COCHRANE, ET AL v. GRAYBAR ELECTRIC COMPANY

JAMES ESTIS

August 9, 2005

Prepared for you by

BIENENSTOCK
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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF SHIAWASSEE

DOUGLAS W. COCHRANE, Personal Representative for the ESTATE OF CAROL S. COCHRANE, Deceased,

Case No. 03-09321-NP

RONALD SHUSTER, Personal Representative for the ESTATE OF LORRAINE E. SHUSTER, Deceased,

Case No. 03-09320-NP

NICHOLAS WASWICK and BETSY WASWICK, his Wife,

Case No. 04-01852-NP

Plaintiffs, Hon. Gerald D. Lostracco

vs.

GRAYBAR ELECTRIC COMPANY,

Defendant.

The Deposition of JAMES ESTIS,

Taken at 30200 Telegraph Road, Suite 200,

Bingham Farms, Michigan,

Commencing at 10:00 a.m.,

Tuesday, August 9, 2005,

Before Stacy K. Locher, CSR-5699, RPR.

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Bingham Farms, Michigan
Tuesday, August 9, 2005
10:00 a.m.

JAMES ESTIS,
was thereupon called as a witness herein, and after having first been duly sworn to testify to the truth, the whole truth and nothing but the truth, was examined and testified as follows:

MARKED BY THE REPORTER:
DEPOSITION EXHIBIT NUMBERS 1-3
10:00 a.m.

EXAMINATION

BY MR. KELSEY:

Q. Good morning, sir, could you state your name for the record, please?

A. James Estis.

Q. Let the record reflect that this is the time and place of taking the deposition of Mr. James Estis who is here as a representative of the Graybar Electric Company, is that correct?

A. Yes.

Q. And this is being captioned in the cases currently pending in Shiawassee County Circuit Court, several cases, there's also a pending case in Genesee County

Circuit Court. I'm not going to go through the file numbers, you have the notice and it will be on the caption of this transcript.

Mr. Estis, have you ever had your deposition taken before?

A. No.

Q. I'm sure that your attorney has gone through some of the ground rules with you but let me go over a few with you. I'm going to be asking some questions today, as may some of these other attorneys here. Don't answer any question that you haven't heard or understood, I'd be happy to rephrase any questions I put to you that doesn't make sense to you as you hear it, let me know, I'll rephrase that. If you do answer we'll expect that you heard and understood the questions, does that make sense?

A. Yes.

Q. If you answer verbally so the court reporter can take down all the questions and answers we would appreciate that and also if you would wait until we finish asking the question before you answer even though you might know where I'm going with a question, it makes it easier for the court reporter to make a full and complete record so when we read this later we know what everybody was saying?

A. Okay.

Q. If you want to take a break at any time let us know, we'll do that. If you want to confer with your attorney during any breaks, you can do that as well. With that let's move along.

You are here as a representative of Graybar Electric Company, is that correct?

A. Yes.

Q. And what's your position with Graybar Electric Company?

A. Branch manager.

Q. How long have you been a branch manager?

A. Eight years.

Q. Are you a corporate officer?

A. No.

Q. And you are not on the board of directors --

A. No.

Q. -- or any position such as that?

When did you start with Graybar Electric Company?

A. December 2nd, 1980.

Q. Prior to that what were you doing?

A. I was working for a competitor of Graybar.

Q. What competitor?

A. Roth Electric.

Q. Is that R-o-t-h?
A. Yes, they're not in business anymore.
Q. Where was that located?
A. 976 East Wood Street, Flint.
Q. A Flint company?
A. Yes.
Q. Was that a wholesale or --
A. Yes.
Q. Was there any retail?
A. No.
Q. What was your position with Roth Electric?
A. Warehouse.
Q. Warehouse?
A. I worked in the warehouse there.
Q. What kind of duties?
A. Packing orders, unloading trucks, typical warehouse work.
Q. How long did you work at Roth Electric?
A. Four years.
Q. So you started there in about '76?
A. Yes.
Q. What did you do prior to that?
A. School.
Q. What kind of school?
A. High school, I graduated in 1974, I started working in

1976.

Q. What high school did you go to?

A. Flint Northwestern.

Q. Any other formal education beyond that?

A. Some college.

Q. Where did you attend college?

A. Mott Community College, Flint.

Q. What kind of coursework?

A. General.

Q. General studies?

A. Yes.

Q. Any math, science, industrial hygiene, anything of that nature?

A. Mainly math, math was my major.

Q. Any degrees?

A. No.

Q. Have you worked anywhere else in your adult life other than these places?

A. No.

Q. Any other part-time jobs while you were in school perhaps?

A. No, not since '76, is that what you meant?

Q. No, I was thinking maybe while you were in high school?

A. In high school I worked at a car dealership as a

mechanic.

Q. Auto mechanic?

A. Yes.

Q. What dealership was that?

A. Blaine Buick.

Q. Blaine?

A. In Flint.

Q. What years did you work there?

A. '73 to '75 I believe.

Q. Was that time frame a time frame when mechanics had to be certified by the State of Michigan?

A. Yes.

Q. Were you certified?

A. Yes.

Q. What were you certified in?

A. I was certified in -- I believe I was certified in brakes, electrical and general.

Q. What type of work did you actually do, did you do all of that?

A. I did everything.

Q. Was that full time or part time?

A. Part time.

Q. Did you work full time during the summers?

A. No.

Q. When you started at Graybar Electric Company what

position did you start at?

A. Truck driver.

Q. How long were you a truck driver?

A. About a year.

Q. And as a truck driver was that a delivery truck?

A. Yes.

Q. So you were driving orders that had been placed with Graybar?

A. Yes.

Q. After that year as a truck driver what did you do?

A. From 1980 through 1983 was a combination of driving a truck, working in a warehouse, working at the counter, wholesale counter, where customers come in.

Q. And after '83 did you move to a different position?

A. In '84 I went into sales, outside sales on the road.

Q. What kind of territory did you cover?

A. Well, our branch -- our geographical territory is as far west as Shiawassee County, as far east as Port Huron, Genesee County is the southern boundary and it goes all the way up into the Upper Peninsula. There was two sales reps, myself and one other, the other handled basically just General Motors.

Q. In the Flint area?

A. In Flint, and I handled anything else I could get my hands on.

Q. What was the other salesman's name?
A. Kurt Golden.
Q. K-u-r-t?
A. Actually Kurt is his nickname, his name is Herdis, H-e-r-d-i-s.
Q. His last name is?
A. Golden, G-o-l-d-e-n.
Q. Is he still employed by Graybar?
A. Yes.
Q. What position is he in now?
A. Sales rep.
Q. So Mr. Golden dealt with General Motors in the Flint area primarily?
A. Yes.
Q. And you dealt with everything else then?
A. Everything else I could get my hands on, yes.
Q. How long were you an outside salesman?
A. 13 years.
Q. So that takes us to about 1997?
A. I believe that's true.
Q. What did you move into in 1997?
A. Branch manager.
Q. You have been there continually since then?
A. Yes.
Q. We are talking about the Flint branch, is that

correct?

A. Yes.

Q. How many offices are there in Michigan or locations?

A. Four and a half.

Q. Explain that?

A. Detroit has a sub branch, just a small counter branch, there's Grand Rapids, Lansing, Flint, Detroit and then Detroit has a small sub branch in Livonia.

Q. Mr. Estis, I want to show you a few documents here and have you take a look at them, the first one is Exhibit Number 1, which is a notice of taking deposition which is for you, the notice in that we gave notice that we wanted to take your deposition, have you seen that item before?

A. I believe I have -- Don sent me a packet which had a lot of information in it and I believe this was in there.

Q. If you could just leaf through that and see if it looks familiar?

A. Was this in the packet you sent me, one of the documents?

Q. I kind of want to ask you the questions, if you don't know then that's the answer, okay?

A. Okay.

Q. Do you recall having seen this item before?

A. Specifically I can't say, there was a lot of papers in that packet.

Q. Maybe I can add to your stack and see if this looks familiar, this has been marked Exhibit Number 2, have you seen that?

A. Again, it was a large packet, I can't say specifically, I can't say specifically I saw this.

Q. Okay. Were you aware, without going into what anybody told you or the subject of that, but were you aware that in conjunction with taking your deposition we had requested of Graybar Electric Company that they produce certain documents?

A. Yes.

Q. And were you aware that we were requesting that the person that we depose be prepared to discuss certain topics?

A. Yes.

Q. And if you reviewed item number two there, there's a long list of items that we placed Graybar Electric Company on notice that we wished to discuss at this deposition, are you familiar with that?

A. Yes.

Q. Are you prepared today to discuss those items --

A. Yes.

Q. -- on behalf of Graybar Electric Company?

A. Yes.

Q. Okay.

MR. PARTHUM: For the record, John, that's the one I sent him.

A. There was a lot of documents, it could be one similar, I can't say absolutely this is exactly the document that I had.

BY MR. KELSEY:

Q. Very good. I just want to know where you are here, that's what we're doing here. Now, I have Exhibit Number 3, if you'll ignore the sticky thing on there for now, just take a look at that and tell me whether or not you've seen that document?

A. Yes.

Q. For the record, that is Graybar Electric Company's answers to plaintiff's interrogatories, is that correct?

A. Yes.

Q. You've seen that document prior to today?

A. Yes.

Q. Did you take any part in providing information for the answers that appear in that document?

A. No.

Q. Have you reviewed to determine for yourself whether the answers in that document are accurate?

A. When I reviewed it I didn't see anything in here that was untrue.

Q. Okay. Did you review it in its entirety?

A. Yes.

Q. Are you aware whether or not Graybar Electric Company was selling asbestos-containing products as of 1980 when you started?

A. No.

Q. No, you are not aware, or no, they weren't?

A. I'm not specifically aware of any products that had asbestos in them.

Q. Okay. I guess I want to be a little more specific. As you sit here are you able to tell me that there were no products being sold by Graybar Electric that contained asbestos?

A. No, that's not what I'm saying, what I'm saying is at that time I wasn't aware of any products that had asbestos in them in 1980.

Q. You didn't know what had and what didn't have?

A. No, I didn't know what was contained in any item.

Q. When you started in 1980 was there a branch manager in the position that you are in now?

A. Yes.

Q. Who was that?

A. Bob Balistrerri.

Q. Spell the last name?
A. B-a-l-i-s-t-r-e-r-r-i.
Q. Is he still employed at Graybar?
A. No, retired.
Q. When did he retire?
A. Around 1998 I believe.
Q. At the time you took over as branch manager?
A. No, he transferred out of Michigan.
Q. Where did he go?
A. He transferred to Chicago and when he retired he was a sales rep out of our Detroit branch.
Q. In the request for production of documents, which we marked as Exhibit 2, you reviewed that?
A. Yes.
Q. Did you make any search of Graybar Electric Company's records for documents that were responsive to that request, yourself?
A. Could you explain that?
Q. Yes. Did you go through your office there in Flint to determine whether or not there were any sales records, invoices, catalogs, any documents that matched the description of the things we were asking you to produce?
A. We don't keep documents longer than seven years, all our documents, purchase orders, invoicing documents

are packaged up, put on a pallet and shrink wrapped once a year with a date and month on them. At the end of the year, at the end of this year when we bring 2005 out to the warehouse for storage we take the ones that are seven years old and dispose of them. We have a company come in that disposes of them for us.

Q. What's that company?

A. I'm not sure of the name of that company, we have -- my manager of customer service normally handles that end of it.

Q. How long has that been the policy?

A. As far as I know at least back to 1980 because when I was working in the warehouse that's something I would do is bring the old files down, get them ready for the company to come pick up and dispose of and store the current year back up in the warehouse, we have a shelf around the top of the back of the warehouse where we keep them.

Q. When you started in 1980 did Graybar Electric Company utilize a computer inventory control or inventory management system?

A. No, it was not computerized in 1980.

Q. So how as a warehouse person would you make a determination of whether or not you had an item in stock and where it would be located, et cetera?

A. There was no locater system, if the ticket was printed it was in stock, they had a pull card system for inventory, maintenance and every shipping ticket that was printed came from the office to be shipped out, had gone through the inventory person and they had looked on the card to see if it was in, it was all done manually.

Q. So why don't you walk me through it, you are the warehouse person so you would be in charge if a delivery truck came in?

A. Yes.

Q. What happens, how do you keep track of what just came in?

A. When material was ordered a copy of that purchase order was sent to the warehouse and kept in a file cabinet. When we received a truck we would take the packing slip from the material that came in, there was a purchase order number on it, go into the file, pull that purchase out, compare the two and check the material off to make sure that we received what we ordered and then send that copy into the office and they would take that at that time and add it to the stock board I believe they called it at the time, a little pull card system, manually add the items as they came in.

Q. Are these index cards or what kind of cards?
A. Yes, it was like an index card, I'm not sure of the actual term for what they call this little file cabinet thing but it was like small index cards.
Q. Was that continually updated then as material came in and went out?
A. And went out, yes.
Q. So that would be how it was -- the determination was made that something was either in stock or needed to be ordered?
A. Yes.
Q. Did you maintain an in-stock position with most of the things that you carried or --
A. Yes, everything that we stocked we reordered when it was out.
Q. Graybar in 1980 had a catalog, is that correct?
A. Yes, we've always had a catalog to the best of my knowledge.
Q. With regard to the items in the catalog, did Graybar stock all of those items?
A. No.
Q. So some items had to be ordered?
A. Yes.
Q. But if it appeared in the catalog it was something that was either in stock or could be ordered?

A. Providing it wasn't discontinued by the manufacturer, yes.

Q. And would your catalogs be changed periodically then to take into account things that were discontinued or changed?

A. Yes.

Q. Do you have any catalogs from the 1980 time frame in your possession?

A. I think somewhere in our office, occasionally we'll have a customer that will bring us in an old catalog, just bring it in and see if we want it just to say we have old catalogs, we do have some old catalogs, they're not really useful anymore.

Q. Did you search through those to see if any of those would be responsive to our request for production of documents?

A. Personally, no, I did not.

Q. Did you review any of those catalogs to make a determination of whether or not there were any asbestos-containing products listed as being available in those catalogs?

A. I reviewed some of the pages from the catalog today.

Q. Today?

A. Earlier today, yes.

Q. What catalog was that?

A. There were several different copies of pages from catalogs.

Q. Do you know specifically what catalogs the copies were from?

A. No, I know they were Graybar catalogs.

Q. Do you know what year or years the catalogs you reviewed were?

A. No, Graybar catalogs had numbers on them, not years and I don't recall the number on the catalogs that I looked at.

Q. You indicated that when you started in 1980 with Graybar Electric Company you had no specific knowledge as to what might contain asbestos versus what wouldn't contain asbestos?

A. That's true.

Q. At some point in your career at Graybar Electric Company did you come into the knowledge of what contains asbestos and what does not or did you get any particular training through Graybar or anywhere else regarding asbestos?

A. I think I first found about asbestos when the general public did, just through things that happened, you read about it in the media, whatnot, and I -- we didn't know about anything at Graybar, I didn't know about anything at Graybar as far as asbestos before

the general public was made aware that asbestos was potentially harmful.

Q. When was that?

A. I really don't know what year, I would be guessing.

Q. Okay. Can you give me a decade?

A. Specifically, no, I can't.

Q. What do you know about the corporate structure of Graybar Electric Company?

A. I know a fair amount.

Q. Who do you report to, start there?

A. Dick Cole.

Q. Who is he?

A. He's our district vice-president.

Q. What does the district comprise?

A. What we call the Chicago district, there are 21 branches in that district, there's branches in Michigan, Ohio, I believe Ohio, Indiana, Illinois, Iowa and Wisconsin.

Q. Where is Dick Cole physically located?

A. Chicago, our district office in Chicago.

Q. Is the district office a separate and distinct building from a branch wholesale location?

A. The Chicago district office, no, it is in the same physical building as the Chicago branch, it's actually Glendale Heights is the location of it, it's called

the Chicago district, Glendale Heights is a suburb of Chicago.

Q. How many district vice-presidents are there?

A. That has changed, we've reduced the number of districts, I think right now there's around 14.

Q. Do all the district vice-presidents report to the same individual or is there another layer of supervision?

A. Well, we have a president of the company.

Q. Mr. Reynolds?

A. Yes.

Q. It's a very nice office, by the way.

A. Underneath Mr. Reynolds are Dennis De Susa (phonetic) who is responsible for the sales end of our business.

Q. So he would be marketing, sales, is he a vice-president?

A. Marketing people, he's a corporate officer, Dennis De Susa is a corporate officer.

Q. Do you know what office he holds?

A. They've changed the titles occasionally, it would be I believe senior vice-president and I believe Dick Cole answers directly to Dennis.

Q. So Mr. Cole reports to Mr. De Susa?

A. Yes.

Q. Do all the other district VPs report to Mr. De Susa?

A. I believe so.

Q. Are there other corporate officers other than the district vice-president, 14 district vice-presidents and Mr. De Susa and Mr. Reynolds?

A. Yes, there's several corporate officers, Larry Giliglo.

Q. How do you spell Giliglo?

A. I'm not sure, I know how to pronounce it.

Q. Does it start with a G?

A. Yeah, G-i-l-i-g-l-o I believe.

Q. We'll just do it phonetically. What is Mr. Giliglo's position?

A. Where Dennis De Susa handles the sales side of it, Larry Giliglo handles the operations side of it.

Q. So would he be a senior vice-president of operations?

A. Yes.

Q. Are there other corporate officers?

A. Yes.

Q. Who else?

A. There is Badie DeElisandro (phonetic), I believe he is our financial officer.

Q. Would he also be a vice-president then?

A. I believe he would be considered a vice-president.

Q. Vice-president of finance?

A. Something similar to that.

Q. Do you have a CFO, chief financial officer?

A. That's him.
Q. Other officers?
A. I can't think of any by name, Dick Cole is one of the two district vice-presidents that is on the board of directors.
Q. Who is the other?
A. I'm not sure, I can't think of the name.
Q. Now, Graybar Electric Company has been around in one form or another since the mid 1800s, is that accurate?
A. Yes.
Q. Do you know when it became Graybar Electric Company by name?
A. In 1929 the employees purchased the company and I believe it was called Graybar Electric prior to that, it was named after the two founders of the company.
Q. Graybar Electric has throughout the years sold a number of products that were branded under the name Graybar, is that accurate?
A. There has been some products that were manufactured for us.
Q. And they would actually have the name Graybar?
A. Yes.
Q. So anyone purchasing then would not know the difference between whether or not Graybar manufactured it or had it manufactured for them, correct?

A. The people knew that we were not a manufacturer.
Q. How would they know that?
A. People who deal with us know that we are a distributor, we don't manufacture anything.
Q. Well, are you talking about from your own experience since 1980?
A. Yes.
Q. And in the 1920s, '30s, '40s, if you bought a Graybar fan -- correct, that's one of the items?
A. Yes.
Q. If I bought a Graybar fan I wouldn't know whether or not they made it or whether someone made it for them, correct?
A. I wasn't around then, I can't say.
Q. Are you aware of any literature or catalogs that would list these items but disclaim the actual manufacturer of the items?
A. I'm not aware of any catalogs that have those in it, period.
Q. When you became aware of asbestos, when you mentioned the general public became aware of the hazards of asbestos, what did you become aware of, what did you learn?
A. Just as the general public knew, that when asbestos became -- people became aware of it it was in the

papers and on the news about asbestos and I believe that all of our products didn't contain asbestos at that point.

Q. That doesn't answer my question though.

A. There was nothing that -- go ahead.

Q. What did you learn?

A. It was potentially harmful.

Q. Did you learn in what way it might be harmful?

A. No.

Q. Did you learn what harm it could cause?

A. Just from reading in the paper, whatnot, I had no training.

Q. What did you learn?

A. That asbestos can get into your system and cause health problems.

Q. Do you know what type of health problems?

A. Specifically, no.

Q. Do you know in what manner it would get into your system as you've described it?

A. Breathing asbestos in the air.

Q. And you believe that when you read that in the newspaper or wherever it was you learned that that at that time Graybar did not sell any asbestos-containing products?

A. To the best of my knowledge, that's true.

Q. Could that -- you weren't able to give me a decade, that wasn't in the last five years, was it?
A. No.
Q. So it was prior to that at least?
A. Yes.
Q. Was it in the '90s?
A. I really don't know, I don't want to guess.
Q. Do you know when Graybar -- assuming that they don't sell anything presently that contains asbestos, is that an accurate presumption?
A. I believe that's true.
Q. Do you know when Graybar Electric Company stopped selling or last sold an asbestos-containing product?
A. Well, it would be when our manufacturers stopped using asbestos to manufacture the products.
Q. Is it your understanding that asbestos was just a component that was placed into items that you wouldn't otherwise know had it?
A. Well, they use asbestos for insulating products, insulating from heat, and they used other products instead of asbestos, they just switched what they used to manufacture them.
Q. Is that something that you believe happened, well, at least happened without your knowledge personally, this switch?

A. I was not aware of any specific time when I was told we were using asbestos and now we're not, I'm not aware of any point that that happened.

Q. Have you in your capacity at Graybar Electric ever received any memos, written documentation, instructions, anything, from anyone in Graybar Electric Company discussing asbestos-containing products being sold or that were sold by Graybar Electric?

A. No.

Q. So at some point when you say this public knowledge came out there were no memos sent out by management regarding asbestos?

A. Not that I saw.

Q. Did Graybar Electric ever physically go into the warehouse and say this has asbestos, take it off the shelves?

A. Not that I'm aware of.

Q. Did Graybar Electric ever recall from any of its customers any asbestos-containing products?

A. Not that I'm aware of.

Q. Did Graybar Electric ever place a warning on any item that it sold that it contained asbestos, warning the user about the potential hazards of asbestos exposure?

A. Not that I'm aware of, I never knew of an actual

product that I was selling that contained asbestos so I don't know of any warning.

Q. That's why we need to go a little beyond your own personal knowledge because you are here as a representative of Graybar Electric Company, are you able to answer the question did Graybar Electric Company ever place a warning on any asbestos-containing product that it sold?

A. I can only speak from my experience.

Q. So you don't know the answer to that?

A. I don't know the answer to that.

Q. In your experience since 1980 you never saw or never placed a warning on any item that you sold?

A. No.

Q. And as you sit here now you are not aware of ever even having handled an asbestos-containing product yourself, is that accurate?

A. That's accurate.

Q. Do you know what types of products were sold by Graybar Electric that contained asbestos?

A. I know of some of the types, yes.

Q. What's the range of your knowledge regarding those products, what did Graybar Electric sell that contained asbestos as far as your knowledge is concerned?

A. High-heat wire, asbestos insulation on it.
Q. Do you know the years that Graybar Electric sold high-heat wire with asbestos insulation?
A. No.
Q. Do you know when Graybar Electric Company last sold high-heat wire insulated with asbestos?
A. No.
Q. Anything else?
A. From looking at the copies of the catalogs, the old catalogs, I see there was asbestos in some gloves, high-heat gloves I guess that were in that catalog.
Q. Anything else?
A. I believe some type of insulating tape, that's all that I recall.
Q. And your knowledge of these products, is that solely by virtue of having reviewed the catalogs earlier this morning before the deposition?
A. Yes.
Q. So you had no independent knowledge of these items being sold by Graybar Electric prior to today?
A. I guess saying asbestos is used to insulate from heat, I could have assumed that, yes, there was asbestos in the products that we sold but as far as actually looking at a catalog and firsthand knowledge of seeing something, today was the first day.

Q. You have already indicated that you did not take part in answering plaintiff's interrogatories to Graybar Electric Company, is that correct?

A. Yes.

Q. So you did not make any review of any documents for that purpose, is that correct?

A. True.

Q. Nobody asked you to check the records at your branch for old catalogs or anything of that nature so that those answers to interrogatories could be prepared, is that correct?

A. I believe I was asked if we had any old catalogs.

Q. And you've told me today that you believe you do have some that date back but you are not sure how far back?

A. Yes.

Q. Where are those kept?

A. Those are kept in our catalog library.

Q. Is that in Flint?

A. Yes.

Q. And how many catalogs are there in the catalog library, if you know?

A. Well, it's hard to tell, probably at least 1,000.

Q. 1,000 catalogs?

A. Catalogs from different manufacturers that we represent, we cover a lot of different manufacturers.

Q. Okay. You've talked about your document retention policy as far as sales records, invoices, I'm assuming that also includes purchasing documents, is that true?

A. Yes.

Q. So you don't have any old purchasing records as far as invoices or purchase orders?

A. Not past seven years.

Q. Okay. At some point Graybar did become computerized for their inventory control, is that correct?

A. Yes.

Q. Do you have a bar code system?

A. We do have a bar code system, it's not fully utilized.

Q. Do you know when the computer system went on line at your branch?

A. Our first computer system at my branch went on line in 1982 I believe.

Q. Is there a storage facility where you store electronic media that would have sales and purchasing information from that computer system?

A. That particular computer system was taken out in I believe 1989 and then the system in '89 was used through 2003 and we're on a new system now that was implemented over the course of about a year, from about the beginning of 2003 through the end company wide.

Q. All right. But going back to that first computer system was there a hard copy, when I say hard copy I'm talking electronic media whether it's tape, hard disk, hard drive, et cetera, of the material from that computer database?

A. At that time all purchase orders and things like that were still printed and they would fall into the seven year policy where they would have been put in a box and after seven years destroyed.

Q. I understand. When you print something from the computer the document itself remains on the hard drive of the computer, is that your understanding?

A. I'm not sure if that system did or not.

Q. Do you know whether or not there was a data backup file or any form of medium that stored the data?

A. No.

Q. You don't know?

A. I don't know.

Q. Have you made any inquiries to determine whether or not there is any form of electronic media that stores that is in Graybar's possession that would have the sales and invoice material from 1982 forward?

A. No, I have not.

Q. If you wanted to find out who would you ask?

A. I would probably go through -- my first person would

probably be our district vice-president of operations.

Q. Who is that?

A. Marty Aske, A-s-k-e.

Q. Is he located in Chicago?

A. Yes.

Q. Rather than repeat the whole question, I'm just looking for the gist of what I've asked you about that computer system for the next one, is there in existence to your knowledge a database or electronic media storage of the information contained from that computer system?

A. The 1982 system?

Q. No.

A. The next one?

Q. The next one.

A. It's my understanding there's no information available from that system today.

Q. What's the basis of your understanding, how do you know that?

A. Because we've tried to get some information and I know they don't have things such as purchase history.

Q. In what context were you trying to get some information from that computer system?

A. We base our current purchases as far as volume on past sales history and sometimes we need to go back to see

if a customer bought a specific product, maybe the customer wants to duplicate what he bought the last time, and we can't go back into our old system that was active prior to 2003 to pull any information from.

Q. And when was it that you tried to do that, do you recall?

A. I believe it was toward the end of 2004.

Q. What's your understanding of the reason why you can't access that?

A. Because the system is no longer in place, they shut the entire system down once all of our branches and districts across the country were on the new system, they ran two systems until all the branches were converted, they didn't all convert at the same time.

Q. So the system you are on now is for every Graybar location?

A. Yes.

Q. You are all on the same system?

A. Yes.

Q. Is there a central server?

A. Yes.

Q. Where is that located?

A. I believe St. Louis.

Q. The system prior to that, was that a similar system where all the locations were on the same system?

A. Yes.
Q. Was that also served by a central server?
A. Yes.
Q. That would have been in St. Louis as well?
A. Yeah, St. Louis and Kansas City is our two.
Q. Given there are probably some good business reasons to be able to access that information, are you aware of any efforts being made to get access to the information in the old system?
A. No, it's my understanding that they pulled all the information that they thought necessary, the system was old, support was unavailable for it anymore and was just not a practical system to have.
Q. So to your knowledge there was no backup of the data made when the system went off line?
A. That's true.
Q. How are the Graybar catalogs created, do you know?
A. As far as actually being printed?
Q. Yes, but I want to go a little deeper than that, who decides what products are listed in the catalog?
A. It would be handled through our St. Louis office.
Q. Would that have been true throughout the years as far as you know?
A. Yes.
Q. So at Flint, Michigan as the branch manager there do

you have input as to what goes into the catalog?

A. No.

Q. Can you stock items that aren't in the catalog?

A. Yes.

Q. And has that been true throughout the history of the company as far as you know?

A. Yes, because the catalog -- we represent a lot of different manufacturers and there's not physically room in the catalog to put every item from every manufacturer that we represent.

Q. And that's been true throughout the years, is that accurate?

A. Yes.

Q. In fact, the catalog contains several, throughout the years, indications to that, if you don't see it in the catalog call us because it's probably available anyway, right?

A. I haven't seen a statement in the catalog to that effect but that is what we tell our customers, just because you don't see it in the catalog doesn't mean we don't have it or can't get it for you.

Q. Do you know how long the Flint branch has been in existence?

A. No, I know that we have been at our current location for 53 years, I believe we've moved into the location

right now in 1952.

Q. Do you know how long the Lansing location has been in existence?

A. No.

Q. Do you believe that it's been there as long or at least as long as the Flint location?

A. I believe it has but I have no knowledge of exactly how long it's been, I would be guessing.

Q. Do you know what rebranding is, do you know what that means?

A. Explain it.

Q. Well, do you believe you know what I'm talking about when I say rebranding a product?

A. I want to make sure that I understand so we're not talking about two different things.

Q. Well, I guess rather than explain it I would just like to know if you have an understanding of the term and what that understanding is and we'll go from there?

A. Well, I guess I have an idea of what it would mean.

Q. What's that idea?

A. Well, someone makes something for you, you take their name off it and put your name on it.

Q. That's a pretty fair description. I wanted to show you one of the interrogatory answers, it's number 30, would you review that for me, please, the question

starts on the prior page. Did you get a chance to review that?

A. Yes.

Q. Earlier you indicated that you've reviewed the answers to interrogatories and didn't see any that you felt were incorrect, am I accurately describing what you told me earlier?

A. Yes.

Q. Does that hold true for interrogatory number 30 there, did you review that previously?

A. Yeah, I reviewed the whole thing, it's a lot to comprehend just in reviewing it. To my knowledge Graybar has never done anything like that.

Q. For the record, interrogatory number 30, which we are going to attach the interrogatories, but it does ask whether or not Graybar or any of its divisions or subsidiaries ever purchased or sold any asbestos-containing product which was rebranded, allowed it or caused it to be rebranded and then it asked a series of sub questions about any rebranding, the answer is similar to what you just stated, no, Graybar did not rebrand any of the products it distributed, is that accurate to your understanding?

A. Yes.

Q. Did you make an examination of old catalogs to aid you

in coming to that conclusion?

A. No, I know -- we sell, we don't manufacture, we don't brand anything.

Q. You are talking about your experience from 1980 forward?

A. Knowing the history of the company.

Q. Well, they did sell Graybar fans that were rebranded, that's rebranding it, isn't it, putting your name on it?

A. No, we didn't put our name on, it was manufactured with our name on it, we didn't manufacture them.

Q. Do you believe that that is different than putting a name on it yourself?

A. Yes.

Q. In what way?

A. Well, if they were made for Graybar with Graybar's name on them that would be different than making it with someone else's name on it and we turn around and scrape their name off and paint ours on.

Q. Wouldn't you agree that if it was made for Graybar and placed the name right on it that Graybar is the manufacturer of that product?

A. No.

Q. How is that different than manufacturing it in your mind?

A. Well, we didn't manufacture it.
Q. You hired somebody to manufacture it?
A. It was just made with our name on it.
Q. As a member of the consuming public if I bought a Graybar fan I would have no way of knowing that you hired someone else to build it for you and put your name on it, would I?
A. A lot of products are made with a name on it other than the manufacturer.
Q. I suppose but if you go buy a pair of Nike tennis shoes you are expecting that Nike made them, right, the name is on them?
A. You would assume, if you buy a Sears lawnmower you don't assume Sears made it.
Q. I don't know, do I?
A. Sears is a store, they sell, they don't manufacture, same as Graybar.
Q. Maybe you know that but as a consumer I might not care or maybe I do care whether a Kenmore was actually made by Sears or manufactured for them by somebody else, do you believe that there's any distinction between that as far as the seller of the item?
A. Explain that.
Q. Do you think as a seller of an item it makes a difference whether you physically made it yourself or

whether you had someone else make it for you and put your name on it?

A. Does it make a difference as far as what?

Q. As far as your obligation to the person that's buying it.

A. Well, any obligation that we have toward the person buying any of our products as far as warranty or anything like that isn't something we offer, it's something the manufacturer offers, if it was something that had our name on it that came with a warranty it would be whatever the manufacturer offered.

Q. As a representative of Graybar Electric Company here today are you aware of any warranties or obligations placed on the seller of a product by law?

A. Any warranties placed on our products, our warranties pass through from the manufacturer because we are an authorized distributor for that product so we pass through any warranty they have, we don't create any warranty or add any warranty to anything we sell.

Q. That wasn't my question. Are you aware of whether or not the law imposes any obligations on Graybar Electric Company as a seller?

A. No.

Q. Do you believe that as a seller of any item you have an obligation to the person purchasing it to make sure

that it's safe, effective and can be used in the way it was intended to be used?

A. Clarify that.

Q. Do you have an obligation as a seller of an item to make sure that the item you are selling is safe and can be used in the way it was intended to be used without doing harm to the person using it?

A. Well, I believe that obligation would be on the manufacturer.

Q. So as a seller you have no obligation?

A. Well, I think as a seller if we know something is unsafe it would be our responsibility to not sell it, we wouldn't sell something that we knew to be unsafe.

Q. Do you believe as a seller you have any obligation to inquire as to the safety of the items that you are selling to make sure that they are in fact safe so that you can stop selling them if they are not?

A. My experience at any time there was an issue with an item being unsafe we are notified by the manufacturer and there's a recall put in place.

Q. We've already discussed recalls regarding asbestos-containing products and you indicated that you are not aware of that having happened, is that correct?

A. True.

Q. You indicated earlier that your only knowledge as to the hazards of asbestos came through the newspaper or media?

A. Yes.

Q. Is that the manner in which Graybar Electric Company is normally informed of safety issues with regard to the products that it sells, only if it reads it in the paper?

A. You asked how I learned about it, I can't speak for the company itself as far as everyone else in the company, I can only speak for myself.

Q. So you don't speak for Graybar Electric Company as far as the corporate knowledge, if there's such a thing, as to the hazards of asbestos?

A. No, you asked me how I learned about it.

Q. Okay. Do you know how Graybar Electric Company learned of the hazards of asbestos?

A. No.

Q. Do you know when anyone with any authority to make changes in the corporate practices, including purchasing and sales, learned of the hazards of asbestos?

A. No.

Q. Did Graybar Electric Company maintain an industrial hygiene department?

A. Industrial hygiene, explain that.
Q. Was there ever a department called industrial hygiene?
A. Not to my knowledge.
Q. Was there ever a safety department?
A. Graybar does have some safety people.
Q. And do you know when they first had people that were designated as safety people?
A. No.
Q. Do you know any of the people that have been in that position over the years?
A. No.
Q. Any names of any individuals?
A. No.
Q. Do you know what their duties were?
A. No.
Q. Do you know whether or not Graybar Electric ever did any research or testing of products that it sold?
A. My belief is no, we have not.
Q. No testing whatsoever?
A. Not to my knowledge.
Q. So not for product defectiveness, use or safety?
A. We deal with manufacturers that have already done the testing, we have a list of approved and unapproved suppliers, if it's not a reputable supplier that does their own testing we don't deal with them, we don't

sell their products.

Q. With regard to the question of when did someone in authority at Graybar Electric Company come into the knowledge that asbestos was potentially hazardous, you are not the right person to ask that question I take it because you've already told me you don't know. Who should I ask?

A. I don't know who the person would be, I don't know.

Q. Does Graybar Electric handle material safety data sheets?

A. Yes.

Q. Do you know when you began handling material safety data sheets?

A. I can guess, my guess is late '80s.

Q. Does Graybar Electric Company have someone who is responsible for complying with government entities such as OSHA, MIOSHA, EPA?

A. In regards to MSDS sheets, is that what you are --

Q. In regards to complying with any requirements imposed on Graybar by those entities?

A. I would assume it would be the person in charge of our safety.

Q. Do you know who that is today?

A. No, I don't.

Q. Do you know who that has been at any time that you

have been with Graybar Electric Company?

A. No.

Q. Have you ever spoken to anyone in charge of safety?

A. No.

Q. Have you ever received any memos from a safety department or someone that held themselves out as being in charge of safety?

A. Not that I recall.

Q. Do you know whether or not Graybar Electric Company has ever been aware of something called threshold limit values with regard to asbestos dust --

A. No.

Q. -- or airborne asbestos?

A. No, not to my knowledge.

Q. Do you know who I should ask to determine whether or not Graybar Electric Company has ever been aware of that?

A. I would assume it would be the person in our safety department.

Q. Did Graybar Electric Company ever have a medical department?

A. No, they had a department that would handle medical claims but as far as a medical department, no.

Q. So you can tell me that there never was such a department?

A. Not to my knowledge.

Q. Do you know whether or not Graybar Electric Company has ever employed a physician?

A. Not to my knowledge they have not.

Q. Do you know what Graybestos is or was?

A. No.

Q. Have you ever heard that term?

A. No.

Q. Are you aware of whether or not Graybar sold under the name Graybar asbestos-containing insulations, electrical insulations?

A. Just looking in the catalog, the old catalog today, that's all as far as specific products that I know of.

Q. And what products are you specifically aware of by looking through the catalog, I thought we listed them?

A. Yeah, there was some wire and --

Q. You talked about the asbestos insulating wire?

A. Yeah, and I believe asbestos insulating tape and I think there was one other, gloves or something that were in the catalog there.

Q. Okay. Let me get this marked.

MARKED BY THE REPORTER:

DEPOSITION EXHIBIT NUMBER 4

11:10 a.m.

BY MR. KELSEY:

Q. I'll show you a packet of papers that are clipped together which has been marked as Exhibit Number 4, did you review this particular catalog prior to the deposition today?

A. I reviewed -- I believe this was one of the packets that I reviewed earlier today.

Q. Could you take a look at the page that has the blue tape, I believe it's page 867, did you review that particular page prior to the deposition today?

A. This specific page, no, we looked at several different pages from catalogs, as far as this specific page I don't recall it.

Q. Okay. Would you agree with me that that page contains a number of descriptions of what are captioned at the top of the page as, quote, Graybar insulating materials?

A. Well, they're insulating materials.

Q. The top of the page says Graybar insulating materials, correct?

A. Yes.

Q. Would you agree with me that there are no other manufacturers listed on this page that describes these various products?

A. No other manufacturers, I see no manufacturers period listed on this page because Graybar is not a

manufacturer.

Q. But this doesn't say anywhere on this page that Graybar doesn't manufacture those insulating materials, does it, take your time and review it?

A. Well, it doesn't say that Graybar manufacturers either, it doesn't say anything about manufacturing on this page, I don't see anything to the effect of manufacturing on this page.

Q. Okay. Just for reference, however, would you agree -- take a look at page 866, there are a number of items on that page, at the top of the page we have G & W telephone cable splicing kits, at the lower right-hand corner you have Rubberoid asphalt paint, those are all manufacturers, is that correct, G & W was a manufacturer as far as you can tell?

A. As far as I can tell.

Q. Can you tell me whether or not G & W actually manufactured that or whether they paid someone else to manufacture it and place their name on it?

A. I can't tell.

Q. You don't know, do you?

A. No.

Q. What about the Rubberoid rapid asphalt paint, do you know whether Rubberoid manufactured that or whether they paid someone else to manufacture it and put their

name on it?

A. I don't know.

Q. When we get to the next page it says Graybar insulating materials, I don't know whether Graybar made those or paid somebody else to make them and put their name on them, correct?

A. I know Graybar was not a manufacturer.

Q. You know it because you work for Graybar, right, so the guy that works for Rubberoid would probably be able to tell me whether or not Rubberoid manufactured that asphalt paint?

A. Yes.

Q. Anybody looking at this catalog wouldn't be able to tell me that, would they?

A. We're a wholesale distributor only and our customers know we are a sales organization, not a manufacturer.

Q. I understand that is your position but from the context of knowing who manufactured this, you don't know who manufactured the Rubberoid asphalt paint, is that correct?

A. No.

MARKED BY THE REPORTER:

DEPOSITION EXHIBIT NUMBER 5

11:14 a.m.

BY MR. KELSEY:

Q. I'll show you a page out of another catalog, it's been marked Exhibit Number 5, it's page 715, take a look at that page?

MR. PARTHUM: Which catalog is this out of, John?

MR. KELSEY: I'll tell you in a minute. Let me take a break for a minute.

BY MR. KELSEY:

Q. As you sit here do you recall having seen that prior to my handing it to you?

A. This specific page I can't recall, not specifically, again, I saw a lot of pages, there it is, 104.

Q. Let the record reflect that that is page 715 which was copied from catalog 104.

MR. PARTHUM: There's a date on the catalog?

MR. KELSEY: This one is 1952, the last one we referred to was 1958 and it was 105.

BY MR. KELSEY:

Q. Do you know how often catalogs were printed?

A. No, I don't.

Q. Do you know how often they're printed now?

A. As far as an actual new catalog coming out, they'll make reprints of the same catalog.

Q. Do they change anything in it when they do that?

A. Maybe some items, not very much, the actual new catalog now every seven or eight years maybe.

Q. That was probably pretty true throughout the years?

A. I'm not sure, they've gotten further and further apart now.

Q. Let's go back to Exhibit 5, page 715 out of catalog 104, you indicated you hadn't reviewed that one specifically, is that correct?

A. True.

Q. Do you agree with me that there are several items listed on this page starting with Cope safety compound kettles, Mineralic pulling compounds, Ideal wire-pulling lubricants?

A. Yes.

Q. And at the bottom left-hand corner under the caption Graybar insulating material there is a long list of items, is that correct?

A. Not specific items there's not, under the other ones there are specific items listed, under the Graybar insulating material it's just general.

Q. One of those items is asbestos tapes, sleevings and cloth, is that correct?

A. Uh-huh.

Q. No other manufacturer or a manufacturer listed to use your terminology, is that correct?

A. True.
Q. Just the caption above it that says Graybar insulating materials, is that correct?
A. Correct.
Q. Down below that you have sleevings, varnish, saturator, asbestos, cotton, fiber, et cetera, correct, you don't list a manufacturer there either?
A. Correct.
Q. Just the caption Graybar insulating material at the top, all accurate?
A. True.
Q. These catalogs are --
A. It also says down here contact Graybar for complete information regarding your requirements. I'll assume at that time that a customer would know that we are not the manufacturer.
Q. From that statement, contact Graybar?
A. When they contact Graybar, you can't order anything off this list here, there's nothing to order, there's not specific items there, this side there is where there's manufacturers listed.
Q. Sure, like the sleeving that's not listed there, right, as far as part number or a catalog number or a price or anything of that nature?
A. Correct.

Q. Do you know were there specialty catalogs that were printed regarding specific items, for instance, Graybar insulating materials, would there be a separate catalog for that?

A. Graybar has had some specialty catalogs coming out maybe for specific manufacturers, some of our manufacturers will print catalogs with our name on the front for us.

MARKED BY THE REPORTER:

DEPOSITION EXHIBIT NUMBER 6

11:23 a.m.

BY MR. KELSEY:

Q. I'll show you what has been marked Exhibit Number 6, did you review that catalog before your deposition today?

A. I believe 102 was in the pile.

Q. Okay. Did you review it?

A. I reviewed a lot of different wiring, yes.

Q. Could you go to the page with the tab on it, please, that's page 995?

A. Yes.

Q. Did you review that page prior to your deposition?

A. This specific page, no.

Q. Would you agree that's a listing of asbestos listing tapes, tubing, cloth?

A. Yes.
Q. Would you also agree with me there are no manufacturer names included?
A. Yes.
Q. Do you know for a fact personally, and if you do how do you know, that Graybar did not manufacture any of these items?
A. Well, I know Graybar is a sales organization, not a manufacturer.
Q. So your answer is yes, you know, or you are just assuming that they didn't?
A. Well, to the best of my knowledge Graybar has always been a sales organization and not a manufacturer, I know of no circumstances when Graybar manufactured anything.
Q. But you do know that Graybar contracted with another company to manufacture fans and other items to their specifications and placed the Graybar name on them, is that correct?
A. I don't know whether it was to Graybar's specifications or not but I know they contracted a company to put Graybar's name on fans.
Q. Are you assuming that Graybar said make me a fan, I don't care what it is, didn't specify what they wanted?

A. I could assume the manufacturer made fans, Graybar picked a fan out and said make that with our name on it.

Q. You have no knowledge of that?

A. No.

Q. Do you know whether or not Graybar did the same thing with the tape and asbestos tubing or sleeving?

A. No.

Q. You don't know if they did or didn't?

A. Correct, I don't know.

Q. Are you familiar with Hanson & York Company?

A. No.

Q. Have you ever heard of that?

A. No.

Q. Is there a Graybar Industrial Supply Division?

A. No.

Q. Has there ever been to your knowledge?

A. No.

Q. Do you know whether or not Graybar at any time purchased or otherwise acquired any industrial supply companies?

A. Not to my knowledge.

Q. And do you know who I could pose that question to at Graybar that would be able to tell me yes or no on that?

A. No, I don't.
Q. Is it your understanding that Graybar Electric Company sold asbestos-containing gloves throughout the years?
A. I saw that in the catalog today and that was the first I had seen those.
Q. What catalog did you see that?
A. It was a stack of catalogs that was shown to me earlier today.
Q. Was there a manufacturer associated with the gloves other than the name Graybar?
A. I don't recall.
Q. Do you have any personal knowledge other than what you reviewed this morning to tell me whether or not Graybar Electric Company sold asbestos-containing gloves?
A. I have no knowledge.
Q. Do you know whether or not Graybar Electric Company sold safety equipment like respirators, masks, other types of safety equipment?
A. Not to my knowledge.
Q. Do you know whether or not Graybar Electric Company ever sold asbestos-containing pipe covering or insulating cement?
A. I have no firsthand knowledge.
Q. Do you know who would?

A. No.

Q. Do you have any personal knowledge whether Graybar Electric Company ever sold asbestos paper and roll board?

A. Asbestos paper and what?

Q. Roll board.

A. No, I have no personal knowledge of that.

Q. What about gaskets?

A. No, no knowledge.

Q. No knowledge, don't know one way or the other?

A. No.

Q. Do you know who would know?

A. No, I don't.

Q. Back to the interrogatories, review interrogatory number 69 and the answer to it, please.

MR. PARTHUM: Let's take a break.

(Recess taken at 11:31 a.m.)

(Back on the record at 11:37 a.m.)

BY MR. KELSEY:

Q. Did you have an opportunity to review the question and answer, I believe it was 69 that I showed you?

A. Yes.

Q. Is that one of the questions and answers that you reviewed previously when you told me that you didn't see anything that you disagreed with?

A. Yes.
Q. In that response it indicates that Graybar Electric Company was aware prior to 1972 of magazine and other periodical publications which -- I don't know the exact wording, basically talking about the hazards or potential hazards of asbestos?
A. It says Graybar has no documents.
Q. Keep reading, did you read the last sentence and answer?
A. Yes.
Q. Into the record, please, I have a question to ask about the last sentence there. Since I don't have it in front of me could you read it?
A. Graybar has no documents reflecting a pre-1972 opinion regarding asbestos health hazards though it is presently aware that there were medical and newspaper articles on the topic before that year.
Q. And do you know where the information for that came from, that answer?
A. No, I don't.
Q. You personally don't know when you became aware of the hazards of asbestos?
A. No.
Q. Are you personally aware of any item that Graybar Electric Company has ever sold that contained a

warning on the product?

A. No.

Q. And you already told me that as far as you are aware Graybar never placed a warning on anything?

A. I can't recall any warning on any product.

Q. And with regard to beyond your personal knowledge from 1980 forward, who would I ask that question, has Graybar ever placed a warning on anything it's sold?

A. Well, I would go probably to our safety person.

Q. And does that person work out of St. Louis?

A. Yes.

Q. But you don't know who that is?

A. Actually I do recall, his name is Dave Hughes.

Q. Do you know how long Mr. Hughes has been -- is it the safety director or --

A. That could be his title, something to do with safety.

Q. Do you know how long he has held that position?

A. I believe since 1995 or around there.

Q. Do you know who held the position prior to Mr. Hughes?

A. No, I don't and I don't know that there was a person in that position prior to that either.

Q. Are you aware of any studies that have been conducted on any of the products sold by Graybar Electric Company that contained asbestos to determine levels of asbestos emitted by its use or installation or

removal?

A. No.

Q. Would you be in a position to know if there were such studies conducted by Graybar Electric Company?

A. Generally if it's something that affects our branch I am made aware of any documentation that affects anything to do with my branch or products we sell, I'm made aware every time there is a recall on any item that could potentially affect our branch.

Q. But as far as being aware of any studies that were conducted in say the '50s, '60s or '70s on any products sold by Graybar Electric Company would you be in a position to know about that?

A. No.

Q. Do you know who would be?

A. If it was a study to do with safety, is that what you are referring to?

Q. Yes.

A. I guess I would start with Dave Hughes, who is our safety director.

Q. Are you familiar with a business called Toledo Commutator or Kirkwood Industries?

A. I wasn't familiar with them until about two months ago.

Q. Did you ever call on Toledo Commutator as an outside

salesperson for the Shiawassee County area?

A. No, I did not, Shiawassee County was my area that I called on and it was very difficult as a sales rep from Flint to do any work in the Owosso, Shiawassee area, they always preferred to buy from their local companies and I was an outsider.

Q. Did you ever call on Toledo Commutator and get turned down?

A. No.

Q. So have you ever spoken to anyone at Toledo Commutator?

A. No.

Q. Have you ever tried to get an appointment with a purchasing agent there?

A. No.

Q. Who are the salespeople prior to you becoming outside sales, do you know?

A. I replaced a person by the name of Tom Berry.

Q. Is it B-e-r-r-y?

A. Yes.

Q. So he would have had the Shiawassee County territory prior to you?

A. Well, when I went into sales I replaced him directly and the other sales rep that called on General Motors was still in place.

Q. Do you know how long Mr. Berry acted in that capacity of outside sales for that territory?
A. No, I don't know.
Q. Do you know who had that position prior to Mr. Berry?
A. No, I know that he had that position in 1980 when I was hired, when I started with the company.
Q. Did he leave the company then?
A. Yes.
Q. Do you know where he went?
A. He went to a company that is no longer in business, Universal Systems in Flint, they were an electrical contractor.
Q. Do you know where Mr. Berry can be found today?
A. No.
Q. Have you seen him in the last five years?
A. Yes.
Q. Where did you happen to see him?
A. I saw him at lunch about eight months ago.
Q. Was this in the Flint area?
A. Yes.
Q. Did you speak with him at that time?
A. Yes.
Q. Did he tell you where he was working or if he was working?
A. At the time he was not working.

Q. Was he looking for work?
A. No, he was on medical leave, he was injured and was not working at that time.
Q. Did you discuss where he was residing?
A. No.
Q. Do you have any idea how to reach him?
A. Yes.
Q. How do you reach him?
A. If I reached him I would probably contact someone else that I knew that would know him.
Q. Who would that be?
A. Probably Kurt Golden, Herdis Golden who also works for Graybar.
Q. Does he still work for Graybar?
A. Yes.
Q. What is his position now?
A. Sales rep.
Q. Is that the same position he's held since you started?
A. No, he was -- up through I believe 1997 he was branch manager and then I replaced him.
Q. He's a sales rep where?
A. In Flint.
Q. Is he a personal friend of Mr. Berry's?
A. Yes.
Q. Does the Flint office or any Graybar office maintain

personnel records that you could look at to determine who held the position of outside sales throughout the years?

A. I don't know of any record that would tell that specifically as far as who was in that position.

Q. Does Graybar Electric Company have a pension plan?

A. Yes.

Q. Would any of the individuals that held that outside sales position be receiving pensions?

A. If they were with the company long enough.

Q. Is there a way to search the pension plan records for current addresses of retired employees?

A. There could be, I don't know, that's handled out of our benefits department.

Q. Where is the benefits department?

A. St. Louis, corporate headquarters.

Q. Have you made any inquiries with the benefits department to determine names and addresses of former employees in the sales?

A. No.

Q. The Flint office, you are a wholesaler only or is there a retail?

A. Wholesale only.

Q. But there is a counter?

A. Yes, for wholesale only, there's a sign posted

wholesale only.

Q. But if you have an account or whatever --

A. Yes.

Q. It's a walk-in counter?

A. Yes.

Q. Walk up and order, you don't have to phone order?

A. You can phone in, order in or come in.

Q. Is there a showroom at all, display areas?

A. In front of the counter there is a small area.

Q. There's no shelves stocked for self service?

A. Yeah, in front of the counter there is.

Q. How big an area is that?

A. About the size of this room.

Q. Has it ever been a retail operations where members of the public not in the trade could come in?

A. No.

Q. Do you know what percentage of sales of Graybar through the years have been through the outside salesperson now versus walk-in business?

A. We don't differentiate that because if a particular customer is assigned to a sales rep, that sales rep gets the credit whether the customer phones in, orders in, walks in and gets it or places the order at his own place of business.

Q. Outside sales is commission type?

A. Salary plus commission.

Q. As an outside salesperson yourself did you maintain records for your own use regarding your customers, what they purchased, when they purchased it, quantities in order to kind of check your commissions?

A. No, as a sales rep you receive what's called -- at the time a sales copy, which is a copy of an invoice that has exactly what the customer purchased and that's just one more copy in the stack that goes to the sales rep so they have a copy of every transaction for their customers.

Q. Did you keep those sales transactions records when you were a salesman?

A. Yes.

Q. And do you still have them now?

A. No, I reviewed them on a monthly basis and then provided they were all acceptable sales, disposed of them.

Q. Do you know what other salespersons did with their copies of those sales documents?

A. I believe every sales rep did the same thing, they used to verify the sales they were getting credit for.

Q. Have you inquired of any other salesman whether or not they maintained records or kept copies of sales of documentation over the years?

A. No.

Q. Did you make any inquiry in response to our request for production of documents as to any sales personnel to see if they had kept any of those materials?

A. No, the only other one there now is Kurt Golden and he was a sales rep when I became a sales rep and he's the one that showed me how to review the sales copies and explained that once you reviewed them they were basically worthless.

Q. As an outside salesperson did you maintain any type of notebook or diary system or other type of writing to refresh your memory as to your customers and what they purchased and the quantities that they purchased for sales purposes?

A. Yes, I maintained certain information.

Q. What type of information did you maintain?

A. Maybe if it was a certain brand of light fixture that a customer preferred I made a notation in his file of that, certain customers like standardize on certain products, light fixtures, for example, so that if there's a damaged lens or something like that they can do a little part swapping from other areas in their facility maybe, I made notes of things like that, that customers -- maybe products they standardized on, products they preferred, certain customers prefer

certain manufacturers over others, certain customers will not accept certain manufacturers.

Q. It is helpful if you are calling on a customer to know what they've purchased in the past, right?

A. Right.

Q. Do you maintain those, do you still have those notes or records?

A. No.

Q. What form were those in?

A. They were in my planner, I had a file that I kept, my planner was a little bigger and I had a regular file for each customer that I kept in my vehicle, yellow manila folders with the name across the top in a milk crate so when I called on the customer I knew what type of products the customer used, what their needs were and it helped to meet the customer's needs.

Q. Do you have any of these old planners or other documentation from when you were a salesman in your possession now?

A. No.

Q. Have you inquired of any other salesman to determine whether or not they had similar materials?

A. I know that some of my sales reps have similar files where they have under a customer, under an account name normally what they'll carry is a list of all the

names within that company, purchasing agents' names, phone numbers, things like that.

Q. Do they not compile the same information that you did regarding the purchasing practice of their customers?

A. I can't say they do or don't, each sale rep is different.

Q. Have you made any inquiry of any salesperson to determine whether or not they have any such records?

A. No.

MR. KELSEY: I think that's all I have.

(The deposition was concluded at 11:56 a.m. Signature of the witness was not requested by counsel for the respective parties hereto.)

CERTIFICATE OF NOTARY

STATE OF MICHIGAN)

) SS

COUNTY OF OAKLAND)

I, Stacy K. Locher, a Notary Public in and for the above county and state, do hereby certify that the above deposition was taken before me at the time and place hereinbefore set forth; that the witness was by me first duly sworn to testify to the truth, and nothing but the truth; that the foregoing questions asked and answers made by the witness were duly recorded by me stenographically and reduced to computer transcription; that this is a true, full and correct transcript of my stenographic notes so taken; and that I am not related to, nor of counsel to either party nor interested in the event of this cause.

_____

Stacy K. Locher, CSR-5699
Notary Public,
Oakland County, Michigan
My commission expires: October 16, 2006

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COCHRANE, ET AL v. GRAYBAR ELECTRIC COMPANY

JAMES ESTIS

August 9, 2005

Prepared for you by

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