue, Seattle, Washington. The caption
 13 of the case is John E. Crum and Marilyn J. Crum vs.
 14 The E. J. Bartells Company, et al. The case number is
 15 98-2-24915-3 SEA.
 16 This videotaped deposition is being taken
 17 on behalf of the plaintiffs. Today's date is January
 18 19, 1999. The current time is approximately 10:22
 19 a.m. Will the attorneys present please identify
 20 themselves.
 21 MR. BERGMAN: Matthew Bergman for the
 22 plaintiff.
 23 MS. PAGELER: Meg Pageler for the
 24 plaintiff.
 25 MR. PETTY: Ken Petty for defendant Kaiser

1 Gypsum Company.

2 MR. GAMBA: And Paul Gamba on behalf of
3 Kaiser Gypsum Company, Inc.

MS. ZAKRZEWSKI: Cheryl Zakrzewski for E.
J. Bartells.

6 MS. BURNS: Valerie Burns for Rapid
7 American and W. R. Grace.

8 MR. GARDNER: Ron Gardner for Owens
9 Corning.

10 MR. WEBB: Henry Webb for CCR.

11 THE VIDEOGRAPHER: Will the court reporter
12 please swear in the witness.

13 BRENTWOOD CROSBY, witness herein, having been first
14 duly sworn by the Notary, deposed
and said as follows:

15 THE VIDEOGRAPHER: You may begin.

18 EXAMINATION

19 BY MR. BERGMAN:

20 Q. Could you please state your full name, sir.

21 A. My full legal name?

22 Q. Yes, sir.

23 A. Brentwood Fairchild Crosby.

24 Q. Mr. Crosby, where do you live?

25 A. In Walnut Creek, California.

Q. And have you always lived in Walnut Creek?

2 A. No.

3 Q. Where did you grow up?

4 A. I was born and raised in Seattle,
5 Washington.

6 Q. What part of Seattle?

7 A. West Seattle.

8 Q. And where did you go to high school?

9 A. West Seattle High School.

10 Q. Did you have any other education in
11 Seattle?

12 A. Seattle University, was Seattle College at
13 that time.

14 Q. And does anybody in your family still live
15 in Seattle?

16 A. My sister.

17 Q. And who are you staying with --

18 A. My sister, in West Seattle.

19 Q. Sir, when did you leave Seattle?

20 A. In about 1952 -- excuse me, 1954.

21 Q. And since leaving Seattle, have you come up
22 from time to time to visit?

A. Quite often.

Q. Sir, have you ever served in the military?

25 A. Yes.

1 Q. And what branch of service was that?

2 A. Well, I started out here in Seattle with
3 the Army Transport Service, and later I was in the
4 Merchant Marine, and then in the Marine Corps reserve.

5 Q. And what years were you in the Marine
6 Corps, sir?

7 A. Well, let's see. It was 1944 to '46.

8 Q. During that time frame were you stationed
9 at any one part of the world?

10 A. Basically the Southwest Pacific.

11 Q. And did you participate in any campaigns
12 during that time?

13 A. Yes.

14 Q. And what campaigns were those, sir?

15 A. At Kwajalein Islands and the Marianas and
16 the Solomons.

17 Q. Were those serious battles, sir, in the
18 history of the United States?

19 A. Yes.

20 Q. Sir, are you married?

21 A. Yes.

22 Q. And what's your wife's name?

23 A. Mary Jean.

24 Q. And how long have you and Mary Jean been
25 married?

1 A. 52 years.

2 Q. Sir, could you trace for us the path that
3 your career followed after you were discharged from
4 the armed forces.

5 A. Well, see, I went to work for Urban Smythe
6 and Warren -- they're a mechanical contractor -- on
7 the Hanford project in Hanford, Washington. Then we
8 finished there, came back to Tacoma and worked for
9 F. A. Urban Company, which was one of the partners of
10 Urban Smythe and Warren. And from Urban Smythe and
11 Warren I went to Automatic Sprinkler Corporation of
12 America.

13 We moved to Portland and in Portland I
14 worked for the Heinz Company, which was a mechanical
15 contractor. And in 1959 I was contacted by Kaiser
16 Gypsum Company and asked to come down to California,
17 to Oakland, to have an interview. In 1960 I joined
18 Kaiser Gypsum in Oakland.

19 Q. And how long did you work from Kaiser
20 Gypsum after joining the organization in 1960?

21 A. Until 1978 when they were sold to Domtar
22 Gypsum Company, and we went over to Domtar at that
23 time until 1989.

24 Q. What positions did you hold in Kaiser
25 Gypsum between 1960 and 1978, sir?

1 A. Well, in 1960 I was hired as their
2 architectural representative.
3 Q. And what does an architectural
4 representative do?
5 A. Well, his duties were to work with
6 architects and designers to integrate the Kaiser
7 Gypsum products into their specifications. Then in
8 1962 I transferred over into sales in the East Bay in
9 Oakland.
10 Q. And what were your responsibilities as a
11 salesman for Kaiser Gypsum in the East Bay area of
12 California?
13 A. Was to sell material dealers and
14 distributors and to work with contractors on the
15 purchase of all Kaiser Gypsum products.
16 Q. And what was the next position you held
17 with Kaiser Gypsum, sir?
18 A. I was a -- 1965 -- well, see, in 1963 I was
19 made an area manager and transferred to Sacramento,
20 California. In 1965 I was promoted to district
21 manager, which encompassed all of the Central Valley
22 to Reno and Salt Lake City and southeastern Idaho.
23 Q. As a district manager for the Kaiser Gypsum
24 company, sir, how many salesmen were you responsible
25 for supervising?

1 A. 14 to 16.
2 Q. And what was the next position you held
3 after serving as a district manager for Kaiser Gypsum?
4 A. I was regional sales manager.
5 Q. And as a regional sales manager, sir, what
6 was your territory?
7 A. Well, it was northern California, northern
8 Nevada, state of Utah, southeastern Idaho, Oregon and
9 Washington.
10 Q. And as regional sales manager for the
11 Kaiser Gypsum Company, sir, at that time how many
12 salesmen did you supervise?
13 A. Close to 20. It varied, but it was
14 probably average around 20.
15 Q. During the time that you worked for Kaiser
16 Gypsum, sir, where was the majority of your time
17 spent? And by that I mean where were you
18 headquartered during most of that time?
19 A. Well, in 1960 when I joined the company I
20 was headquartered in Oakland. They had temporary
21 offices at 145 Grand Street in California. Then in
22 1960 moved into the Kaiser Center when it opened.
23 Q. And where is the Kaiser Center located,
24 sir?
25 A. It's located on Lakeshore Drive.

1 Q. Is that in Oakland?
2 A. In Oakland, right.
3 Q. And what is the Kaiser Center, sir?
4 A. Well, the Kaiser Center was the home of the
5 Kaiser Industries, and they had approximately 64
6 different companies represented in the building.
7 Q. Sir, I'm handing you what's been marked as
8 Exhibit 1, ask you whether you can identify that
9 photograph.
10 A. Well, this is the Kaiser Center itself.
11 This is Lake Merced right in front of it, and that's
12 Lakeshore Drive right in front of it.
13 Q. Could you show that to the videographer.
14 A. (Indicating.)
15 Q. Where within the Kaiser Center, sir, was
16 Kaiser Gypsum Company located?
17 A. Basically on the 25th floor and the 24th
18 floor. Senior management was more or less on the 24th
19 floor.
20 Q. And did you know -- in the course of your
21 work, sir, did you interact with senior management of
22 Kaiser Gypsum Company?
23 A. Absolutely.
24 Q. And during the majority of the time that
25 you worked for that company, sir, who was the head man

1 in charge of the Kaiser Gypsum Company?
2 A. Well, Claude Harper was the president of
3 Kaiser Gypsum and when he left R. A. Costa, Bob Costa,
4 became vice-president and general manager.
5 Q. During the course of your work at Kaiser
6 Gypsum, sir, did you have the occasion to interact
7 with Mr. Costa?
8 A. Yes.
9 Q. And what would be the occasions that would
10 cause you to interact with Mr. Costa?
11 A. Well, it would be during sales meetings,
12 management meetings, played quite a bit of golf
13 together.
14 Q. Sir, I'm handing you what's been marked as
15 Exhibit 2, and I'm also putting a blow-up of Exhibit 2
16 on the easel. Who were the individuals that are shown
17 in Exhibit 2, sir?
18 A. Okay. The fella to the left as I look at
19 it is Bob Costa, Robert A. Costa, and the fella that
20 he's shaking hands with is John Crum.
21 Q. Sir, I'm handing you this pointer. Could
22 you please point to Mr. Costa for us, please.
23 A. This is Mr. Costa and this is Mr. Crum
24 (indicating).
25 Q. During an average work week, sir, how many

13

1 times would you see Mr. Costa?

2 A. Well, you wouldn't set it up on a weekly
3 sis, but to sit in meetings with him it would
4 probably be about once a month.

5 Q. And how about socially, sir? How often
6 would you play golf with Mr. Costa?

7 A. Oh, three or four times a year.

8 Q. Was Kaiser Gypsum Company a -- to your
9 knowledge and to your understanding, sir, was Kaiser
10 Gypsum Company associated with any other Kaiser
11 entity?

12 MR. PETTY: Object to form of the question.
13 Go ahead.

14 A. Well, we were a subsidiary of Kaiser
15 Cement.

16 Q. And what was Kaiser Cement, sir?

17 A. Well, they manufacture and distributed
18 cement products, bulk and bagged, on the Pacific
19 Coast.

20 Q. And what kind of products in general did
21 Kaiser Gypsum manufacture?

22 A. Well, they -- in bag cement there's five
23 kinds of cement. I think they manufactured and sold
24 two, type 2 and type 5 cement.

25 Q. Sir, what was your understanding of the

14

1 relationship on a day-to-day basis between Kaiser
2 Gypsum and Kaiser Cement?

3 MR. PETTY: Object to the form of the
4 question.

5 Q. You can answer the question. The lawyers
6 have an obligation to object on behalf of their
7 clients and the judge will decide later on the nature
8 of that objection.

9 A. Could you repeat the question.

10 Q. Certainly, sir. Let me rephrase the
11 question. Did there come a time when Kaiser Gypsum
12 and Kaiser Cement became more closely intertwined than
13 they were previously in the course of your employment?

14 A. Yes.

15 MR. PETTY: Objection as to form.

16 Q. Can you describe the nature of this
17 interaction?

18 MR. PETTY: Same objection.

19 A. Well, as business slowed down we had
20 personnel that covered pretty much the same
21 territories, areas of responsibility, as the cement
22 people. So we -- it was at the suggestion of the
23 cement company that some of the Gypsum people assume
24 responsibility for cement sales in specific areas and
25 some of the cement guys would assume sales

15

1 representation in the Gypsum division.

2 Q. And approximately when did that integration
3 take place, sir?

4 MR. PETTY: Object as to form. Lacks
5 foundation.

6 A. Best of my recollection, I think it was
7 around 1970.

8 Q. Sir, during your -- as you served as a
9 regional manager and a district manager for Kaiser
10 Gypsum, where was your office located?

11 A. In the Kaiser Center.

12 Q. And what floor was your office?

13 A. On the 25th floor.

14 Q. And how often in the course of a week would
15 you have to go down to the 24th floor to confer with
16 senior management?

17 A. Well, the support people, production and
18 research, had their offices on the 24th floor, and it
19 was quite common for us to go down and talk to them
20 about different things, but as far as fully integrated
21 meetings between division and regional sales with the
22 cement company it's probably about once a month.

23 Q. Sir, I'm handing you what's been marked as
24 Exhibit 3 which was previously identified in the
25 November 4 deposition of Joseph Hobby as Exhibit 4.

16

1 And I'll ask you to look at the first page, and I just
2 have a general question for you, sir. Can you
3 identify the individuals that are listed on the first
4 page of that chart?

5 A. Well, right at the top is --

6 Q. Well, just as a general question, can you
7 identify those individuals?

8 A. Yes, most of them.

9 Q. I'm going to now show you a blow-up of the
10 first page of Exhibit 3, and I'm going to ask you some
11 questions now, sir, about specific individuals that
12 are depicted on that document. First I think you had
13 previously identified a photograph of Mr. Costa.

14 A. Right.

15 Q. What were Mr. Costa's responsibilities at
16 Kaiser Gypsum?

17 A. Well, he was the general manager. He
18 worked very closely, naturally, with all his
19 vice-presidents of the different divisions.

20 Q. Next, sir, asking about Mr. Eshelman, what
21 did he do in the organization?

22 MR. PETTY: Object to the form of the
23 question. Can I have a continuing objection all your
24 further examination on this chart or do you want me to
25 --

1 MR. BERGMAN: Take a continuing objection,¹⁷
2 Ken, that's fine.
3 MR. PETTY: Thank you.
4 A. Well, Mr. Eshelman was more or less of an
5 administrative manager for Bob Costa.
6 Q. And how about Mr. H. R. Orzech?
7 A. Orzech was an administrative assistant.
8 Q. In the course of your duties at Kaiser
9 Gypsum, sir, did you ever have to interact with Mr.
10 J. W. Blewett?
11 A. Yes.
12 Q. And what did Mr. Blewett do at Kaiser
13 Gypsum?
14 A. He was manager of special products and the
15 promotion of.
16 Q. And how about Mr. B. W. Simpson, sir. What
17 did he do?
18 A. Mr. Simpson, he was a controller.
19 Q. And L. D. Olsen?
20 A. He was a manager of traffic and
21 transportation.
22 Q. During the time that you were at Kaiser
23 Gypsum, sir, who was your immediate supervisor?
24 MR. PETTY: Objection as to form,
25 particular part of his career you asked him about.

1 MR. BERGMAN: Yeah, I understand.¹⁸
2 Q. During the time that you were a regional
3 manager at Kaiser Gypsum, who was your immediate
4 supervisor?
5 A. J. J. Hague, James Hague.
6 Q. And what were Mr. Hague's responsibilities
7 at Kaiser Gypsum, sir?
8 A. He was the -- in charge of sales and of the
9 sales regions, districts, as a sales --
10 Q. And in an average work week, sir, how often
11 would you -- during the time you were a regional
12 manager how often would you interact with Mr. Hague?
13 A. Probably about once a week.
14 Q. Sir, what did Mr. Crowle do or what did
15 R. C. Crowle do in the Kaiser organization?
16 A. He was a merchandising manager.
17 Q. And as merchandising manager, sir, what was
18 his responsibility?
19 A. To list and promote different products.
20 Q. And in the course of your --
21 A. And pass information and direction on down
22 to sales.
23 Q. In the course of your work at Kaiser
24 Gypsum, sir, did you have the occasion to interact
25 with the research and development department?

1 A. Definitely.¹⁹
2 Q. And who was in charge of research and
3 development during most of the period that you worked
4 there?
5 A. George Kirk.
6 Q. And was there also an individual named Mr.
7 H. C. Dupuis?
8 A. Yes, that's Harlan.
9 Q. And what did Harlan Dupuis do?
10 A. He was again semi-administrative assistant
11 to Bob Costa.
12 Q. And how about C. H. Schaper?
13 A. That's Ernie Schaper. He was
14 vice-president of operations, production.
15 Q. And how about P. J. Franklin?
16 A. He was a vice-president of production.
17 Q. And finally, A. Chavez?
18 A. Oh, Tony was more or less our manager of
19 our Mexican operations. He...
20 Q. Sir, if you could look for me on this
21 blow-up, which is the first page of Exhibit 3, and
22 tell me if you would, sir, where the individuals who
23 are listed there were officed, where their offices
24 were located?
25 A. Basically the 24th floor.

1 Q. Sir, I ask you whether you could provide us²⁰
2 with a diagram of the 24th floor of the Kaiser Center
3 indicating where each individual's office was located,
4 understanding that your background is in sales not in
5 art.
6 A. Yeah, that's right. Well, the Kaiser
7 Center was basically built in a crescent. This would
8 be a typical office floor for all 28 floors. In this
9 corner was Harper and then Costa, and then Hague, then
10 Crowle, and this is the conference room over here
11 (indicating).
12 Q. Could you just put a C on that for us, sir?
13 A. Conference room. And this is trailed off
14 with administrative assistants and then offices down
15 here (indicating).
16 Q. Do you recall where Mr. Franklin's office
17 was located?
18 A. I think he's right next to the conference
19 room here (indicating).
20 MR. PETTY: Counsel, just for
21 clarification, do you have a particular time frame in
22 mind that we're talking about here?
23 THE WITNESS: Well, this would be basically
24 1960 to about -- when we first moved in the building
25 Claude Harper was in this corner, Costa was here.

1 Then when Harper left Costa moved into the president's
2 office where he was vice-president and general
nager (indicating).

Q. And approximately -- well, let's finish
5 that and then we'll elicit what general time frame
6 we're speaking with. How about Mr. Dupuis, sir?

A. I think Harlan was right about here
8 (indicating).

Q. And finally, sir, what about Mr. -- well,
10 did you know an individual named Mr. Kirk?

A. George Kirk?

Q. Yes.

A. Oh, yes, definitely.

Q. And where was Mr. Kirk's office located?

A. Over in this area, the west of the
16 building (indicating).

Q. Could you just put a K approximately where
18 Mr. Kirk's office was located?

A. (Complying.)

Q. Thank you very much, Mr. Crosby. I think
21 you can resume your seat. I'm going to mark this
22 diagram as Exhibit 8, and will provide counsel with
23 copies of it at the first available opportunity.

(Marked Deposition Exhibit 8.)

Q. You had drawn a conference room on Exhibit

22
1 Mr. Crosby. Did you ever attend meetings in that
2 conference room?

A. Definitely, yeah.

Q. Approximately how often did that occur?

A. Well, it would be between a 30 and 90-day
6 period, or whenever Bob Costa or Mr. Harper would call
7 for a special meeting we'd all go up there. It wasn't
8 on a regular basis.

Q. Do you know whether or not the senior
10 management that you've identified would meet more
11 frequently than every --

A. Oh, definitely.

MR. PETTY: Object to the form.

Q. And what is your understanding of how often
15 these meetings would take place, based on your
16 experience?

MR. PETTY: Same objection.

A. It was just hard to say.

Q. Sir, I'd now like to turn your attention to
20 the second page of Exhibit 3, page entitled "sales"
21 and I'm going to --

MR. PETTY: We don't have one entitled
"sales," Counsel.

A. Research development and business
25 development.

1 MR. BERGMAN: Is it the third page?

2 MS. ZAKRZEWSKI: First page didn't even
3 match up.

4 MR. PETTY: Nothing that you passed out,
5 Counsel, matches the chart that you're now holding in
6 your hand.

7 MR. BERGMAN: Why don't we correct that,
8 then. We'll take a very short break.

9 THE VIDEOGRAPHER: Off the record at 10:49.
10 (Recess.)

11 THE VIDEOGRAPHER: On the record at 10:53
12 a.m.

13 MR. BERGMAN: I'm going to substitute the
14 Exhibit 3 that I had previously handed to Mr. Crosby
15 for the corrected version and am circulating it among
16 all defense counsel. Apologize for the mix-up.

17 MR. PETTY: So this is an entirely
18 different document than your prior Exhibit 3?

19 MR. BERGMAN: Yeah.

20 THE VIDEOGRAPHER: On the record at 10:53.

21 Q. Mr. Crosby, I'm putting a blow-up diagram
22 up on the easel which is a copy of the second page of
23 the substituted Exhibit 3. And what I would like you
24 to do for me, sir, is identify -- well, first of all,
25 let me ask you, can you identify most of the

24
1 individuals set forth on that document?

2 A. Yes.

3 Q. Sir, let me ask you, first of all, there's
4 an individual listed here, B. Crosby. Do you know who
5 that is, sir?

6 A. I hope so.

7 Q. And who might that be?

8 A. Me.

9 Q. Sir, if I could ask you to take this
10 pointer for us and identify all of the individuals who
11 are set forth on the second page of Exhibit 3 as well
12 as what their responsibilities were and where they
13 were located.

14 MR. PETTY: Counsel, before doing so, may I
15 lodge an objection --

16 MR. BERGMAN: Absolutely.

17 MR. PETTY: -- to the use of this document
18 without laying adequate foundation, without any
19 indication or sense as to what time frame is involved
20 here.

21 MR. BERGMAN: Your objection is well taken,
22 Counsel. We're talking about the period 1970 to 1972.

23 MR. PETTY: Well, Counsel, that's fine. I
24 think that's testimony and foundation that needs to
25 come from a witness.

1 MR. BERGMAN: That's fine. 25
2 Q. Mr. Crosby, what was the general time frame
3 that this diagram represents in terms of the structure
4 of the sales force of the Kaiser Gypsum Company?

5 MR. PETTY: Object to the form of the
6 question.

7 A. Well, I think it's pretty well set up for
8 1965 to 1970.

9 Q. And sir, could you now point to each
10 individual on that document and indicate --

11 A. This is Jim Hague (indicating). He was the
12 vice-president of sales. Frank Potts was his
13 administrative assistant. Robert Laidlaw was the
14 administrative assistant not only to Mr. Hague but --

15 Q. Now, sir, at the next level there are three
16 regional sales managers. What were the three regions
17 that the company was -- the company sales efforts were
18 divided into?

19 A. On this region 1 was by Tommy Donovan.

20 Q. And what area was that?

21 A. That was in southern California from
22 Bakersfield south over into Phoenix and Albuquerque,
23 and at a later date part of Mexico.

24 Q. Then the next region, sir. Maybe we'll
25 just take it by level.

1 A. This is region 2. This is Al Alessandri. 26

2 Q. And what area was region 2 encompassing?

3 A. Region 2 encompassed northern California,
4 northern Nevada, state of Utah, southeastern Idaho,
5 Oregon, Washington, Alaska.

6 Q. And was region 2 the region that you
7 subsequently assumed responsibility for?

8 A. Right, and Alaska and Hawaii.

9 Q. And finally, sir, the third region?

10 A. Region 3 was Charlie Watson. He was
11 regional manager of Pacific Northwest, which would be
12 Oregon, Washington, Alaska.

13 Q. And sir, of the individuals listed at the
14 third level, the sales manager level, if you could for
15 us, identify those who you remember and what region
16 they worked in in the 1965 to 1972 time period?

17 A. Well, this is Gordon Brown. He was
18 basically in southern California, down from LA down
19 into San Diego. Asimos was over in New Mexico and
20 Phoenix, New Mexico and Arizona. Bob Olson was
21 LA area, greater LA area, on up to Bakersfield. And
22 Bob Boltz was an area manager. Worked directly under
23 Bob Olson.

24 Q. And how about in the Northwest Pacific
25 region, the second, region 2?

1 A. This is Dick James. He was in the greater 27
2 Seattle area. This is Ed Millis. He went east in
3 1965 as the district manager in the New Jersey/New
4 York area. Jim Kelly, he was district manager down in
5 Georgia, Florida, that area. Sullivan was assistant
6 to him.

7 Q. Let the record reflect that the witness was
8 just testifying to the east region of Kaiser Gypsum.
9 Now, if you would --

10 MR. PETTY: Object to the form of the
11 question.

12 Q. Now, if you would, sir, could you identify
13 those individuals in the center section, the northwest
14 Pacific region, at the sales manager level that you
15 recall.

16 A. Okay.

17 Q. And what region they were working?

18 A. I have a correction to make here. This is
19 Jim Watson, not Charlie Watson, as regional sales
20 manager of the east.

21 Q. Thank you, sir. Now if you could address
22 the Northwest Pacific region?

23 A. This is Al Alessandri, and he had district
24 managers under him, Galen Thomas, who was basically in
25 the Bay area. Charlie Watson was district manager in

1 Seattle. Wilf Torgeson was district manager in 28
2 Portland. Myself, I was district manager in eastern
3 California, northern Nevada, Utah and southeastern
4 Idaho. Doug McClellan was an area manager that I used
5 in northern California, and he assumed
6 responsibilities when I'd go east or over the
7 mountains.

8 Q. Thank you, sir. I wanted to ask you some
9 questions now, sir, concerning the research and
10 development portion of Kaiser Gypsum. In the course
11 of your duties as a district and regional sales
12 manager, did you ever have the opportunity to interact
13 with the research and development staff?

14 A. Yes.

15 Q. What were the types of circumstances that
16 would cause you to interact with the research and
17 development personnel?

18 A. Well, if we'd have a product problem --
19 what I mean by a product problem would be the
20 application of the product or the quality of the
21 product -- the salesman would write what they called
22 the customer problem report which would come to my
23 office, would review, sign off or initial, and send to
24 the production department, which would be at Antioch
25 in most cases.

1 Q. Sir, I'm going to ask you some questions 29
2 now concerning the third page of the revised Exhibit 3
3 understanding that counsel has a standing objection on
4 the use of said exhibit. And I'm going to pass you or
5 I'm going to show on the easel a blow-up of the third
6 page of the revised Exhibit 3. And I'm just going to
7 ask you questions about a few of the individuals on
8 that document.

9 Could you please identify for us the
10 individuals toward the top of page 3 of Exhibit 3?

11 A. Okay. This is Harlan Dupuis.

12 Q. And where was Mr. Dupuis' office located?

13 A. On the 24th floor of the Kaiser Center.

14 Q. And now the next level.

15 A. Okay. This is George Kirk. He was more or
16 less the manager of research and development and
17 product quality.

18 Q. And how about Mr. Tillisch?

19 A. Oh, Paul Tillisch was product development.
20 He was more the scientist type guy. Paul right here.

21 Q. And how about H. L. Weightman?

22 A. Howard Weightman was -- he was the
23 specialist on the formulation and production of
24 accessory products.

25 Q. And let me now ask you, sir, what are

26 accessory products or what were accessory products? 30

27 A. Well, accessory products is your taping and
28 finishing compounds, K-spray, radiant heat finishing.

29 Q. What was K-spray, sir?

30 A. K-spray is a simulated acoustic covering
31 they put on ceilings. It was formulated with,
32 basically, with joint compound, Styrofoam, which gave
33 you the little lumps.

34 Q. And what was radiant heat compound?

35 A. Well, in radiant heat when you installed
36 it, it was installed with a machine that ran on the
37 floor. And it had groovers up in the head of it, and
38 you'd run that along the ceiling, and as it would
39 groove the wallboard the radiant heat coil or cables
40 would go up and were embedded into the grooves.
41 They'd go for a certain size room and take a certain
42 number of feet of radiant heat cable to push heat to
43 heat the room.

44 Q. Sir, were the Kaiser Gypsum sales people
45 that you supervised responsible for knowing the use
46 and application of Kaiser Gypsum accessory products?

47 A. Absolutely.

48 Q. And why was that, sir?

49 A. Well, if they had to monitor and write up
50 complaints and to call out the people from the

51 production department, they had to pretty well know 31
52 how the product worked and --

53 Q. And did salesmen ever participate in any
54 demonstrations on the use and application of Kaiser
55 Gypsum accessory products?

56 A. Yes.

57 Q. And what were the occasions that sales
58 personnel would be required to participate in these
59 kind of demonstrations?

60 A. Well, as you're attempting to sell a
61 customer and to sell them on your product we'd donate
62 materials, specific amounts for them to try in the
63 taping and the finishing compounds and the acoustical
64 spray, K-spray, or in radiant heat when we did
65 demonstrations of how it was applied, they would --

66 Q. And would Kaiser Gypsum salesmen ever have
67 to be present on job sites where Kaiser Gypsum
68 products were being used?

69 A. Yes, definitely.

70 Q. And why was that, sir?

71 A. Well, you constantly monitored your
72 products, especially with a new customer, to make sure
73 that they were using them right, mixing them right and
74 so to get the best performance. So...

75 Q. I'm going to ask you some questions now,

76 1 sir, about three of the accessory products that are at 32
77 2 issue in this case. The first category are joint and
78 3 finish compounds.

79 4 A. Well, joint and finish compound came in two
80 5 different ways. One was in a powder form, and they
81 6 were in separate bags. There was joint and finishing
82 7 bags, 25-pound bags, and in the premix joint and
83 8 finish came in five-gallon buckets.

84 9 MR. PETTY: Object for the --

85 10 A. Four pound boxes.

86 11 MR. BERGMAN: Object and move to strike the
87 12 response. There was no question pending.

88 13 Q. And can you tell us, sir, how the bagged
89 14 joint compound would be applied?

90 15 A. Well, normally what they do, they take a
91 16 25-pound bag of joint and finishing compound, put it
92 17 in a five-gallon bucket, stir it and slowly add water
93 18 until it became -- it's like making a cake. Until you
94 19 had a usable product, and that's when the salesmen
95 20 really had to be present when they first started using
96 21 it to make sure they didn't over water it or
97 22 under water it.

98 23 Q. What was the next step, sir, after the
99 24 joint compound or the finish compound had been mixed?

100 25 A. Well, with the powdered joint and finish

1 compound it would be mixed in these five-gallon
2 buckets in the field, then taken from the five-gallon
3 buckets, put in a tray, and with a blade, a finishing
4 knife, or a taping knife, the applicator would scoop
5 it out, run it along the seams and the joints and they
6 would --

7 Q. What was the next step then?

8 A. They'd let it dry, and then they'd sand it
9 with -- usually with a stick sander. It was a long
10 pole with about a four-by-eight inch piece of
11 sandpaper attached to a blade on it, and they would
12 just sand the ceiling or sand the walls.

13 Q. Sir, can you tell me what, if anything,
14 would happen when the Kaiser Gypsum joint compound or
15 finish compound would be mixed in a bucket?

16 A. Well, you start out with a dry powder and
17 then, as I say, slowly add water and bring it up to
18 where it's in a soluble condition so it could be
19 handled and spread.

20 Q. Can you tell me whether or not any dust
21 would be created when that process was being
22 undertaken?

23 MR. PETTY: Object to form, leading
24 question. It's been asked and answered.

25 Q. Let me rephrase the question, sir. What if

1 anything would occur when the bagged Kaiser Gypsum
2 joint compound would be poured into the bucket?

3 MR. PETTY: Object to form, leading.

4 A. Well, you'd open the 25-pound bag, slowly
5 pour it into the five-gallon bucket and then proceed
6 from there where I just mentioned, until you blended
7 it into a workable solution.

8 Q. Can you tell me whether or not any dust was
9 created by that process?

10 MR. PETTY: Same objection. This whole
11 line of questioning has become quite leading.

12 A. Well, there could be dust, yeah. When
13 you're handling a dry product, start stirring it
14 around or pouring it out of the bag, yeah, there could
15 be dust.

16 Q. And sir, can you tell me whether or not any
17 dust was created when dried joint compound was sanded?

18 MR. PETTY: Same objection, leading.

19 A. Yeah, definitely. Stuff would just float
20 down in the air.

21 Q. Let me ask you now, sir, about the
22 application of K-spray, sir. How was K-spray mixed
23 and applied?

24 A. Well, K-spray was -- came in a larger
25 container, larger bag, I think, usually a 50-pound

1 bag, and it would be dumped into a mixer, like a
2 cement mixer and watered and agitated until it gets to
3 a certain consistency, and then shot through a hose to
4 a gun. And the applicator would, through a lever,
5 would control the quantity of K-spray that would come
6 out the end of the gun. It would be pumped, pumped
7 from the tank through the hose and out the gun and
8 sprayed on the ceiling.

9 Q. And was any dust created during -- any time
10 during this process?

11 MR. PETTY: Object to the form of the
12 question, leading.

13 A. If there was dust it would probably be when
14 they were dumping it in the mixer.

15 Q. And finally, sir, if you could describe the
16 use and application of the radiant heat compound.

17 A. Okay. Radiant heat compound came in bags.
18 It was mixed pretty much the same as taping and
19 finishing compound. Then it was troweled on the
20 ceiling over these embedded cables that were put into
21 the ceiling, electric cables, and then to -- to unify
22 the ceiling without lumps or bumps they would sand it.

23 MR. PETTY: Just to interpose an objection,
24 this is not a product that was identified by Mr. Crum
25 or that's at issue in this case, at least on the

1 current record.

2 Q. Well, let's turn our attention now to Mr.
3 Crum, since it's been brought up and let me ask you,
4 sir, some questions about some of the work that Mr.
5 Crum did for Kaiser Gypsum.

6 A. Well, I hired John personally --

7 Q. I have to ask a question.

8 A. I thought you'd asked the question.

9 Q. Well, I kind of introduced it. How did it
10 come to be that Mr. Crum -- do you know John Crum,
11 first of all?

12 A. Definitely.

13 Q. And how did you first meet Mr. Crum?

14 A. As an applicant for a position with the
15 company.

16 Q. And approximately when was that, sir?

17 A. Either 1964 or 1965.

18 Q. And did you hire Mr. Crum?

19 A. I recommended he be hired, yes.

20 Q. And what did Mr. Crum do for Kaiser Gypsum?
21 What position was he hired for?

22 A. He was hired as a sales territory salesman
23 in the Reno area, which encompassed most of northern
24 Nevada and part of eastern California into the Lake
25 Tahoe area and Tahoe City.

37

1 Q. And what were some of Mr. Crum's
2 responsibilities as a salesman for Kaiser Gypsum?

A. Well, he sold a full product line. They're
that we call dealer salesmen. That's your entry level
as a dealer salesman. They sold wallboard, accessory
products, full product line, Firtex, which was our
softboard material. Firtex is acoustical tile,
building boards, sheeting.

Q. Well, let me now ask you specifically, did
Mr. Crum sell Kaiser Gypsum joint compound?

A. Definitely.

Q. And did Mr. Crum sell Kaiser Gypsum finish
compound?

A. Yes.

Q. And did Mr. Crum sell Kaiser Gypsum
K-spray?

A. Yes.

Q. And did Mr. Crum sell Kaiser Gypsum radiant
heat compound?

A. Yes.

MR. PETTY: Object to the form of the
question.

Q. Sir, what were some of Mr. Crum's
responsibilities as a Kaiser Gypsum salesman?

A. Well, it was to create sales through

38

dealers or distributors or direct sales to Gypsum
drywall contractors, dealers and distributors.

Q. Did Mr. Crum have any responsibility to
conduct demonstrations of Kaiser Gypsum products?

A. Yes, as all Kaiser Gypsum salesmen did.

Q. And what were some of the products that Mr.
Crum demonstrated?

MR. PETTY: Object to the form of the
question.

Q. Do you know what kinds of products Mr. Crum
demonstrated?

A. Joint/finishing compound, K-spray, radiant
heat.

MR. PETTY: Same objection, lacks
foundation. Go ahead.

Q. In the course of your duties, your
supervision of Mr. Crum, did you ever go out to his
sales area?

A. Yes.

Q. And did you ever participate in any
demonstrations with Mr. Crum?

A. Yes.

Q. And what kind of products did you
participate in demonstrating with Mr. Crum?

A. Taping and finishing and radiant heat

39

1 compound.

Q. Sir, did you ever go to any job sites with
Mr. Crum during the course of your supervision of his
work?

A. Yes.

Q. And what job sites do you recall going to?

A. Well, there was -- he had a myriad of jobs.
He had some commercial work in Reno, Nevada, which
means high rises or commercial type buildings, local
taping and finishing contractors, again, dealers and
distributors.

Q. And why was it --

MR. PETTY: Move to strike the
nonresponsive.

Q. Why would Mr. Crum or do you know why Mr.
Crum would go on to job sites where Kaiser Gypsum
products were being used?

A. Well, we sold under the basis of product
quality and service, and part of the service was to
make sure that the field people that worked for the
subcontractors handled the products in a precise
manner.

Q. And, sir, what were some of the major
commercial projects that Mr. Crum sold Kaiser Gypsum
products to, to the best of your recollection?

40

MR. PETTY: Object to the form of the
question. Lacks foundation.

Q. Well, let me respond to that objection,
which was well taken. Was Mr. Crum -- would Mr. Crum
keep you apprised of his sales activities?

A. Definitely.

Q. And was there competition for major
construction work in Reno?

A. Very strong.

Q. And when a major job would be awarded would
that be something that you would be notified of?

A. Yes.

Q. What were some of the major construction
projects that you recall Kaiser Gypsum supplying
products to in the Reno area?

MR. PETTY: Object to form. Calls for
hearsay. Go ahead.

A. Well, we had put all the board and
accessories on the MGM casino, and Harrah's casino, we
had jobs there. Harold's club, and a large volume to
residential. They would be all over the area,
wherever they were building a project, the tract.

Q. And did you personally visit any of those
job sites, sir?

A. Yes.

41

1 Q. And what job sites did you personally
2 visit?

3 A. Well, commercial and the residential both.

4 Q. Sir, was John Crum an effective salesman
5 for Kaiser Gypsum products?

6 A. He was a very, very effective salesman.
7 He was what in the trade you'd call a salesman's
8 salesman or a customer salesman.

9 Q. And in your experience and in your
10 supervision of Mr. Crum, what made him so effective?

11 A. Honesty, integrity, and he was just on the
12 job when he was supposed to be, fulfilled all our
13 requirements of obtaining customers and the sale of
14 the products.

15 Q. Did Mr. Crum receive any awards from Kaiser
16 Gypsum for his sales activities?

17 A. Well, this is an indication here
18 (indicating).

19 Q. That's -- you're pointing to Exhibit 2?

20 A. Exhibit 2. That's when John was receiving
21 the salesman of the year for district 2.

22 Q. And were you present at the ceremony when
23 he was given this award?

24 A. Right.

25 Q. I now want to ask you some questions, sir,

42

1 concerning some of the other work that Mr. Crum did
2 when he wasn't selling Kaiser Gypsum products. And I
3 guess my question to you, sir, is did Mr. Crum -- you
4 testified extensively that Mr. Crum sold Kaiser Gypsum
5 products. Do you know whether or not Mr. Crum used
6 Kaiser Gypsum products?

7 A. He used them personally.

8 Q. And how was that, sir?

9 A. Well, John built some spec houses in Washoe
10 Lake, Nevada, which is between Reno and Carson City.

11 MR. PETTY: Counsel, can I just interpose
12 an objection to lack of foundation.

13 Q. Go ahead.

14 MR. PETTY: Go ahead.

15 A. It was done with my full knowledge, because
16 John was the type of guy that if he wanted to do some
17 work on one of these houses he'd be out there at 3:30,
18 4:00 in the morning and be ready to go to work on his
19 normal sales jobs normally by 8, 8:30 in the morning,
20 work all day and then work evenings.

21 Q. First of all, how do you know that Mr. Crum
22 constructed houses on the side?

23 A. Well, I visited most of his units when I'd
24 be up there working with him.

25 Q. And who would do the taping and drywall

43

1 work on the houses that Mr. Crum constructed, if you
2 know?

3 MR. PETTY: Object to form of the question.
4 Lacks foundation.

5 A. Well, when he first got going John and his
6 son more or less did the hanging of the board, taping,
7 texturing themselves, and then as he went on in the
8 business, built some bigger places, his own home for
9 example, he would hire that done by local contractors
10 that he knew.

11 Q. And sir, do you know what drywall products
12 Mr. Crum used when he was doing his own taping and
13 drywall work?

14 MR. PETTY: Object to the form of the
15 question. Lacks foundation.

16 A. Well, he would use Gypsum wallboard, then
17 tape and texture and apply acoustics where necessary.

18 Q. And where would he get his supplies, if you
19 know? Let me ask you, do you know where he would get
20 his supplies?

21 A. From one of his distributors.

22 Q. And do you know what brand of drywall,
23 joint compound and finish compound he used on these
24 houses?

25 A. Kaiser.

44

1 MR. PETTY: Object to the form of the
2 question, lacks foundation.

3 Q. I'm sorry, sir, what was your answer?

4 A. Kaiser.

5 Q. Thank you. Do you want to take a short
6 break?

7 A. Yeah, I'd like to.

8 THE VIDEOGRAPHER: Off the record at 11:23.
9 (Recess.)

10 THE VIDEOGRAPHER: On the record at 11:40.

11 Q. Mr. Crosby, at the time that John Crum was
12 working for you selling Kaiser Gypsum joint and finish
13 compounds, were you aware that those products
14 contained asbestos?

15 A. No.

16 Q. Did there come a time, sir, when you had
17 any concerns regarding potential asbestos content in
18 Kaiser Gypsum products?

19 A. Yes.

20 Q. Sir, can you describe approximately when
21 that was that those concerns developed?

22 A. Probably the late '60s, '69 to '70, yeah.

23 Q. And can you describe what caused you to be
24 concerned about asbestos in Kaiser Gypsum products?

25 A. Well, we had customers and contractors and

1 applicators that asked us outright if we had asbestos⁴⁵
2 in our products, and I wasn't knowledgeable of any
3 stos.

4 Q. And what if anything did you do in response
5 to those customer inquiries?

6 A. I think in about 1970 I went to George
7 Kirk.

8 Q. And who was Mr. Kirk, sir?

9 A. He was the administrator of manufacturing
10 in northern California, well, I think for the whole
11 company, but in our area.

12 Q. Did you speak to Mr. Kirk, sir?

13 A. I talked to George, and I said, George, I'm
14 getting questions from customers and do we have any
15 asbestos in our products.

16 Q. And where did this conversation take place,
17 sir?

18 A. In the Kaiser Center on the 24th floor.

19 Q. And approximately how far was Mr. Kirk's
20 office from Mr. Costa's office?

21 A. Well, probably 100, 150 feet.

22 Q. And what if anything did Mr. Kirk tell you
23 in response to your inquiries concerning the presence
24 of asbestos in Kaiser Gypsum products?

25 MR. PETTY: Object to form, calls for

1 hearsay.

2 Q. What did Mr. Kirk tell you in response to
3 that inquiry?

4 MR. PETTY: Same objection.

5 A. We did not have asbestos in our products.

6 Q. I don't understand, sir.

7 A. In our accessory products.

8 Q. What did Mr. Kirk tell you?

9 A. When I asked him --

10 MR. PETTY: Same objection.

11 A. I asked him if we had asbestos in our

12 products because we had had inquiries from our

13 customers, and he said no. So then I went to Al

14 Raffaelli who was the accessory specialist in the
15 manufacturing of accessories at Antioch and --

16 Q. Where did that conversation take place?

17 A. At Antioch at his laboratory.

18 Q. And approximately when did that take place?

19 A. It was 1970, I think.

20 Q. And what did you say to Mr. Raffaelli?

21 A. I asked him, I said, Al, is there any
22 asbestos in our accessory products.

23 Q. And what did Mr. Raffaelli say to you?

24 MR. PETTY: Object to form, calls for
25 hearsay.

1 A. No, we don't have any accessories in our⁴⁷
2 any asbestos in our accessories.

3 Q. After you were told by Mr. Kirk and Mr.
4 Raffaelli that there was no asbestos in Kaiser
5 Gypsum's products, what if anything did you do?

6 A. Well, at that point it was just about the
7 time we had a district sales meeting coming up. So at
8 the sales meeting question came to me from some of the
9 salesmen, do we have asbestos in our products, and I
10 said, to my knowledge, no. I checked with George Kirk
11 and with Al Raffaelli.

12 Q. What was the general reaction of your sales
13 staff upon learning that no asbestos was contained in
14 Kaiser Gypsum products?

15 MR. PETTY: Object to form. Can we try to
16 slow down the questions and then the answers.

17 MR. BERGMAN: I'll finish my question,
18 you'll object, then we'll go on.

19 MR. PETTY: Yes.

20 MR. BERGMAN: So let me try again with my
21 question.

22 Q. What was the reaction of your sales staff
23 when you told them that there was no asbestos in
24 Kaiser Gypsum products?

25 MR. PETTY: Objection, calls for hearsay.

1 A. Relieved.

2 Q. And why was that, sir, to the best of your
3 knowledge?

4 A. Well, because if you --

5 MR. PETTY: Objection, lacks foundation.
6 Calls for speculation.

7 A. If you had asbestos in your product it
8 would be negative towards sales, and...

9 Q. Did you have any discussions with John Crum
10 concerning presence of asbestos in Kaiser Gypsum
11 products?

12 A. He attended the meetings, the meeting that
13 we discussed that.

14 Q. And what if anything did you tell John Crum
15 concerning the presence of asbestos in Kaiser Gypsum
16 products?

17 A. That according to the research and
18 development department, the manufacturing, we did not
19 have accessory -- asbestos in our accessories.

20 Q. And what was John Crum's reaction upon
21 learning this information?

22 MR. PETTY: Object to form. Calls for
23 hearsay.

24 A. Relief.

25 Q. Can you be a little more specific?

1 MR. PETTY: Objection to the form. Calls ⁴⁹
2 for hearsay and speculation.
3 A. Relief inasmuch as --
4 Q. Let me rephrase the question for you, Mr.
5 Crosby, and understanding that counsel has a standing
6 objection. What did Mr. Crum tell you after you told
7 him that there was no asbestos in Kaiser Gypsum
8 products?
9 A. Well, that he would go to his customers and
10 tell them that we did not have asbestos in our
11 products.
12 Q. Mr. Crosby, I'm going to hand you what's
13 been marked as Plaintiff's Exhibit No. 4. And I'm
14 going to put on the easel a blow-up of page 1 of
15 Exhibit 4. When was the first time, sir, that you saw
16 Exhibit 4, this document?
17 A. Oh, I think it was probably about three to
18 four months ago.
19 Q. And prior to seeing Exhibit 4, did you have
20 any knowledge as to whether or not asbestos was
21 contained in Kaiser Gypsum products?
22 A. No.
23 Q. What was your -- prior to viewing Exhibit 4
24 what was your understanding as to whether or not
25 asbestos was present in Kaiser Gypsum products?

1 A. Well, as I had stated, the proper people ⁵⁰
2 my mind said we didn't, and so I took it at face
3 value. This letter was shown to me by counsel from
4 San Francisco at my home in Walnut Creek.
5 Q. Sir, I'm going to ask you some questions
6 about Exhibit 4. And what I'd like you to do, sir, is
7 if you could stand and take the pointer, and I'm going
8 to ask you to identify the individuals identified in
9 that or named in that 1965 document starting with L.
10 R. Flicker on the right.
11 MR. PETTY: Counsel, can I just clarify
12 what is Exhibit 4? Is it a one page that's up there
13 on the chart or is it multiple pages?
14 MR. BERGMAN: The document on the -- the
15 chart is the first page of Exhibit 4. The exhibit for
16 purposes of this deposition is the entire document.
17 My inquiry is going to be restricted to the first
18 page.
19 MR. PETTY: Thank you.
20 Q. Sir, first of all, could you tell us who
21 L. R. Flicker is?
22 A. Leonard Flicker, in my mind, was our safety
23 engineer.
24 Q. And where did Mr. Flicker work?
25 A. Out of the Kaiser Center on the 24th floor.

1 Q. Mr. Flicker was on the 24th floor? ⁵¹
2 A. I think he was there and at Antioch.
3 Q. Now, if you could just go down the
4 individuals, we just have initials there, if you could
5 tell us who they are and what they did for the
6 company, to the extent that you know.
7 A. This is Robert Allgood. He was the plant
8 manager of the Antioch plant. And Caprye, I think he
9 was involved with the Seattle plant. Jack Cassidy was
10 the manager of our Firtex plant in St. Helen's, Oregon
11 where we made softboard products. Chambers I think
12 was back east. I think Dicks was back east. I don't
13 recognize this one.
14 Q. That's Mr. Homan?
15 A. Mr. Homan.
16 Q. Okay.
17 A. Modaff I think was at St. Helens. P. D.
18 Orleman was -- he replaced Bob Allgood as the manager
19 of the Antioch plant. This one I don't recognize
20 (indicating). What's that, Tra-boo?
21 Q. Traub.
22 A. Traub, I think he was east coast. This is
23 Jim -- J. H. Walton (indicating). I don't really know
24 Walton.
25 This is Richard Wiborn (indicating). He

1 was -- what did Dick do? At that time in 1965 I don't ⁵²
2 know what Wiborn was attached to at that time.
3 And then this is Sam Witt (indicating).
4 Samuel Witt, he was the plant manager of the Long
5 Beach plant. Paul Franklin was vice-president of
6 production. George Kirk was our research director.
7 Q. And sir, was the George Kirk on Exhibit 4
8 -- excuse me -- yeah, Exhibit 4 -- the same George
9 Kirk that you spoke to in 1970 --
10 A. Right.
11 Q. -- who told you there was no asbestos in
12 Kaiser Gypsum products?
13 A. Right.
14 MR. PETTY: Object to the form of the
15 question.
16 Q. And how about J. C. Reilly, sir?
17 A. J. C. Reilly, he was an attorney with the
18 corporation.
19 Q. Where was Mr. Reilly's office located, sir?
20 A. On the 24th floor of the Kaiser Center.
21 There was Ernie Schaper. Ernie Schaper was -- he was
22 the vice-president of production. Part of St. Helen's
23 plant, part of Seattle plant, the Antioch plant.
24 Q. Well, thank you, Mr. Reilly. Okay, Mr.
25 Crosby, you can sit down if you choose. I next want

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1 to show you Exhibit 5. I just want to ask you to
2 identify a few of the people on Exhibit 5. Who is
3 C. Dupuis?

4 A. Harlan Dupuis was more or less
5 administrative assistant to Bob Costa.

6 Q. And how about H. L. Weightman?

7 A. Howard was -- Howard Weightman was at the
8 Antioch plant as a research developer. Tom Smith was
9 a chemist that worked on formulation of Gypsum
10 products.

11 Q. And how about A. F. Raffaelli?

12 A. That's Al Raffaelli. He worked in the
13 research.

14 Q. And is that the same Al Raffaelli that you
15 had spoken to the year before?

16 A. Right, at the Antioch plant.

17 Q. Sir, I'd now like to ask you a few
18 questions about -- like to ask you some stuff about
19 just your general work at Kaiser Gypsum. Beginning at
20 the time you were a district sales representative, can
21 you tell me whether or not you would have been
22 considered in upper management?

23 A. Middle management.

24 Q. And while you were working in middle
25 management, did you have to interact with production

people?

54

2 A. Yes.

3 Q. And was one of your jobs to be aware of
4 potential problems of Kaiser Gypsum products?

5 A. Yes.

6 MR. PETTY: Object to form of the question.
7 Leading.

8 Q. And did you have any responsibility
9 concerning product defects?

10 A. Yes.

11 Q. And what responsibility would that have
12 been?

13 A. Well, if there was a product problem or
14 assumed problem by a contractor or a customer, it went
15 directly to the salesman. Then the salesman would
16 write what we call a customer problem report which
17 would be transmitted directly to my office. I'd
18 review it, initial it, and send it back to the plant
19 for an answer.

20 Q. Did you also have any responsibility for
21 communicating product information to customers?

22 A. Yes.

23 Q. And what was the nature of that
24 responsibility, sir?

25 A. Well, well, again, which was our theme, was

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1 product quality and service. We'd talk about the
2 products, quality of the products, and the service
3 that we could give to the customer if he would buy our
4 products.

5 Q. If there had been a hazard associated with
6 a Kaiser Gypsum product, would that have been
7 something that you think you would have been
8 responsible for knowing about?

9 MR. PETTY: Object to form of the question.

10 A. I should have because we were getting
11 direct questions from our customers.

12 Q. Well, sir --

13 MR. PETTY: Object. Move to strike the
14 nonresponsive portions of the answer.

15 Q. -- I'm going to refer to Exhibit 6, which
16 is Kaiser Gypsum's sworn answers to interrogatories in
17 the Pickner case, and I'm going to refer, I'm going to
18 read Kaiser Gypsum's sworn response under oath to
19 interrogatory No. 6. Kaiser Gypsum states under oath
20 that "Beginning in 1972 Kaiser Gypsum affixed caution
21 labels to the packages and containers of its
22 asbestos-containing products. The warning label, as
23 prescribed by OSHA, read: 'CAUTION: Contains
24 asbestos fibers; avoid creating dust; breathing
25 asbestos dust may cause serious bodily harm.'"

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1 Mr. Crosby, between 1972 and 1978, were you
2 aware of any warnings on the containers of Kaiser
3 Gypsum asbestos products that breathing asbestos could
4 cause asbestosis?

5 MR. PETTY: Object to form of the question.
6 Lacks foundation.

7 A. Not that there was asbestos in our product.

8 Q. Are you aware of any warnings on Kaiser
9 Gypsum products that breathing asbestos could cause
10 lung cancer?

11 MR. PETTY: Object to form. Lacks
12 foundation.

13 A. No.

14 Q. Are you aware of any warnings on Kaiser
15 Gypsum products that breathing asbestos could cause
16 mesothelioma?

17 MR. PETTY: Same objection.

18 A. No.

19 Q. Sir, between 1972 and 1978, approximately
20 how many bags of Kaiser Gypsum product -- Kaiser
21 Gypsum joint or finish compound were sold by you or
22 under your supervision?

23 MR. PETTY: Object to the form. Lacks
24 foundation.

25 A. I'd say approximately 250,000.

1 Q. And did you see a warning on any of those ⁵⁷
2 bags of Kaiser Gypsum products?
3 MR. PETTY: Object to form. Lacks
4 foundation.
5 A. Not to my knowledge.
6 Q. Did you see a warning on any of the bags or
7 Kaiser Gypsum products that were sold under your
8 auspices that breathing asbestos could cause a hazard
9 to human health?
10 MR. PETTY: Same objection.
11 A. Not to my knowledge, or memory.
12 Q. Are you aware of any oral warnings that
13 were given to Kaiser -- given to any of your customers
14 concerning dangers associated with asbestos that was
15 contained in Kaiser Gypsum products?
16 A. No.
17 MR. PETTY: Object to form, lack of
18 foundation.
19 A. No.
20 Q. Sir, I'm handing you what's been marked as
21 Exhibit 7. Sir, prior to this deposition, have you
22 ever seen the text of the warning contained in Exhibit
23 7?
24 A. Not to my knowledge.
25 Q. Are you aware of -- are you aware of any

1 discussions among senior Kaiser Gypsum management that ⁵⁸
2 warnings needed to be placed on Kaiser Gypsum's
3 asbestos-containing products?
4 A. No, not to my knowledge.
5 Q. Sir, during the time that you worked for
6 Kaiser Gypsum, did you consider yourself to be a loyal
7 employee?
8 A. Absolutely.
9 MR. PETTY: Objection, leading.
10 Q. And today, sir -- what was the feeling that
11 you had toward Kaiser Gypsum at the time that your
12 employment for that company came to the end?
13 A. Well, it was best company I ever worked
14 for. We were very upset that they sold the company to
15 Domtar of Canada.
16 Q. And as you look back over the years that
17 you spent with Kaiser Gypsum, the 18 years that you
18 spent with Kaiser Gypsum, how do you feel about that
19 portion of your life?
20 MR. PETTY: Object to form.
21 A. Very good.
22 Q. Are you a party to this lawsuit, sir, John
23 Crum's lawsuit?
24 A. No.
25 Q. And do you have any interest in the outcome

1 of this case? ⁵⁹
2 A. No.
3 Q. Are you testifying here pursuant to a
4 subpoena?
5 A. Yes.
6 Q. And other than reimbursement for your
7 transportation expenses, are you receiving any
8 compensation for your testimony here today?
9 A. No.
10 Q. Have you had any discussions with Kaiser
11 Gypsum's lawyers concerning your testimony in this
12 lawsuit?
13 A. Yes.
14 Q. And can you relate for us the time, the
15 place and the nature of those conversations?
16 A. Well --
17 MR. PETTY: I'm going to object to the
18 extent it calls for hearsay.
19 Q. You can go ahead and answer.
20 A. I met with this gentleman right here first
21 at my house in Walnut Creek, California, talked to him
22 on the phone prior to that. Then at a later date,
23 which was about three weeks ago, I met with him and
24 his employer Gabrielle at my house in Walnut Creek.
25 Q. Was that Gabrielle Jackson, sir?

1 A. Yes. ⁶⁰
2 Q. And what did Kaiser Gypsum's attorney say
3 to you during the course of that meeting at your home
4 approximately three weeks ago?
5 MR. PETTY: Object to form. Calls for
6 hearsay.
7 A. Pretty much the same questions I've been
8 asked today. Gave the same answers.
9 MR. PETTY: Object and move to strike the
10 nonresponsive portions of his answer.
11 Q. Did you have any discussions with Kaiser
12 Gypsum's -- did Kaiser Gypsum's lawyer mention
13 anything to you concerning your loyalty to the
14 company?
15 MR. PETTY: Object to form. Leading, calls
16 for hearsay.
17 A. Well, he asked me if I was a dedicated
18 employee, enjoyed my employment, which I answered both
19 positively.
20 Q. And do you still feel that today, sir?
21 A. Absolutely.
22 MR. BERGMAN: Those are the only questions
23 that I have.
24 MR. PETTY: You're resting your direct
25 examination?

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1 MR. BERGMAN: For now.

2 MR. PETTY: Well, it's either you are or
3 you're not. Does this complete your direction
4 examination videotape of Mr. Crosby?

5 MR. BERGMAN: Yes, it does.

6 MR. PETTY: At this time we'll take a lunch
7 break and come back at what, 1:30, 1:15?

8 MR. BERGMAN: 1:15. --

9 MR. PETTY: Fine.

10 THE VIDEOGRAPHER: Off the record at 12:03.
11 (Recess.)

12 MR. PETTY: This is Ken Petty for Kaiser
13 Gypsum Company. Before we resumed, earlier today I
14 talked to Mr. Bergman about a bit of a dilemma we're
15 in. We have pending discovery interrogatories to the
16 plaintiffs which have not been supplemented. Much of
17 the information that I've heard here today for the
18 first time is information I believe we were entitled
19 to in supplemental discovery responses. Much of it is
20 also at odds with historical information that is not
21 currently at my disposal, and as a result I'm not in a
22 position to proceed at this moment with Mr. Crosby's
23 videotaped perpetuation deposition.

24 I raised this with Mr. Bergman. It would
25 be our position that we will proceed with our

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1 videotaped cross-examination at a future date and time
2 to be agreed upon. And is that more or less what we
3 discussed, Mr. Bergman, and agreeable to you?

4 MR. BERGMAN: Well, I had understood that
5 you were going to proceed this afternoon as far as you
6 are able, and at that point we would address the issue
7 as to what additional examination would be necessary.

8 MR. PETTY: What I conveyed to you is that
9 that was a possibility. Since this is a videotaped
10 deposition and will in fact serve as our trial record,
11 I think any trial lawyer would not proceed without
12 being prepared to do the full examination and have
13 whatever documents or depo transcripts or affidavits
14 might be necessary to conduct that examination. If I
15 were to proceed today more or less treating this as a
16 discovery deposition then you're putting me in a
17 position where at trial I may have to cut and paste
18 pieces of the video together. Just as you had the
19 opportunity to present your trial examination of Mr.
20 Crosby in a continuous organized fashion the way you
21 chose, I would like to have that same choice myself in
22 the presentation of his examination.

23 So with that we will reserve our right to
24 make the -- to complete the deposition of Mr. Crosby
25 at a later time.

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1 MR. BERGMAN: Plaintiffs take the position
2 that this deposition has been noted for three weeks.
3 There have been numerous discussions as to the time of
4 this deposition. This deposition was rescheduled
5 several times to accommodate the schedule of defense
6 counsel. We will take the position that Kaiser Gypsum
7 has waived any cross-examination that they may choose
8 to take or they may have had the opportunity to take
9 in this deposition, and that will be our position.

10 MR. PETTY: And that is of course a
11 different position than you conveyed to me in our
12 discussions before we came in here.

13 MR. BERGMAN: I conveyed to you that you
14 should go as far as you can and we'd see where things
15 ended up. I didn't realize that you were going to not
16 do anything today, and I felt like at the conclusion
17 of a cross-examination today, as this is no different
18 than any other deposition in any other case, we could
19 at that point better assess where we'd go from here,
20 but we are obviously of different opinions at this
21 juncture.

22 MR. PETTY: At this point I want the record
23 to reflect the language verbatim in plaintiff's
24 amended notice of videotaped deposition for Mr.
25 Crosby. It states in part, "The said videotaped

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1 deposition to be subject to continuance or adjournment
2 from time to time or place to place until completed."
3 Nowhere in this notice does it say there was any
4 necessity that this deposition be completed today or
5 that it be completed here in Seattle.

6 In addition, if you wish I can make a
7 record and append to the stenographic record the
8 discovery responses that we have received from
9 plaintiff. I think I would like to do that if you
10 have a copy. Ask the court reporter to mark this as
11 Kaiser Gypsum 1.

12 (Marked Deposition Exhibit Kaiser Gypsum
13 1.)

14 MR. PETTY: And for the record the document
15 that's been marked as Kaiser Gypsum Exhibit 1 is a
16 copy of the set of interrogatories and requests for
17 production propounded by Kaiser Gypsum to the
18 plaintiffs in this case including the plaintiff's
19 answers and responses thereto as signed by Mr. Crum on
20 November 6, 1998 at his home in or outside of Reno,
21 Nevada.

22 In particular, interrogatory No. 10
23 requests plaintiff to set forth each and every fact
24 upon which plaintiffs intend to rely in establishing
25 each alleged theory of liability against Kaiser

1 Gypsum. Plaintiffs have listed their theories of
2 liability. However, interrogatory No. 11 asks for the
3 identity and the current business/residence address,
4 phone number of each witness you intend to call at
5 trial to establish your alleged theories of liability
6 against Kaiser Gypsum and request a description of
7 what each witness will testify to.

8 The response provided on November 6, which
9 has never been supplemented, simply states,
10 "Plaintiffs have not yet selected their trial
11 witnesses. All witnesses will be disclosed in
12 plaintiff's 105 day designation." And of course
13 that's not been filed yet since it's not due, I think,
14 until April, something of that nature. That would be
15 our record.

16 May I also take this opportunity to issue a
17 subpoena to Mr. Crosby for the completion of his
18 deposition.

19 THE WITNESS: I don't want it.

20 MR. PETTY: And sir, that is a subpoena
21 issued to you for your attendance to complete this
22 deposition. I assume that we can work with counsel to
23 reach an agreement if the date doesn't work or the
24 place doesn't work. We have always been able to reach
25 agreements to accommodate the needs of the attorneys

1 and of our respective witnesses.

2 MR. WEBB: What date do you have right now,
3 Ken?

4 MR. PETTY: Nominally I picked the date of
5 March 10th here at my offices at 10 a.m., and I will
6 also give Mr. Crosby a copy of the notice of the
7 completion of his deposition for that time and place.
8 And Mr. Bergman, I'll --

9 MR. BERGMAN: Thank you, Ken.

10 MR. PETTY: For the record I'd like marked
11 as Kaiser Gypsum Exhibit No. 2 the subpoena and the
12 deposition notice for the continuation and completion
13 of this deposition.

14 (Marked Deposition Exhibit Kaiser Gypsum 2.)

15 (Deposition adjourned at 1:30 p.m.)

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A F F I D A V I T

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3 STATE OF WASHINGTON)

4) ss.

5 COUNTY OF KING)

6

7 I have read my within deposition, and the
8 same is true and accurate, save and except for changes
9 and/or corrections, if any, as indicated by me on the
10 correction sheet hereof.

11

12

13

BRENTWOOD CROSBY

14

15

16 SUBSCRIBED AND SWORN to before me this ____

17 day of _____, 1999.

18

19

20

21

22

Notary Public in and for the State

23 of Washington, residing at _____.

24

25

1

C E R T I F I C A T E

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2

3 STATE OF WASHINGTON)

4) ss.

5 COUNTY OF KING)

6

7 I, the undersigned Notary Public in and for the
8 State of Washington, do hereby certify:

9 That the annexed and foregoing deposition of each
10 witness named herein was taken stenographically before
11 me and reduced to typewriting under my direction;

12 I further certify that the deposition was
13 submitted to each said witness for examination, reading
14 and signature after the same was transcribed, unless
15 indicated in the record that the parties and each
16 witness waive the signing;

17 I further certify that all objections made at the
18 time of said examination to my qualifications or the
19 manner of taking the deposition, or to the conduct of
20 any party, have been noted by me upon said deposition;

21 I further certify that I am not a relative or
22 employee or attorney or counsel of any of the parties
23 to said action, or a relative or employee of any such
24 attorney or counsel;

25 I further testify that I am not in any way

1 financially interested in the said action or the outcome
2 thereof;

3 I further certify that each witness before
4 examination was by me duly sworn to testify the truth,
5 the whole truth and nothing but the truth;

6 I further certify that the deposition, as
7 transcribed, is a full, true and correct transcript of
8 the testimony, including questions and answers, and all
9 objections, motions, and exceptions of counsel made and
10 taken at the time of the foregoing examination.

11
12 IN WITNESS WHEREOF, I have hereunto set my
13 hand and affixed my official seal this _____ day of
14 _____, 1999.

15
16
17
18
19
20 _____
21 CHERYL MACDONALD
22 Notary Public in and for
23 the State of Washington,
24 residing at Seattle.
25

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