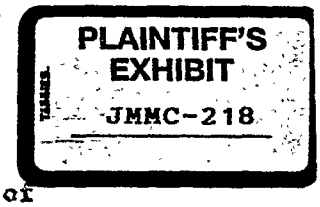
COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA



Civil Case No. 2099 - January Term, 1957

The Supervisors of the Township of Moon, now to the use of Johns-Manville Sales Corporation, Plaintiffs
Johns-Manville Sales Corporation
vs.

Herbert Neff, also known as Herb. Neff, individually and doing business as Herb Neff Contracting and Peerless Casualty Company, a corporation, Defendants.

Pittsburgh, Pennsylvania, November 6, 1957.

HIGHLIGHTS OF TRANSCRIPT OF OFFICIAL NOTES OF TESTIMONY

Summary of Claims

Herb Neff purchased materials from Johns-Manville Corporation in the amount of $33,702.34 to be used by the Township of Moon in their Water Distribution System according to Contract No. A4. The sum of $30,438.31 was paid by Neff to J-M for said materials, leaving a balance of $3,264.03, which remained unpaid in spite of frequent demands made by J-M on both the individual and corporate defendants.

Neff received all materials purchased from J-M, but served them with notices of defective materials received as required under the terms of purchase orders. J-M then took the matter of unsettled balance to court and Neff filed a counter claim on his refusal of payment.

Because of defective A-C transite pipe furnished by J-M to Neff, ten leaks occurred, which according to Neff's testimony caused serious delays since he had to stop his current work and go back to fix the leaks. Neff stated that the cost to himself of discovering the leak and repairing it was $833. per leak.

Furthermore, Neff's attorney, Mr. Jones, stated that the purpose of testimony submitted was to prove loss of profits and show that Neff was entitled to a fair profit on the particular job if it could be shown that the damages resulted from faulty pipe furnished by Johns-Manville.

Testimony Quotations

We present below verbatim quotations of testimony submitted at this case. These quotations pertain to statements made by Mr. Neff, unless otherwise indicated, and have been grouped under a particular subject as each subtitle shows.

Handling of A-C Transite Pipe - "They call it 'paper pipe' because it is very frail. You have to watch it. It is just like eggs. You have to watch how you handle it or where you lay it, nothing touches it or drops on it." (page 32)

Pipe Used at Road Crossings - "This pipe we laid had to cross the road several times and the engineers know that this paper pipe, Johns-Manville transite pipe, will not withstand road bearing pressures, so they wanted cast iron in there. And everywhere we had a road bearing weight to go into cast iron and after the bearing go back with transite." (page 35)

Installation of A-C Transite Pipe - "We used the utmost caution on the pipe because I knew what the pipe was like. I knew it had to be handled carefully and it took a lot of patience and time to install it right. And I had good men to do it. I was there as much of the time as possible and I watched them lay it and they took pride in their work. In fact, when we had a leak they just couldn't figure it out. It was just a puzzler to us. We just

racked our brains. I would go home at night and I couldn't sleep because I couldn't figure out why, what was happening." (page 73)

In several places throughout the testimony it is noted that the instructions given by Johns-Manville as to the installation of A-C transite pipe were carefully followed by Herb Neff and his men. The actual work of laying the pipe was inspected by qualified "instructors" from Johns-Manville who "got down and actually helped" in the job.

Neff's superintendent on the Moon Township job, Neil Kilmer, stated the following in regard to the installation procedures observed: "If the pipe was laid, that is 13'6" section of pipe, was laid we will say with a section or hard substance sticking up in the center of that pipe or anywhere near the center of that pipe, it would -- the weight of your dirt over the top of it -- that is your backfill over the top of it would create a tension and break down and it causes what is called a beam break." (pages 140-141) "In other words, it is a break that is caused by either rock, dirt, or some object in the center of the pipe being forced up." (page 145)

Defects and Imperfections of A-C Pipe - Describing a piece of A-C pipe and referring to its inside diameter, Neff stated, "It is a little less than 8 inches. It would run about 7 and three quarters." ... "In the trade that is called an 8 inch pipe." (page 40)

Identifying another pipe exhibit: "That is a piece of 8 inch transite pipe that blew apart on the job." (page 40) "It blew itself apart when the water pressure was put through it. In other words, the pipe just separated and that is how it broke right

there. It is transite pipe (that) came from Johns-Manville. It was in approximately two or three days and it blew. It blew up the day it was tested. Now, I can go through and show you imperfections in this (pipe) if you want me to." (page 41)

Farther along in the trial, Mr. Neff demonstrated the imperfections found on the machined ends of the A-C pipe exhibits and corresponding collars. Neff inspected the pipe and collars using a pair of calipers to show the difference in thickness of the pipe, and the difference in the outside and the inside measurements of the collar. The collar is intended to make a leak-proof joint -- if perfect. Neff's comments after his effective demonstration were, "You can see it (the differences and imperfections). You don't need calipers. That's the kind of scrap, I call it, that we have got. I mean they shipped it to us and it can't be used. That's all. If you put this collar on this pipe, this pipe is off because it is thin on one side and thick on the other. This collar is bad. If you happen to get the two thin sides together you have got a leak, and believe me, you have got trouble." (pages 45-46)

Neff was asked if he could observe the defects mentioned when the pipe was delivered to him. His answer was, "I could observe defects like this pipe. Pipe like this is obvious to visual inspection. When it was delivered it was put in a pile out where it wouldn't get mixed in with the good pipe. And this, these defects like this, imperfect machining, whether it wasn't molded right or what they did couldn't be detected at the time of installation because you can't take a pair of calipers and run around on the job and check all these. You have so much pipe there. You have to get it laid. But after you have a leak and they start giving

you trouble you take them home with you and try to figure out what happened. You try to get down to a basis why are you having these leaks because it is something you have to cure yourself. You just measure and study and figure and do everything you can. Finally you come up with an answer just like I did on this." (page 47)

Dwelling still on imperfections of pipe, and attributing to this fact the cause of the leaks, Neff continued, "The pipe itself and the collars were made imperfect. They are not round like they should be. There is a difference in thickness there. You have only got a little ledge (which) holds that rubber in place, 3/32 of an inch in there means a leak. That's all. If you get your water pressure behind that rubber on one side you have got a gap in there. You have got trouble. You have got a leak." (page 60)

Following this statement, Neff made a practical demonstration using calipers to measure dimensions of both the pipe and collars. According to Neff they were not made true to fit each other. The collars had different diameters. There was a difference between inside diameters from one coupling to another. In laying the pipe this difference would account for imperfect joint and consequently leak occurrences. (pages 64-65)

<u>System of Manufacture of A-C Transite Pipe</u> - Oren Schlemmer, supervisor of quality control at Johns-Manville's Waukegan plant explains the system used in manufacturing A-C transite pipe on pages 163 through 165 of the testimony. This makes very interesting reading indeed, and many good points can be selected to use to our own advantage.

Toward the end of the testimony, Mr. Jones, attorney for

Herb Neff, cross-examined Paul Harlamert, J-M regional sales manager. The matter of uniformity and tolerances of gaskets used by J-M was being discussed and we excerpt the dialogue as follows:

(Mr. Jones leading the questions)

Q. Do these gaskets have to be uniform in sizes and circumferences?

A. Within a reasonable degree allowable by certain tolerances which we designed in the ring.

Q. What is the tolerance on those gaskets that you allow?

A. You are asking the wrong man. I wouldn't know but --

Q. You are a mechanical engineer?

A. That's right.

Q. And you have charge of instructing customers?

A. That's right.

Q. But you don't know the tolerances that are allowed?

A. I can find them for you. I know that they are available but I wouldn't make a guess on the stand as to what the tolerances are because they are not important to me at the moment. I am selling a completed --

Q. You are selling pipe.

A. I am selling a complete factory manufactured research laboratory specified product. Is that right?

Mr. Jones: That's all. (pages 189-190)

Inferred Opinions

As stated in the memorandum covering this report, this case was decided for the contractor, Herb Neff, and against Johns-Manville Corporation. We do not have available at this time a report of the proceedings following this testimony. However, there are several points to be observed in the testimony which can be used to our advantage. We cite a few:

1. Repeated evidence was submitted to the fact that the contractor observed the installation instructions indicated by J-M. Instructors from J-M "supervised" the laying of A-C transite pipe on this project. Therefore, it could be inferred that the leaks did not directly result from faulty installation.

2. If the leaks did not result from faulty installation, then they must be attributed to inherent defects and imperfections in the product itself. Ample evidence was presented and practically demonstrated in court to show those defects and imperfections.

3. Considering the defects and imperfections of the product, a logical deduction is that the product was not suitable for the purpose for which it was intended. Therefore, there is justification in the contractor's claims against the supplier of inferior, unsuitable materials.

4. Loss of profits by the contractor should deserve full consideration since he actually diverted his efforts because of leaks which originated through no fault on his part.

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