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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DOROTHY ST. JACQUE, Plaintiff, vs. JOHNS-MANVILLE CORP., etc,. et al., Defendants. AND ALL RELATED CASES	CASE NO. C 137 465

DEPOSITION OF EVERETT SHUMAN,

Taken on behalf of the Plaintiffs

at Sheridan Hotel, State College,

Pennsylvania, on March 4, 1981,

commencing at 10:15 A.M., pursuant

to Notice.

Reported By: Jerry Lefler, CSR, SCO
Certificate No: 2856

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remember what year. It was in this '47, '49 period, and he was replaced by Mr. Tom Collins, as I recall. Who then became General Manager of the division.

Q. Do you recall whether Mr. Collins became General Manager?

A. Not specifically. But it's in that period, about 1948, '49, somewhere along in there.

Q. Then did you report to Mr. Collins up to --

A. Mr. Collins, yes.

Q. Did you continue to report to him up to 1958?

A. No. Then there was some more changes. I'm trying to think of the man's name who was there for a short time who was General Manager. But he was in there just a short time. Actually it was primarily Mr. Collins that was head of the division.

Q. Do you recall anyone else that you reported to directly in the period between '49 and '58?

A. Well, I was just going to say, toward the end there, oh, a year or so before the division was sold to Owens-Corning, Bruce Trumm was the division manager.

Q. That would be T-r-u-m-m?

A. Right.

Q. He was General Manager of the Kaylo Division?

A. Yes, he took over for Mr. Collins.

Q. Sir, in 1958 the Kaylo Division was sold to Owens-Corning; is that correct?

A. That's correct.

Q. And you at that time began employment with

Owens-Corning?

A. With Owens-Corning.

Q. In what capacity, sir?

A. I don't remember the exact title, but I was -- functioned as a consultant to the Sales Department of industrial insulations.

Q. In that capacity, sir, to whom did you report directly?

A. H.T. Williams. Who was sales manager for industrial insulations.

Q. How long did you remain in that job title?

A. From '58 to '61.

Q. At that time did you cease your employment with Owens-Corning?

A. Yes.

Q. What was your next employment, sir?

A. Pennsylvania State University.

Q. In what capacity?

A. Associate Professor of research engineering.

Q. How long did you remain in that job capacity?

A. Until mandatory retirement in 1968.

Q. During that period of time, sir, between 1961 and 1968, did you do any consulting work with either Owens-Corning or Owens-Illinois?

A. I don't recall any. I don't remember -- I mean, I talked to people so I have to differentiate between just talking to them and consulting. I don't remember any consulting per se.

MR. BOGAN: Well, excuse me a minute.

THE WITNESS: Go ahead.

MR. BOGAN: I'm going to object to the question on the lack of foundation of this witness as to what was being sold to whom. He was not a salesman, he never worked in the Sales Department, Aaron. And we may have to take two or three more depositions if you really want to get to this. I'd rather you lay a foundation for his familiarity with the sales of the product, and then we can go into it. Otherwise, I don't think it s really fair to him or to anyone here to pursue that line of questioning.

MR. SIMON: I understand that. If you have no knowledge in any area, Mr. Shuman, please indicate that.

Q. Sir, how did you become aware in your capacity or in your various capacities with Owens-Illinois as to this set up of contractors or distributors selling Kaylo rather than direct sales?

A. Well, of course, you just hear this from the conversations with the sales people. Then, of course, they would discuss who the contractors were or the distributors in certain areas.

Q. Did --

A. This is the sales procedure characteristic of the industry that's sold through distributors, unless they had their own distributing systems.

Q. Sir, did you continue to have contact with the sales people when you went to work for Owens-Corning?

A. Well, I was as a consultant to the sales people.

Q. Did you become aware through those contacts in what manner, if any, Owens-Corning sold Kaylo to the Navy?

A. Excepting -- well, incidental to my contacts, because Owens-Corning had some distributors and had some contracting offices of their own. But my contact was primarily with a specific problem or specific question that a particular salesman might have.

Q. Did you happen to learn, sir, during the course of your Owens-Corning consulting work, whether or not Owens-Corning was actually involved in sales directly to the Navy as opposed to through distributors or contractors?

A. No, I never thought of it as being sales sold to the Navy per se.

The Navy enters in, of course, from having to approve that a particular product is acceptable. And to that extent, of course, was the work that I had done with Mr. Sinclair. Because this was to get the Kaylo product on an approved list.

Q. A product that was placed on that approved list to the Navy, sir, was that the same product that was sold to private customers?

A. Yeah. All of them were identical. There were no differentiations.

Q. Same asbestos content?

A. Yes, same formulas.

Q. Sir, did most customers generally purchase Kaylo according to the ASTM specs or some other specification?

A. Well, of course, the larger users might write their own specifications. But basically they were all the same as an ASTM requirement. Although an occasional large user might want some particular property emphasized. He might want a higher compressive strength, for example, than the ASTM might have.

Q. Do you recall who some of the larger users were who wrote their own specs?

A. M.W. Kellogg Company. K-e-l-l-o -- I can't remember whether one or two "g's".

Q. Okay. Do you recall the names of others?

A. Well, then there were others like the Fluor, F-l-u-o-r. Then there are other refinery engineers.

Q. The purpose of those specifications was to describe the product that was desired; is that correct?

A. Yeah. So it would become a purchasing specification.

Q. So the seller would know what the customer wanted, and vice versa?

A. Yes.

Q. Sir, before we go on, was does ASTM stand for?

A. ASTM. American Society for Testing and Materials.

Q. Okay.

A. Philadelphia.

Q. Their subgroup that was connected with thermal insulation is --

A. Committee C-16, on thermal insulation.

Q. Did you ever in any of your capacities with

A. Yes. He was an engineer in the Kaylo Division.

Q. For what period of time, sir?

A. Well, I can't remember when he started. But it was in the forties. And then he went over to Owens-Corning when the division was sold, into their Engineering Department.

Q. Do you know what his function or job responsibility was with Owens-Illinois?

A. Well, it was the engineering of equipment and the general engineering we had to do at the plant in Berlin.

Q. When you refer to equipment, are you referring, sir, to equipment involved in the manufacture of Kaylo?

A. Primarily, yes.

Q. Do you know if Mr. Finn had any responsibility for the development or maintenance of ventilation equipment at the Berlin plant?

A. Well, that could be it, because dust collecting was part of the engineering operation.

Q. That would be a part of Mr. Finn's responsibility, or would have been?

A. Well, he, I think, reported to someone else. But he was in the engineering phase that did this.

Q. Do you know to whom he reported?

A. John Persion.

MR. BUNDA: I'm sorry. Mr. Shuman, you didn't answer the question. I would ask you to listen to the question. He asked you if Mr. Finn was responsible for the ventilating equipment, and I don't think that the answer

actually met the question. You said he was --

THE WITNESS: Well, I was trying to say that he worked in that. Now, the word responsible, of course, might not be quite right. But he worked on dust collecting as a part of the engineering operation.

MR. BUNDA: Okay.

Q. BY MR. SIMON: What was Mr. Persion's job responsibility or job title?

A. Well, I don't know. Again, I don't know specifically. He was the one who was immediately in charge of the engineering group there at Berlin.

Q. Do you know who Dr. Taylor reported directly to?

A. To the Director of Research of Owens-Illinois. Initially it was Mr. Bowes, and then I think later Oscar Burch became Director of Research, B-u-r-c-h.

Q. Is the name H.T. Williams familiar to you, sir?

A. Yeah. I pointed out he's the one I reported to when I went over to Owens-Corning. He was sales manager for industrial insulation.

Q. That's right. I'm sorry.

In your capacity at Owens-Corning, sir, did you have occasion to receive correspondence, written correspondence, from Mr. Williams?

A. Well, seldom, because we were in adjacent offices, and so very little correspondence per se.

Q. Did you have occasion to review correspondence that Mr. Williams directed to others?

A. Again, if my name was on to receive copies, I

Q. Okay. That asbestosis could result from Kaylo exposure?

A. Yeah.

MR. BUNDA: Objection, it's a leading question.

Q. BY MR. SIMON: Sir, do you know when you gained this information from Mr. Hazard, or approximately when?

A. Well, it would be in this time that I would say whenever he found out, it would be a matter of several months later when he would come for an inspection trip he would bring it up. It was still talked about in terms of the dust hazards, and that if we reduced the dust hazard we'd reduce that hazard too.

Q. Do you recall whether or not you received this information in the fifties as opposed to the forties?

A. No, I would say in the fifties.

Q. Early fifties?

A. That's difficult for me to say now.

Q. At some time in the fifties?

A. Yes.

Q. Sir, you stated earlier that the Kaylo Division of Owens-Illinois was sold to Owens-Corning in 1958.

A. As far as I understand it, yes.

Q. Do you know what personnel from Owens-Illinois were involved in that transfer?

MR. BOGAN: I don't understand your question. You mean the people who actually did the paperwork on it?

MR. SIMON: The person who negotiated the transfer.

THE WITNESS: No. This would be top management.

Q. BY MR. SIMON: The same would be true of the Owens-Corning people, that would --

A. Top management, yes.

Q. I take it you yourself had nothing to do with it?

A. No. In fact, I never heard about it until on the -- I heard it on the radio and found out. I had been working for two weeks for Owens-Corning and didn't know it.

Q. BY MR. SIMON: I take it, sir, that the individuals who were working for the Berlin plant in 1958 were transferred to Owens-Corning with the sale --

A. That's my understanding, yes. Just a plant transfer.

Q. That would have included yourself?

A. No. I was in Toledo.

Q. I'm sorry.

A. I was transferred then into their Sales Department.

Q. It would have included their plant manager and all individuals under him?

A. As far as I understand.

Q. Do you know if there was any transfer of personnel from the Kaylo research division to Owens-Corning?

A. I don't think so. I can't remember what happened to Dr. Kalousek, but -- I'm pretty sure he didn't go over to Owens-Corning.

Q. What about Dr. Taylor?

A. He either.

Q. Do you know of anyone other than yourself that was involved in research at Owens-Illinois that did go over?

A. No, I can't think of anyone who did.

Q. Do you know when Owens-Corning first began sales of Kaylo?

A. Oh, it's hard to say because, of course, the two companies were closely associated, and Owens-Corning's product, fiberglass at that time, was suited only to about 450 degrees. So in order to get jobs at much higher temperatures were concerned, they of course were interested in having Kaylo. But it wasn't until sometime later that they officially became a representative on, I guess they called their western division.

Q. How did your personal job duties change, sir, when your employment was transferred to Owens-Corning, if at all?

A. Well, I had nothing to do with the plant or researc It was primarily as consultant to the sales people.

Q. Was your title that of service manager?

A. I think that was probably it, yeah.

Q. Did you have anything to do with product development after that time?

A. No. Only -- of course, if anyone had an idea -- they had the system where anyone could submit ideas voluntarily.

Q. Do you recall if you submitted any?

A. I can't remember now. See, this patent there was issued in '61. I can't remember when that was filed.

Q. Sir, do you know what documents, if any, were transferred to Owens-Corning by Owens-Illinois at the time of the acquisition?

A. The only thing I can think of is the files were just left there. Whoever came in, they had them.

MR. BOGAN: Are you guessing?

THE WITNESS: I know that mine were left there.

MR. BUNDA: What do you mean by were there?

THE WITNESS: I mean at Berlin.

Q. BY MR. SIMON: Do you know, sir, if in the files at Berlin those files contained the results of the Saranac Lab studies of Kaylo?

A. I don't think they did because as I said we never got the reports themselves. It was only by verbal transfer from Bill Hazard that the Berlin plant got them.

Q. Do you know if the files that were left at Berlin would have included the documentation that I showed you earlier with regard to your own correspondence to Saranac about the dust verse block problem?

A. I would think that would be there.

Q. Sir, do you know to whom, other than yourself, the results of the Kaylo studies were made available?

MR. BOGAN: You mean orally?

MR. SIMON: Orally or in writing. The studies performed at Saranac labs.

THE WITNESS: At Saranac? No.

MR. BUNDA: Objection. You think that calls for conjecture.

A. And the signatures, Bishop, Taylor -- Bishop worked under Taylor in general research.

Q. You recognize those signatures?

A. I'm not too sure about Duff, because I don't remember him.

Q. The other two you do recognize?

A. Bishop and Taylor, yes.

Q. Again, sir, would that have been a document generated within Owens-Illinois?

A. Within Owens-Illinois.

Q. Not normal course of the business of that company?

A. Yes.

Q. If I may, sir.

There is a handwritten notation indicating two copies sent to Kaylo (OCF), 5/23/58. Do you recognize that handwriting, sir?

A. No, I don't.

Q. The next exhibit, sir, which I will mark as Plaintiff's 27, is a report dated November 12, 1953, again the General Research Division, Owens-Illinois Glass Company. The title, "The Development and Properties of Kaylo Finishing and Laminating Cement Number Five," copies to Lovland, Pfeifer, Shuman, Burch, Northrup, Taylor, Hackett, Hamilton, general research file, research library, two copies sent to Kaylo, OCF, 5/23/58.

I ask, sir, if you recognize that document.

(Whereupon Plaintiff's Exhibit 27 was marked

for identification at this time.)

THE WITNESS: Yes.

Q. BY MR. SIMON: Do you recall, sir, whether you received a copy in or around November of 1953?

A. About then, yes.

Q. Do you recognize the three signatures that appear at the bottom?

A. Yes, Bishop, Taylor and Hackett.

Q. Those are authentic?

A. Yes.

Q. Again, this document would have been generated --

A. Within Owens-Illinois.

Q. In the normal course of their business?

A. Right.

Q. I have to ask, where is Westwood, sir?

A. That's the name of the street.

Q. We got a neighbor --

A. That's the name of the street where general researc is located.

Q. Okay. Again, with reference to that notation, two copies sent to Kaylo, OCF, 5/23/58. Do you recognize that?

A. I don't recognize that.

Q. Next, sir, which we'll mark as Plaintiff's 28, is another study by General Research Division, Owens-Illinois Glass Company, entitled "Study of SID cycles at Berlin plants and other factors affecting the quality of the wear," dated January 21, 1954.

for identification at this time.)

MR. SIMON: It's entitled "Kaylo Rock Preparation and Properties," copies to Stewart, Pfeifer, White, Shuman, Trumm, Northrup, Burch, Bowes, Hackett, Taylor, general resea file, research library, two copies sent to Kaylo OCF, May 23, 1958.

I would ask you, sir, if you've ever seen that document before?

A. Yes.

Q. Would that have been in 1954?

A. Yes.

Q. Again, sir, that's an Owens-Illinois prepared document?

A. Yes.

Q. Do you recognize the signature?

A. Bishop, Taylor and Hackett.

Q. As authentic?

A. Yes.

Q. This again would have been prepared in the normal course of Owens-Illinois --

A. In the normal course, yes.

Q. What is Kaylo rock, sir?

A. Well, this was the different form they were making, as I recall, they were trying to make it with bubbles in it, like concrete made lightweight by creating some kind of a bubble forming mechanism in it. So it was high density, and that was why it got the name rock.

Q. Was it ever commercially used?

A. No. In fact, I think the report says it didn't seem to be feasible.

Q. That was not intended, I take it, as a substitute for the use of Kaylo in any form?

A. No.

Q. -- We'll skip this one because we're not concerned with xonotlite.

The next one I ll mark, Plaintiff's, 30 for identification, purports to be another study from the General Research Division, March 25 1955, entitled "Properties of Kaylo Thermal Insulation and Competitive materials," copies to Stewart, Burch, Shuman, general researc file, research library, two copies sent to Kaylo, OCF, May 23, 1958. I would ask you, sir, if you've ever seen that document before?

(Whereupon Plaintiff's Exhibit 30 was marked for identification at this time.)

THE WITNESS: Yes.

MR. HOCH: Aaron, the exhibit is dated 3/25/55?

THE WITNESS: Yes. March 25, 1955.

MR. HOCH: Thank you.

THE WITNESS: Right. I see some names now of competitors that I'd forgotten about.

Q. BY MR. SIMON: Who was this report prepared by, sir?

A. Joe Scovronek.

Q. Could you spell that?

A. S-c-o-v-r-o-n-e-k. And he worked under Dr.

Taylor. Of course, Hackett was the Director of Research of the company.

Q. Do you recognize that as his signature?

A. Yes.

Q. And that of Dr. Taylor's?

A. Yes.

Q. And Mr. Hackett?

A. Yes.

Q. And again this would have been --

A. Normal business.

Q. Do you know where Mr. --

A. Scovronek.

Q. -- Scovronek is these days?

A. No, I don't.

Q. Do you know if he's still alive?

A. I'm not sure. I presume. He was much younger than I was.

Q. Do you recall, sir, if you saw this document in or around 1955?

A. Yes, I'd say about that time.

Q. Did you happen to review it with regard to its accuracy?

A. Well, no, because you presume that they would put only data they had actually gotten. It was just a case of reviewing what the results were.

Q. The next document is entitled "Administrative Division Research Department, Owens-Illinois," another entitled "Chemical and Physical Properties of Hydrous

Calcium Silicate Products," appears to be dated August 29, 1957, prepared by Dr. Taylor, copies to Burch, Hackett, Stewart, Trumm, Shuman, general research file, research library, two copies sent to Kaylo, OCF, May 23, 1958. I'll mark that as Plaintiff's 31 for purposes of identification.

(Whereupon Plaintiff's Exhibit 31 was marked for identification at this time.)

Q. BY MR. SIMON: I would ask you, sir, if you've ever seen this document before?

A. Yes.

Q. Was that a document prepared by Dr. Taylor?

A. Yes.

Q. During the course of his employment with Owens-Illinois?

A. Yes.

Q. Do you recognize the signature as being his?

A. Yes.

Q. Sir, the front page appears to be somewhat different than the others.

A. Well, I think they just changed the format.

Q. Do you recognize that format as being the format used during that period of time?

A. Well, I'd seen it, but I don't remember just when they adopted this.

Q. Are you familiar with that form at some point in time?

A. Yes.

Q: Do you also recognize -- there appear to be a

Q. Was the purpose of this study, in part, to lower the thermal conductivity of Kaylo to that of Thermobestos?

A. Yes. And of course, as I was saying, try to find out what the factors were that affected the thermal conductivity, hopefully to bring it down.

Q. Okay. Sir, do you know if any of the results of the Arthur D. Little studies were made available to Owens-Corning personnel at any time?

A. I don't know. Other than those notes that you have there that they were sent to them. But at that time there were not.

Q. What about the reports that we went over from the General Research Division of Owens-Illinois?

A. Because, you see at that time they were two separate operations. They were merely sales representatives after they had taken over that part of it.

MR. SIMON: I yield to somebody else. If I have something else, I can come back to it. Thank you, sir.

MR. BOGAN: Let me state one thing about these documents, for the record. As far as my client is concerned, I have not had an opportunity to review these documents that have been offered for identification by plaintiff's attorney. They appear to be as a group several hundred pages in number, and I am on the record now reserving my right to cross-examine Mr. Shuman at a subsequent time after I've had a reasonable opportunity to

you moved to Toledo in 1949 from the Berlin plant; is that correct?

A. That's correct.

Q. And your office was in Toledo at the time of the acquisition of the Berlin plant by Owens-Corning?

A. That's right.

Q. Is it a fair statement that you don't really know which, if any, documents were transferred at the Berlin plant facility when it was, in fact, bought by Owens-Corning, to Owens-Corning; is that correct?

MR. SIMON: I'll object to that as misstating his prior testimony.

MR. BOGAN: That's why I'm going into it.

MR. SIMON: Okay. My objection is on the record.

THE WITNESS: Let me put it this way. All I remember is that anything I had was just left there. What happened after that, I wouldn't know.

Q. BY MR. BOGAN: You don't know about other peoples' documents who worked for Owens-Illinois, and after the transfer took place, you don't know what happened to those files, do you?

A. No.

MR. BOGAN: All right. That's all I have.

EXAMINATION

BY MR. BUNDA:

Q. Mr. Shuman, you've testified that you were in

the research division at Berlin between 1947 and 19 -- 1944 and 1947, and then you were plant manager from 1947 to 1949.

A. That included the research.

Q. Then from 1949 to 1958 you were in Toledo?

A. Right.

Q. What was your capacity in Toledo again?

A. Well, Director of Research, but I was really a consultant to the Sales Department. See, I was coordinator between the work done at the Berlin plant and the work done at general research, as these reports here showed.

Q. There were other people doing research on Kaylo at the time?

A. In general research, right.

Q. Were they your superiors?

A. No. General research was an entirely separate department.

Q. Was there research going on at Berlin still at the time that there was general research going on in Toledo?

A. Yes.

Q. What was the difference between the two?

A. Well, one was dealing with what you might call laboratory samples, and the Berlin plant was translating this into plant samples. Translating the so-called research at general research into what the plant could use.

Q. So the research going on in Toledo would be more the physical properties of the material?

A. Yeah. It would go down to the basic chemistry. Whereas the Berlin plant would be using actual raw

materials.

Q. Would the problems be faced by the Berlin Research Department be more in terms of adjusting the manufacturing process?

A. Yes.

Q. If there were problems occuring in the manufacturing process?

A. Yes. This is to improve the product on a manufacturing basis, not in the test tube.

Q. If they were searching for different materials to be put in the product, such as a substitute for asbestos, who would be doing that research?

A. Well, it may have started at general research, just to find out what kind of materials were available, and then we would get some of that material and try it on a batch size.

Q. Would it be possible that general research might find a substitute for asbestos that they would think would be promising, and then problems would arise in the manufacturing process by use of the substitute?

MR. SIMON: Let me object to that as being vague and ambiguous and calling for sheer speculation on Mr. Shuman's part.

MR. BUNDA: Can you answer?

THE WITNESS: Well, what I was trying to convey was that things that they might have done in the laboratory on the test tube size, we would then try to translate into batch size, or small batch size at the plant, that General