FILE NAME: The Budd Company (BUD)

DATE: 2018 Oct 15

DOC#: BUD003

DOCUMENT DESCRIPTION: Legal – Testimony of M Bauer

Build PMK

Detailed Transcript Bookmark/Issues Summary

Bauer, Michael (Vol. 01) - 10/11/2018

Deponent Name: MB101118

Monday, October 15, 2018

1. Trial & Summary - [Total Running Time : 01:39:23, Overall Run Time : 00:00:00]

Page 8:11-8:20, 00:00:29 - [00:00:29] [Overall Running Time : 00:00:00]

Q. All right. Mr. Bauer, please for the record please state your name and address.
A. Michael Bauer, B-a-u-e-r, 2893 Woodford Circle, W-o-o-d-f-o-r-d, in Rochester Hills, Michigan, 48306.
Q. You're now retired, is that right?
A. Yes.
Q. Okay. And the -- I understand that you've agreed to come here to testify today on behalf of The Budd Company, is that right?
A. That's right.

Page 10:7-10:18, 00:00:34 - [00:00:34] [Overall Running Time : 00:00:30]
Start at "AND"

Q. Budd is no longer a part of that? And I understand that you yourself -- it looks like you were the assistant general counsel of The Budd Company in the 90's?
A. Right.
Q. Okay. And at that time, it was an active business?
A. Yes.
Q. But it was beginning to downsize, is that --
A. That's right.
Q. Okay. Was Budd still in the rail business, in the railcar business when you were assistant general counsel?
A. No.

Page 10:24-11:21, 00:01:25 - [00:01:25] [Overall Running Time : 00:01:05]

Q. Okay. Can you tell me about any people, either former

employees of Budd or other persons who were never employed by Budd, who were the people that you met with in order to prepare yourself for the task of testifying on behalf of the Company?

A. Just Mr. Wynne and one of his partners, Mr. Rustmann.

Q. Okay. So, I can assume that as far as actually meeting with human beings, you haven't met with any former Budd Company physicians for example or spoken with them on the telephone?

A. Right, I have not.

Q. What about people in the claims or casualty management department, have you met or spoken with any of them?

A. No.

Q. Have you spoken with any former industrial hygienists that worked for Budd at one time?

A. No.

Q. What about pipefitters who worked for Budd, people who actually worked in the railcar plant, have you met or interviewed any of those individuals?

A. No.

Q. The car assemblers so to speak, none of them?

A. No.

Page 14:12-15:17, 00:01:57 - [00:01:58] [Overall Running Time : 00:02:30]

Q. All right. So, as a corporate attorney, as somebody who has worked with corporations it looks like for a good part of your legal career, I'm assuming that in the context of a corporation like Budd, Budd has always had corporate attorneys, is that right?

A. I don't know the early history of the company. It dates back to 1912. As far as the history goes that I'm aware of, yes, it's had corporate attorneys.

Q. Okay. And then a corporate attorney is generally

responsible for the corporate structure, right, making sure that the corporation keeps its books correctly, right?

A. Yes.

Q. And if a corporation, Budd for example, acquires other businesses, the corporate attorneys have a duty to the company to examine those businesses to understand what the assets and liabilities are at all time, right, to protect the company and advise the company, is that fair?

A. Yes.

Q. Corporate attorneys are responsible for, for example, for compliance with laws, right, to advise the company on how to comply with the law?

A. Right.

Q. And I assume to some extent, if requested, corporate attorneys also give advice in terms of safety and what a company should do to carry out its duties to manufacture and sell products as safely as they know how to, is that fair?

A. To the extent safety is the subject of laws and regulations, definitely that's the case.

Page 16:13-17:11, 00:01:52 - [00:01:53] [Overall Running Time : 00:04:28]

Q. Can I have the color chart, please? Sir, we put together a chart here -- if we can go to the Elmo -- which consists of an -- I have given you a copy of it or maybe you can see it. This is a chart that we created from the information that was provided to us by The Budd Company that shows us the number of passenger cars that were in service on the Santa Fe Railroad until 1971.

And what happened in 1971 is that Amtrak took

over. This is compiled from the data that Budd gave us. You can see that at its peak in the 60's, Budd had about 400 -- a little bit more than 400 passenger cars that it had sold to Santa Fe that were still in service. Does that comport with your general understanding of Budd's sales to the Santa Fe?

A. I didn't -- I don't recall the exact numbers. I did see in the records from time to time sales records. The totals I really wasn't aware of. But that doesn't look to be out of line.

Q. Okay. Now, the reason I have put this chart up -- and I'm going to be using it a little bit today -- is that the stipulated facts in this case are that Mr. Rave went to work in the passenger car shops of the Santa Fe & Topeka in somewhere about 1952 I think is our stipulated date.

Page 17:17-18:2, 00:00:30 - [00:00:31] [Overall Running Time : 00:06:21]

You understand that in 1971, Santa Fe went out of the passenger business, and it was taken over by Amtrak, right?

A. Right.

Q. Okay. But you've probably seen enough in the records to understand that after Amtrak, the workers at Santa Fe including Mr. Rabe took that work under contract and they kept doing that work in the shops in Topeka. Do you understand that?

A. I don't recall seeing that in the records, but if you say so.

Page 18:22-19:7, 00:00:53 - [00:00:54] [Overall Running Time : 00:06:52]

Q. Sir, would you agree with me that to the extent that it's knowable, every car that was sold from Budd to

Santa Fe from the 1940's through 1964 contained asbestos-containing pipe covering among other asbestos products? You'd agree to that?

A. Yes.

Q. We're going to be talking about steam lines, water lines and air conditioning lines today mostly. Do you know of any other competitors in the railcar business during that period except for Pullman and ACF?

A. No.

Page 20:13-20:25, 00:00:56 - [00:00:57] [Overall Running Time : 00:07:46]

Q. Okay. The other testimony of the company official is that pipefitters, men who we designated as pipefitters like Mr. Rabe were the ones who stripped out and changed all the insulation, all of the asbestos insulation. Do you understand that?

A. Yes.

Q. Okay. He also said that in all of the cars that Budd built, Budd used a product which we've now determined to be a product called Wovenstone Insulation, which was purchased from Unarco. Does that comport with your understanding of the material that Budd incorporated into its railcars?

A. Yes.

Page 22:7-22:24, 00:01:16 - [00:01:17] [Overall Running Time : 00:08:43]
Start at "Can"

Budd does not contend -- excuse me. Can we agree that Budd never performed asbestos dust sampling or fiber release studies as asked in topic 19?

A. Yes.

Q. Okay. So, there was never -- as far as you know, there was never an attempt to measure the exposures that a

pipefitter would have had either in stripping or applying this Wovenstone insulation, is that correct?

A. That's correct.

Q. Okay. If you take a look at topic No. 15 on the Notice, it specifically asks, "What is Budd's contention as to whether its use of asbestos-containing insulation or other components on passenger railcars was required, sanctioned or affirmatively specified for use by any federal, state or local agency, customer or industry trade organization?" Does Budd contend that its use of asbestos was mandated by any of those sources?

A. At least by customer specifications, yes.

Page 23:9-23:21, 00:00:51 - [00:00:52] [Overall Running Time : 00:10:00]

Q. What about the Santa Fe? You didn't see any requests from them to use asbestos, did you?

A. I don't recall. I may have.

Q. The reason I ask is because when we questioned Mr. Huftless, who was the last supervisor of the coach shop, he indicated that they would get drawings from Budd that were stamped by Budd and that Budd was the one who designated the Wovenstone; and then Santa Fe followed suit when they replaced it. Does that sound -- does that comport with your understanding of what happened?

A. I really don't know the details of who prepared the specs.

Page 24:10-24:14, 00:00:24 - [00:00:24] [Overall Running Time : 00:10:52]
Start at "But if Budd"

exposure limits. But if Budd had learned that there was an overexposure beyond the permissible exposure limits say in the 1950's or 60's, would it have warned its own workers?

A. It's own workers, I'd say yes.

Page 25:11-25:21, 00:00:41 - [00:00:41] [Overall Running Time : 00:11:16]

Q. Okay. Topic 25 asks -- it says, "What was the date of Budd's first notice of personal injury for the alleged contraction of a pneumoconiosis; in other words, a dust disease of the lungs, asbestosis or malignancy of the lung from a Budd employee or the employee of a customer or other Budd product user"? What was that date as far as you know?

A. As far as I know, it was 1973.

Q. Okay. And where did that come from?

A. That came from a Workers' Compensation claim filed by a Budd employee.

Page 26:15-26:22, 00:00:39 - [00:00:40] [Overall Running Time : 00:11:57]

Q. Well, when did Budd stop making railcars generally?

A. I believe it was 1985.

Q. As far as you know, was -- were asbestos-containing components still being used at that time?

A. As far as I know, yes.

Q. So, there was no conscious determination to stop using the product?

A. Correct.

Page 29:4-29:17, 00:00:56 - [00:00:56] [Overall Running Time : 00:12:37]

Q. Topic 26 on the Notice, we've asked what Budd's contention is regarding Mr. Rabe's cumulative dose of asbestos fibers that he sustained while working on Budd passenger cars. Does Budd have an opinion with regard to his cumulative dose?

A. I'd have to give the same answer as before. Based on my

personal information and my record review, I don't know.
Q. I understand, sir. But you understand that you're here testifying on behalf of the company, not based on your personal knowledge, correct?
A. Correct.
Q. So, I'm just asking you if you can provide us with Budd's contention with regard to that inquiry.
A. I cannot.

Page 29:25-30:14, 00:01:47 - [00:01:47] [Overall Running Time : 00:13:33]
Start at "If Budd"

to put this back up so we can look at it. If Budd had 400 cars operating in the Santa Fe's fleet in the 1960's, during the period of time when Mr. Rabe was working in Topeka, does it stand to reason that he would have worked on many of those cars?
A. Yes.
Q. Mr. Shaw, his co-worker, testified that -- I'm sorry, can we go back to Elmo for a minute? Mr. Shaw, his co-worker, testified that in 1964, a final order of high-level cars was shipped by The Budd Company to Santa Fe and that these cars came in for their first major overhaul to the Santa Fe shops in Topeka sometime in 1972, '03, '04, period, after Amtrak took over. Do you have any information that would dispute that?
A. No.

Page 32:8-33:1, 00:01:30 - [00:01:31] [Overall Running Time : 00:15:20]

And I'm just going to ask you to take a look at Interrogatory No. 38. It asks about Budd's membership in the National Safety Council. Do you see that? I think it says they were a member since 1943, is that right?

A. That's right.
Q. I'm going to show you a document that we're marking as Exhibit 1, which is a document entitled Dusts, Fumes, and Mists in Industry, Data Sheet 531, published by the National Safety Council. Do you see that?

DEPOSITION EXHIBIT 1
WAS MARKED BY THE REPORTER
FOR IDENTIFICATION

This happens to be the 1963 version of the data sheet. I just wanted to ask you some questions about it. Do you see it says on the document that this is prepared by the Health Committee, Chemical Section, National Safety Council. Do you see that, sir

0033 A. Yes.

Page 33:13-33:16, 00:00:16 - [00:00:16] [Overall Running Time : 00:16:51]

Q. If you turn the page two pages, you will see that there's a discussion of the disease asbestosis. Do you see that, sir?
A. Yes.

Page 33:25-34:10, 00:00:35 - [00:00:36] [Overall Running Time : 00:17:07]

Q. Okay. And then in the last column in the National
0034 Safety Council's document, it discusses the fact that dust studies were conducted in the asbestos textile industry, and it was recommended that dust concentration be kept at less than 5 million particles per cubic foot to prevent asbestosis. Do you see that, sir?
A. I'm sorry, the last column?
Q. At the top of the last column.
A. Oh, I see, yes. I see it.
Q. Do you see that?
A. Yes, I see it.

Q. I'd like you to turn to an article that was published on Page 193. It's called, "The Occupational Disease Hazard Evaluation in the Field," by Warren Cook.
A. Yes.
Q. Do you see that, sir? And it says that he was the director of the Division of Industrial Hygiene for a large commercial accident liability insurance company in Chicago. Do you see that?
A. Yes.
Q. Do you know when The Budd Company hired or contracted with its first industrial hygienist?
A. No.
Q. If you would, if you just turn the page to 194, I want to ask you -- take a look and read some comments that
0036 Mr. Cook made. This was in 1942. In the second paragraph, you will see that it says, "In the case of asbestos -- in the case of the asbestos dust condition, our evaluation of the exposure should be based on the knowledge that the present toxic limit for asbestos is five million particles of dust per cubic feet of air." That's what they were talking about at the National Safety Council, right, the last article?
A. Yes, I think so.
Q. It says, "This is a very small concentration, so small in fact that the condition may look good even through a critical eye and still present an exposure greater than this low limit."

If you take a look at the next paragraph, it states, "In the case of asbestos dust, however, and this holds even more certainly for dust high in free silica

content, the toxic limit is so low that the only safe procedure is to have recourse to actual dust determination." Do you see that, sir?

A. Yes.

Q. And then he says, "This is especially important where the injurious condition is not immediately evident but requires years to develop as in the case of asbestosis and silicosis," right?

A. Yes.

0037 Q. So, the question I have is that -- let me ask you this. Do you know -- do you have any information that The Budd Company considered or was aware of the concept of latency, of latent diseases?

A. Just in general?

Q. Yes.

A. Not specifically, no.

Q. Okay. So, when did -- most of the cars that were built for the Santa Fe were built at the Red Lion plant in Pennsylvania, is that right?

A. Yes.

Q. And I think that plant was built in 1942 just around the same time as this article was written, correct?

A. That sounds right. I don't know for sure but about that time.

Q. Okay. So, you understand what Dr. Cook was saying here -- Mr. Cook was saying that these diseases don't happen all of a sudden. It takes years and years for them to manifest, is that correct?

A. Correct.

Q. Okay. One of the -- one of Budd's competitors in the railcar business you mentioned was the Pullman Company. Do you remember talking about the Pullman Company?

A. Yes.

Page 38:6-38:15, 00:00:54 - [00:00:54] [Overall Running Time : 00:21:54]

Sir, this is a study that was published by the State of Illinois Department of Public Health. Do you see that?

A. Yes.

Q. The Division of Industrial Hygiene. And if you turn to the third page of the document -- go to the Elmo, sir. If you go to the third page of the document, you'll see that this is an industrial hygiene survey of the Pullman plant in Chicago. Do you see that?

A. Yes.

Page 39:5-39:6, 00:00:05 - [00:00:06] [Overall Running Time : 00:22:48]

Q. And it's dated April 1st, 1938, is that right?

A. Correct.

Page 39:14-39:15, 00:00:03 - [00:00:03] [Overall Running Time : 00:22:54]
Start at "Do"

Q. Yes. Do you see the paragraph on dust?

A. Yes.

Page 40:8-40:10, 00:00:08 - [00:00:09] [Overall Running Time : 00:22:57]

Q. And you can see that there was some testing done, Nos. 11 and 12. Do you see that, sir?

A. Yes.

Page 40:24-41:11, 00:00:42 - [00:00:42] [Overall Running Time : 00:23:06]

Q. Okay. And then in No. 12, there was a test that was done in the steam department under the car while men are stripping pipe covering. Do you see that, sir?

A. Yes.

Q. Okay. That's pretty much the same thing that Mr. Rabe

alleges that he did, isn't it, stripping pipe cover under a car?

A. I wasn't aware of that, but I'll agree.

Q. Okay. And then there were findings showing that there was 27 million particles per cubic foot of inorganic dust, 4.75 million particles of silica and 8 million particles of asbestos. Do you see that, sir?

A. Yes.

Page 42:1-42:21, 00:01:20 - [00:01:20] [Overall Running Time : 00:23:48]

0042

Q. I'd like you to take a look at page 6 which follows the chart. If you can go to the Elmo, sir? If you go to the last paragraph on page 6, you'll see something that says stall shop. Do you see that, sir?

A. Yes.

Q. The paragraph? And they're discussing the contamination that they found. It says, "We found that the contamination of air in the stall shop is due to the stripping operation in the cars, the steel saw in the tin department, the duplex grinder in the tin department and the pipe covering in the steam department." And then they say, "Both of these -- both of these stripping operations are the greatest sources of dust and present a serious dust hazard to the men doing this work." Do you see that?

A. Yes.

Q. "Particularly since no protection is afforded." Then it says, "Fortunately, these operations are intermittent. If they were continuous, the entire stall shop would be seriously effected." Do you see that?

A. Yes.

Page 43:4-43:9, 00:00:17 - [00:00:17] [Overall Running Time : 00:25:08]

Q. And you will see that there are a number of recommendations, engineering recommendations, that were made to the Pullman Company. The first recommendation is that all stripping operations should be carried on outside the shop. Do you see that, sir?

A. Yes.

Page 43:13-44:5, 00:01:19 - [00:01:20] [Overall Running Time : 00:25:25]

Q. Okay. The second recommendation is that respirators approved for silica and asbestos dust be given to the pipe covering strippers in the steam department and that these respirators be cleaned daily. Do you see that?

A. Yes.

Q. The third recommendation is that the people stripping the pipe covering should wet it down. Do you see that?

A. Yes.

Q. And then let's skip to No. 5. It says, "Men sweeping out the cars wear approved respirators if they have daily sweeping to perform and apply wet methods." Do you see that?

A. Yes.

0044

Q. So, it's fair to say that at least at the Pullman plant in Chicago, an analysis was performed of the type of pipe stripping operation, pipe covering removal operation that's alleged in this case, isn't it?

A. Yes.

Page 49:14-50:1, 00:01:20 - [00:01:20] [Overall Running Time : 00:26:44]

This is an article that was published by Dr. J.C. Wagner, et al, in 1960. Do you see that, sir?

A. Yes.

Q. And the subject is, "Pleural Mesothelioma and Asbestos

Exposure in the North Western Cape Province." Do you see that?

A. Yes.

Q. If you turn to -- this is a study of a number of cases of mesothelioma in 1960. And if you turn to page 267, you will see that one of the cases, case 30, involved a boilermaker and what they called the fitter. Do you see that, sir?

A. Yes.

Page 50:25-51:9, 00:00:52 - [00:00:53] [Overall Running Time : 00:28:04]

Q. And if you look at cases 30 -- 29, 30 and 31, these are all individuals who worked for railroads, aren't they?

A. Yes.

Q. So, 3 out of the 33 mesotheliomas that were reported were among railroad workers, is that right?

A. Yes.

Q. Are you familiar with the work that was done and the paper that was done by Dr. Selikoff in 1964 about pipefitters?

A. No.

Page 51:20-52:4, 00:00:49 - [00:00:49] [Overall Running Time : 00:28:57]

Q. Sir, this is an article that's already been discussed in this case or that the jury will hear about in this case that was published by Dr. Irving Selikoff and his associates entitled, "Asbestos Exposure and Neoplasia." And I'd like to ask you a couple of questions about it. You will see in the abstract, it says that, "Building trades insulation workers have relatively light intermittent exposure to asbestos." And then he talks about various workers that he studied and what they died

of. Do you see that?

Page 53:1-53:6, 00:00:20 - [00:00:20] [Overall Running Time : 00:29:47]
Start with "So"

That's what the epidemiological reports tell us." So, he's talking about people who are insulating pipe, correct?

A. Yes.

Q. The same activities that are alleged in this case?

A. Apparently.

Page 54:7-54:15, 00:00:58 - [00:00:59] [Overall Running Time : 00:30:08]

Q. Later on in the paragraph, he says, "This incidence of more than one percent of deaths from pleural mesothelioma is strikingly high for a tumor that is generally considered to be extremely rare."

In any event, my question to you is, did you find any evidence in your review of the records that The Budd Company was either aware of Dr. Selikoff's study or considered it or disputed it in any way after 1964?

A. No.

Page 54:25-55:7, 00:00:41 - [00:00:41] [Overall Running Time : 00:31:07]

Q. Sir, the first page of this summary of articles is taken from an article from Tuesday, October 6, 1964, in Indiana, Pennsylvania. Do you see that?

A. Yes.

Q. And if you look down at the article there, they say that asbestos -- there's a study that asbestos is cancer causing. Do you see this, the title of the article?

A. Yes.

Page 55:12-56:15, 00:01:21 - [00:01:22] [Overall Running Time : 00:31:48]

Q. The Budd plant was in Pennsylvania, correct, where the cars were built?
A. Yes.
Q. If you take a look at the second article in the group, this comes from York, Pennsylvania. Do you know where York, Pennsylvania, is?
A. No.
Q. The title of the article is, "Doctor Studying Environmental Health Hazards Cites Risk from Asbestos Dust." Do you see that, sir?
A. Yes.
Q. And he cites Dr. Selikoff's article?
A. Correct.
Q. In the third paragraph, it says, "Selikoff said the link between cancer and asbestos has led him to suspect that other mineral dust which contaminates both urban and rural air may create medical hazards for the public." Do you see that?
A. Yes.
Q. And the third article in the series is from Wilmington, Delaware. And Budd had a plant right outside of Wilmington, didn't it?
A. I believe so, yes.
Q. Okay. The title of this article is, "Asbestos Cancer Link Probed," right?
A. Correct.
Q. This is published in 1966 in the Wilmington Morning News. Do you see that, sir?
A. Yes.

Page 56:23-58:1, 00:02:21 - [00:02:21] [Overall Running Time : 00:33:10]

Q. And of course Budd's headquarters were in Michigan in the 1960's, weren't they?

A. I don't remember when they moved to Michigan but around then.

Q. I'd like you to just take a look at this article that was published in 1964 in the Lansing State Journal. And again, this is an article that talks about asbestos and cancer, does it not?

A. Yes.

Q. Finally, there's another article here that is published in 1964, a similar article from Battle Creek, Michigan. Do you see that, sir?

A. Yes.

Q. And it says, "Asbestos cancer link per serious lung and chest cavity carcinomas show mineral dust embedded." Do you see that, sir?

A. Yes.

Q. So, apparently Dr. Selikoff's article in 1964 was big news, is that fair to say?

A. It appeared in these articles, yes.

Q. Now, 1964 was the same year that Budd made its final sale of cars to the Santa Fe, is that correct?

A. Yes.

Q. Okay. And at that time, according to the chart that we looked at earlier, Budd cars comprised approximately half of the Santa Fe fleet. If you look at 1964, around that time, the Santa Fe fleet had about 400 Budd cars in it, is that correct?

A. Yes.

Page 59:21-59:24, 00:00:15 - [00:00:15] [Overall Running Time : 00:35:31]

Q. Well, you'll agree that Budd saw evidence of claims in its workers at Red Lion who worked in the car plant. Are you aware of that or not?

A. Yes.

Page 61:10-62:15, 00:02:11 - [00:02:11] [Overall Running Time : 00:35:46]

Q. I would like to ask about -- talk a little bit about pipefitters at Budd. My understanding is that -- well, will you agree with me that Budd's production workers who built the cars at Red Lion were pipefitters, is that right? There were pipefitters among them?

A. I assume so.

Q. And that Budd employed pipefitters at that plant?

A. Yes.

Q. Okay. What Mr. Rabe stripped off, they first put on the car, is that right?

A. Correct.

Q. In 1981, a group of pipefitters at the Red Lion plant were assigned to the asbestos cleanup crew. Have you seen those documents?

A. Yes.

Q. I want to show you what we've marked as Bauer Exhibit 10.

DEPOSITION EXHIBIT 10
WAS MARKED BY THE REPORTER
FOR IDENTIFICATION

Okay. This indicates that in 1981 -- and it says that, "In order to minimize the risk of potential hazard of exposure to asbestos fibers, the following procedure is to be implemented immediately." Do you see that?

A. Yes.

Q. Okay. This is sent by the employee relations manager. Do you see that?

A. Yes.

Q. And it's directed to Red Lion personnel?

15 A. Correct.

Page 63:13-63:16, 00:00:09 - [00:00:10] [Overall Running Time : 00:37:57]

13 Q. And it says that, "The employees will be instructed in
14 the proper methods and procedures to do the cleanup,"
15 correct?
16 A. Right.

Page 68:4-68:15, 00:01:02 - [00:01:03] [Overall Running Time : 00:38:06]

04 Q. So, let me ask you this again. If you take a look at
05 paragraph 18 in the Notice, the question is posed, "When
06 if ever did Budd first warn or educate their own workers
07 concerning potential disease or health risks from
08 working with or around asbestos fibers"? And what would
09 your answer be?
10 A. I believe it was 1980.
11 Q. So, according to an amended Interrogatory received last
12 week, sometime in the 1980's, Budd then began testing
13 its employees who were historically exposed or already
14 diagnosed, is that right?
15 A. That's right.

Page 71:23-72:1, 00:00:12 - [00:00:12] [Overall Running Time : 00:39:09]

23 Q. So, at least as far back as 1981, there were indications
24 that there were Budd employees in Philadelphia with
25 asbestos disease, is that right?
0072 01 A. At the Hunting Park plant apparently, yes.

Page 72:17-73:2, 00:00:51 - [00:00:51] [Overall Running Time : 00:39:21]

17 Q. Are you familiar with the name Dr. McIlwain? Do you
18 know who he was?
19 A. No.

Q. Well, I'm going to represent to you that according to the Interrogatories filed in this case, Dr. -- there was a Dr. McIlwain who was the chief medical officer of Budd, anyway the highest ranking medical officer in the 1950's and 60's. I'm going to show you a document -- actually an article that was written by Dr. McIlwain in 1952. If you'd take a look at it, I'd like to go over it with you.

Page 73:11-74:9, 00:01:20 - [00:01:21] [Overall Running Time : 00:40:12]
Start with "Mr. Bauer"

let me ask Mr. Bauer. Mr. Bauer, if you look at the cover of the document, there's a stamp of the Mellon Institute Library that's dated October 6, 1952, correct?

A. Correct.

Q. So, this document from the Commonwealth of Pennsylvania had to be issued before then, correct?

A. Correct.

DEPOSITION EXHIBIT 14
WAS MARKED BY THE REPORTER
FOR IDENTIFICATION

Q. So, in any event, sometime before October 6, 1952, this article was issued by the Department of Labor and Industry. And I'd like to just go over a couple things with you about it. If you look at the cover of the document, it's hard to read because the print is kind of old and it's not a great copy. But it's entitled, "Commonwealth of Pennsylvania Safe Practice Bulletin No. 2." Do you see that, sir?

A. Yes.

Q. And it says, "Occupational Disease Prevention," right?

A. Right.

Q. The subject of the article is Insulation in Stream Lined Trains, correct?

09 A. Correct.

Page 74:14-74:21, 00:00:42 - [00:00:43] [Overall Running Time : 00:41:33]

14 Q. In trains. If you would turn to page 1 of the text, you
15 will see that it's -- there it is. It's entitled,
16 Insulation in Stream Lined Trains by Dr. E. H. McIlwain,
17 who is noted to be a medical director and personnel
18 manager of the Edward G. Budd Manufacturing Company. Is
19 that -- that's this predecessor name to the company we
20 call The Budd Company, correct?
21 A. Correct.

Page 75:15-75:19, 00:00:18 - [00:00:19] [Overall Running Time : 00:42:16]

15 Q. Then in the next paragraph he says, "It is about some of
16 the features of the insulation that I wish to direct a
17 few remarks. Fiberglass is a product of Owens-Corning
18 Corporation." Do you see that?
19 A. Yes.

Page 76:3-76:8, 00:00:28 - [00:00:29] [Overall Running Time : 00:42:34]

03 Q. Then if you will take a look at page 3, Dr. McIlwain
04 says that, "This material is the base for numerous
05 products, a partial listing of which would include
06 railcar and bus insulation, locomotive cab and boiler
07 insulation, pipe covering and blocks." Do you see that?
08 A. Yes.

Page 76:12-76:14, 00:00:08 - [00:00:09] [Overall Running Time : 00:43:03]

12 Dr. McIlwain acknowledges that even pipe insulation is
13 now being made of fiberglass, does he not --
14 A. Yes.

Page 77:15-77:19, 00:00:23 - [00:00:23] [Overall Running Time : 00:43:12]

Q. So, Budd's chief medical officer understood that because of the fact that the fibers in fiberglass were large, that they couldn't be inhaled into the lung and cause occupational disease. Is that what he's saying?
A. He said it keeps it to a minimum.

Page 78:2-78:10, 00:00:45 - [00:00:46] [Overall Running Time : 00:43:35]

And then he concludes, "Fiberglass providing the qualities generally sought as an insulation product to stream lined trains and in addition has proven safe for handling purposes by other workmen."

So, clearly, Dr. McIlwain or somebody on his behalf was studying the benefits of fiberglass not only as an insulating material but also in terms of safety for workmen, was he not?
A. Yes.

Page 78:19-78:24, 00:00:21 - [00:00:21] [Overall Running Time : 00:44:21]

Q. Mr. Bauer, The Budd Company prided itself on its engineering and scientific prowess, didn't it?
A. Yes.
Q. You would agree that Budd was an expert in the design, construction and materials of passenger cars?
A. Yes.

Page 80:24-81:21, 00:01:18 - [00:01:18] [Overall Running Time : 00:44:42]

Q. Budd knew that its railcars would require periodic renovation and repair after the sale, correct?
0081 A. I assume so.
Q. So, we've already acknowledged, agreed, that there were

no studies ever performed of fiber release or asbestos dust on -- or dust levels taken from the asbestos pipe cover. The only tests that I've seen were from the boiler room of Red Lion, do you agree with that?

A. Was it the boiler room of Red Lion?

Q. Yes.

A. I don't recall.

Q. I'll show it to you if you'd like.

A. Okay.

Q. So, why do you think they tested the boiler room? Do you have any knowledge as to why they tested the boiler room?

A. No.

Q. I mean, did anyone there get sick?

A. I don't know.

Q. Was that the trigger for testing physical structures for toxic dust at best, somebody making a claim and getting sick, was that the trigger?

A. I don't know what the trigger was.

Page 82:6-83:21, 00:02:35 - [00:02:35] [Overall Running Time : 00:46:00]

This is marked as 16, sir. This is a file we received from Budd that was mixed in with a number of Workman's Compensation claims on a gentleman by the name of Homer Kuykendall. If you turn to the first page on this exhibit, there is -- there happens to be a copy of his employment card. And what is he listed as? You will see it on the second half of the page, his craft.

A. Oh, pipefitter.

Q. Yes, pipefitter. So, same thing as Mr. Rabe, correct?

A. Well, it's a pipefitter. I don't know what kind of pipes they were.

MR. WYNNE: John, you keep saying that. But

I'm just not sure. I thought it was sheet metal worker according to his own description. But whatever the records indicate.

BY MR. ROVEN:

Q. All right, sir. On the second page, there's a Petition for Hearing that he filed. Do you see that? It was filed in December of 1972.

A. Yes.

0083 Q. This is a claim that was filed by Mr. Kuykendall. You can see it's December of 1972. And this is a claim -- if you would, can you please read the nature of the claim that he filed, claim for benefits?

A. Starting -- where do you want me to start?

Q. In the center of the page.

A. No. 2?

Q. Yes, please.

A. "The injury or disablement occurred at Detroit, Wayne County, Michigan, and in the following manner. The plaintiff was exposed to various deleterious media and was engaged in hard, arduous, strenuous, difficult manual labor which required fast heavy lifting, bending, twisting, turning and other -- under much pressure. The plaintiff was also exposed to constant noise."

Q. I'm sorry, the next paragraph is the type of claim that he's filed.

A. No. 1, pneumoconiosis, asbestosis, heart condition and sequela. No. 2, generalized arthritis of back and spine, shoulders, hands and feet. No. 3, bilateral diminution of hearing-related conditions.

Page 83:25-85:8, 00:01:42 - [00:01:42] [Overall Running Time : 00:48:35]

Q. And in any case, he appears to have been claiming that

0084 01 he was -- that he had asbestosis from working on pipes,
02 pipe insulation, would that be fair to assume?
03 A. Yes.
04 Q. Okay. So, the only question -- the question that I'm
05 asking you is since he made this claim that he had
06 contracted a disease as a result of his work, do you
07 know whether in 1972 the pipefitters in the building
08 that Homer Kuykendall worked in were informed that
09 asbestos could be a hazard? Do you know whether Budd
10 informed them?
11 A. I don't know.
12 Q. All right. Now, Budd had a Railcar Division, correct?
13 A. Correct.
14 Q. It had an Automobile Parts Division here in Michigan?
15 A. Yes.
16 Q. Based mostly here in Michigan but in other states as
17 well, correct?
18 A. Right.
19 Q. And it had a Polychem Division, correct?
20 A. Correct.
21 Q. All of those divisions that I just mentioned all
22 manufactured products that utilize the asbestos and in
23 their construction, didn't they?
24 A. Right.
25 Q. And all of those products were sold to the public,
0085 01 correct?
02 A. Correct.
03 Q. All of those products were intended to be repaired or
04 removed, replaced, weren't they?
05 A. Yes, I believe you could say that, yes.
06 Q. Now, the Polychem Division was formerly known as
07 Continental Diamond Fibre Company, correct?
08 A. Correct.

Page 86:1-86:4, 00:00:19 - [00:00:20] [Overall Running Time : 00:50:17]

0086 01 Q. In the 1950's and 60's, Budd had a lot of claims for
02 general pneumoconiosis, didn't it?
03 A. I recall seeing pneumoconiosis claims. I don't remember
04 how far back, but they had some for sure.

Page 90:11-90:17, 00:00:30 - [00:00:31] [Overall Running Time : 00:50:37]

11 Q. All right. In any event, this -- we know that the
12 Material Standards Manual that we looked at was at least
13 as old as 1968, correct, because of the distribution at
14 the end?
15 A. Correct.
16 Q. Okay. And this was approximately 16 months after
17 Dr. McIlwain's address at the Pennsylvania Health?

Page 90:23-91:5, 00:00:18 - [00:00:19] [Overall Running Time : 00:51:08]

23 Q. But what I'm saying is it was at least 16 years after
24 that?
25 A. 16 years, correct.
0091 01 Q. At that time, Budd was still using the same Wovenstone
02 product, correct?
03 A. Correct.
04 Q. The asbestos product?
05 A. Yes.

Page 91:18-94:10, 00:04:27 - [00:04:28] [Overall Running Time : 00:51:27]

18 Q. Do you know who Mr. W.L. Sheppard was? Do you know that
19 name?
20 A. No.
21 Q. Okay. I'm going to represent to you that Mr. Sheppard
22 was the president of the Railcar Division and had an

office in Philadelphia. This is marked as Deposition Exhibit No. 18.

DEPOSITION EXHIBIT 18
WAS MARKED BY THE REPORTER
FOR IDENTIFICATION

This is a memo from Mr. Sheppard to a number of people. And you'll see it says Red Lion Plant Railway Division at the top, does it not, sir?

A. Yes.

Q. And the date of this note is September, 1966?

A. Correct.

Q. Okay. At that time, Mr. Sheppard -- let's put this one up there. Mr. Sheppard says that, "The company is taking a look at its products liability insurance coverage. This reconsideration is based on a growing tendency for claims to be placed on the original manufacturer of an article rather than or in addition to the end operator of the equipment." Do you see that, sir?

A. Yes.

Q. Okay. Can you -- what is he talking about there? Why is --

A. I assume that was about the time that legal developments occurred that allowed the original equipment manufacturer to be sued.

Q. Prior to that time, it was very difficult for consumers to bring claims. There were technical and legal reasons why consumers couldn't bring claims against manufacturers, correct?

A. Yes.

Q. And it was beginning to occur at that point?

A. Correct.

Q. And Mr. Sheppard understood that, correct?

A. Yes.
Q. And in the second paragraph he says, "Accordingly the company has established an outside group who are visiting each division." So, it wasn't only limited to the Railcar Division; all the divisions were tuned into this, correct?
A. Yes.
Q. "Their purpose is to learn what products the division makes, who uses them and what potential do they have -- do they represent for liability claims." Did I read that correctly?
A. Yes.
Q. Okay. So, let me ask you this. In your review of the documents, at any time after 1966 when this study was conducted did you see any evidence that the railcars or that the components of railcars were studied by this group to determine what hazards they presented or what potential problems they would create for, you know, products liability claims?
A. No.

0094

Q. Do you -- okay. So, you found no evidence that at any time after this 1966 meeting or program that Budd retained any sort of scientist, experts or specialists to analyze railcars?
A. Correct, I did not.
Q. Sir, we had a number of files provided to us by Budd involving claims for pneumoconiosis as well as other general types of Workers' Compensation claims historically. And I created a chart, and I wanted to show you this chart which we have marked as Exhibit 19.

Page 95:12-95:25, 00:00:48 - [00:00:48] [Overall Running Time : 00:55:55]

Q. But in any event, sir, did you do your own search so to

speak or were you just provided with isolated examples of these type of claims?

A. I did my own search.

Q. Okay. Did you find a significant number of claims such as this?

A. I know I searched for the term pneumoconiosis, and I did find quite a few. I don't know if it was all of these. But I did find pneumoconiosis claims.

Q. Okay. And then there are a number of cases that they date back to the early 70's that are literally for -- that say asbestos, that the claims are based on asbestos exposure, correct?

A. Correct.

Page 97:15-98:10, 00:01:26 - [00:01:26] [Overall Running Time : 00:56:44]

I'm sorry. Just to correct the record, this is being substituted for what we originally marked as 20. Okay. And you will see it's a letter from a physician to The Budd Company about Mr. Buggs Neri or Mr. Neri Buggs. Do you see that?

A. Yes.

Q. And it's 1954?

A. Yes.

Q. And it's an inquiry asking Budd to find out if this man was exposed to silica or asbestos, is that right?

A. Yes.

0098

Q. Okay. All right. Let me show you another file. This is on a Mr. Caretti, Philip Caretti. This is a claim that we've marked as Exhibit 21.

DEPOSITION EXHIBIT 21
WAS MARKED BY THE REPORTER
FOR IDENTIFICATION

This is a claim -- according to Budd, this is a claim for pneumoconiosis. On the front page, it says the last day worked was 1965, is that right?

A. Yeah.

Page 98:16-98:24, 00:00:28 - [00:00:28] [Overall Running Time : 00:58:11]

Q. And in the second paragraph, it says, "From 1937 to 1965 he worked first as a pipefitter's helper and then as a pipefitter, is that right?

A. I'm sorry?

Q. Yes. It's the middle of the third paragraph of the work history.

A. Oh, I'm sorry, yes.

Q. So, he worked from 1937 to 1965 as a pipefitter?

A. Yes.

Page 99:15-100:2, 00:00:41 - [00:00:41] [Overall Running Time : 00:58:39]

Q. And then it's -- the diagnosis is noted as pneumoconiosis, correct?

A. Correct.

Q. So, this is an example of a pipefitter who filed a claim for pneumoconiosis, 1960's, correct?

A. Let's see.

MR. WYNNE: The claim says 1970.

THE WITNESS: 1970.

BY MR. ROVEN:

Q. I'm sorry. He last worked in the 1960's as a pipefitter, filed in the 1970's. So, as a pipefitter, he would have worked with asbestos-containing materials?

A. I don't know.

Page 102:24-103:19, 00:01:28 - [00:01:29] [Overall Running Time : 00:59:20]

24 Q. Okay. Let me ask you this. Could you just explain your
25 understanding in a nutshell of the Continental Diamond
0103 01 Fibre Company of Delaware and how Budd acquired it,
02 merged it and then disposed of it?
03 A. Budd purchased certain assets of Continental Diamond
04 Fibre in 1955. The seller -- if my recollection is
05 correct, at the time was Continental Diamond Fibre
06 Company. But as part of the transaction, the seller
07 agreed to change its name to take those terms out of it,
08 allowing Budd to create Continental Diamond Fibre as a
09 subsidiary of The Budd Company.
10 And I believe in 1962 Budd merged Continental
11 Diamond Fibre Company into The Budd Company. At some
12 point, either there or later, it changed its name to the
13 Polychem Division. And then in 1995, they sold the
14 Polychem Division.
15 Q. So, basically it was part of Budd either as a
16 wholly-owned subsidiary or a division literally merged
17 into the company for 40 years until it was sold,
18 correct?
19 A. Right.

Page 106:10-106:12, 00:00:18 - [00:00:18] [Overall Running Time : 01:00:49]

10 Q. Sir, we've marked this as Bauer 25, and it's some
11 documents that were sent to me by the State of Delaware
12 concerning the events about Continental Diamond Fibre.

Page 107:17-109:2, 00:02:12 - [00:02:13] [Overall Running Time : 01:01:08]

17 was already in the works. Basically, the deal was
18 approved in principle. But Continental Diamond Fibre
19 had to take this to their shareholders to make sure that
20 everybody signed off, correct?
21 A. Correct.

Q. So, in this year, in this interval year while the deal was pending, what was the due diligence that Budd -- the Budd lawyers would have done to make sure that the deal -- that the deal was a sound deal for the Budd shareholders? What are the things that the law department of Budd would have been doing to analyze the validity of the deal?

A. I can say what typically they would do, and that is review all of the relevant records from the target company, lists of assets, lists of liabilities, corporate corporation records, financial records, that type of thing.

Q. Okay. Part of that would have been like, for example, claims that were pending against the target company, against CDF?

A. Yes.

Q. I mean, that would have been a normal thing to do?

A. Correct.

Q. Okay. All right. I want to show you a couple of documents that I located. The first one I'm going to show you is dated July 15th, 1954, which we've had marked as Bauer 26.

DEPOSITION EXHIBIT 26

WAS MARKED BY THE REPORTER

FOR IDENTIFICATION

I'd like to ask you some questions about it. This is a document, a letter, that was written by Liberty Mutual to a man named Norris, who was the manager of Continental Diamond Fibre in Marshallton, Delaware. Do you see that, sir?

A. Yes.

Page 109:16-110:1, 00:00:43 - [00:00:43] [Overall Running Time : 01:03:21]

Q. But if you take a look at the second paragraph, Liberty Mutual is concerned, apparently they say that relative -- I know it's a poor copy. But it says, "Relative to the attention brought by the recent allegation of a hazardous dust condition in the compounding room, I have contracted our industrial hygienist -- I don't know -- there's something about a plan, analyzing your plant on July 19th for the purpose of making a dust count in the area." Do you see that, sir?

A. Right.

Page 110:16-111:11, 00:01:23 - [00:01:24] [Overall Running Time : 01:04:05]

Q. Sir, on the next -- I understand you're not waiving your objection. On the next page, you will see that there's an actual industrial hygiene survey that was submitted by Liberty Mutual on February 4, 1955. Do you see that?

A. Yes.

Q. Okay. And it was sent to the Continental Diamond Fibre Company, Haveg Division. Do you see that?

A. Oh, yes. It's hard to read, but I see it.

Q. So, apparently CDF, the target of Budd's takeover had a division called the Haveg Division, right?

A. Apparently so.

Q. Okay. And then if you take a look at the next page, without getting too far into the weeds, you will see on paragraph 1, that there's an indication that air sampling was performed -- I'm sorry, this is in the first paragraph. There's an indication that, "Air sampling for hydrogen chloride was performed and then for asbestos dusts in the treating, drying, storage and Haveg mixing room and for general dust in the Haveg

sanding area." Do you see that, sir?

A. Yes.

Page 112:2-113:23, 00:03:37 - [00:03:38] [Overall Running Time : 01:05:28]

Q. Yeah, you can go on.

A. "If the handling of the dried material, i.e., removing it from the dryers and dumping it in the storage bins, the employees performing these operations are exposed to high concentrations of asbestos dusts. The practice of wearing respirators while performing this operation then leaving the storage room after it is completed provides sufficient control over this exposure."

Q. If you would, just take a look at paragraph 3. It says that -- I think I can read this one -- "the employee performing the -- I can't -- I guess the sanding is exposed to extremely high concentrations of dust from the finished product beyond the full influence of the exhaust system." So, apparently they had an exhaust system, correct?

A. Apparently.

Q. And they were still -- they are saying he was exposed to concentrations that the exhaust system couldn't handle. If you go to the -- to page -- the Bates stamp is 230 on this page there are dust counts that were performed. And these are for asbestos dust. And one of the concentrations shown in the general room sample -- you'll see the second one -- was 34.6 million particles per cubic foot of asbestos. And if you scroll down to No. 7, you will see that there was actually an exposure of 190 million particles per cubic foot; so -- in a breathing zone of employees doing sanding. Do you see that, sir?

A. Yes.

Q. Okay. So, in any event, this report was made in July of 1954. Now, I want to show you a second report that came after it. Oh, one other thing. If you look on -- at the very last page on the last exhibit, you will see that there's a letter from a gentleman named Paul Lynum who was identified as the plant superintendent on the first page at the bottom. And put this on the Elmo and take a look at it.

My Lynum writes and he says, "Mr. Thomas of Liberty Mutual called this morning and said he and their industrial hygienist would be here on Monday, July 19th, to make a dust count in the compounding area. This relates of course to the pending Tweed case." Do you see that?

A. Yes.

Q. That indicates they've got some kind of lawsuit filed against them?

A. It sounds that way.

Page 116:23-117:2, 00:00:15 - [00:00:16] [Overall Running Time : 01:09:06]

Q. Sir, this is another letter from the Liberty Mutual safety engineer to Continental Diamond Fibre, correct?

A. Correct.

0117 Q. And the president of the company is copied on it?

A. Yes.

Page 118:5-119:7, 00:01:41 - [00:01:41] [Overall Running Time : 01:09:22]

Q. Okay. All right. Now, you told us earlier that part of the due diligence process of Budd's legal department in making this acquisition would be to study things like this, claims, problems, potential liabilities, correct? That would just be normal operating procedure?

A. Typically, yes.
Q. So, it would be common and expected for somebody from the Budd legal department to have seen these three letters, correct?
A. Well, not necessarily. If Mr. Wynne is correct and they didn't buy this operation, they wouldn't have had any reason to review records relating to it.
Q. Well, but remember, they were going to buy the entire company for stock, weren't they, in 1954?
A. I don't believe that's what that meant. They were buying, assets, certain assets, not the entire company. They were paying for that with stock, which is a different thing.
Q. But being that as it may, we know that there was a claim pending, correct?
A. Correct.
Q. And we know that the president of Continental Diamond Fibre received all these letters and received the notice, correct?
A. Correct.
Q. So, it's -- the claim was a potential liability of Continental Diamond Fibre, wasn't it?
A. It could be.

Page 119:24-120:3, 00:00:19 - [00:00:19] [Overall Running Time : 01:11:03]

Q. Okay. I'm going to show you another document that is the Notice of Annual Meeting of Shareholders of Continental Diamond Fibre Company. And this document is dated April 27, 1955, just a week after the third letter from Liberty Mutual.

Page 120:18-124:10, 00:05:36 - [00:05:37] [Overall Running Time : 01:11:22]

Q. I don't want to get too far ahead of myself. But

basically Continental Diamond Fibre is going to their shareholders and saying, we have a potential deal with Budd; we want you to vote on it?

A. Yes.

Q. So, and then the next page you will see that, again, Mr. Murphy, the one who was the president of the company and received the letter from Liberty Mutual, he's listed as the president of the company still, correct, on page 2?

A. Yes.

Q. And then I'd like you to turn to page 3, which describes the deal. And it says, "Agreement for sale of certain assets." And here it says that -- it basically says, "The stockholders will be requested to approve an agreement whereby the company will transfer its property and assets to Budd," and a copy of that agreement is attached, correct, so you can read it?

A. Yes, correct.

Q. And then it says that, "The properties to be transferred to Budd include three plants together with all personal property pertaining to such plants and other real estate and everything. Budd is to receive all accounts receivable of the company and certain other intangible assets, the capital stock of the two subsidiaries, a company that looks like it's in South America. The company will get rid of the name Continental Diamond Fibre and make that available to Budd," correct?

A. Correct.

Q. Okay. And then the third paragraph, it says five lines down, it says that, "In addition, Budd will assume substantially all debts, liabilities and obligations of the company, including obligations under purchase and

sale contracts and leases." So, we don't know what other deal was made. But according to this statement, if this is true, then Budd would have assumed all the debts and liabilities for this claim that was made in Marshallton?

A. Not necessarily.

Q. Not necessarily? Okay.

A. It says, "substantially all." And we don't -- unless it's attached, we don't have a contract. We can look at the contract. And typically in such a contract, there's a description of which liabilities are assumed.

In the transaction I'm familiar with, if you don't buy a particular plant, you don't get those liabilities.

Q. Well, and that may be the case. That may be the case.

A. Fine. So, you characterized it as all liabilities. It's not.

Q. Then on the next page, on page 4, they describe Continental's plants, and they say the -- and they include Marshallton. And they say that it's equipped for the manufacture of -- excuse me. They say that it's 29 acres, and the plant is equipped for the manufacture of products of Haveg Corporation. You will see this at the end of page 4.

A. Yes.

Q. Largely consisting of corrosion-resistant plastic compound, which is I guess how they refer to this insulation -- I don't know -- and for the partial processing of vulcanized fiber sheets. Do you see that? And it says, "If the sale of assets to Budd is consummated, the manufacture of products for Haveg Corporation, which would be retained as a subsidiary, would continue at the Marshallton plant." So, they are

cutting off -- they understand they cut off this plant?
A. Correct.
Q. It's not going to Budd. And then they describe the business of Budd and -- after that. And I'd like you to next take a look at page 7. You will see on page 7 the description of Budd's customers. They list Santa Fe, is that right?
A. Yes.
Q. I would like you to look at page 10. And it says, "Additional information." It's at the bottom of page 10. It says, "Budd has advised Continental that if the agreement is consummated, Budd intends to continue to employ substantially all of Continental's present employees." Do you see that?
A. Yes.
Q. So, Budd's goal was to basically continue the business intact, correct?
A. Those portions it purchased, yes.
Q. Right. And they kept all -- they kept the employees. And then at the bottom, it says, "Budd has advised Continental that it presently intends to retain Mr. Murphy, president, as a consultant for five years," correct?
A. Correct.
Q. So, Mr. Murphy becomes -- the president of CDF becomes a Budd consultant for five years?
A. Correct.

Page 125:17-125:20, 00:00:13 - [00:00:14] [Overall Running Time : 01:16:59]

Q. So, in other words, Budd has agreed to pay the normal debts of CDF that are -- that accrue before the closing date, correct?
A. Correct.

Q. Okay. I want to show you another document that we will mark as 31.

DEPOSITION EXHIBIT 31
WAS MARKED BY THE REPORTER
FOR IDENTIFICATION

This is a letter that's after the incorporation of Continental Diamond Fibre Division of The Budd Company. This is -- now Continental Diamond Fibre is completely part of Budd since November 29, 1955, correct?

A. Correct.

Q. And he writes -- this gentleman, the signatory of this letter, whose name is Mr. Cain -- you can't read his signature, but you can see it's typed down there at the bottom. Mr. Cain writes to the Haveg Corporation and he says, as you already -- "As you undoubtedly already know, your letter of credit expires on November 30th, this having been issued to cover the 150,000 pounds of I guess the Amosite asbestos placed at Oakland Metal against your order."

He says, "There has been but one shipment of 21,000 pounds" -- et cetera, et cetera. And then, you know, later in the letter he says, you know, go get your own letter of credit. You can read it if you'd like.

But I want you to -- I'd like your understanding on this as a corporate attorney. Does that mean that the Continental Diamond Fibre Division of The Budd Company is using their letter of credit to extend credit to this -- to this Haveg Corporation to buy 150,000 pounds of asbestos?

Page 130:1-130:6, 00:00:16 - [00:00:16] [Overall Running Time : 01:19:25]

THE WITNESS: I have read the letter. It's not really clear exactly what Continental Diamond Fibre Division of Budd is doing with Haveg here. They may be facilitating a purchase. I just can't tell. They're doing something with them obviously concerning the purchase and a relevant letter of credit.

Page 131:17-133:3, 00:02:21 - [00:02:21] [Overall Running Time : 01:19:42]

Q. Okay. Let me show you a document that was generated a year later, a couple of years later, I'm sorry. This is moving up to the 60's now. And this is a document we have marked as Exhibit 33. This is a Technical Bulletin of Continental Diamond Fibre. And at this point, they're part of Budd, right?

A. Polychem Division you mean?

Q. Yes.

A. Right.

Q. But that's the old Continental Diamond Fibre Company, right?

A. Right.

Q. Now they're actually a division of Budd, and they are part of the company?

A. Correct.

Q. And it indicates that they too are selling asbestos products, is that right?

A. Correct.

Q. Okay. The documents shows them. Let me put it on the Elmo. This Technical Bulletin says that Budd is now in the title, and it says that they are selling -- the date is April, 1969. And it tells us that they are now selling the brand name Dilecto Phenoloc Asbestos

Laminates, correct?

A. Correct.

Q. And that this is -- these are sheets, rods and tubes. And it describes the product below as AA grade, an asbestos fabric base grade that's resistant to heat. Do you see that, sir?

A. Yes.

Q. If you turn to the next page, you will see that the Polychem Division describes the grades of this material. Some of it is very high temperature, some of it is made for tubes, rods and sheets. And then if you look at the bottom of the page, it indicates that the rods and tubes are sanded and buffed. Do you see that?

A. Yes.

Page 136:10-136:22, 00:00:39 - [00:00:39] [Overall Running Time : 01:22:03]

Q. Okay. Now, by this time, Budd was really a big company, weren't they?

A. Budd had been a big company for decades.

Q. I mean, I have a copy here I'm going to show you of the Fortune 500, the old Fortune magazine from -- this is from 1967.

DEPOSITION EXHIBIT 35

WAS MARKED BY THE REPORTER

FOR IDENTIFICATION

And you remember Fortune, right? This is the magazine that always had the list of the 500 biggest U.S. corporations.

A. Yes.

Page 137:9-137:22, 00:00:56 - [00:00:57] [Overall Running Time : 01:22:42]

Q. Okay. And I brought a copy of the page that Budd was

on. And at that time, it looks like they were -- if I'm not mistaken, I think they were ranked -- in 1966, they were ranked the 199th largest company in the United States. Do you see that?

A. Yes.

Q. Ahead of companies like Seagram's Whiskey and Armstrong Cork. And I don't know who Collins Radio was. They're gone. Sherwin-Williams, Worthington Essex Wire, Owens-Corning Fiberglass, the people that made that auto glass?

A. Right.

Q. Then I have another one, another Fortune. This is from 1971. This is Exhibit 36.

Page 138:5-138:18, 00:01:12 - [00:01:12] [Overall Running Time : 01:23:39]

Q. And according to this, in 1971, Budd was the -- was the 216th largest corporation in the country, correct?

A. Correct.

Q. Now, for a corporation the size of Budd, a company like the Santa Fe that had bought 450 railcars from them over the course of a few decades I assume was still a significant customer in the mid 60's?

A. At least for the Railway Division, yes.

Q. If Budd had wanted to transmit information about their products, about the condition of their railcars, all the railcars they had ever sold, all 450 railcars, it would have been easy for them to contact the Santa Fe, would it not?

A. Yes.

Page 139:23-141:14, 00:02:35 - [00:02:35] [Overall Running Time : 01:24:52]

And this is a series of letters between the Railway Division and the chief mechanical officer of the

Pennsylvania Railroad. Do you see that?

A. Yes.

Q. Okay. And on the first page, it talks about the subject, it says, "Altoona stripping, 20 sleepers." Do you see that?

A. In the first paragraph? Let's see.

Q. The subject line.

A. The subject. I'm sorry, yes.

Q. And then in the first paragraph it says, "Several days ago, we discussed the possibility of a Budd representative being assigned to Altoona to inspect and approve the stripping of the 20 bedroom roomette sleepers prior to their shipment to our Red Lion plant for completion of the interior." So, apparently -- well, let's finish the document. And then it talks about this project. The gentleman from The Budd Company who is the sales representative for this particular transaction said he's got a program. It says, "We would like to participate in the Altoona program as follows." Do you see this?

A. On the first page?

Q. Yes.

A. Oh, yes.

Q. Then he says, "When the first car is partially stripped, we suggest we have an on-the-car meeting which would be attended by our Altoona representative plus two or three members of our engineering department." So, this indicates that Budd actually had a representative at the rail shops, right, in Altoona?

A. Yes.

Q. Okay. And then they sent three other members over of the engineering department. And it says, "At that time,

we would review details of the stripping and discuss Budd drawings and the car interior that will amplify the specifications and clarify conditions in the area of partitions, et cetera." And then No. 2, it says, "Once this stripping is underway, we will instruct our representative to remain in Altoona until the first five cars have been stripped, the equipment reconditioned and the cars shipped to Red Lion."

Page 141:20-142:9, 00:01:02 - [00:01:03] [Overall Running Time : 01:27:28]

Q. That's okay. But it basically says that they write back and they say, "The chief mechanical officer is very much in favor of The Budd Company sending an inspector to supervise the stripping of the 20 N&W sleepers prior to their shipment." And in the third paragraph, it says that, "Mr. Johnston has agreed that if we can arrange to there have a resident inspector in Altoona, he will issue instructions to give this man full responsibility and control. No car will leave Altoona until the Budd inspector releases it." Do you see that, sir?

A. Yes.

Q. Okay. So, in any event, it appears that Budd was very intimately involved in the operations of its customers, is that fair to say?

A. Yes, to the extent described here, correct.

Page 145:6-145:25, 00:01:24 - [00:01:25] [Overall Running Time : 01:28:31]

Q. You would agree with me that typically a manufacturer of industrial equipment really doesn't know the service conditions of use of its product, is that correct?

A. Yes, correct.

Q. So, for example, if Budd sold a railcar with asbestos pipe insulation to two different railroads, railroad A

and railroad B, it would be possible that railroad A would assign somebody to take it off who hardly ever does it, maybe he only strips insulation once a year and he doesn't get a severe dose of exposure; but railroad B could assign an older man who does it every day, correct?

A. Correct.

Q. There's no way for Budd to know how, in this example, who is going to strip the asbestos, where it's going to be done or what precautions if any the employer is going to use, correct?

A. Correct.

Q. So, in circumstances like that, should the manufacturer take the safe course and warn?

Page 146:6-148:22, 00:04:03 - [00:04:04] [Overall Running Time : 01:29:56]

A. Well, I agree with Mr. Wynne, it does call for an opinion. And I think the onus is really on the employer of whoever is doing that work to make sure they're protected. They are in a position to know who is doing it, under what conditions. They're subject to relevant OSHA standards. So, that being the case, my personal opinion would be Budd would not have a duty to do that.

Q. What about before OSHA when there were no OSHA standards, who should have warned then?

A. I think just as matter of course that typically wasn't done by companies back then that I'm aware of.

Q. That leads me to question 7, which is posing the question, "What is the factual basis for Budd's contention that the decedent's employer or the government should have warned decedent of asbestos hazards associated with working on Budd passenger cars?"

What is the basis for your claim that the Santa Fe should have warned Mr. Rabe?

A. Depends on the time I suppose. But once OSHA was in place, they would have an obligation under OSHA to make sure the standards were complied with.

Q. Well, OSHA was in place -- let me ask you this. Do you think that the Santa Fe should have -- is Budd's contention that the Santa Fe should have been held to a higher standard than Budd?

A. No.

Q. You told me earlier that Budd didn't warn its own employees until the 80's.

A. Correct.

Q. So, would that have been around the time that you would have expected Santa Fe to warn its asbestos strippers too?

A. My answer, I was referencing OSHA. My point was once OSHA went into effect, the employer -- whether it's Budd or Santa Fe -- clearly has an obligation to do that.

Q. Okay. But I'm just saying, you wouldn't have held the Santa Fe to a higher standard than you would have held The Budd Company, correct?

A. Correct.

Q. Now, for -- have you seen any examples where Budd did warn? Did Budd know how to communicate a warning when it needed to in the Railcar Division for example?

A. I'm not aware that they did. So, I guess my answer is no.

Q. I have a photograph that Mr. -- actually, Mr. Wynne sent it to me. I wanted to show you. It's in the documents that we received. This one is marked as Bauer No. 39.

DEPOSITION EXHIBIT 39

WAS MARKED BY THE REPORTER

FOR IDENTIFICATION

It says -- I'm just asking you to look at that. So, this is an example of an -- I think an electrician would probably tell you that this was an electrical closet on a passenger car where all the wiring systems were. And it contains a warning, correct, about the voltage?

A. Correct.

Q. And the reason it contains a warning is because, I mean, a veteran electrician is going to know that there's voltage when it's activated. You don't have to warn a veteran electrician, do you?

A. No, I suppose not.

Q. But there are certain people who may be in there working with it who don't know, right?

A. Correct.

Q. So, Budd chose to warn, correct?

A. Correct.

Page 150:24-152:9, 00:02:12 - [00:02:12] [Overall Running Time : 01:34:00]

Q. And this is a set of Answers that were given by the Manville Trust. And the question is, "Regardless of whether you assert that any warning is necessary with regard to your asbestos-containing product, did you put on such products or their containers any warning of any potential hazard or possible hazard or hazard to health by virtue of the asbestos content of the -- of said products? If so" -- and then it says describe it. And on the next page, you will see an answer. And I want to put the answer up here on the Elmo so the jury can see the answer.

DEPOSITION EXHIBIT 40

WAS MARKED BY THE REPORTER

FOR IDENTIFICATION

The answer says, "Answer, Manville placed warning labels on the packaging of its industrial thermal insulation products containing asbestos which might release dust upon installation. These labels and the dates are as follows." And you will see the first one is 1964 to 1970. Do you see that, sir?

A. Yes.

Q. And it says, "Caution, this product contains asbestos fiber. Inhalation of asbestos in excessive quantities over long periods of time may be harmful. If dust is created when this product is handled, avoid breathing the dust." Then it tells the user to wear a respirator. Now, when Budd received these products from Manville, it

0152 didn't ship the boxes that it was in or anything to Santa Fe, did it?

A. No.

Q. It took the products out of the boxes and put it on the pipes, right?

A. Correct.

Q. So, if there was a warning, this was never passed on to the customer, is that correct?

A. As far as I know.

Page 153:4-153:16, 00:00:41 - [00:00:41] [Overall Running Time : 01:36:13]

Q. I understand. I want to show you an exhibit that we have marked as No. 41.

DEPOSITION EXHIBIT 41

WAS MARKED BY THE REPORTER

FOR IDENTIFICATION

This is a document that was generated by Haveg Industries that was still in business in 1972, years

later, okay? And you will see here that Haveg writes, it says -- this is December 16, 1972. "Due to OSHA requirements, I believe we should send the attached statement to all of our customers who purchase Haveg asbestos-filled products." Do you see that, sir?

A. Yes.

Page 153:24-155:4, 00:02:28 - [00:02:29] [Overall Running Time : 01:36:54]

Q. I just want you to look at the Notice that Haveg elected to place on its products. It says, "The following Haveg materials are not generally considered hazardous but do contain a certain amount of asbestos fibers. This material generates dust similar to sawdust that will contain asbestos fibers when being machined, sawed, ground or abraded in any way. I wish to make you aware that a federal imposed limit of an eight-hour time weighted average airborne concentration of asbestos fibers to which any employee may be exposed shall not exceed 5 fibers per" -- I think they mean 5 million particles per cubic foot -- "is now in existence and 2 fibers per million will be put into effect in 1976. Therefore, the following recommendations are made by Haveg for safety and health."

And what they tell their customers is, "Isolated cutting, threading and chipping for repairs probably will not cause a hazardous condition for the operation and probably will not exceed OSHA limits. Workmen should wear respirators if any dust is generated." Do you see that, sir?

A. Yes.

Q. Okay. So, at least in 1972, there were companies who were compounding products that contained asbestos who were generating warnings to their customers, correct?

24 A. Correct.

25 Q. And we know from looking at the prior records that in

0155 01 1966, Budd was investigating the nature of their

02 products because of their concern over products

03 liability claims, isn't that right?

04 A. Yes.