

FILE NAME: Wagner (WAG)

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ORIGINAL

Q344

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

IN RE: ASBESTOS LITIGATION

Samuel E. Lodge	: C.A. #95C-11-009
Ukley G. Fuller	: C.A. #95C-08-242
James Ligenfelter	: C.A. #95C-08-185
Joe Andreavich	: C.A. #95C-10-30
Thelma Clark	: C.A. #95C-11-121
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Bernard V. Comegys	: C.A. #95C-03-67
Michael A. Joswick	: C.A. #96C-02-125
Paul Huff	: C.A. #96C-03-269
Jerry Ginn	: C.A. #96C-03-252

Wilmington, Delaware
April 23rd, 1997

Deposition of WAYNE RABON, taken before
Deborah J.W. Moquin, a Court Reporter and Notary
Public, on April 23rd, 1997 at 2:00 p.m. at the
offices of JACOBS & CRUMPLAR, P.A., 2 East 7th Street,
Wilmington, Delaware.

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1 BY MR. HEDRICK:

2 Q. How are these sales records
3 arranged; are they arranged chronologically, by site,
4 how?

5 A. They're marked by customer, put
6 down by customer.

7 Q. When you say "customer" --

8 A. Filed by customer.

9 Q. The sales record that you
10 brought with you says "Amoco Chemicals" up at the top.
11 Is that the customer?

12 A. Yes.

13 Q. Were you requested to look for
14 the customer, Amoco Chemicals Corp.?

15 A. Avisun/Amoco, they changed their
16 name and it was I think about that time. That's the
17 only card I could find.

18 Q. What is the records retention
19 policy at Charles Wagner presently?

20 A. We have none.

21 Q. How far back do your sales
22 records go?

1 A. They went back probably to '50
2 several years ago and then we had a floor. Our roof
3 caved in and we lost a lot of records. Right now I've
4 got them -- that happened to be in an old pile stacked
5 just laying somewhere, I suppose, but right now I've
6 got them to about '80, my records.

7 Q. Sir, you said this record was in
8 an old pack laying somewhere?

9 A. Yeah; we kept them upstairs, the
10 old records.

11 Q. Did you individually go to this
12 old pack --

13 A. Yes, I did.

14 Q. -- laying somewhere to get these
15 records?

16 A. Yes, I did; I looked, yes.

17 Q. Where was it located?

18 A. Upstairs.

19 Q. Are there other records that
20 were --

21 A. There were other records up
22 there. Now there's no records up there because they

1 MR. HEDRICK: Correct.

2 THE WITNESS: No.

3 MS. YOUNG: For any customer?

4 MR. HEDRICK: Correct.

5 THE WITNESS: They were up

6 there, yes. They went -- I guess they
7 were in the '70s I would think, records in
8 the '70s and after that, they were
9 downstairs.

10 BY MR. HEDRICK:

11 Q. And the records downstairs begin
12 in 1980?

13 A. Yes.

14 Q. Why are the records upstairs?

15 A. Because we have no room, had no
16 room to keep them. There was too many of them. We
17 kept them forever until we had the flood and then they
18 were destroyed.

19 Q. So there were some records that
20 were destroyed because of the flood?

21 A. Yes.

22 Q. The records upstairs are not

1 inclusive of all possible records that you may have
2 had for certain customers, is that correct?

3 A. They are inclusive. The records
4 that were upstairs were old and they're no longer
5 around.

6 The only records I have now is
7 to 1980.

8 Q. Let me rephrase my question.

9 For records for Amoco Chemicals,
10 let's use that as the customer, is it possible that
11 the flood would have damaged or destroyed some of the
12 records that you would have had, had you not had a
13 flood for the sales records?

14 A. Very possible.

15 Q. You don't know whether the
16 records that you produced today is inclusive of every
17 sales records that Charles A. Wagner may have had
18 prior to the flood, is that correct?

19 A. I still don't understand the
20 question, but that's the only piece of paper that I
21 found.

22 Q. My question is, sir, I think you

1 BY MR. HEDRICK:

2 Q. Sir, could you identify what has
3 been marked as Exhibit P-4?

4 A. That's what I found in one of
5 the files.

6 Q. What is the document, sir?

7 A. It's a Continental Minerals
8 Corporation reactivated old Desert Minerals. Desert
9 Minerals is what the supplier used to be for
10 Desertalc, Desertalc '57.

11 Q. Is it a letter?

12 A. Yes, I guess. It looks like a
13 letter, nothing signed. It's not signed so maybe it's
14 just a flyer. It's probably a flyer put out by the
15 supplier.

16 Q. Were you distributing Tremolite

17 --

18 A. No.

19 Q. Let me finish the question,
20 please.

21 A. I thought you were finished.

22 Q. I wasn't.

1 that Charles Wagner was distributing Desert Talc
2 products during the period of time when Charles Wagner
3 received this memo?

4 A. No, we were not. '71 was the
5 last time we distributed Desertalc 57.

6 Q. Do you know why it was that
7 Charles Wagner received this memo in 1979?

8 A. I already stated I think it's
9 probably because we were on a list as a distributor
10 years earlier.

11 Q. In the moment, sir, it says --
12 and I'll quote it, it's in the third paragraph if you
13 want to see it.

14 "However, we recognize that
15 current regulations do exist, and it is prudent to
16 evaluate potential hazards whenever any suspect
17 material is used."

18 Did you have any knowledge
19 before the time that Charles Wagner received this memo
20 that there were potential hazards connected with using
21 Desertalc products?

22 MS. YOUNG: Objection. There's

1 have the product at the time.

2 Q. Let me show you what has been
3 marked Exhibit P-5. If you can describe for the
4 record what that document is?

5 A. Letter from United States Bureau
6 of Mines.

7 Q. What's the date?

8 A. December of '78.

9 Q. When you say, sir, that Charles
10 Wagner was not a distributor of Desertalc after 1971,
11 that is based, sir, on the fact that you couldn't find
12 any records post-1971, is that correct?

13 A. Yes.

14 Q. This letter that has been marked
15 Exhibit P-5 is to Jackson Beaman of Continental
16 Minerals Corporation. Do you know how it become part
17 of the records of Charles Wagner?

18 A. No, I really don't, except that
19 it ties in with this letter here, I guess.
20 (Indicating. I really don't.

21 Q. Exhibit P-6 is a letter from the
22 United States Department of the Interior dated

1 February 26th, 1979 to the Assistant Secretary to
2 OSHA, signed by the director. Let me show you that
3 document, sir.

4 Do you know how that came to
5 become part of the records of Charles Wagner?

6 A. No, I don't.

7 Q. Do you recall reading or seeing
8 that document in 1979?

9 A. I don't recall, but I'm sure I
10 saw it.

11 Q. Can I have it back, please?
12 Thank you.

13 In Exhibit P-7 at the top it
14 says "Desertalc technical data." Can you just explain
15 to me, sir, why Charles Wagner has that document?

16 A. Because they send out tech
17 sheets. I don't know what date this is.

18 Q. "They" meaning Charles Wagner
19 sends it to customers?

20 A. No. The supplier sends it to us
21 if the customer wants it. They don't all want it, but
22 sometimes they want the spec sheet.

1 MR. HEDRICK: You are
2 instructing him not to answer that
3 question?

4 MS. YOUNG: Yes.

5 MR. HEDRICK: Sorry, sir. Your
6 father disclosed his home address. I just
7 was asking the question. If you don't
8 want to disclose it, that's fine.

9 MS. YOUNG: There's been no
10 representation that he doesn't want to
11 disclose it. That was my instruction.

12 BY MR. HEDRICK:

13 Q. What is your position at Charles
14 Wagner?

15 A. President.

16 Q. How long have you been the
17 president of Charles Wagner?

18 A. 12 years -- I'm sorry 10 years.

19 Q. When did you first become
20 associated with Charles Wagner?

21 A. 1961.

22 Q. Could you give chronologically

1 the office?

2 A. Clerical.

3 Q. What were your duties at
4 clerical?

5 A. I would type the memos on the
6 customer's sales cards.

7 Q. What was your next position in
8 the office?

9 A. I guess that was it. I mean I
10 did other things in the office.

11 Q. When was the next time your
12 title changed from clerical to something else?

13 A. I would say '87.

14 Q. What were you?

15 A. President.

16 Q. Can you describe for me, sir,
17 what the market area is for Charles Wagner?

18 A. The Delaware Valley area they
19 call it.

20 Q. Can you just tell me the states
21 that comprise the market?

22 A. Well, there's southern Jersey,

1 Asbestine talc?

2 A. No, I do not.

3 Q. Are there any located within the
4 records of Charles Wagner?

5 A. No.

6 Q. Do you know if there were any
7 studies or tests done by Charles Wagner to determine
8 if there was any asbestos in Asbestine talc?

9 A. There was no tests done.

10 Q. Do you know if there were any
11 tests done by any other supplier of Asbestine talc or
12 whether or not it contained asbestos?

13 A. No, I don't.

14 Q. Can you tell me, sir, what
15 supplier or what company did Charles Wagner obtain
16 Desertalc from?

17 A. Desert Minerals.

18 Q. Did Charles Wagner at any time
19 obtain Desertalc from any other company?

20 A. No, we did not.

21 Q. Did Charles Wagner ever
22 distribute any Johns Manville products to Delaware?

1 A. Not that I know of.

2 Q. Did Charles Wagner ever
3 distribute Metrotalc 4651?

4 A. I don't know what that is.

5 Q. So it would be correct to say
6 that you don't know if Charles Wagner ever distributed
7 that?

8 A. Yes.

9 Q. Do you know if Charles Wagner
10 ever distributed any Whitaker, Clerk and Daniels
11 products to Delaware?

12 A. We did not. They were a
13 competitor.

14 Q. Did Charles Wagner ever
15 distribute Westell 202?

16 A. We did not.

17 Q. At any time?

18 A. At any time.

19 Q. Did Charles Wagner ever
20 distribute Polytcalc 4615 to Delaware?

21 A. I'm sure we didn't.

22 Q. Did Charles Wagner ever

1 that. I thought you were talking about
2 Delaware.

3 BY MR. HEDRICK:

4 Q. Would the answer be correct that
5 you distributed Pfizer products?

6 MS. YOUNG: Objection; that is
7 outside of the scope of the notice.
8 Moreover, that exhibit was marked at a
9 previous deposition and testimony was
10 given on that subject.

11 MR. HEDRICK: Are you directing
12 him not to answer?

13 MS. YOUNG: Yes. It's beyond
14 the scope of that notice.

15 MR. SIPE: I second that.

16 BY MR. HEDRICK:

17 Q. Sir, are you aware of any OSHA
18 regulations pertaining to exposure to asbestos fibers?

19 A. I'm not -- I don't know of any
20 regulations, but I know over the years they have had
21 material out there about it.

22 Q. When was the first time that you

1 remember seeing any material from OSHA regarding
2 asbestos exposure?

3 A. I don't think I saw any. I
4 probably got a notice from a lawyer.

5 Q. Do you recall the first time
6 that you received any notice of any regulations or any
7 limits that OSHA placed on being exposed to asbestos
8 fibers?

9 A. No, I really don't. It's a
10 while ago.

11 Q. Do you remember the decade?

12 A. No.

13 Q. Was it in the '70s or '80s or
14 '90s?

15 A. I don't even know. It's not
16 '90s, no.

17 Q. You don't know whether it was
18 the '70s or '80s?

19 A. No.

20 MR. HEDRICK: Let's take a
21 five-minute break.

22 (A brief recess was taken after

1 THE WITNESS: I do not know and
2 that's the only customer as far as I know.

3 BY MR. HEDRICK:

4 Q. Sir, did you ever come to an
5 awareness that exposure to asbestos is dangerous?

6 A. From reading it, sure, in
7 newspapers and hearing it on television.

8 Q. Do you recall the first time
9 that you came to that awareness?

10 A. No. It's a while ago.

11 Q. Do you know the decade?

12 A. Could have been 20 years ago. I
13 don't really know.

14 MR. HEDRICK: Those are all the
15 questions I have to the extent that, as I
16 discussed with Phebe, I'm not going to
17 take the court's time to go through each
18 and every instruction not to answer not
19 based on the attorney/client privilege.

20 To the extent that we need to
21 re-visit that, we will. I don't know that
22 we need to, but if we do, we will.