

FILE NAME: Foster Wheeler (FW)

DATE: 1991 Dec 6

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DOCUMENT DESCRIPTION: Legal - Affidavit of Walter Newitts

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IN RE: NEW YORK CITY
ASBESTOS LITIGATION

X

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X

: Hon. Helen E. Freedman

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THIS DOCUMENT RELATES TO:
ALL POWERHOUSE CASES

:AFFIDAVIT OF WALTER NEWITTS

X

STATE OF NEW JERSEY:

SS:

COUNTY OF MONMOUTH:

I, WALTER NEWITTS, of full age, being duly sworn
according to law, deposes and says:

1. Before consenting to signing this affidavit, it was
explained to me that I was being interviewed by the lawyer for
the plaintiffs who have brought suit against my former employer
Foster Wheeler.

2. I am a former employee of Foster Wheeler
Corporation. I worked for Foster Wheeler for approximately 9
years, beginning in approximately 1963 or 1964. Before that
time, I worked for Hemminger Co. of Newark, New Jersey.

3. Prior to working for Hemminger I received an
engineering degree from Newark College of Engineering.

4. While I was with Foster Wheeler Corporation, I was
Manager of Construction and responsible for the insulation and
refractory division for the entire world.

PLAINTIFF'S EXHIBIT

5. As part of my job at Foster Wheeler, I would visit the construction sites of various powerhouses in New York, New Jersey and elsewhere.

6. When Foster Wheeler was involved in the construction of a boiler, Foster Wheeler would be responsible to make sure that everything was working correctly and would turn the unit over to the utility, only after all work was completed. In other words, it was a turn-key operation.

7. Until sometime in the mid to late 1960's, Foster Wheeler would let the customer take responsibility for or issue sub-contracts for the insulation of Foster Wheeler boilers and equipment. Thereafter, in many instances, although not all, Foster Wheeler itself would actually hire insulators out of the union hall to insulate the boiler and related equipment.

8. During construction, Foster Wheeler would at all times have on site a superintendent, as well as a manager from various departments at Foster Wheeler whose responsibility it was to see that the material and equipment was installed as specified. For example, when I or one of my assistants made a trip to the job site, our job was to insure that insulation was installed properly and according to specifications. Foster Wheeler would specify in the contract documents generally the type of insulation to be used and where it should be applied.

9. Most often, as part of the sale of the boiler, insulation was sold and distributed by Foster Wheeler.

10. In the 1950's, asbestos containing 85% magnesia insulation was used extensively on the Foster Wheeler boiler casing and piping. Thereafter, in approximately the late 1950's, asbestos containing calcium silicate was specified by Foster Wheeler for use on every boiler. There is no question that the engineers at Foster Wheeler were aware that this insulation contained asbestos. In addition to boilers, Foster Wheeler manufactured other related equipment which specified asbestos insulation, including feedwater heaters. Feedwater heaters were basic production machinery, with a life span shorter than that of a boiler.

11. At some point in time, Foster Wheeler actually decided they would go into the business of selling insulation. I would estimate that 5% to 20% of every construction product revenue came from the sale of insulation.

12. I recall that while I was at Foster Wheeler, they were members of the National Safety Council, and sent representatives to National Safety Council meetings. The information learned at those meetings, however, were never shared with me or anyone in my division. I similarly was never provided with any of the written material concerning the hazards of asbestos that was distributed by the National Safety Council to its members.

13. I am familiar with the magazine, Boiler Maker and Plate Fabricator, and know that Foster Wheeler was a subscriber.

19. My recollection is that Johnson kept an entire file on the dangers of asbestos in his personal drawers. I would estimate that those files comprised at least two or three drawers.

20. Johnson, myself and Bert Levine actually introduced spray asbestos insulation to the utility industry. Prior to that time, Asbestospray was primarily used for fireproofing. In fact, Asbestospray was applied to a Foster Wheeler unit constructed at the Orange & Rockland Lovett plant after the May 13, 1968 meeting with Selikoff. None of the Orange & Rockland employees who were in the area were supplied with respiratory protection or warned about the dangers of asbestos.

21. In Foster Wheeler's own plants, asbestos insulation was handled and fabricated for use on Foster Wheeler equipment. Those individuals cutting or handling the insulation were provided respirators, even before I started at Foster Wheeler. Similarly, exhaust systems were installed before I began working at Foster Wheeler to remove dust from the area where the men were working. I know this because the systems were already in place when I first arrived at Foster Wheeler.

22. Asbestos was also sprayed in the Foster Wheeler plant. Individuals, including Dick Johnson himself were supplied and wore respirators when performing that operation.

23. The respirator program was enforced in the plant as a requirement when handling, cutting or spraying any asbestos

containing insulation. Similarly, if an individual was cutting gasket material in the Foster Wheeler plant, he would also be given a respirator.

24. Foster Wheeler historically has kept records of every piece of equipment installed in every utility with whom they have done business. The files were organized by specific location. Thus, if Foster Wheeler wanted to know all of the Foster Wheeler equipment installed at the Astoria Generating Station, a file would exist with that information.

25. In addition to selling and installing boiler and related equipment, Foster Wheeler would also enter into maintenance contracts with the various utilities concerning the upkeep of Foster Wheeler equipment. The maintenance contract was a service that Foster Wheeler offered to its customers, which was separate and apart from the installation contract. The maintenance contract was administered within the Foster Wheeler construction department after 1972. Prior to 1972, it was a separate division run by Jim Edly. As part of that responsibility, Foster Wheeler would conduct maintenance inspections and generate reports to the utility for things that had to be attended to. For example, if insulation was damaged or in other disrepair, that would be pointed out and recommendations for repair and remediation would be made by Foster Wheeler. Thereafter, the customer would either have the choice of having

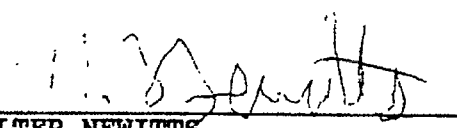
handling of insulation or alerting them to the dangers attendant to repair of insulation on Foster Wheeler equipment. At no time did Foster Wheeler instruct customer employees to wear respiratory protection or employ other dust suppression methods when performing insulation repairs on Foster Wheeler equipment. If Foster Wheeler wanted to, they certainly had the ability to communicate directly with customer employees and inform them of the dangers of handling and working with asbestos containing insulation specified on Foster Wheeler equipment and how to protect themselves from those dangers.

39. If after a Foster Wheeler boiler or related equipment was installed a problem arose with the operation of that boiler, Foster Wheeler would send an engineering representative out to the Utility customer. An inspection would be made and recommendations to solve the problem would be submitted to the customer.

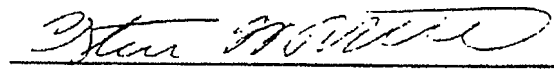
40. If the operational problem was determined to be a problem with design, Foster Wheeler engineers would solve the problem for the customer. After that design problem was fixed, other customers with similar boiler design would routinely be notified either by telephone or through a bulletin.

41. If Foster Wheeler wanted to inform customers that the insulation installed on Foster Wheeler equipment posed a health hazard and should be handled with certain precautions, that notification could easily have been given similar to any

other design defect notification as indicated above. Foster Wheeler knew the identity of everyone of its customers, and had the ability to contact each and every one.


WALTER NEWITTS

Sworn and subscribed to before me
this 6 day of December, 1991.


Notary Public

attest at New York, N.Y. this 6th day of December 1991.