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DATE: 2008 May 8

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DOCUMENT DESCRIPTION: Legal - Deposition of Dale A. Fronk [Spear Exhibit 3]

EXHIBIT 3

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

- - -

Chris Shinall and Maruja Shinall,	:	
Plaintiffs,	:	
vs.	:	Case No. CGC 07-274462
CSR, Ltd., aka Colonial Sugar Refinery, et al.,	:	
Defendants.	:	

- - -

DEPOSITION

of Dale A. Fronk, taken before me, Rosemary F. Anderson, a Notary Public in and for the State of Ohio, at the Sheraton Suites Columbus, 201 Hutchinson Avenue, Columbus, Ohio, on Thursday, May 8, 2008, at 12:37 p.m.

- - -

ENTERED MAY 15 2008

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APPEARANCES:

Levin Simes Kaiser & Gornick LLP
By Mr. William Levin
44 Montgomery Street, 36th Floor
San Francisco, California 94104

On behalf of the Plaintiffs.

Jackson & Wallace
By Ms. Catherine Golden
55 Francisco Street, 6th Floor
San Francisco, California 94133

On behalf of the Defendant Orton Ceramic Foundation.

ALSO PRESENT:

Mr. Gil Whitney, Videographer.

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Thursday Afternoon Session,

May 8, 2008.

- - -

THE VIDEOGRAPHER: We are on the record. Today's date is May 8, 2008. The time is approximately 12:37 p.m. We are here to take the videotape position of Dale Fronk in the case of Chris Shinall versus CSR, Ltd., aka Colonial Sugar Refinery, et al., Case No. CGC 07-274462, in the Superior Court of the State California, County of San Francisco.

I am Gil Whitney. I'm the videographer today. Today's court reporter is Rosemary Anderson. We're with the firm of Armstrong & Okey.

The court reporter may swear the witness.

(Witness sworn.)

THE VIDEOGRAPHER: And also I'd like counsel to introduce themselves.

MS. GOLDEN: Yes, this is Catherine --

MR. LEVIN: Good morning, although it may be afternoon where you are, sir. My name is Bill Levin. How are you doing?

THE WITNESS: Very good, Bill, thank you.

MR. LEVIN: Does the court reporter have

a copy of the notice by any chance?

(EXHIBIT MARKED FOR IDENTIFICATION.)

MR. LEVIN: I just want to say this deposition is being taken pursuant to deposition notice which is now attached as Plaintiff's Exhibit 1.

- - -

DALE A. FRONK

being by me first duly sworn, as hereinafter certified, deposes and says as follows:

EXAMINATION

By Mr. Levin:

Q. Sir, you're being produced as a person most knowledgeable at Orton on a number of topics that are contained in the deposition notice. Do you understand that?

A. No, I don't.

Q. Okay. Tell me what you do understand.

A. I understand that I'm here to give a deposition.

Q. Okay. Have you seen the deposition notice?

A. I don't know that I've actually seen the deposition notice. I don't know what you're -- no, I

have not seen one.

Q. Okay. So you haven't seen the deposition notice that sets forth the categories that you're being produced to testify about?

A. That's correct.

MS. GOLDEN: Madam Court Reporter, could I see that?

Plaintiff's Exhibit No. 1 has no categories at all. Okay. Well, I'm not sure what you have.

Actually, I'm sorry, this deposition notice that the court reporter has marked actually says Notice of Taking Deposition of Employee Bill Chase.

MR. LEVIN: Okay, we'll have to substitute the correct exhibit, deposition notice.

Q. But suffice it to say you haven't seen any deposition notice, sir, correct?

A. That's correct.

Q. Okay. And you're not familiar with the categories set forth in the deposition notice.

A. That's correct.

MS. GOLDEN: Well, I'm just going to put in a belated objection that that lacks foundation.

MR. LEVIN: All right.

Q. Sir, could you outline for me your history with Orton working at the company?

A. I started with the Orton Ceramic Foundation December 1, 1962. I terminated employment with them June 30, 2007. That's my employment dates.

Q. Okay.

A. 44-1/2 years basically.

Q. Okay. When you started in 1962, what was your position with the company there?

A. In 1962 I was hired in as a ceramic engineer.

Q. Okay. And how long did you work as a ceramic engineer?

A. Basically the entire time.

Q. Okay. And have you ever been deposed before?

A. I have been deposed, yes.

Q. How many occasions?

A. One.

Q. Okay. Do you remember when and where that was?

A. Basically ten years ago here in Columbus, Ohio.

Q. Okay. Now, when you began with the company in 1962 as a ceramic engineer, what was the general sort of description of your job duties?

A. As a ceramic engineer I was in charge of quality control, engineering, method improvements.

Q. Okay. And do you understand that this case involves what I'm going to refer to as Orton cones?

MS. GOLDEN: I'm going to object. It's vague and it calls for speculation. It lacks foundation.

You can go ahead and answer.

A. I understand that it involves Orton, and I guess you could say something to do with our materials, yes.

Q. Okay. What materials do you understand to be involved in this case?

MS. GOLDEN: I'm going to object. That's vague, ambiguous. It's overbroad. It lacks foundation. I don't know what difference it makes what his knowledge is about what the case is about.

Q. You can answer.

A. Would you rephrase or ask me the question again?

Q. Yeah. Do you have an understanding as to which products manufactured by Orton Ceramics are involved in this case?

A. Well, I don't think -- no, we didn't manufacture a product that is involved in this case.

Q. Okay. Why is that?

MS. GOLDEN: Okay. That's argumentative. That makes no sense. It lacks foundation. It's overbroad. It's vague. Why is that that you didn't manufacture a product that is involved in this case?

Q. Yes. What's your basis for saying what you just said, sir?

MS. GOLDEN: Okay. To clarify for the record, the basis in this case and the allegations have to do with packaging material that was used in a package to ship the cones.

A. We did not manufacture that product.

Q. All right. How -- how would you describe the packaging materials we're now talking about, sir?

A. How would I describe them?

Q. Yeah.

A. As it relates to?

Q. Well, when you were working there, what did you commonly refer to these packaging materials

as?

MS. GOLDEN: I'm going to object. There's no -- it lacks foundation. It's vague and it's overbroad. It's ambiguous, and there is no time frame specified.

Q. What was Orton in the business of selling when you went there in 1962, what kinds of products?

A. In 1962 we were selling pyrometric cones.

Q. Any other product?

A. Not in 1962.

Q. Okay. And what are polymetric cones?

A. Pyrometric cones are time temperature measuring indicators typically used to measure the amount of heat work established in the firing process.

Q. Okay. And when you sold those polymetric cones, did the polymetric cones get sold with packaging material?

MS. GOLDEN: I'm sorry, I was going to say it's pyrometric.

Q. Pyrometric.

A. P-Y-R-O, pyro.

Q. Right, pyrometric cones. When you sold the pyrometric cones in 1962, did they get sold along

with packaging material?

A. They were packaged, that's correct.

Q. Okay. And in 1962 -- well, in 1962 were the pyrometric cones packaged in sawdust?

A. That is correct.

Q. Okay. And is it true that in the middle of 1963 Orton began packaging its pyrometric cones with vermiculite?

A. It was in that area, yes.

Q. Okay. And do you know why it is that Orton switched from packaging its pyrometric cones in sawdust to packaging them in vermiculite?

A. I do know why, yes.

Q. Tell me why.

A. Back in 1962-63 sawdust was difficult to obtain, the quantities that we required on a weekly, daily, monthly basis, so we were looking for alternatives to sawdust.

Q. Okay. Did you look at a number of alternatives to sawdust?

A. That is correct, probably as many as six or eight different alternatives.

Q. Okay. And eventually you settled on vermiculite.

A. That is correct.

Q. And at the time that you were looking at all of the alternatives, did you do any research as to the possible health hazards that may have been associated with any of the alternative materials that you were considering?

A. There was no reason for us to do that.

Q. So that would be a no.

A. That's a no.

Q. Okay. What were the other materials that you considered using as packaging material?

A. Ground up corncobs, peanut shells, popcorn, things of that nature.

Q. Okay. Eventually you decided on the mineral vermiculite.

A. That's correct, yes.

Q. All right. And at the time did Orton have -- how many employees were at Orton?

A. Approximate number, 45.

Q. Okay. And how many of them were -- had an engineering background?

A. Myself and the general -- the assistant to the general manager, two of us.

Q. Okay. Was there anybody who had

responsibility for safety?

MS. GOLDEN: I am going to object. It's vague, ambiguous, overbroad. It lacks foundation.

You can go ahead.

A. Probably that would have fallen under my duties and responsibilities.

Q. Okay. Were there any chemists at the company?

A. No.

Q. Okay. What types of disciplines did the other employees have, types of expertise did they have at the time?

MS. GOLDEN: And just so I'm clear, Bill, are we talking about '63 now?

MR. LEVIN: Yes, '63's fine.

MS. GOLDEN: Okay.

Q. If Orton was in the business of selling pyrometric cones and had a number of employees, I'm just trying to get a sense of the different types of expertise that those employees had at the time.

MS. GOLDEN: No, no, no. That's fine. I thought you had premised a time frame when we started out with 45 employees, and I just wondered if we were still in that kind of time frame. That's all.

MR. LEVIN: Yes.

MS. GOLDEN: Okay.

A. I'm going to answer the best I can. The general manager was also a professor at the Ohio State University in engineering. The assistant general manager was a ceramic engineer, sales engineer, myself. We had one individual that worked in the research of pyrometric cones. From that point down the remaining employees were high school graduates or educations less than that.

Q. All right. And when you were evaluating the alternatives, the alternative materials that you could use as packaging material, when you were evaluating vermiculite, did you do any sort of testing or research into the nature of vermiculite as a material?

MS. GOLDEN: I'm going to object. It's vague, ambiguous, and it lacks foundation, it's overbroad, ambiguous.

A. I can state that the testing as I understand the word testing, perhaps the way you stated it, yeah, we tested it as to whether or not it would effectively meet the goals and our objectives of getting our product from our plant to the end

users' plants without the cones breaking.

Q. Okay. But beyond trying to determine whether it was functional for your purposes, you didn't do any further research or investigation into the nature of vermiculite as a material.

A. I didn't think I had to. There was no reason for me to do testing other than just that, that's correct.

Q. Okay. Now, when you were still evaluating the various materials that you could use, including vermiculite, when you were looking at vermiculite, was there some company that you were dealing with that was supplying the vermiculite to you so you could determine whether it was functional for your purposes?

A. When you say a company, are you talking about where I obtained my source or the manufacturer? Can you help me here a little bit?

Q. Yeah, where you obtained your source.

A. It was --

Q. Really I'm talking about both. You had to get your hands on vermiculite to see if it was helpful to you in your packaging, and I'm just trying to determine who you got from and where you got it.

A. Very good. I think in particular it was called Oakland Nursery, and it was a nursery. That's where we got it.

Q. Oakland Nursery?

A. That's correct.

Q. Where was that?

A. In the middle of Columbus, Ohio, you know, a nursery, an organization that sells plants, flowers, trees.

Q. Do you know where they got their vermiculite?

A. I have no idea.

Q. Okay. And then eventually you decided to use vermiculite in the packaging of the pyrometric cones in about mid '63, correct?

A. That's correct.

Q. Okay. At that point in time when you first started using vermiculite in the packaging of the pyrometric cones, where did you get your vermiculite?

A. I don't really know unless I'd go to the records.

Q. Okay. Are there records?

A. I personally don't have records, no.

Q. Okay. So you don't know who Orton purchased its vermiculite from in mid 1963.

A. Not unless I would see the purchase order, no.

Q. Okay. I have a number of checks, Orton checks --

A. Okay.

Q. -- that were produced by I think it was Gary Childress, and those checks are from Edward Orton Ceramic Foundation beginning in March '63 going all the way through '64 and '65 and '66 and '67, '70 and '74 to Zonolite. Have you ever seen those checks?

MS. GOLDEN: I'm going to object. It lacks foundation. The documents speak for themselves. It's vague. Well, that's it. That's my objections. Go ahead.

MR. LEVIN: Okay.

Q. Have you ever seen those checks?

A. I might have run across a check, but that wasn't -- seeing the actual check was not part of my duties or responsibilities.

Q. At the time, you mean at the time?

A. At the time, that's correct.

Q. Okay. But in preparing for this deposition have you been provided by counsel with copies of those checks to review?

A. I have not seen a check for review.

MR. LEVIN: Okay. Is there a fax where you are?

MS. GOLDEN: Yeah. There's probably a fax at the front desk of the hotel. Do you want to fax something, Bill?

MR. LEVIN: Well, do you have the checks with you? Otherwise I'm going to fax them to you.

MS. GOLDEN: I don't have everything with me. Are you looking at a specific check?

MR. LEVIN: I'm looking at the whole stack.

MS. GOLDEN: I don't have the whole stack with me. I mean, I had them on Tuesday when we did Gary's deposition, but I don't have them anymore.

MR. LEVIN: Okay.

MS. GOLDEN: But I do have a few if you want me to show -- if you have a specific one you want him to look at.

MR. LEVIN: No, a few would be good.

MS. GOLDEN: Okay. Tell me what you're

looking at and I'll see if I have it with me.

MR. LEVIN: I'm looking at Exhibit 3 to Childress' deposition, which starts with check 6810 and then goes through a number of checks.

MS. GOLDEN: Is this an exhibit from the prior depo?

MR. LEVIN: Yeah, it's from the '07.

MS. GOLDEN: I got that one. It says Plaintiff's Exhibit 3 right on the top of it?

MR. LEVIN: Yes.

MS. GOLDEN: Yes, I have that. Do you want me to show it to him?

MR. LEVIN: Yes.

MS. GOLDEN: Okay. Madam Court Reporter, for the record, this is a check dated March 20, 1963, and it has previously been marked as Plaintiff's Exhibit 3 to the Childress deposition dated 11/28/07, and the check is for $662.24.

That's the one you're talking about, right, Bill?

MR. LEVIN: That's the top one, yes.

MS. GOLDEN: Okay. He's looking at it.

Q. (By Mr. Levin) Just thumb through it, sir.

A. I've got it, okay.

MS. GOLDEN: He's got it. He's got a copy.

Q. Okay. Thumb through the exhibit. Look at all the checks there.

MS. GOLDEN: No, he's got one check in front of him.

MR. LEVIN: You do not have the rest of them?

MS. GOLDEN: I have a few of them. I don't have all of them with me.

MR. LEVIN: Okay. Well, show him the ones you have.

MS. GOLDEN: Well, you need to tell me. I'm not going to show him the ones I have. You tell me which ones you want him to look at.

MR. LEVIN: I'll fax them to the hotel.

MS. GOLDEN: Okay. I mean, there must be -- you're going to be faxing about what, 60 pages?

MR. LEVIN: Something like that. Let's just take a two-minute break while I can get it faxed. What hotel are you at there?

MS. GOLDEN: Well, it's called the Sheraton Suites.

MR. LEVIN: Where?

MS. GOLDEN: In Columbus, Ohio, and I don't know what the fax number is. Do you want to go off the record for a moment.

MR. LEVIN: No, I'm just going to step away and get this faxed there.

MS. GOLDEN: Okay, all right.

(Discussion off the record.)

Q. (By Mr. Levin) Sir, you have seen one of the checks from Exhibit 3. I'm going to fax the rest to the hotel. But they reflect, don't they, a payment from Orton to Zonolite?

A. That's correct, yes.

Q. Are you familiar with Zonolite?

A. Yes, I am.

Q. What is Zonolite?

A. Well, it's the company that we ordered packaging material from.

Q. Okay. And do you understand that the packaging material that you ordered from Zonolite was vermiculite?

A. That is correct.

Q. Okay. And at least this check that you have in front of you reflects that being paid for in

March of 1963, correct?

A. That's correct.

Q. And do you know where the Zonolite came from?

A. No, I do not.

Q. Okay. And in connection with preparing to be presented as the person most knowledgeable on a number of subjects, including the one I just asked you about, did you do anything to determine -- to help you determine where the vermiculite that Orton was purchasing in 1963 came from?

MS. GOLDEN: I'm going to object because you're assuming that he was presented as a person most knowledgeable. He's already stated that that is not his understanding.

MR. LEVIN: That was what the notice --

MS. GOLDEN: But you can go ahead. You can go ahead and answer the question with that caveat.

A. Bill, can you break the question down a little bit to help me?

Q. Well, let me -- counsel is saying that you're not being produced as the person most knowledgeable or implying that.

MR. LEVIN: Is that the case, counsel?

MS. GOLDEN: Well, you have a specific deposition notice for Dale Fronk, which we don't have here, and it is not for the person most knowledgeable.

MR. LEVIN: All right. Hold on a second.

Q. All right. So my question is whether you have done anything to try to determine back in 1963 where the Zonolite came from.

MS. GOLDEN: I'm going to object. It's vague. It's overbroad, and it calls for speculation. And I don't know what you mean by "where it came from." Are you talking manufactured, where it was shipped from, what?

MR. LEVIN: All of those things, anything he's done to determine any and all of those things.

MS. GOLDEN: Okay. Well, then you can --

A. I don't really remember right now of me trying to determine where it came from other than the shipping point from wherever they had it in stock to us. Other than that, no, Bill, I don't remember any details of that.

Q. Okay. What do you remember about the shipping point?

A. In all honesty I vaguely remember it came from Kentucky to Columbus, Ohio. That's the best I can remember.

Q. Okay. You were not involved in purchasing the Zonolite?

A. I was involved in purchasing the Zonolite.

Q. Okay. And was -- did you deal with anyone at Zonolite or W. R. Grace?

MS. GOLDEN: Objection. I don't know where W. R. Grace came into this. So we have two questions here. That question is compound.

A. I --

Q. Who is W. R. Grace, sir? Do you know who W. R. Grace is?

A. I know of W. R. Grace, yes.

Q. Okay. And did they sell vermiculite to Orton?

A. In 1963?

Q. No, at all.

A. There was a period of time, yes.

Q. Okay. And did you deal with anyone at Zonolite or at W. R. Grace?

MS. GOLDEN: Okay, that question is

vague, ambiguous, overbroad, and it lacks foundation. It's compound.

Q. Did you deal with anyone at Zonolite in purchasing vermiculite?

A. Yes.

Q. Okay. Who?

A. I don't know by name but by position probably a sales -- the sales department would be first. The order department would be second.

Q. Okay. And where were those people that you dealt with located?

A. You know, Bill, in all honesty I have no idea. I'm going to assume from the location that the shipment came from would be my guess.

MS. GOLDEN: Okay. And we don't want you to guess. If you just don't remember, don't know, you can just say you don't remember, you don't know.

A. I don't know, Bill.

Q. Okay. I'm looking at a letter from Grace, Diane O'Donnell, technical administrator to Dale Fronk. And it says: Mr. Fronk: This is in response to your recent request for a material safety data sheet for vermiculite No. 2 which you have been using as packing material. I am attaching a copy of

our MSDS Z-140 industrial vermiculite, Libby source size 1, 2, and 3.

Have you seen that correspondence recently?

A. Yes.

Q. Okay. Do you have it there in front of you?

A. Not in front of me, but --

MS. GOLDEN: Do you want him to look at it?

MR. LEVIN: If you have it.

MS. GOLDEN: For the record, this is a letter from Grace to Mr. Fronk, and it has been previously been marked as Plaintiff's Exhibit No. 6 to Gary Childress' depo of 11/28/07. I'm putting it in front of the witness.

Q. Do you see that letter, sir?

A. I have it in front of me, yes.

Q. And do you have the material safety data sheet attached to it?

A. I have just the letter.

Q. Well, there is a material safety data sheet attached to the version that I have from Exhibit 6. Have you seen that also?

A. I --

MS. GOLDEN: Okay. I have a material safety data sheet. It does not have an exhibit number on it. I don't think there's anything on the Plaintiff's Exhibit 6. No, it doesn't say how many pages it is. If you want me to show him the material safety data sheet that was apparently sent at the same time as this letter, September 25, 1981, I can show it to him. Do you want me to put that in front of him?

Q. Okay. Sir --

A. Yes.

Q. -- so would you agree with me that both the letter and the material safety data sheet reflect that vermiculite was being supplied to Orton by W. R. Grace from Libby, Montana?

MS. GOLDEN: I'm going to object. That's overbroad. It calls for speculation. The document speaks for itself, and it lacks foundation.

A. Bill, right now I have just the letter in front of me.

Q. All right. Will you agree with me the letter reflects that the source of the vermiculite that Grace was supplying to Orton was from Libby?

MS. GOLDEN: Same objections. The document speaks for itself.

A. It states here: I am attaching a copy of such and such industrial vermiculite, Libby source, size 1, 2 and 3. That's what the letter states.

Q. Okay. Would you agree that that reflects that the source of the vermiculite that was Grace was selling to Orton was Libby -- was from Libby, Montana?

MS. GOLDEN: I'm going to object. It calls for speculation. It lacks foundation. The document speaks for itself. It calls for speculation. The document says what it says.

Q. Go ahead, sir.

A. Bill, it doesn't state anything about Montana on this letter.

Q. Okay. Do you have the material safety data sheet in front of you?

A. Not yet.

MS. GOLDEN: I asked you if you wanted me to put it in front of him. You didn't respond. Do you want me to give it to him?

MR. LEVIN: Yes.

MS. GOLDEN: Okay. Madam Court Reporter,

identifying for the record a material safety data sheet dated June 10, 1977. Manufacturer's name is W. R. Grace, and this is a two-page form that I am placing in front of the witness.

Q. Okay. And could you look at section 1 and read what it says about the manufacturer of the vermiculite?

A. Yeah. The manufacturer on this material safety data sheet, it just says: Manufacturer's name W. R. Grace & Company.

Q. And then two lines down it says: Chemical name and synonyms. What does it say?

A. Okay. It says: Expanded Libby, Montana vermiculite.

Q. Okay. And this was a material safety data sheet that was forwarded by W. R. Grace to you at your request.

A. I would assume that, and I shouldn't be assuming. Well, I have the material safety data sheet in front of me, that's correct.

Q. In the letter it says: This is in response to your request, meaning Mr. Fronk, for a material safety data sheet.

A. Well, let me just do something. The

letter I have is September 25.

Q. Right.

A. And the material safety data sheet is dated June 10, 1977.

Q. Right. Well, that may be the operative material safety data sheet for that time period. I'm asking you, assuming that this material safety data sheet came with this letter, whether you would agree it was in response to a request you made for a material safety data sheet for vermiculite?

A. That is correct.

Q. Okay. And do you remember why you made that request?

A. For the material safety data sheets in 1981?

Q. Yes.

A. To comply with an OSHA standard.

Q. Okay. Having to do with what?

A. Health and safety in all plants, the Williams -Steiger Act of 1973.

Q. All right. And what about the vermiculite was a health and safety concern in 1981?

MS. GOLDEN: Okay, I'm going to object. That assumes facts not in evidence. That lacks

foundation, and it misstates prior testimony; vague and ambiguous and overbroad.

A. Bill, a material safety data sheet, according to OSHA, was required for anything brought into a plant, and vermiculite was one of those things brought into a plant.

Q. Hold on a second. Okay. You were -- were you done with your answer?

A. Yes.

Q. This letter to you reflects that there was a material called tremolite fiber in the vermiculite, correct?

MS. GOLDEN: I'm going to object. The document speaks for itself. It's also hearsay. This lacks foundation, vague and ambiguous.

You can answer the question.

A. The letter states: This further reduces the exposure of the user to airborne tremolite fiber.

Q. And what is tremolite fiber as far as you understand it, sir?

MS. GOLDEN: I'm going to object. That calls for an expert opinion. It lacks foundation. It's vague. It's overbroad.

If you --

Q. Sir.

A. I took courses in mineralogy, and tremolite is a mineral.

Q. An asbestos fiber, correct?

A. No, I don't -- I wouldn't say it's an asbestos fiber from my knowledge of the courses that I've had in mineralogy.

Q. When did you first become aware that the vermiculite that was purchasing from -- well, the vermiculite that you were purchasing contained tremolite?

MS. GOLDEN: Well, first of all, that assumes facts that are not in evidence. There's no time period presented. It's vague, ambiguous and lacks foundation.

Madam Court Reporter, could you read back the question for the witness, please.

(Record read.)

A. Bill, the vermiculite that we were using, according to the letter, says vermiculite No. 2 --

MS. GOLDEN: You have to listen to his question carefully. He said when.

THE WITNESS: When.

MS. GOLDEN: And then the question does

assume many things after that so.

THE WITNESS: That's correct.

A. This letter here states and refers to No. 3 expanded vermiculite containing tremolite, and we were using No. 2. The answer to your question is I don't really know when that occurred, if, in fact, it did occur.

Q. Okay. Did you -- sometime did you become aware that the vermiculite that you were using contained tremolite?

MS. GOLDEN: Objection, assumes facts not in evidence, lacks foundation.

You can go ahead.

A. I -- I don't ever remember where it was -- we were informed, I was informed, that the vermiculite we were using did, in fact, contain tremolite. I don't ever remember somebody hitting me over the head telling me: Hey, this contains tremolite; don't ever remember that, other than what the letter states here, that No. 3 contained -- could possibly contain tremolite.

Q. Okay. Well, could you turn to the material safety data sheet?

A. Okay.

Q. And this is for the No. 2 vermiculite that you were purchasing.

A. Correct.

Q. And see where it in section 2 it says: Hazardous ingredients?

A. That's correct.

Q. And it says: Contains less than .1 percent by weight of a naturally occurring contaminant tremolite.

A. Okay. I see that now, yes.

Q. Okay. And it says: OSHA Regulation 1910.1001 defines tremolite as asbestos.

A. That's correct, that's what it says.

Q. Okay. So would you agree with me that the vermiculite that you were purchasing from Grace contained tremolite?

MS. GOLDEN: Okay, I'm going to object. There's no foundation. There's no time frame here, and the document is hearsay, and it's vague and ambiguous.

But you can answer the question.

A. Bill, according to the MSDS sheet dated June 10, 1977, section 2, it states that, like you said, that vermiculite, and I'm not sure yet if it's

No. 2, I'm still looking for that. It says industrial sizes, you're correct, 1, 2, and 3. Okay, so it would possibly contain what they say here in quotes, asbestos fibers.

Q. Okay. And that was the vermiculite that you were -- that Orton was purchasing from Grace.

A. No. 2 was what we were purchasing, that's correct.

Q. Okay. And the No. 2, along with the No. 1 and No. 3 contained tremolite asbestos?

MS. GOLDEN: I'm going to object. That calls for speculation. The document speaks for itself. There's no foundation here.

Q. According to the document, the material safety data sheet, the vermiculite, the No. 2 that you were purchasing at Orton and the No. 1 and No. 3, contained tremolite asbestos, correct?

A. It says here that it contains less than 1/10 percent by weight of a naturally occurring contaminant, tremolite, that's correct.

Q. And it also says that OSHA defines tremolite as asbestos, correct?

A. It says OSHA regulation defines tremolite as asbestos, that's correct. That's what it says.

Q. Okay. And that's talking about the No. 2 vermiculite that Grace was supplying to Orton.

MS. GOLDEN: All right. I'm going to object. That's now been asked and answered three or four times, and he's answered.

You don't need to answer that again.

THE WITNESS: Okay.

MR. LEVIN: Well, I'd like an answer just so we're clear.

MS. GOLDEN: We are perfectly clear. This is getting abusive. You've asked him so many times the same question. The document speaks for itself.

You can answer this question one more time.

A. The form states yes, in answer to your question, what I read here.

Q. At any time -- do you have any knowledge that the vermiculite supplied by Zonolite to Orton in the 1963 through 19 -- 1969 time period came from any source other than Libby, Montana?

MS. GOLDEN: That question completely assumes the fact that the vermiculite came from Libby, Montana and only Libby, Montana. That lacks

foundation. You're trying to trick the witness. It's vague. It's ambiguous. It's overbroad.

You can answer the question.

A. Bill, I have no recollection as to where the vermiculite was being mined.

MS. GOLDEN: He's talking about '63 to '68.

A. That's correct, from 1963 to 1968.

Q. At all?

A. I have no recollection as to where it was mined, that's correct.

Q. Could you describe the packaging that these pyrometric cones came in from '63 to, you know, '63, '67 time frame?

MS. GOLDEN: I'm going to object. There's absolutely no allegations in the complaint or anywhere else that there was any exposure or anything to do with any Orton cones past the spring of 1964. So I don't know what the relevance is of a packaging after the spring of 1964.

MR. LEVIN: That's fine.

Q. From the time you came to the company until let's just say through 1964, can you describe what the packaging of the cones looked like?

A. The packaging material used?

Q. Yes.

MS. GOLDEN: No, he wants to know -- oh, I'm sorry. Okay. We need to clarify what you mean by the packaging.

THE WITNESS: Yeah.

Q. If someone was purchasing the Orton cones --

A. Okay.

Q. -- in that time period and it was shipped to them --

A. Okay.

Q. -- and they had to take the cones out of whatever they were contained in, what would they be seeing? What would they be looking at. Describe how, you know, how it was shipped, what it was contained in.

A. Okay.

MS. GOLDEN: I'm confused. Are you talking about the box?

MR. LEVIN: Yes.

MS. GOLDEN: Okay. So we're talking about the box now, '62 to '64.

Q. Yeah, start with the box.

A. Okay. There were two different box sizes used at that time, this time frame. One box was basically a three inch by three inch by six inch, and that was what we referred to as a half telescope box.

Q. What kind of box?

A. Cardboard.

Q. Okay. And you opened it, what, at the top?

A. The top being a half telescope, that's correct. The top of that box would lift off of the bottom section of the box. That was one type box, one size box. The other size box was just basically half that size, half that size in the three inch by three inch -- I'm sorry. It would be the three inch by six inch but only half as tall.

Q. Okay.

A. So one and a half inch tall. And that also was a half telescope box.

Q. Okay.

A. That's the box.

Q. Okay. And then you'd open the box and there'd be what?

A. There would be the contents of the -- whatever the box indicated, you know, 50 cone

10 pyrometric cones, so there would be 50 pyrometric cones in that box. Surrounding the cones would be a packaging material.

Q. And that would be the vermiculite --

A. Not --

Q. -- beginning in mid '63?

A. Not necessarily.

Q. And why is that?

A. Because when I came in '62 and part of '63, we were using sawdust, and those cones would go into inventory, and those cones might not have come out of inventory for six, eight months later, two years later. So if I opened up a box of cones in mid '63, it could contain sawdust, even in late '63 could contain sawdust. Until we used up all the sawdust, we did not start to pack in vermiculite.

Q. Okay. How long did it take to use up the sawdust inventory?

A. Back in those days it could take a week, two weeks, maybe even as much as a month.

Q. Okay. But after you used up the sawdust inventory, it was packaged in vermiculite.

A. That is correct.

Q. And did you ever handle the vermiculite

yourself?

A. Yes, I did.

Q. Okay. And when you handled the vermiculite, did dust get on your hands?

A. If you and I both accept dust as being the remains of the product, yes.

Q. And so when somebody tried to take the cones out of the packaging, they'd have to move away the vermiculite that was surrounding it, correct?

MS. GOLDEN: That assumes facts not in evidence. It lacks foundation. It's vague, ambiguous and overbroad. It calls for speculation. Are we talking about a full box, a half empty box? What are --

Q. If somebody opened a box with a cone in it that was packed in vermiculite, to get the cone out they would have to remove the vermiculite that was surrounding the cone, correct?

A. The best way I can answer that is we wanted vermiculite to be between two cones so that two cones wouldn't be touching each other in the shipping process. So the best I can answer that, Bill, is if I were to remove a cone from a box, I would have to touch or move to the side vermiculite

have that so-called dust, something that would go airborne.

Q. Did you ever do any testing of the air for tremolite asbestos in the vicinity of somebody that was handling this vermiculite that your cones were packaged in?

(Record read.)

A. No.

MS. GOLDEN: Okay. That assumes facts not in evidence. It lacks foundation.

A. No.

Q. Okay. Did you ever consult with an industrial hygienist as to the health hazard that may have been presented by the vermiculite packaging that you were packaging your cones in? And by that I mean a health hazard to somebody that was handling the packaging in connection with using your cones.

MS. GOLDEN: I'm going to object. That's vague. It's ambiguous. It's overbroad.

You can answer it.

A. Bill, that is very broad because we did have a State of Ohio hygienist in our plant, and we did ask them to analyze I'm going to say dust that would be generated in a manufacturing process.

Q. When was that?

A. Oh, gees, probably in the '70s and '80s.

Q. Okay.

A. '90s.

Q. Did that industrial hygienist in Ohio, the work of that person involve testing for asbestos in the air at Orton?

A. Well --

MS. GOLDEN: Objection. This lacks foundation. It's overbroad. It's vague, and it has nothing to do with the allegations in the complaint or this case, what was going inside -- on inside the manufacturing plant of Orton.

Go ahead and answer the question.

A. Bill, they didn't come to detect asbestos in our plant, mainly because we and they didn't see the need for that to be done.

Q. And that's -- that's because the plant wasn't -- the packaging was -- I mean, the plant wasn't making the packaging, correct?

A. That's correct, we were not making vermiculite. That's correct.

Q. Correct. So the industrial hygienist who was there was basically evaluating the condition of

manufacture of the pyrometric cones, not the -- not the vermiculite packaging.

A. That's negative. That's no.

Q. Can you elaborate?

A. Well, can you rephrase that?

Q. Well, I originally started out by asking whether an industrial hygienist had ever sort of done any testing in the air for the presence of asbestos for you.

A. Bill, when we asked them to come out to analyze our atmosphere, our air --

Q. Yeah.

A. -- and this is through EPA or OSHA, whatever --

Q. Yeah.

A. -- we wanted to make sure that we had a plant that was safe health-wise. They analyzed dust, and they gave us the report, and they analyzed it for knowing what we were using in that plant. They analyzed it for anything and everything they thought we should know about that might be hazardous.

Q. Well, was anybody handling the vermiculite packaging at the plant when they were doing this testing?

A. That is correct, yes.

Q. They were?

A. That's correct.

Q. Did they do any air sampling near the vermiculite packaging?

A. Oh, yes.

Q. Do you have the results of that air sampling?

A. Not in front of me, but the State of Ohio did some reports, yes.

Q. Okay. When they did those reports, did they -- did the State of Ohio understand that the vermiculite contained tremolite asbestos?

MS. GOLDEN: Objection. That calls for speculation. It lacks foundation. It's vague, ambiguous and overbroad.

Do you know what the State of Ohio knew?

A. That's what I was going to say. Bill, I have no knowledge as to the expertise of the individual sampling or the people that tested, analyzed the results. I don't know that.

Q. Okay. At that time did you know that the vermiculite contained tremolite asbestos?

MS. GOLDEN: Okay. You're assuming at

all times that all vermiculite that Orton ever had contained asbestos, which is simply not true. And also I'm not clear on what the time period is. Your question lacks foundation. It assumes facts not in evidence. It calls for speculation.

MR. LEVIN: The time frame is when they did the test, and he's given the time frames for that.

MS. GOLDEN: Well, the testing went on for quite a long time, didn't it, Bill?

THE WITNESS: Dale.

MS. GOLDEN: I mean Dale. I'm sorry. Didn't it go on for a while?

THE WITNESS: The testing for the dust?

MS. GOLDEN: Yeah, by OSHA or whoever it was.

THE WITNESS: Yeah, we did this like every two years.

Q. Starting in what year?

A. I have no idea. I'm going to say 1970.

MS. GOLDEN: Until when?

THE WITNESS: I think it's -- I don't know if it's still going on.

MS. GOLDEN: Okay.

THE WITNESS: But at least through 2000.

Q. Okay. And were you aware or do you know if others at Orton were aware at that time that the vermiculite contained tremolite asbestos?

MS. GOLDEN: Objection, assumes facts not in evidence, lacks foundation, overbroad.

A. If -- I don't know if anyone else knew that, Bill.

Q. Okay. Did you know that?

A. I know that according to the material safety data sheet.

Q. But you didn't know it at the time?

MS. GOLDEN: Okay. I'm going to object to that. I have no idea what time period you're talking about now.

Q. When they began testing, did you know that the vermiculite contained tremolite asbestos?

A. Bill, I'm going --

MS. GOLDEN: That assumes that the vermiculite when they began testing in the '70s contained tremolite, and you have not established that at all. You've assumed that as a fact, so this question completely lacks foundation. This is the problem that I have with these types of questions.

Q. Sir, you may answer.

MS. GOLDEN: No, he's not going answer until you lay a foundation.

Q. Sir, in 1970 did you know whether or not vermiculite contained tremolite asbestos?

MS. GOLDEN: Okay. And you're talking about any vermiculite anywhere in the country?

Q. The vermiculite you were using in your plant.

MS. GOLDEN: Okay. So that would be 19 -- I don't know what year he said.

THE WITNESS: He said 1970. The answer is I did not know.

Q. Okay. Did there come a point in time where Orton contained -- strike that.

Did there come a point in time where Orton included warnings along with the sale of its pyrometric cones that the cones were packaged in vermiculite that might contain tremolite asbestos?

MS. GOLDEN: Objection, compound, overbroad, vague.

You can answer the question, though.

A. The best I can answer your question, because I also found it vague, was we never felt that

it was necessary to put a warning on.

MS. GOLDEN: Did there ever come a point in time when you put a warning on your cones?

THE WITNESS: A warning on our cones?

MS. GOLDEN: I think he said that had to do with asbestos.

THE WITNESS: That's correct.

MS. GOLDEN: And the answer is?

THE WITNESS: No, we never did.

MS. GOLDEN: Thank you.

Q. (By Mr. Levin) Okay. So you never included any warning along with the sale of your cones that the vermiculite that it was packaged in might contain asbestos?

MS. GOLDEN: Is the answer no?

A. The answer is no.

Q. All right. Was Orton a member of the American Ceramic Society?

A. Yes.

Q. Did you attend those meetings?

A. From 1960 up until two years ago, yes.

Q. Okay. And do you recall at those meetings whether the subject of asbestos as a health hazard was discussed?

A. Now, can you clarify that, Bill, for me? When you say "at those meetings it was discussed," in generalities, technical papers, conferences? What were you referring to?

Q. I wasn't at the meetings.

A. Okay.

Q. But you started attending those meetings when?

A. 1960.

Q. And they were regular meetings, correct?

A. Annual meetings of the American Ceramic Society.

Q. And what I'm trying to learn if somebody attended though annual meetings, as you did, of the American Ceramic Society, whether there would be information discussed or disseminated at those annual meetings that would inform people that asbestos was hazardous to human health?

MS. GOLDEN: Okay, I'm going to object. That lacks foundation. It assumes facts that are not in evidence. It's vague, ambiguous, overbroad, and it doesn't even -- we have no time period here whatsoever.

But you can go ahead and answer the

question.

A. Bill, I don't ever recall attending a paper or a conference or a seminar where asbestos was discussed at any of these meetings.

Q. Okay. Did you receive -- was there literature disseminated by the American Ceramic Society?

A. Yes.

Q. And did Orton receive that literature?

A. Most of it, yes.

Q. And were you the person that got that literature?

A. I got basically the same literature that was sent to the American -- to the Orton Foundation, I received that at home also, yes.

Q. Did you review that literature?

A. Not review. Trust me, if you'd see the literature -- did I review it? In some cases, yes. In most cases, no.

Q. Did somebody else at Orton review the literature?

MS. GOLDEN: Calls for speculation.

A. Probably not.

MS. GOLDEN: Do you know if anyone else

reviewed it?

THE WITNESS: No.

MS. GOLDEN: Then just say no.

A. No.

MS. GOLDEN: Don't guess.

A. I don't know of anyone at the Foundation, no.

Q. Okay. Let's take a short break.

A. Okay.

MS. GOLDEN: Oh, thank God.

THE VIDEOGRAPHER: Off the record at 1:45 p.m.

(Recess taken.)

THE VIDEOGRAPHER: On the record at 1:56 p.m.

Q. (By Mr. Levin) Sir, are you aware of sales to the University of Hawaii in the '63-'64 time frame?

A. No.

Q. Okay. Do you know who at the company would have been involved in the '63-'64 time frame in purchasing the vermiculite?

A. In the purchasing of vermiculite?

Q. Yes.

A. For our packaging materials, '63-'64?

Q. Yes.

A. That would have been either directly or indirectly me.

Q. Okay. Anyone else?

A. The purchasing, not really, no.

Q. Okay. Beginning in '63 this was a new material you were purchasing for the first time, correct?

A. A new material for packaging, yes; a new material, yes.

Q. Okay. But are you telling me as you sit here today you don't remember where you purchased it from?

MS. GOLDEN: I'm going to object because you've already shown him the check that went to Zonolite, so I don't understand the question. This has been asked and he answered it, and you have all the documents.

Q. Other than Zonolite, do you remember anyone else that you purchased vermiculite from in the '63-'64 time frame?

A. I don't know of any other, Bill.

Q. Okay. Okay. Are you aware that the

Orton cones have been tested for the presence of tremolite?

A. Orton cones?

MS. GOLDEN: Okay. I'm going to object. That assumes facts not in evidence. It lacks foundation. it's vague. It's ambiguous.

MR. LEVIN: I'm going to rephrase it.

Q. The packaging material that the cones came in, are you aware that they've been tested for the presence of tremolite?

MS. GOLDEN: Okay. I'm going to object again because there's no time frame here, and it lacks foundation. It's vague, ambiguous and overbroad.

Are you aware that the vermiculite's ever been tested? I don't know -- actually, I don't know if you can answer that.

A. Well, the best way, Bill, I can answer your question is according to this material safety data sheet that I have in front of me, it says that it was tested, yes. It was tested or else they would not have put that statement down.

MS. GOLDEN: Maybe they made it up.

Q. Okay. But aside from that, are you aware

of any testing of the Orton packaging material that the cones came in, the vermiculite, for the tremolite?

A. Not to my knowledge.

Q. All right. Did Orton retain any of the packaging material that went along with its cones in the company warehouse or facility so that they could be tested?

MS. GOLDEN: Okay. Are we talking about now?

Q. Yeah, now from back then.

A. I guess what you're asking me is would we have vermiculite from 1963?

MS. GOLDEN: Did you retain any?

THE WITNESS: Did we retain any?

MS. GOLDEN: Yeah, I think you should listen to the question again.

Madam Court Reporter, could you read back the question.

(Record read.)

MS. GOLDEN: And then we established a time frame. But, anyways, have you ever retained any vermiculite in your warehouse?

A. Not to my knowledge.

MR. LEVIN: All right. You know, unfortunately, on the PMK issue I wasn't involved in this, but Ray tells me that this was the witness that was supposed to be produced as the person most knowledgeable on these subjects, but you're telling me that he's not being produced as the person most knowledgeable on various subjects that were contained in our PMK notice.

And I'm going to leave that issue on the table to be resolved by somebody other than me since I was not involved in any of those conversations.

MS. GOLDEN: Okay. I will just state on the record that I received five PMK notices which we objected to, and I had a conversation with Ray on the phone, and I said: I have these five notices. I don't know what you are doing because you aren't even allowed to have five notices, and you tell me who you want for deposition.

And he named a few people, including Dale. And I said: Okay. You don't have to produce -- you don't have to subpoena him. I will produce Dale for you and you can ask him questions. And he did send a depo notice for Dale.

MR. LEVIN: All right, well --

MS. GOLDEN: So as a courtesy to you and the Levin firm because Mr. Fronk would have had to be subpoenaed, he does not work for Orton anymore, in fact anybody else on our PMK would have had to have been subpoenaed, I voluntarily made him present for you for his deposition.

MR. LEVIN: All right. Well, we'll see where that is.

MS. GOLDEN: That's fine.

MR. LEVIN: All right. I have no further questions.

(Discussion off the record.)

THE VIDEOGRAPHER: Off the record.

(The deposition concluded at 2:06 p.m.)

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State of Ohio :
: SS:
County of _____ :

I, Dale A. Fronk, do hereby certify that I have read the foregoing transcript of my deposition given on Thursday, May 8, 2008; that together with the correction page attached hereto noting changes in form or substance, if any, it is true and correct.

_____
Dale A. Fronk

I do hereby certify that the foregoing transcript of the deposition of Dale A. Fronk was submitted to the witness for reading and signing; that after he had stated to the undersigned Notary Public that he had read and examined his deposition, he signed the same in my presence on the _____ day of _____, 2008.

_____
Notary Public

My commission expires _____, _____.

- - -

CERTIFICATE

State of Ohio :
: SS:
County of Franklin :

I, Rosemary F. Anderson, Notary Public in and for the State of Ohio, duly commissioned and qualified, certify that the within named Dale A. Fronk was by me duly sworn to testify to the whole truth in the cause aforesaid; that the testimony was taken down by me in stenotypy in the presence of said witness, afterwards transcribed upon a computer; that the foregoing is a true and correct transcript of the testimony given by said witness taken at the time and place in the foregoing caption specified and completed without adjournment.

I certify that I am not a relative, employee, or attorney of any of the parties hereto, or of any attorney or counsel employed by the parties, or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Columbus, Ohio, on this 13th day of May, 2008.

Rosemary F. Anderson /kst

Rosemary F. Anderson,
Professional Reporter, and
Notary Public in and for the
State of Ohio.

My commission expires April 5, 2009.

(RFA-8139)

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