

FILE NAME: Cape Asbestos (CAPE)

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DOCUMENT DESCRIPTION: Legal - Deposition of Geoffrey Arthur Higham
[Legal - Tibbs Case Exhibit 18]

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MC LEAN

----- X
LOIS J. THACKER, et al.
Plaintiff,
v.
UNR INDUSTRIES, INC., et al.,
Defendants

SKALC
RECORD
NO. 82 L 49

RUSSELL STONE,
Plaintiff,
v.
UNARCO INDUSTRIES, INC., et al.,
Defendants

NO. 83 L 81

DOROTHY KING, et al.,
Plaintiffs,
v.
NORTH AMERICAN ASBESTOS CORPORATION,
et al.,
Defendants

NO. 83 L 89

BUFORD GOWEN,
Plaintiff,
v.
UNARCO INDUSTRIES, INC., et al.,
Defendants

NO. 83 L 140

JOHN V. HANDLEY, et al.
Plaintiffs,
v.
CAPE ASBESTOS FIBRES, et al.,
Defendants

NO. 80 L 93

----- X
Deposition of Mr GEOFFREY ARTHUR HIGHAM, produced, sworn and
examined the 3rd and 4th days of October 1984 at the offices of
Messrs Linklaters & Paines, Barrington House, 59/67 Gresham Street
London EC2, England.

1 knowledge in respect to the period 1950 to 1972.

2 DIRECT EXAMINATION by Mr WALKER

3 Q State your name, please.

4 A Higham; Geoffrey Arthur Higham.

5 Q What is your age, Mr Higham?

6 A Fifty-seven.

7 Q When did you first take employment by any company which had
8 the word "Cape" in its name?

9 A In 1965.

10 Q Do you in England have a legal requirement that at the end of
11 the calendar year the wages paid to you will be reported to the
12 government on a tax form?

13 A Yes.

14 Q What company or companies that had the word "Cape" in it
15 reported having paid you wages during the calendar year 1965?

16 A Well, to the best of my recollection, Mr Walker, the name of
17 the company was Cape Building Products Ltd.

18 Q For how many more years did the revenue authorities in England
19 receive reports that you were paid wages by Cape Building
20 Products Ltd?

21 A I couldn't say, in all truth. I became, as is on the record,
22 a director of what was then the Cape Asbestos Co. in 1967,
23 and I think it could be safely assumed that they would then
24 be responsible for my payment and the return to the Inland
25 Revenue.

26 Q What is the present name of the corporation which in 1967 used
27 the name The Cape Asbestos Co. Ltd?

28 A Cape Industries Ltd. -- Cape Industries PLC.

1 Q From 1967 through the time we are taking this deposition,
2 which is in 1984, have you, so far as you know, been paid
3 wages from Cape Industries PLC in each of those calendar
4 years?

5 MR FOX-ANDREWS: Objection, in so far as the period October 1972
6 to October 1979.

7 MR WALKER: You may answer, Mr Higham.

8 A I am now paid wages by pay check. It comes from Charter
9 Consolidated.

10 Q In what calendar year did you last receive -- strike that.
11 For what calendar year were wages last reported to have been
12 paid by The Cape Asbestos Companies or that same corporation
13 by any of its succeeding names, including Cape Industries PLC?

14 A I was seconded to Charter Consolidated in 1980, and my pay
15 check would come from them from that time.

16 Q What time in 1980 were you seconded to Charter?

17 A I don't recall exactly. I think April, but I am not sure of
18 the actual month.

19 Q What is your current rate of pay?

20 A £57,000 a year.

21 Q Who reports having paid that to you?

22 A I receive a slip each month from Charter Consolidated which
23 sets out the monthly amount.

24 Q At the end of each calendar year beginning with 1980 has the
25 wages paid to you by a corporation with the name "Charter"
26 in it been reported to the government authorities?

27 A I take it so. I haven't done the reporting myself.

28 Q In the United States both the employer and the employee receive

1 a copy of this form. Do you have a similar requirement in
2 England?

3 A Yes. We have a P60. I receive a form which summarizes what
4 I have been paid. I am not sure that it is the same form that
5 goes to the Inland Revenue.

6 Q B as in -----

7 A I am not at all sure they do submit a form to the Inland
8 Revenue, to tell you the truth.

9 Q But in any event you are familiar with the form which is called
10 B60?

11 A P60.

12 Q Thank you. Did the P60 form that you received for the
13 calendar year 1980 and each calendar year thereafter disclose
14 wages paid to you by more than one corporation with the name
15 "Charter" in it?

16 A No, not that I recall.

17 Q Which of the corporations with the name "Charter" -- excuse me.
18 Which of the corporations with the word "Charter" in its name
19 has provided you a P60 form from 1980 to the present?

20 A I think it is called Charter Consolidated Services.

21 Q Are there any other corporations with the word "Charter" in
22 its title that have provided you a P60 form at any time in your
23 life?

24 A No.

25 Q Are you an officer or director in Charter Consolidated Services?

26 A Not that I am aware of.

27 Q Do you have a title which describes your position within
28 Charter Consolidated Services?

1 A No.

2 Q Do you have in your possession any business card which
3 identifies you with any corporation that has the word "Charter"
4 in its name?

5 A No, I don't think I do. I think the only cards I have
6 identify me as Chairman of Cape Industries.

7 Q Have you ever had any business cards which identify you as
8 being part of a corporation which has the word "Charter" in
9 its name?

10 A No.

11 Q Do you for each calendar year file an Income Tax form with the
12 revenue authorities in England?

13 A Yes.

14 Q What is the name or number of that form?

15 A I couldn't say.

16 Q Do you fill it out yourself or do you hire someone to do that?

17 A I fill it out myself.

18 Q By name or number -- for example, in the States the primary
19 form is called a 1040 form. Do you have a similar name or
20 number for the primary form that is used in England?

21 A I don't know. It is called "Return of income and claim for
22 allowances", I believe, with the year. I don't know whether
23 it has a number or not.

24 Q Does your -- strike that. Does the "Return for income and
25 claim for allowances" form have one or more boxes or questions
26 which require the taxpayer to disclose his or her employer or
27 employers?

28 A Yes.

1 It says the principal industrial subsidiaries do certain
2 things.

3 MR WALKER: I will take your answer, Mr Higham.

4 A I agree with what Mr Polak has said, and I think, if I may
5 say so, the question has been asked before and answered in
6 the same way.

7 Q What principal industrial subsidiary or subsidiaries of
8 Charter manufacture and install building and insulation
9 products?

10 A Cape Industries, the Shand company. Those would be the two
11 operating in those particular fields.

12 Q Is there a department or division of Charter which controls,
13 advises, relates to or otherwise has contact with those
14 subsidiaries which manufacture and install building and
15 insulation products?

16 MR POLAK: Objection as to form. There are a lot of verbs in
17 there.

18 MR WALKER: I will take your answer, Mr Higham.

19 MR POLAK: If you understand it.

20 A There is no such department, Mr Walker, controlling or advising
21 those subsidiaries carrying out those activities. I don't
22 know what "relating to" means in this context. "Having
23 contact with", there would be contact for example between the
24 accounting departments at the end of the year at the time of
25 preparing these annual reports by law, but that would be about
26 all.

27 MR WALKER: As I understand it you are paid £57,000 by a
28 corporation with the word "Charter" in its title to do some

1 thing or some things. Does that thing or those things which
2 you are paid to do by the corporation with the word "Charter"
3 in its name bring you into contact with the principal
4 industrial subsidiaries of Charter which manufacture and
5 install building and insulation products?

6 A Yes.

7 Q What thing or things do you do with those subsidiaries?

8 A I act as Chairman of a number of Charter's industrial
9 subsidiaries, for which the companies concerned pay Charter.
10 So in effect although I receive my salary from Charter,
11 it is very largely paid for by these other companies according
12 to the time I spend with them.

13 Q I think we had earlier decided that the only two subsidiaries
14 which have anything to do with manufacturing and installation
15 of building and insulation products were Cape and Shand; is
16 that correct?

17 A Yes.

18 Q Are you the Chairman of both Cape and Shand?

19 A No, I am not actually the Chairman of Shand. I was widening
20 it to cover some of these other operations. I am not
21 Chairman of Shand.

22 Q Let me ask the question again, then. What thing or things
23 do you do for Cape Industries and the Shand Company (those being
24 your words as best I can recall them) and those being what you
25 said were the principal industrial subsidiaries of Charter
26 which manufacture and install building and insulation products?

27 A It is difficult to give a brief answer. I am charged by
28 Charter to see that their investments in these companies are

1 being properly managed, and this involves being concerned
2 in three areas, usually as Chairman of the board of the
3 companies concerned. The first of these is to discuss with
4 the other directors of that company their strategy, their
5 policy, the wider questions which affect the business and
6 the direction in which the business is going; secondly to
7 be concerned with finance; and thirdly to be concerned to
8 see that the senior management in the business are competent
9 persons, and for those duties I work with the directors of
10 the subsidiary concerned and I report to the Charter board
11 of directors on these matters.

12 Q You are the Chairman of Cape Industries PLC; is that correct?

13 A That is correct, yes.

14 Q Is there a corporation known as Shand Company?

15 A There is.

16 Q What is the exact name, so far as you know?

17 A I think it has got a long name, actually. I think it is called
18 LeHane McKenzie Shand, but I wouldn't be sure, Mr Walker. It
19 would be in the document there, I think.

20 Q Was it at one time called Alexander Shand Holdings Ltd?

21 A That is the one, yes. That is what its name is.

22 Q Are you on the board of a corporation which has as its name
23 Alexander Shand Holdings Ltd?

24 A No.

25 Q Have you ever been?

26 A No.

27 Q Do you have anything to do with Alexander Shand Holdings Ltd?

28 A Not directly.

1 this complaint was filed, and this complaint was filed well
2 after 1972, and I am entitled to explore those relationships
3 between Charter of which Mr Higham is a living, breathing,
4 can-go-to-heaven, can-go-to-hell type part of Charter as to
5 what he knows about what is going on in the United States.

6 There is no other way for Charter to do something other than
7 through its agents and employees, one of which is Mr Higham.

8 MR POLAK: First of all, at the time that the complaint was filed
9 we are talking about 1982/83 - I would have no objections to
10 you trying to find out whether Charter was doing business in
11 Illinois in any way that you wish. But that relates to a
12 period of time when the complaint was filed. Now you can ask
13 questions as to what Charter was doing at least for the time
14 period when he was a director of Charter when he would have
15 knowledge. He first became a director of Charter in October
16 1979. I have no problem with you asking him any question that
17 deals with his knowledge of whether Charter was doing business
18 during that entire period of time leading up to the filing of
19 the complaint; but you are talking now in generalities where
20 the reader of the transcript does not know what time frame
21 we are talking about, and time frames are important when you
22 are dealing with jurisdiction. So I am asking you to be
23 precise, and if you are not precise I would have to ask him
24 not to answer the question.

25 MR WALKER: Mr Higham, as precisely as you can, when did you
26 first make acquaintance with Joan Holtz?

27 MR POLAK: You can answer it if you deal prior to 1972, unless
28 Holtz is an employee of Charter, in which case you can deal

1 with it from 1979 to 1983, I guess.

2 A Not prior to 1972.

3 MR WALKER: What is the answer to my question, Mr Higham?

4 MR POLAK: Direction not to answer.

5 MR WALKER: You were the managing director of Cape for how long?

6 A Nine years.

7 Q 1970 thru 1980?

8 A 1971 thru 1980.

9 Q During that time did Cape sell asbestos fibre?

10 MR FOX-ANDREWS: I advise you not to answer any questions save
11 in respect of the period pre 1972 and post October 1979.

12 MR WALKER: You don't need to worry about Mr Fox-Andrews'
13 question. Just answer mine. What is the answer to my
14 question?

15 A Cape never sold any asbestos.

16 Q And when you use the word "Cape" you refer to ...?

17 A Cape Industries, of which I was managing director.

18 Q Cape Industries PLC never sold asbestos; is that correct?

19 A That is correct.

20 Q Did you ever know any entity that did sell asbestos?

21 MR FOX-ANDREWS: Again I advise you, Mr Higham, not to answer
22 that question save in respect to the pre 1972 period and the
23 post October 1979 period.

24 MR WALKER: What is the answer to my question?

25 MR POLAK: It is so general. Whether he knew anybody that sold
26 asbestos?

27 MR WALKER: We can have the question read back if you are in
28 doubt as to it.

1 MR POLAK: O.K.

2 A May I have the question again, Mr Clark? (The Reporter
3 read the pending question).

4 MR FOX-ANDREWS: Again my advice stands for all these questions.
5 If they are going to be put in this form, the only thing you
6 can answer, if they are otherwise intelligible, is in respect
7 of the period pre 1972, post October 1979.

8 A Pre 1972 -----

9 MR WALKER: Mr Higham, don't pay any attention to what Mr Fox-
10 Andrews asks you. I am not here to take your answers to his
11 questions. If you -----

12 A But I am answering your question.

13 Q If you are motivated to answer my question, please answer the
14 question. If you are indicating you are not going to answer
15 the question, you can save us all time and increase the chance
16 of your being able to do something else by just saying you are
17 not going to answer my question.

18 A I am trying to be as helpful to you as I can, Mr Walker.
19 The answer I give will be my answer, and the answer to your
20 question is: Pre 1972 there were subsidiary companies of Cape
21 Industries who were engaged in mining asbestos in South Africa
22 and in selling it round the world. I don't think there is
23 any secret about that.

24 Q When did it become a secret as to who was selling asbestos?

25 MR POLAK: That assumes a fact which is not in the record. He
26 never said that.

27 MR WALKER: What is the answer to the question that I asked you,
28 Mr Higham, which is: Do you know of any entities that sold