

FILE NAME: Wagner (WAG)

DATE: 1988 Sept 21

DOC#: WAG020

DOCUMENT DESCRIPTION: Legal - Deposition of Edward C. Rabon

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE.

IN AND FOR NEW CASTLE COUNTY

In Re:) C.A. 86C-MY-13 (Bjorson)
Asbestos Litigation) C.A. 86C-JA-155 (Jenkins)
) C.A. 86C-AU-70 (Lowe)
) C.A. 84C-MY-145 (Bradley)
) C.A. 85C-FE-10 (Farrall)
) C.A. 85C-NO-119 (Graham)
) C.A. 86C-JN-160 (Hearn)
) C.A. (Fernandes)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

In Re:)
Asbestos Litigation) C.A. 85-435 (Wells) (LOW)

In Re:)
Asbestos Litigation) C.A. 85-03 (Korean) (JJF)

Deposition of EDWARD C. RABON taken pursuant to notice at the law offices of Jacobs & Crumplar, P.A., 2 East 7th Street, Suite 400, Wilmington, Delaware, beginning at 1:15 p.m. on Wednesday, September 21, 1988, before Heather G. Slate, Registered Professional Reporter and Notary Public in the State of Delaware.

APPEARANCES:

MARY ANN MATUSZEWSKI, Esq.
Jacobs & Crumplar, P.A.
2 East 7th Street - Suite 400
Wilmington, Delaware 19801
for Plaintiffs

WILCOX & FETZER
913 Market Street Mall - Wilmington, Delaware 19801
(302) 655-0477

Wilcox & Fetzner
Registered Professional Reporters

A-85

COPY

SEP 26 1988

1 his signature. It's a letter he wrote.

2 MS. YOUNG: That's not what you're
3 asking him. You're asking him what his state of
4 mind was at that time.

5 MS. MATUSZEWSKI: No, I'm not.

6 MS. YOUNG: He's already said he
7 doesn't remember getting or sending those letters.

8 BY MS. MATUSZEWSKI:

9 Q. Mr. Rabon, is it your testimony today that
10 you don't know what Asbestos Sweeping Compound is?

11 A. Yes, that is my testimony.

12 Q. Is it your testimony today that you did not
13 know what it was January 31st, 1969?

14 A. I can't answer. I don't know what I thought
15 in January 20 years ago. I just honestly don't
16 know. I'm not being evasive. I just don't know.

17 Q. And it's your testimony that all the powders
18 that you dealt with at Charles Wagner could not hurt
19 anyone?

20 A. Except possibly from inhalation. I've
21 already indicated that there was a -- There's always
22 a dust hazard from anything. You can stand out here
23 on the corner of Delaware Avenue and get plenty of
24 it. If you stand there long enough, it will affect

1 you. My point is that -- The first question was
2 fire or explosion hazards. The answer is no, no
3 explosion hazards. The second question is --

4 Q. To what? That's what I want to know.

5 A. To Asbestos Sweeping -- To any powder of the
6 type we sold.

7 Q. Or to Asbestos Sweeping Compound?

8 A. If we sold it, it had to be a powder.

9 "Our Process Hazards Committee must
10 establish" -- It says, "We are using or planning to
11 use your product, Asbestos Sweeping Compound."

12 MS. YOUNG: Excuse me. Is there a
13 question pending?

14 MS. MATUSZEWSKI: I think there was.

15 MS. YOUNG: Could I have it read back.

16 (The Reporter read back as follows:

17 "Question: And it's your testimony
18 that all the powders that you dealt with at
19 Charles Wagner could not hurt anyone?")

20 THE WITNESS: I didn't testify to that.

21 MS. YOUNG: Okay. What's the question
22 pending?

23 BY MS. MATUSZEWSKI:

24 Q. So now you're saying that you didn't say the

1 powders Charles Wagner sold couldn't hurt anybody?

2 A. Am I making a deposition or -- I resent the
3 type of question and the manner in which you're
4 doing it, just for the record.

5 Q. Your attorney is here to make the
6 objections.

7 A. I'm trying to be as honest and fair as I can
8 and I always have been and I'll swear before God I'm
9 doing it now. I'm being badgered.

10 MS. YOUNG: If there is a question, ask
11 it. We'll see if he can answer it.

12 BY MS. MATUSZEWSKI:

13 Q. Is it your testimony that the powders
14 Charles Wagner sold could not hurt anyone?

15 A. No, it is not my testimony.

16 Q. What were you referring to in your letter of
17 January 31st, 1969 if you did not know what Asbestos
18 Sweeping Compound was?

19 MS. YOUNG: Objection.

20 MR. GABAY: Objection.

21 MR. MARLIN: Objection.

22 MS. YOUNG: Asked and answered. Don't
23 answer that. Move on.

24 BY MS. MATUSZEWSKI:

1 Q. Mr. Rabon, I want you to read your response
2 to one, two, and three.

3 A. Response to first one is --

4 MS. YOUNG: Do you want him to read it
5 out loud? It's in the record.

6 MS. MATUSZEWSKI: No.

7 BY MS. MATUSZEWSKI:

8 Q. What did you think there was no fire or
9 explosion hazard to?

10 A. Any powder that we sold.

11 Q. Under number two, it reads, "It is non-toxic
12 and only normal precautions against any dusty
13 material need be exercised." What did you think
14 that was referring to?

15 A. Any powder that we sold at that time. Both
16 these questions or answers are at that time. This
17 is 20 years ago.

18 Q. Okay. And for number three, what did you
19 think that referred to?

20 A. Any powdered material that we sold, which is
21 what we sold. Any of the powders we sold at that
22 time.

23 Q. Could you tell me if you did any research on
24 the powders that you sold at that time to determine

1 whether or not any of them were toxic?

2 A. No.

3 Q. Could you tell me whether or not you asked
4 anyone whether or not any of the powders, which you
5 sold were toxic?

6 A. Our principals told us that.

7 Q. Excuse me?

8 A. Our principals told us they were not toxic.

9 Q. Who told you that asbestos was not toxic?

10 A. No one.

11 MR. MARLIN: Objection as to form.

12 MS. MATUSZEWSKI: I'll rephrase it.

13 BY MS. MATUSZEWSKI:

14 Q. Did anyone ever tell you asbestos was not
15 toxic?

16 A. No. Not to my knowledge.

17 Q. Did you ever have any research done to
18 determine whether or not asbestos was toxic?

19 A. No. We never have research done on
20 anything. We're strictly a sales organization.

21 Q. Did you ever ask any industrial hygienist
22 whether or not asbestos was toxic?

23 A. No.

24 Q. Did you ever ask any medical doctor whether

Wilcox & Fetzer
Registered Professional Reporters

1 asbestos was toxic?

2 A. No.

3 Q. Did you ever ask anyone from ACL whether
4 asbestos was toxic?

5 MS. YOUNG: By "ACL," you mean Asbestos
6 Corporation Limited?

7 MS. MATUSZEWSKI: Right.

8 A. No, I don't recall. I may add that we rely
9 on our principals to inform us without us asking.

10 Q. Do you recall whether or not Asbestos
11 Corporation Limited ever informed you whether or not
12 asbestos was toxic?

13 A. At that time, no.

14 Q. Did you check any medical or scientific
15 literature, journals, to determine whether or not
16 asbestos was toxic?

17 A. No. We're talking 20 years ago now.

18 Q. I realize that. That's what I'm asking.
19 And at the time that you wrote the January 31st,
20 1969 letter, isn't it true that you'd done no
21 research, conducted any studies, or looked into any
22 scientific or medical journals as to whether or not
23 asbestos was toxic?

24 A. Charles A. Wagner Company did none of that,

1 that's correct.

2 Q. What were the other types of powders that
3 you dealt with?

4 A. Clay in several different forms. Talc. And
5 we had a host of natural abrasives, we call them,
6 pumice stone, barites, a product which is natural
7 barium sulfate. We sold what we loosely describe as
8 non-metallic minerals to distinguish them from the
9 metallics. And almost without exception, they're
10 all naturally mined products. They were
11 beneficiated ground powders and put in bags by the
12 manufacturer and sent to us for resale.

13 Q. Did you ever refer to clay as asbestos?

14 A. No.

15 Q. Did you ever refer to talc as asbestos?

16 A. No.

17 Q. Did you ever refer to any of the powders
18 that you dealt with other than asbestos as asbestos?

19 A. No.

20 Q. At the time that you wrote the January 31st,
21 1988 letter, had you done any research as to whether
22 or not asbestos required any special handling
23 precautions?

24 MR. MARLIN: Can we have that question

Wilcox & Fetzer
Registered Professional Reporters

1 read back, please. 2004/10/53

2 MS. MATUSZEWSKI: I'll restate it.

3 BY MS. MATUSZEWSKI:

4 Q. At the time that you wrote the January 31st,
5 1969 letter, had you or anyone at Charles Wagner
6 done any research as to whether or not asbestos
7 required any special handling precautions?

8 A. No.

9 Q. At the time that you wrote the January 31st,
10 1969 letter, did you ever ask anyone whether or not
11 asbestos needed any special handling precautions?

12 A. No.

13 Q. Did you ever consult any literature, any
14 industrial hygienist, any medical journals as to
15 whether or not asbestos needed any special handling
16 precautions at the time of the January 31st, '69
17 letter?

18 A. No.

19 Q. At the time that you wrote the January 31st,
20 1969 letter, isn't it true that you had done no
21 research nor investigation as to whether or not
22 asbestos required special handling precautions?

23 A. You just asked me that. I've already said
24 no. Nor do we do it on any of our products because

1 A. Well, the subject of the letter is manual of
2 testing procedures. And they refer to that and
3 they're explaining some of the features of the new
4 manual, which they enumerate.

5 Q. Do you recall whether or not the manual ever
6 contained anything about safety or hazards of
7 asbestos?

8 A. I don't actually recall that.

9 MR. GABAY: Objection to the form.

10 MS. YOUNG: You can answer.

11 A. Well, I don't recall, no.

12 Q. Further on, there's a June 28, 1957 letter.

13 A. '57 or '67?

14 Q. '57.

15 MR. GABAY: Give me a second here.

16 What is it? What was the date again?

17 MS. MATUSZEWSKI: June 28, 1957.

18 THE WITNESS: Yes.

19 BY MS. MATUSZEWSKI:

20 Q. How did the asbestos come from ACL to
21 Charles Wagner?

22 A. In bags, usually in boxcar or trucks,
23 depending upon size of shipment, usually.

24 Q. This refers to a shipment of 6D, which I

1 assume is an asbestos fiber. Am I correct?

2 A. That's correct.

3 Q. In jute?

4 A. That means burlap. We call it burlap down
5 there, they call it jute up here.

6 Q. The bags that it came in, was it paper or
7 burlap? I'm confused by this letter. It seems like
8 it's both.

9 A. It says, "This will acknowledge your letter
10 of June 21st concerning a recent shipment of 60 in
11 jute." That means in burlap bags.

12 MS. YOUNG: If you're going to read it
13 out loud, you have to read it slow enough for her to
14 do that.

15 BY MS. MATUSZEWSKI:

16 Q. The question is did the asbestos you
17 received from Asbestos Limited Corporation come in
18 bags of jute or bags made of paper?

19 MR. GABAY: Are we talking about this
20 specific shipment or are we talking about --

21 MS. MATUSZEWSKI: We're talking about
22 in general.

23 A. In general, they came in paper bags. But
24 originally they came in jute. This is 1957 and I

1 can only assume the changeover took place sometime
2 around that time. I don't know the date, though.
3 In fact, if you read on, they say on certain date
4 they'll change off either to jute or paper or
5 pressure packed, which is still a third method.

6 Q. You don't recall about when the changeover
7 happened?

8 A. Other than what it says here, from
9 August 1st on, it says.

10 Q. And the last one I'll ask you to take a look
11 at is a January 13th, 1970 letter. I think it's the
12 last one, actually.

13 MR. GABAY: Yes, it is. }

14 THE WITNESS: Yes.

15 BY MS. KATUSZEWSKI:

16 Q. And it's a letter addressed to you --

17 A. Right.

18 Q. -- from P. E. Leclerc from Asbestos
19 Corporation Limited. In the middle of the page, it
20 has a caution. Could you tell me whether or not you
21 ever wrote to DuPont advising them of this caution?

22 A. I don't recall whether I wrote to DuPont.
23 But what it says here is that they are going to
24 print this on every bag. And, of course, we

Wilcox & Fetzer
Registered Professional Reporters

1 don't -- we don't repack. We use the bags as they
2 come. So whenever they started putting this
3 cautionary label on bags, that's when DuPont would
4 have gotten it. But I don't recall whether a
5 specific written notice ever went out. There was
6 really, at this particular time, no reason to advise
7 them at this point, to the best of my knowledge.

8 To answer your question, I don't recall
9 what we did except that it would be on the bags from
10 this point. The purpose of putting this letter in
11 here was to try to date the time when this legend
12 went on the bags because I was asked that question
13 sometime back, maybe in the previous deposition, as
14 to how the bags were marked. And it was very
15 difficult for me to say how they were marked at any
16 specific time. But this sort of dates it a little
17 bit.

18 Q. Do you recall ever writing to DuPont
19 changing your January 31st, 1969 letter, the
20 information in there, once you received this
21 January 13th letter?

22 A. I do not recall ever doing that, no.

23 Q. And there are no letters in your file
24 indicating that you did that?

(54y's)
SR

1 A. Not to my knowledge, no.

2 MS. MATUSZEWSKI: I think that's all I
3 have.

4 BY MS. HANNIGAN:

5 Q. I have some questions. Mr. Rabon, my name
6 is Patricia Hannigan. The paper which was filed in
7 the court, it's called a renoteice of deposition
8 duces tecum which brought me here today, refers to a
9 request which was directed to you to look through
10 your files and bring any papers you have relating to
11 Crane Packaging Company. Are you familiar with the
12 Crane Packaging Company?

13 A. Only from the name in here seeing the
14 documents. I'm not familiar with them, no.

15 Q. Are you faniliar with a company by the name
16 of John Crane or John Crane-Houdaille?

17 A. No.

18 Q. To your recollection, did Wagner ever do
19 business with a company by the name of John Crane or
20 John Crane-Houdaille?

21 A. To the best of my knowledge, no.

22 Q. As I understand it, you were a supplier. Is
23 that correct?

24 A. We are a distributor or an agent, depending

1 BY MS. MATUSZEWSKI:

2 Q. In regards to the January 31st letter that
3 you wrote back to DuPont, what was the basis that
4 the sweeping compound was not toxic?

5 MS. YOUNG: Objection. Asked and
6 answered.

7 MR. GABAY: Objection as to the form.

8 BY MS. MATUSZEWSKI:

9 Q. No. I did not ask that. What I'm trying to
10 get at, you told me before you didn't think your
11 powders required anything more than a respirator and
12 I'm trying to find out what is the basis for your
13 knowledge of that.

14 MR. GABAY: My objection still stands
15 as to the form.

16 A. The basis was as I gave it to you, that all
17 of our powders are in terms of, to the best of my
18 knowledge, were -- they were potentially harmful as
19 a result of a dust hazard. And the principal
20 precaution we would ask anyone to take would be to
21 protect themselves from dust. That was -- I assume
22 that's what you asked me.

23 Q. That's not what I meant and I apologize if I
24 didn't make myself clear. What is the basis of your

1 knowledge or where did you get your knowledge that
2 the powders that you dealt with were not toxic?

3 A. Well, just, again, from suppliers' sources.
4 It's just something which I guess you grow up with.
5 I don't know. I can't give you a specific answer
6 about specific products. But dust hazards you would
7 normally associate with any finely powdered
8 material.

9 Q. I'm sorry. I wasn't referring to
10 specifically a dust hazard but as to toxicity.

11 A. Well, I can't answer the toxicity part
12 because to me the toxicity in this case I guess
13 would be -- I don't know. I don't know the
14 definition of toxicity without looking it up.

15 Q. Do you know the definition of toxic?

16 A. Not the definition, no, but I have an idea.

17 Q. What does it mean to you?

18 A. In this case, it means to me to protect --

19 MR. GABAY: Excuse me. Are we asking
20 what it means to him today or if he knew what it
21 meant and what it meant to him back in 1969?

22 MS. MATUSZEWSKI: That's fair.

23 BY MS. MATUSZEWSKI:

24 Q. What did it mean to you in 1969?

1 A. I'm sorry. I don't know. I can't answer
2 that. 20 years back. I apologize but I can't.

3 Q. What does toxic mean to you today?

4 A. Toxic could mean a number of things. It
5 could mean that if you eat it, you'll die, or if you
6 breathe it, you might get some other problem in your
7 breathing apparatus. To me, anything that we sold
8 at that time, that the only possible danger it had
9 to my knowledge at that time was from dust. So if
10 you protect yourself from dust, you're in the
11 clear. That was my interpretation. That's the
12 basis. You asked me, I guess, why. I answered what
13 I did, for better or for worse, why.

14 MS. MATUSEWSKI: I think I'll stop
15 there.

16 BY MR. MARON:

17 Q. Sir, my name is James Maron and I represent
18 the Asbestos Claims Facility. I'm going to show you
19 a document dated February 2nd, 1955 which came out
20 of the package which we marked as Exhibit 15 to this
21 deposition, sir. Sir, first of all, do you remember
22 receiving this letter?

23 A. No.

24 Q. What's a Group 7? What does Group 7 mean to