

FILE NAME: US Gypsum (USG)

DATE: January 14, 1985

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DOCUMENT DESCRIPTION: 1985 Legal - Deposition of Benjamin Miriello

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TENNESSEE
3 NORTHERN DIVISION
4 CASE NOS. 3-83-511 and 3-84-768



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6 DISCOVERY DEPOSITION OF BENJAMIN G. MIRIELLO

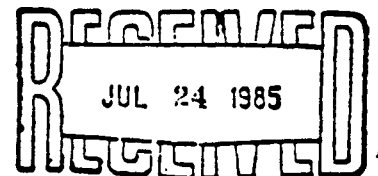
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8 COUNTY OF ANDERSON, TENNESSEE, et al., GEORGE LOUIS
9 BYRD, et ux.,

10 Plaintiffs,
11 vs.

12 UNITED STATES GYPSUM COMPANY, et al.,

13 Defendants.

14 -----
15 PURSUANT TO NOTICE and COURT ORDER,
16 the above-entitled deposition was taken on behalf of
17 the Defendant, U.S. Gypsum, at 13696 East Iliff Place,
18 Aurora, Colorado, on January 14, 1985, at 10:20 a.m.,
19 before Dawn Calderwood, Certified Shorthand Reporter
20 and Notary Public.



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24 CALDERWOOD/MACKELPRANG & ASSOCIATES
25 CERTIFIED SHORTHAND REPORTERS, RPR's
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1 APPEARANCES:

2 For the Plaintiffs: MICHAEL Y. ROWLAND
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5 For the Defendant DARRYL G. LOWE
6 U.S. Gypsum: Kennerly, Montgomery & Finley
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8
9 Also present: Barbara Arras

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<u>EXAMINATION</u>	<u>I N D E X</u>	
BY MR. LOWE		<u>PAGE</u>
		3

<u>FOR IDENTIFICATION</u>	<u>E X H I B I T S</u>	
Deposition Exhibit 1		<u>PAGE</u>
Newspaper article from the		17
Jersey Journal, March 3, 1936		

P R O C E E D I N G S

WHEREUPON, the following proceedings were taken pursuant to the Federal Rules of Civil Procedure.

* * * * *

MR. LOWE: This deposition of Mr. Miriello is being taken pursuant to notice for a discovery deposition and also pursuant to the order of Judge Murrian of the United States District Court for the Eastern District of Tennessee.

And if we could, we would like to go ahead and attach the notices to the deposition.

MR. ROWLAND: You brought copies, so that's fine.

MR. LOWE: That's probably for both; right?

MS. ARRAS: It's for Anderson, Byrd, Lytle and Shultz.

MR. ROWLAND: And noticed in two or three other cases. I will try to get you a complete list of them.

BENJAMIN G. MIRIELLO,
having been first duly sworn to tell the truth,
testified as follows:

EXAMINATION

BY MR. LOWE:

Q. Mr. Miriello, if you would, please state your full name for the record.

A. Ben -- otherwise known as Benjamin -- G. Miriello.

Q. What is your present address?

A. 2750 South Xanada Way, Aurora, Colorado.

Q. If you would, please, give me your date of birth.

A. April 9th, 1920.

Q. And that would make you, presently, 64?

A. Correct.

Q. And by whom are you employed?

A. I am retired from AT&T Technology.

Q. How long did you work for AT&T Technology?

A. Forty-two years.

Q. When did you retire?

A. In June of 1984.

Q. So you would have started for AT&T, then, back in 1942?

A. Correct.

Q. Is that correct? All right. Let me go back, if I could, and give me your place of birth.

A. Place of birth would be Jersey City, New

1 Jersey.

2 Q. And did you grow up there?

3 A. I did.

4 Q. Did you go to school there, your primary
5 elementary education?

6 A. I did.

7 Q. At what location did you first work for
8 AT&T Technology?

9 A. In the Kearny Works at Kearny, New Jersey.

10 Q. Were you still living in Jersey City at
11 that time?

12 A. I was.

13 Q. When did you move away from Jersey City for
14 the first time?

15 A. For the first time -- after I married --
16 you want an approximate date? I couldn't give you
17 the actual date.

18 Q. Yes.

19 A. You are taxing my memory, and it's not that
20 great. Well, I was married 30 years. So let's take
21 back from 30, would be the approximate time I moved
22 out of Jersey City.

23 Q. At age 30?

24 A. Yes.

25 Q. So that would have been about 1950?

1 A. Got me. I didn't realize that I had to
2 come up with these kinds of dates. What the heck.
3 Barbara -- Ron was born there, so he's 32. Thirty :
4 years ago, yeah.

5 Q. Do you recall approximately when you moved
6 to the Denver area?

7 A. Some 20-odd years ago -- 1965.

8 Q. 1965?

9 A. Uh-huh.

10 Q. Now, what line of work did you follow after
11 you finished high school?

12 A. Well, I started working for Western
13 Electric.

14 Q. You started immediately after high school?

15 A. Yes.

16 Q. Okay.

17 A. Barring -- well, actually, yes. I went
18 into the service after that, while I was working for
19 them.

20 Q. You were in the service for what years?

21 A. Well, 1942 to 1945.

22 Q. Do you recall what year you graduated from
23 high school?

24 A. 1937.

25 Q. What did you do from 1937, then, to 1942?

1 A. What did I do from 1937 to 1942?

2 Q. What line of work, or did you work?

3 A. I worked for Macy's, Bloomingdale's,
4 Colgate-Palmolive.

5 Q. Still living in Jersey City?

6 A. Correct.

7 Q. Now, if you could, I would like to ask you
8 at this time to produce for us, to take a look at,
9 any documents that you intend to use or that you will
10 be relying upon in your deposition here today.

11 Do you have anything?

12 MR. ROWLAND: I have got copies of --

13 THE DEPONENT: Copies of the letter
14 that I wrote to U.S. Gypsum.

15 MR. ROWLAND: I thought you already
16 had these (indicating).

17 MR. LOWE: I can't anticipate what you
18 are going to use in the deposition.

19 THE DEPONENT: The letter I wrote to
20 U.S. Gypsum about my father's death, their reply, and
21 his death certificate.

22 BY MR. LOWE:

23 Q. Let me ask you if this letter dated June 8,
24 1950, is the letter that you wrote regarding your
25 father's death?

1 A. Very much so.

2 Q. And is that letter one that you intend to
3 rely upon in your testimony here today? :

4 A. When you say "rely upon," how do you mean?

5 Q. Well, is it your understanding that you are
6 going to be using this letter in your testimony here
7 today?

8 A. Well, I will refer to this letter, yes.

9 Q. And the second document is a letter dated
10 December 27th, 1950, which I understand to be the
11 reply to your letter?

12 A. That's correct.

13 Q. And then you have shown us a copy of a
14 death certificate. The name of the deceased is
15 Raffaele, Ralph, Miriello. Is that correct?

16 A. Correct.

17 Q. Do you know of any other documents that you
18 have in your possession or have access to that you
19 will rely upon to give your testimony here today?

20 A. No.

21 Q. Have you gotten any information, that you
22 intend to testify about today, from relatives back in
23 New Jersey?

24 A. I should have and could have; but I didn't,
25 no.

1 Q. All right, sir. Let me ask you, if I can,
2 please, sir, to tell me your father's main occupation
3 as you recall it from the earliest part of your
4 childhood that you have a recollection of.

5 A. Cabinetmaker.

6 Q. And in that particular occupation, what
7 type of things did he do? -- if you know.

8 A. What did he do?

9 Q. What type of things did he do?

10 A. Made chest of drawers -- you know,
11 furniture, woodworking.

12 Q. Would that have been primarily in the
13 Jersey City area?

14 A. Yes.

15 Q. Now, was that his main occupation
16 throughout his adult work life history up until the
17 time of his death?

18 A. Very much so, yes.

19 Q. Do you know how he came to work at the
20 Henderson Street plant?

21 A. Yes. During the depression years, jobs
22 were hard to come by. And he was forced to look for
23 employment elsewhere.

24 Q. In other words, he couldn't make a living
25 to support his family as a cabinetmaker at that time,

1 during the depression years, so he then took
2 employment where he could find it, basically, for
3 that period of time?

4 A. Correct.

5 Q. Did he, at some point in time after working
6 at the Henderson Street plant, then go back to his
7 employment as a cabinetmaker after the economy got
8 better?

9 A. True.

10 Q. The depression years, "from my history
11 lessons -- not from my memory -- started about 1929.
12 Do you know, or do you have any idea when your father
13 worked at the Henderson Street factory?

14 A. Somewhere or another the date of 1933 comes
15 into play, as far as my recollection goes.

16 Q. Realizing that's a long time ago --

17 A. Correct.

18 Q. -- and that our memories aren't always the
19 best, but sitting her today under oath, your best
20 recollection is that your father worked at the
21 Henderson Street plant in 1933?

22 A. Approximately, yes.

23 Q. Okay. Do you have any independent
24 recollection as to how long he worked at the
25 Henderson Street plant?

1 A. Several years.

2 Q. In your letter you indicate that your
3 father worked in the Henderson Street plant in 1935.
4 Would it be your best recollection that he worked
5 there from the years 1933 to 1935?

6 A. Yeah -- within that area or years, yeah.

7 Q. Is there some way you can correlate the
8 time that he worked in the Henderson Street plant
9 with your childhood or your experiences or your age
10 or years in school? Is there any way that you can go
11 back and do that?

12 A. Let's see. How can I correlate it? No, I
13 guess my recollection would only be the fact that I
14 remember coming home from school and having lunch
15 with him when he was working at that plant.

16 Q. Would that have been before you went to
17 high school, or do you recall?

18 A. It would be, yeah, uh-huh.

19 Q. Is there something about that -- in other
20 words, you recall coming home from lunch yourself
21 before you went to high school but not after you
22 started high school?

23 A. No, I just realized I came home from school
24 and had lunch with him. So it was during the
25 depression years. If I had to, I could sit down and

1 figure it out; but you are taxing my memory somewhat.

2 Q. Is it your best recollection, as we sit
3 here today, that he went back into the cabinetmaking?
4 or furniture-making occupation around 1935 or 1936?

5 A. Uh-huh, somewhere in there.

6 Q. Don't say "uh-huh," if you would, for the
7 court reporter. Please say yes or no.

8 Is it your best recollection that he went
9 back into his main occupation as a cabinetmaker
10 between 1935 and 1936?

11 MR. ROWLAND: If you know the exact
12 date.

13 THE DEPONENT: I don't know the exact
14 dates. I am approximating the dates. Yeah,
15 somewhere in that area.

16 BY MR. LOWE:

17 Q. Now, you have indicated that probably the
18 beginning of his work at the Henderson Street plant
19 was probably around 1933. Could it possibly have
20 been earlier than that?

21 A. Could it have been earlier? I really
22 couldn't say actually whether it was earlier or not.
23 But those are the immediate dates that I can
24 recollect.

25 Q. I apologize for being insistent -- but 1933

1 to 1935 are the years that you feel comfortable with;
2 is that correct?

3 A. In that range, could be two years before or
4 after.

5 Q. What was the address where you and your
6 family lived back then?

7 A. 218 Grand, G-r-a-n-d. That's on the
8 letters, also.

9 Q. All right. Do you recall ever living at
10 8 Lexington Avenue in Jersey City?

11 A. I lived at 8 Lexington Avenue in Cranford
12 not Jersey City.

13 Q. That was not in Jersey City?

14 A. That was my first home that I moved to
15 after getting married.

16 Q. While your father worked at the Henderson
17 Street plant, you lived on Grand Street?

18 A. Correct.

19 Q. And you probably recall that because it was
20 in fairly close proximity to the plant?

21 A. Very much so; it's just around the corner.

22 Q. Was your father a cigarette smoker?

23 A. No. He smoked an occasional cigar.

24 Q. Your best recollection is that he did not
25 smoke cigarettes?

1 A. That's for sure.

2 Q. Do you recall, sir, whether or not your
3 father ever received his wages in a pay envelope with
4 cash in it as opposed to a check, or do you recall?
5 Do you have a recollection one way or the other?

6 A. Somehow -- this is vague -- but I think it
7 was a check.

8 Q. Do you know if you or any member of the
9 family -- your brothers and sisters -- would have a
10 check stub or some sort of a pay slip --

11 A. At this day and age?

12 Q. Yes.

13 A. No.

14 Q. -- that would show, specifically, who it
15 was that your father worked for at the Henderson
16 Street plant?

17 A. No, by no means.

18 Q. Let me ask you, Mr. Miriello: Do you smoke,
19 or have you ever smoked?

20 A. Yes, I do.

21 Q. On a regular basis?

22 A. Uh-huh.

23 Q. How much do you smoke, please, sir?

24 MR. ROWLAND: What does that have to
25 do with this case?

1 MR. LOWE: This is discovery. All I
2 am asking him about are his smoking habits on a daily
3 basis.

4 MR. ROWLAND: What in the world does
5 that have to do with the subject of this litigation?

6 MR. LOWE: It may be tied in. I don't
7 think I have to show it's relevant at this point in
8 time, or it's admissible evidence. I don't think the
9 Rules require me to do that.

10 THE DEPONENT: Suppose I am refusing
11 to answer?

12 MR. LOWE: I want to ask you that.

13 THE DEPONENT: I don't think it's
14 relevant to what we are talking about. That's my own
15 personal opinion.

16 BY MR. LOWE:

17 Q. Do you mind telling me how long you have
18 been a smoker?

19 A. No, because we are not talking about me. I
20 am not being prosecuted, as such.

21 Q. Did you ever receive any baseball cards in
22 tobacco that your father brought home when you were a
23 boy? Do you ever remember getting anything like that?

24 A. No.

25 Q. You don't remember your father bringing

1 cigarettes to the house or smoking cigarettes?

2 A. Not at all. I already told you he was an
3 occasional cigar smoker.

4 Q. When you were growing up, do you recall
5 reading the city newspaper?

6 A. Yes.

7 Q. Was that the Jersey Journal?

8 A. Correct.

9 Q. Let me show you, if I could, please, sir, a
10 copy of the Jersey Journal dated Tuesday, March the
11 3rd, 1936, and ask you if you would look at that and
12 just familiarize yourself with that for a minute.

13 MR. ROWLAND: How about showing me the
14 other documents that you have got from your company
15 files about his father and his employment.

16 MR. LOWE: I don't have -- as a matter
17 of fact, there is no evidence that he ever worked for
18 U.S. Gypsum.

19 MR. ROWLAND: Yeah, there is. Right
20 here (indicating) is the evidence.

21 MR. LOWE: A search has been made, and
22 there is no evidence that he worked for the
23 U.S. Gypsum Company.

24 THE DEPONENT: This (indicating) is
25 their rely to my letter, and it says U.S. Gypsum.

1 I can't read this; I am sorry. It's too --

2 BY MR. LOWE:

3 Q. Are you not able to read that print? ?

4 A. Just the large print, yeah.

5 Q. Read to me, if you would, what you can read.

6 A. What I can read? "Large Gypsum Firm Comes
7 Here; Jobs For Hundreds."

8 Q. Is there anything else in that article that
9 you can read?

10 A. "\$100,000,000 corporation takes
11 50-year lease. Decision made after survey conducted,
12 say officials."

13 Q. Anything else?

14 A. "Murder trial."

15 MR. LOWE: We would ask that that or a
16 copy of that newspaper article be introduced and
17 admitted as Exhibit 1 to your testimony.

18 (Deposition Exhibit 1 was marked for
19 identification.)

20 BY MR. LOWE:

21 Q. Mr. Miriello, a few minutes ago you
22 indicated -- when I was having a side conversation
23 with Mr. Rowland about employment records regarding
24 your father -- that the letter that we looked at was
25 an indication that your father worked for U.S. Gypsum

1 Company.

2 Can you tell me which letter you are
3 talking about?

4 A. Both.

5 Q. Would you show me, in the United States
6 Gypsum letter, where it indicates that your father
7 worked for United States Gypsum Company?

8 A. It's in reply to my letter.

9 Q. They don't acknowledge in their letter to
10 you that he worked there; do they? You are just
11 saying that since they did write you back, that you
12 feel that's an indication he did work there; is that
13 right?

14 A. I was invited for a tour of the plant. I
15 went for a tour of the plant at their request.

16 Q. They invited you for a tour of the plant?

17 A. Yes.

18 Q. Is that what you are relying upon to show
19 that your father worked for U.S. Gypsum?

20 A. I know he worked there.

21 Q. I understand that you say he worked there.

22 A. I know he worked there.

23 Q. All right, sir. But is there anything,
24 other than what you just pointed out in the letter,
25 that indicates that he did, in fact, work there -- by

1 documents, not by what you are saying but by a
2 document?

3 Do you feel there is anything in this
4 letter dated December 27, 1950, to you that admits or
5 indicates that your father worked for United States
6 Gypsum Company?

7 A. I don't know what you are driving at.

8 Q. What I am driving at -- is there any
9 acknowledgement anywhere in this letter that states
10 that your father did, in fact, work for United States
11 Gypsum Company?

12 MR. ROWLAND: Well, I think the letter
13 speaks for itself.

14 MR. LOWE: I am entitled to ask and
15 have that question answered.

16 THE DEPONENT: One would think that if
17 I wrote a letter to my father's place of employment
18 and they replied, that that, in itself, is an
19 acknowledgement of his being an employee there.

20 BY MR. LOWE:

21 Q. So I will understand, the only thing that
22 you are relying upon as evidence that your father
23 worked at United States Gypsum Company is the fact
24 that you wrote them a letter and that they wrote back?

25 MR. ROWLAND: That's not correct. He

1 said he knew he worked there.

2 MR. LOWE: I am asking you, sir --

3 THE DEPONENT: I used to bring lunches
4 to him there.

5 BY MR. LOWE:

6 Q. We are talking now, at this point, about
7 documents that indicate whether your father did or
8 did not work for United States Gypsum Company.

9 A. Here's (indicating) another document that
10 will tell you, because he died of asbestosis.

11 Q. Is there anything on the death certificate
12 that indicates your father worked for U.S. Gypsum?

13 A. Where else would he have gotten asbestosis?

14 Q. Is --

15 A. On the heading of this letter --

16 Q. Let me finish my question first. Is there
17 anything on the death certificate, anywhere, that
18 states United States Gypsum Company?

19 A. No. But I am sure if you went to Dr.
20 Blum's records, it does list U.S. Gypsum Company.

21 Q. Is there anything on the United States
22 Gypsum Company letter that acknowledges that your
23 father was ever an employee of United States Gypsum
24 Company? -- other than the fact that they simply
25 responded to your letter.

1 A. Well, wouldn't one think that if you wrote
2 to a company --

3 Q. Excuse me, sir, just answer my question.

4 MR. ROWLAND: Darryl, he's trying to
5 answer.

6 BY MR. LOWE:

7 Q. Is there anything in this letter, anywhere,
8 that acknowledges that your father worked for United
9 States Gypsum Company?

10 A. I am telling you, sir, that if one wrote a
11 company, they would deny the letter that they
12 received. And they wouldn't bother answering it and
13 would say we will not concede to the fact that your
14 father worked here, so we have no further
15 acknowledgement of your letter.

16 But they are acknowledging my letter and
17 answering it and stating that they are -- as you can
18 very well read.

19 Q. That is your opinion; is that correct?

20 A. It would be any intelligent person's
21 opinion. I am not knocking your intelligence.

22 Q. As a matter of fact, the letters says
23 specifically -- and if you would follow me on this.

24 A. You are picking out -- you are isolating
25 statements in the letter to try to bring out a point

1 that doesn't exist, sir.

2 Q. Let me do this. And, for the record, by
3 quoting from this letter, I do not waive my right to
4 object to the introduction of any of these documents
5 as exhibits to the plaintiff's proof in chief.

6 If you would please direct your attention
7 to the second paragraph of the letter and see if I am
8 reading this correctly.

9 A. You are taking something out of context.

10 Q. Follow along --

11 A. You want to take this out of context.

12 Q. I want you to look and see if I read it
13 correctly -- and I quote: "A check of our records
14 shows that our company did not acquire and operate
15 its New Jersey plant where your father was employed
16 until February 28, 1936, and accordingly, his
17 employment or the bulk of it must have been for the
18 prior owner or operator of that plant."

19 A. Who was the former owner?

20 Q. Sir, answer my question.

21 A. Who was the former owner?

22 MR. ROWLAND: If he read it correctly,
23 just agree he read it correctly.

24 THE DEPONENT: Because National Gypsum
25 Company is U.S. Gypsum Company; they are one in the

1 same.

2 MR. ROWLAND: Did he read the thing
3 correctly?

4 THE DEPONENT: Yes, he read it
5 correctly.

6 MR. ROWLAND: Okay, fine.

7 BY MR. LOWE:

8 Q. Now, you just indicated that, in your
9 opinion, National Gypsum Company and U.S. Gypsum
10 Company is one and the same company. Did I
11 understand you correctly? Is that correct?

12 MR. ROWLAND: If you know, tell him
13 what you know. If you don't know, don't try and
14 guess at something.

15 THE DEPONENT: No, I don't know.

16 MR. LOWE: I would suggest to you,
17 Mr. Miriello, that what Mr. Rowland just said as
18 counsel for the plaintiff in this case would hold
19 whole true for all of your testimony -- that you
20 should not guess and just state what you know. I
21 believe that's all.

22 MR. ROWLAND: I don't have any
23 questions on this deposition.

24 (Whereupon, at 10:56 a.m., the
25 deposition concluded.)

1
2 I have read the foregoing transcript
3 of my testimony and have indicated same by my
4 signature.
5
6
7

8 _____
9 BENJAMIN G. MIRIELLO
10

11 STATE OF COLORADO

12 CITY AND COUNTY OF DENVER

)
)
)

ss.

13
14
15 Subscribed and sworn to before me by
16 the said BENJAMIN G. MIRIELLO, this _____ day of
17 _____ 1985.

18 My commission expires _____
19
20
21

22 _____
23 Notary Public
24
25

1 STATE OF COLORADO

CERTIFICATE

2 CITY AND COUNTY OF DENVER

) ss.

3 I, Dawn Calderwood, a Certified

4 Shorthand Reporter and Notary Public for the State of

5 Colorado, do hereby certify that previous to the

6 commencement of the examination, the said BENJAMIN G.

7 MIRIELLO was duly sworn by me to testify the truth in

8 relation to the matters in controversy between the

9 said parties; that the said deposition, consisting of

10 23 pages, was taken in shorthand by me and was

11 reduced to typewritten form; that the foregoing is a

12 true transcript of the questions asked, testimony

13 given, and proceedings had; that I am not attorney

14 nor counsel nor in any way connected with any

15 attorney or counsel for any of the parties to said

16 action or otherwise interested in its event.

17 IN WITNESS WHEREOF, I have affixed my

18 notarial seal this _____ day of _____

19 1985.

20
21
22
23 DAWN CALDERWOOD
24 Calderwood/Mackelprang & Associates
25 Certified Shorthand Reporter
and Notary Public

1 CALDERWOOD/MACKELPRANG & ASSOCIATES

2 1554 Vine Street

3 Denver, Colorado 80206

4
5 January 25, 1985

6 Mr. Benjamin Miriello
7 2750 South Zanada Way
8 Aurora, Colorado 80014

9 Re: County of Anderson, et al. vs. U.S. Gypsum

10 Your depositions (discovery and videotape) in the
11 above-entitled case have now been transcribed. The
12 court Rules require that we file your depositions
13 promptly. Therefore, if you would like to review and
14 sign your deposition, please call our office to make
15 an appointment . . .

16 _____ within 30 days to comply with the
17 statute.

18 _____ X by _____, so the deposition
19 may be filed in time for trial.

20 If you do not call for an appointment within the time
21 designated, we shall file your deposition unsigned.

22 Sincerely,

23 Dawn Calderwood
24 CALDERWOOD/MACKELPRANG & ASSOCIATES
25 Registered Professional Reporters

cc: M. Rowland
D. Lowe
Court, File