

USS ENGINEERING DEPARTMENT

Mr. Shuck (age 91) testified that he worked for USS from 1940 to 1970 at the Clairton Works. Shuck held the following job titles: draftsmen, assistant design supervisor, head of project department, assistant to chief engineer Larry Eckles. Mr. Shuck thought he served as the chief engineer from the early 1960s until he retired in 1970. Once a month as the chief engineer, he would go to Pittsburgh as did all of plant chief engineers, to meet with corporate engineering. The two individuals he recalls at the corporate level were Steve Curtis and John Marner. At the plant level, Shuck would answer to the Plant Manager; the plant manager at USX Clairton during the relevant time period was Mr. Pflaster (Deceased). At the plant level, there were two groups within engineering.

a. **Construction Engineering Department** - in the 1960s to 1970s, this group consisted of 6-8 people under the supervisor of Al Kahn. This group consisted of structural inspectors and a survey area.

b. **Design Engineering Group** - during the relevant time period, this group consisted of approximately 30 people — primarily engineers. The group was further divided:

- (1) electrical
- (2) mechanical
- (3) chemical
- (4) general

The design engineering group would prepare the specifications for a job. I discovered that the original specifications for the Keystone Project were prepared by the USX Clairton Design Engineering Group - however, the job was removed from the plant engineers and thereafter handled by corporate engineering. Mr. Shuck could not comment on whether the original specs his engineers prepared were used. Shuck did provide the following information:

1. The typical procedures would be the specification prepared by the design engineering group would be sent to PURCHASING - which is at the corporate level. The Purchasing Department would solicit bids from contractors.

2. Once purchasing secured the bids the information was sent back to the design engineering group to review the bids and any and all information submitted by the contractor.

3. The design engineers would prepare tabulations and suggest or recommend to purchasing what contractors to secure, however, purchasing would ultimately select the contractor.

4. The contractor had to follow the specifications prepared by USS. The insulation materials had to be approved by USS. If a contractor wanted to deviate from the specs USS had to give permission. If the contractor wanted to hire a subcontractor, USS had to approve the subcontractors.

5. Shuck would not concede USS specs called for asbestos - he did concede the specs required insulation to meet a certain temperature. He agreed that asbestos pipecovering was used at USX Clairton; he conceded that the Keystone Project consisted of miles and miles of insulated pipes.

6. USS steelworkers and outside contractors worked in the same immediate area. The Keystone Project replaced old coke batteries - therefore in the same immediate area of the coke batteries.

7. The Keystone Project was assigned a contractor engineer and a design engineer - both from corporate engineering.

8. Typically, the bidder would come to the job site before making a bid and would meet with the design and construction engineer assigned to the job. The contractor would be advised of any hazards at the job site.

9. In the typical situation, the construction engineer would see to it that the contractors were performing their work in safe manner. The inspectors within construction engineering would

see to it that the work of the outside contractor was in compliance with the USS specifications.

10. USS did not provide mask or respirators to outside contractors. The witness never heard of "wet down" procedures. Never heard of the "contractors guide" which was attached to Defendant's Answer to Interrogatories. He never told his engineers to tell the potential bidders of asbestos at the job site. Mr. Shuck was not aware that asbestos was hazardous until he retired from USS - sometime after 1970.

Mr. Duffy (age 82) was deposed on 10/14/98. He provided me with information regarding how the corporate engineering department was set up. Duffy was employed by USS from 1935 to 1980 in various capacities. From 1964 to 1974 he was the Manager of Design and Project Engineering at the corporate level. In 1963-64 USS decided to centralize their engineering department - that is why the Keystone Project was not handled at the plant level. The individuals in charge of corporate engineering - Executive Vice President JR Ferguson and Ed Tindell. The 2 major departments at the corporate engineering department were as follows:

1. Construction Engineering Department - (people in charge 64-70 Frank Heydorn, Robert Jordan). This group would oversee the contractors at the jobsite -- be sure the contractors were doing work in compliance with USS specs and in a safe fashion. The construction engineer could at any time shut the job down -- ultimate say over contractor.

2. Design Engineering Department (Duffy in charge of) this group consisted of engineers, specification engineers, draftsmen, and estimates. This group would prepare USS specs.

The process was as follows:

1. Design Engineering Department prepares specifications for a project. Each project is assigned an order number -- most of the Keystone Project had order number 535-96086 the spec number was 535-4102.

2. The specifications are sent to the Purchasing Division since this division would secure bids from contractors and ultimately select the contractor.

3. Purchasing Division sends out:

- a. specifications
- b. invitation to bid
- c. USS Questionnaire Form
- d. USS Proposal Form

(C and D must be completed by contractors)

*if a contractor goes to inspect the site he would meet with the Construction Engineer for the job and/or Design Engineering if there is a question regarding the specs.

4. The bid information was sent to Design Engineering Department to review and compare bids. The Design Engineer Department prepared a "Recommendation for Placement" -- ie, suggest the bidder.

5. The Recommendation is sent to Purchasing Division and Purchasing selects a bidder and completed a form "Notice of Placement" which was sent to Construction Engineering.

6. The contractor thereafter answers to the USS construction engineer. If a contractor wanted to hire a subcontractor or go outside specs it had to be approved by the construction engineer.

7. As the job would expand the construction engineer would complete a "Change Order" -- outlining the work and what specification was to control.

8. As a job would expand the Design Engineering Group would complete "Addendums to the Original Specifications".

9. The contractor would be required to sign an "Acknowledgement of Order" which stated the following "The undersigned accepts this order and agrees to carry out and discharge all of the conditions and obligations specified in said order and in the "General Conditions Covering Work on Purchaser's Premises" attached thereto.

The document entitled "General Conditions Covering Work on Purchaser's Premises"

essentially shifted all liability to the contractor -- industrial contractors were required to provide their workers with **ANY AND ALL INFORMATION ABOUT PRODUCTS BEING USED TO PERFORM WORK NOT USS**. This document was used in the USS California litigation and submitted to the jury.

The specifics as to Keystone are as follows:

1. In 5/66 USS had insulation specifications for the Keystone Project -- essentially three specifications.

- a. INS-1 cold insulation for piping and vessels
- b. INS-2 insulation for cryogenic temperatures
- c. INS-3 insulation for hot piping, vessels and equipment

The insulation (1) for cold piping was specified to be styrofoam or foam glass. The insulation (2) for cryogenic temp (ie, I think the cold boxes) was pearlite or slagwool. The insulation (3) for hot piping was to be "Pittsburgh Corning Unibestos and/or an equivalent" (See Exhibit A).

The finishing cement was specified as "JM 352" cement mixed with Portland cement.

(2) In January of 1967 Mr. Duffy sent a letter to Mr. Shuck advising him that the successful bidders for insulation for piping and equipment were JM and AC&S (See Exhibit B).

(3) We have a small AC&S file that was produced by USS - bid information (See Exhibit C -- watch two different order numbers).

(4) From May to August of 1968 there were Change Orders #6 through #9 involving AC&S. These change orders were controlled by Addendum Specification #10 and #11 - the scope of the work appears to be (See Exhibit D Change Orders and Exhibit E addendum to specifications):

(a) area 7(?)

(b) Pyridine Plant

(c) Benzene Storage Tank

(d) Light Oil Recovery

(5) The AC&S employees who dealt with the bids was D.M. Coffin.

(6) USS has not been able to produce "Acknowledgement of Order" signed by AC&S for work order #535-96086 or the document that should have been attached entitled "General Conditions Covering Work on Purchasing Premises" (See Exhibit F).

(7) In the USS specifications for Keystone when discussing the work of contractors it is noted:

Contractors are to:

3.1 Furnish all supervision, labor, materials, tools, equipment and incidentals necessary to insulate all piping, mechanical equipment, vessels, heat exchangers, cold boxes and storage tanks as shown on the drawings and as specified herein.

3.5 Furnish on the site of work during construction an experienced superintendent duly authorized to represent and act for the contractor in all matters pertaining to the work covered by this specification.

3.6 Work in close cooperation with the engineer.

3.7 Before starting any work, contact the construction engineer for proper clearance and shall be governed by the engineer's instructions.

3.11 Abide by all local and plant laws and regulations.

3.12 Comply with the "Contractor's Safety Responsibilities" manual and other plant safety regulations.

(8) USS attached to Responses to Interrogatories various documents, including "Management Guide for Contractors' Safety Responsibilities" (See Exhibit G) – cautioning management and the USS construction engineers to walk a very fine line regarding directing and/or supervising outside contractors to avoid liability. In the Guide the following is noted:

The Construction Contract makes it crystal clear that the contractor is responsible for the safety of all persons employed by him and his subcontractors or any other person entering our premises for reasons relating to the contract. The accountability for their safety is also his unless his responsibility is qualified by some act or failure to act on the part of

Corporation Management.

The "acts of management" which can qualify or perhaps negate this stated responsibility of the contractor generally fall under three main headings. These are:

1. Assuming a measure of responsibility for the safety of contractors.
2. Defining the position of the Construction Engineer as responsible for completion of contract.
3. Giving working directions to contractors' employees.

Perhaps a clear distinction can be made under "assuming a measure of responsibility for the safety of contractors" by showing the contrast between an individual contractor inspecting a plant site prior to bidding and the same contractor reporting for work as the successful bidder after the contract has been awarded. At site inspection prior to bidding, the contractor is a business invitee presumed unfamiliar with the hazards involved and plant management assumes a measure of responsibility for the safety of business invitees and other persons lawfully on the premises when those business invitees and other persons enter the premises through the use of the special pass procedure. This assumption of responsibility includes, where appropriate, hard hats, eye protection, guides, etc., and is based on the lack of familiarity with steel operations of this type of person.

However, as the successful bidder, plant management assumes no responsibility for the safety of the persons of contractors' employees, his subcontractors, and their employees coming on the premises pursuant to a Construction Contract since this class of person is by the terms of the contract skilled in the work being performed and assumed to be familiar with steel operations. Further, by the specific terms of the contract, the contractor himself has assumed full responsibility for their safety. Contractors' employees enter the premises through the use of the contractor's badge procedure and their comings and goings are not brought to the attention of plant management on an individual basis.

10. Attached as Exhibit H is a document I secured from USS which in a brief concise fashion sets forth what is the Keystone Project.

11. Mr. Masaitis, a retired USS industrial hygienist, discussed contractor line up meetings. At these meetings, US Steel would advise the contractors of any hazards that were anticipated — Mr. Masaitis testified that hazards known to the contractor were not discussed. From that, I can only assume that US Steel will argue at the time of trial that they had no duty to warn the asbestos workers of the dangers associated with asbestos in 1968 and 1969 because the asbestos workers were well aware of those dangers. Masaitis did concede that if the safety department observed unsafe practices by an independent contractor, US Steel had the authority to stop a job or shut it down.

12. USS did not produce any specifications for the USS Neville Island PA and MA plants which were being constructed during the relevant time period -- late 1960s. I took the deposition of the plant manager, Peter Serokis, and did a summary regarding this plant (See Exhibit I). The PA plant that was being built during the relevant time period was built by Badger and the MA plant by Scientific Design. USS and Badger produced various documents which have been provided to Chris Salon. I believe the specifications for the PA plant were completed by Badger since it was a turn key contract. Chris did advise me that the specs she had from Badger referred to asbestos.