

IN THE CIRCUIT COURT FOR THE COUNTY OF PINELLAS

STATE OF FLORIDA

MARY BENNETT as Personal)
Representative of the)
Estate of RAYMOND BENNETT,)
Deceased,)

Plaintiff,)

vs.)

CIRCUIT CIVIL NO. 82-5351-20

NATIONAL GYPSUM COMPANY,)
a foreign corporation;)
UNITED STATES GYPSUM COMPANY,)
a foreign corporation;)
GEORGIA PACIFIC CORPORATION,)
a foreign corporation,)

Defendants.)

Deposition of OLIVER EUGENE BURCH,

taken on behalf of the Plaintiff, before
Betty J. Catlett, Certified Court Reporter
and Notary Public, at 133 Peachtree Street,
Suite 1100, Atlanta, Georgia, commencing at
approximately 3:00 p.m., Monday, December 5,
1983.

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1 APPEARANCES OF COUNSEL:

2 For the Plaintiff: ROBERT J. CARROLL, Esq.
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4 1 Countryside Park
Clearwater, Florida 33515-2086

5 For the Defendants: J. MICHAEL NIFONG, Esq.
6 Miami Center
100 Chopin Plaza
Miami, Florida 33131

7 Also Present: Phillip McClendon, Esq.
8 Nancy McElwaney, Legal Assistant

9 - - -

10 OLIVER EUGENE BURCH,
11 having been first duly sworn, was examined and
12 deposed as follows:

13 EXAMINATION

14 BY MR. ROBERT J. CARROLL:

15 Q Mr. Burch, state your full name.

16 A Oliver Eugene Burch.

17 Q Where are you employed?

18 A Georgia Pacific, Atlanta, Georgia.

19 Q How long have you been employed with or
20 by Georgia Pacific?

21 A Since 1965.

22 Q What is your present position?

23 A General Sales Manager, Gypsum Division.

24 Q How long have you had that position?

25 A Since 1969.



1 Q What position did you have immediately
2 prior to that?

3 A Director of Technical Services.

4 Q Can you tell me what that means?

5 A I had responsibility for building code
6 work, putting together the technical information
7 needed by the sales people in the field, working with
8 building code officials and et cetera.

9 Q Was that also concerning the Gypsum
10 products?

11 A Yes.

12 Q How long did you have that position?

13 A From 1966 until 1969.

14 Q What position did you have prior to that?

15 A Area Sales Manager.

16 Q What was your area?

17 A San Francisco, California area.

18 Q And when did you have that position?

19 A From the time Georgia Pacific, 1965 --
20 1966, I'm sorry.

21 Q I'm not sure I'm square on that. You
22 started with them in '65?

23 A As a salesman.

24 Q Then very quickly you became the Area
25 Sales Manager?

1 A. That's right.

2 Q. After approximately a year or so, you
3 became a Director of Technical Services?

4 A. That's correct.

5 Q. So I believe we've covered the titles of
6 all the positions you've held with Georgia Pacific?

7 A. That's correct.

8 Q. What is your educational background, sir?

9 A. I attended San Jose State College, but did
10 not graduate.

11 Q. What was your field or --

12 A. Engineering and Business Administration.

13 MR. J. MICHAEL NIFONG: Let me make
14 one statement on behalf of Georgia
15 Pacific Corporation. We have two amended
16 notices for taking deposition. As I
17 enumerated in my letter to Mr. Carroll,
18 of November 17th, you asked that we
19 designate two people but due to the time
20 constraints, we agreed to make one person
21 available from 3:00 o'clock until 6:00
22 o'clock. We must conclude by 6:00 o'clock
23 because of other plans of the people
24 involved in the deposition.

25 As I told your office -- is Joan



1 your secretary?

2 MR. CARROLL: Yes.

3 MR. NIFONG: She's very good.

4 One person would testify as to
5 distribution and sales patterns and as
6 to brand names and perhaps the
7 manufacturing period. That is this
8 particular gentleman.

9 As to the chemical analysis or the
10 research information or the decisions to
11 discontinue, that would be another
12 individual who will have to be produced
13 at some later time that is mutually
14 convenient or otherwise.

15 MR. CARROLL: That was our
16 understanding.

17 By the way, I want to thank you for
18 noting on the record that Joan is very
19 good. She's probably going to be reading
20 the deposition and immediately ask for a
21 raise.

22 Q (By Mr. Carroll.) The best thing to do,
23 Mr. Burch, is to go to the first item on the notice
24 to take deposition and read it in its entirety so that
25 it will be in the record and we'll know what we're



1 talking about.

2 Item No. 1 is the brand names, manufacturing
3 periods, distribution and sales patterns of spackling
4 and taping compounds manufactured by defendant,
5 Georgia Pacific Corporation, during the 20-year period
6 immediately prior to May 7, 1980.

7 You've heard counsel indicate that you are
8 the man on behalf of Georgia Pacific who can answer
9 questions in this area. I understand --

10 MR. NIFONG: At this time.

11 Q (By Mr. Carroll.) I understand that you
12 don't have every answer to every question that someone
13 could think of, but presumably you have some knowledge
14 personally and you've done some additional effort or
15 work in the immediate past or distant past that lets
16 you have that information for us. Is that a fair
17 statement?

18 A I have some knowledge personally, yes.

19 Q Have you done any particular research in
20 order to specifically provide information for us today
21 at this deposition?

22 A Specific research, what do you mean by
23 that?

24 Q In order to give us that information, brand
25 names, manufacturing periods, et cetera, to cover the



1 20-year period beginning immediately prior to May 7th,
2 1980?

3 A. I think I would have specific knowledge of
4 brand names to give you.

5 Q Okay.

6 MR. NIFONG: As I also told your
7 office and as I stated in my letter of
8 November 17th -- I'm not certain of that
9 date, but I believe it was November 17th --
10 that the person would go back to a
11 reasonable period of time. This person,
12 as it relates to Georgia Pacific Corporation,
13 can give you information from 1965 to 1980
14 on your question, perhaps. Sometime around
15 April, May, June of 1965.

16 Q (By Mr. Carroll.) Okay. Let's start with
17 some brand names, to begin with so we'll have products
18 that we can talk about.

19 What brand names are you aware of during
20 the period of time that you have been with the
21 company or from your knowledge of when you arrived
22 what was in existence, that would fit the pattern or
23 the description of spackling and taping compounds?

24 MR. NIFONG: I object to the form
25 of the question.



1 Answer it if you're able to.

2 Go ahead and you can answer unless I
3 instruct you not to.

4 A (By the witness.) What may I ask is your
5 definition of spackling compound?

6 Q (By Mr. Carroll.) We're interested in
7 products used at the completion or near the
8 completion of a dry wall project. The compounds that
9 would be used to prepare the joints, to fill any
10 imperfections and to provide a final finished surface,
11 if something had to be added to the dry wall. Is
12 that a clear enough explanation?

13 A Yes.

14 Q What are the products that you are aware
15 of that Georgia Pacific manufactured, by brand name,
16 during that 20-year period?

17 A It would be Georgia Pacific --

18 MR. NIFONG: Let me object. You
19 asked for the past 20 years. He's only
20 going to be able to testify from 1965 to
21 1980.

22 MR. CARROLL: I appreciate the fact
23 that he's been with them since 1965, but
24 I suspect he had some immediate knowledge
25 at the time of what was already in

1 existence.

2 MR. NIFONG: I just wanted to note
3 the objection. Go ahead and answer if
4 you can.

5 A. (By the witness.) Repeat the question.

6 Q (By Mr. Carroll.) What are the brand names
7 of products that fit the general categories that we've
8 been discussing?

9 A. Georgia Pacific or Best Wall Ready Mix
10 Joint System Compound.

11 Q Can we pause just a minute and be sure
12 that we get that correct. Those were two separate
13 products that you have just described? One was
14 Georgia Pacific and the other was Best Wall or are
15 they all Best Wall with Georgia Pacific as a little
16 name also on the package?

17 A. Same product, but in the earlier period it
18 was called Best Wall Ready Mix and shortly after 1966
19 or '67 became Georgia Pacific.

20 Q So it's Best Wall --

21 A. Ready Mix.

22 Q And what was the rest of it?

23 A. Joint System Compound.

24 Q Then at a later time the very same product
25 became known as Georgia Pacific --



1 A. Right.

2 Q Please continue.

3 A. Again, Best Wall or Georgia Pacific
4 Bedding Compound.

5 Q What is that word?

6 A Bedding, B-e-d-d-i-n-g.

7 Q And again, the change was from Best Wall
8 to subsequently Georgia Pacific?

9 A. Correct.

10 Q But the product at that time remained the
11 same?

12 A. Correct.

13 Q Please continue.

14 A. Georgia Pacific or Best Wall Topping
15 Compound, T-o-p-p-i-n-g.

16 Q Okay.

17 A. Georgia Pacific or Best Wall Joint System
18 Products.

19 Q Please continue.

20 A. Georgia Pacific or Best Wall One Day Joint
21 Cement.

22 Q Please continue.

23 A. I think that about covers the spectrum of
24 it.

25 Q Would it be your recollection that the

1 change over from Best Wall to Georgia Pacific, for all
2 of these products, occurred at one pretty confined
3 period of time?

4 A Yes.

5 Q Do you remember when that occurred?

6 A I don't remember the exact date.

7 Q Do you remember the year or the
8 approximate year?

9 A It would be approximately 1967.

10 Q So to the best of your knowledge, at this
11 particular time, with the information available to
12 you, the products that you have named would be the
13 only ones that have been manufactured by Georgia
14 Pacific in the time period in which you have
15 knowledge that would be considered to be a dry wall
16 finishing product for the joints or for the surface?

17 MR. NIFONG: I object to the form
18 of the question. Answer it if you can.

19 A (By the witness.) To the best of my
20 knowledge that would be correct.

21 Q (By Mr. Carroll.) When you arrived in
22 1965 with the company, was Best Wall already a brand
23 that was being utilized by Georgia Pacific?

24 A Yes.

25 Q At the time of your arrival, did you learn

1 how long Best Wall had been a product name for
2 Georgia Pacific?

3 A Yes.

4 Q How long had that been?

5 A For Georgia Pacific since 1965.

6 Q I see. So it was not a product name very
7 much prior to your arriving?

8 A For Georgia Pacific?

9 Q Yes, sir.

10 A For Georgia Pacific, it was a product name
11 since 1965.

12 Q I'm assuming that perhaps another company
13 manufactured Best Wall prior to that date?

14 A That's correct.

15 Q Who was that?

16 A Best Wall Gypsum Corporation.

17 Q Seems only fair.

18 Do you know how it came to be that
19 particular product became a Georgia Pacific product?

20 A Yes.

21 Q Can you tell us about that, please?

22 A Yes. Georgia Pacific acquired the Best
23 Wall Gypsum Corporation in 1965. It was a merger. It
24 wasn't an acquisition.

25 Q Where was Best Wall Gypsum Corporation



1 located?

2 A Paoli, Pennsylvania.

3 Q Did you have anything to do with Best Wall
4 Gypsum Corporation?

5 A Yes, I did.

6 Q What was your involvement with that
7 corporation?

8 A I was a territory salesman for Best Wall
9 Gypsum Corporation.

10 Q Was that out in California?

11 A Yes.

12 Q How long had you been with Best Wall at
13 the time you went over to Georgia Pacific?

14 A Since 1956.

15 Q Are you able to tell us how long a period
16 of time, prior to 1965, Best Wall was producing the
17 products you enumerated for us?

18 A Yes, I am.

19 Q Can you tell me about that?

20 A Since 1956. With one exception, Ready Mix
21 products were not produced since 1956.

22 Q They came on sometime in between '56 and
23 '65?

24 A That's correct.

25 Q And that would have been the very first

1 product that you mentioned?

2 A. That's correct.

3 Q I understand that you're not the person to
4 give us the technical information requested in Item
5 No. 2, 3 or 4, but in order to direct my questioning
6 a little bit, you might have a little information that
7 might be some help in differentiating these products.

8 What was the purpose of each of these
9 products? What were they intended to be used for?

10 MR. NIFONG: I object to the question.

11 You can answer it to the extent that you
12 understand it.

13 Q (By Mr. Carroll.) For example, let's take
14 them one at a time. What was, to your knowledge, the
15 purpose and the use that Best Wall Ready Mix Joint
16 System Compound was to be put?

17 A To treat the joints of Gypsum Wallboard,
18 to provide a monolithic surface for later decoration.

19 Q Was that designed to go right on the wall-
20 board or was it designed to go on a taping substance
21 first? Was it to be a taping process first then the -

22 A. That's correct.

23 Q So there would be the wallboard, then the
24 taping and then the Best Wall Ready Mix Joint System
25 Compound?

1 A. The Best Wall Ready Mix Joint System
2 Compound could be used on tape products and often was.
3 It also could be used in finishing over the taping to
4 provide the monolithic surface and often is.

5 Q One use would be if you had a very
6 irregular joint between two boards, you might use the
7 Best Wall Ready Mix Joint System Compound to first --
8 well, smooth out to some extent the joint, then put
9 the tape on?

10 MR. NIFONG: Read that back.

11 (Thereupon, the designated portion
12 was read back by the court reporter.)

13 Q (By Mr. Carroll.) I was trying to get
14 ahead and I thought that was what you were trying to
15 say.

16 A. No. The embedding of the Ready Mix
17 Compound is done simultaneously. The material goes
18 under the tape against the wallboard and the tape is
19 applied as you work in the material, down the joint
20 or across the joint, as the circumstance may be.

21 Q Okay.

22 A. It is used to adhere the tape to the joint,
23 to the wallboard.

24 Q Then as needed, it is used on top of the
25 tape?

1 A. That's correct.

2 Q Let's go to the next product, Best Wall
3 Bedding Compound. I'll ask you the same question.
4 What was the purpose or intended use of this product?

5 A. That material's intended use was to imbed
6 the tape to do just the function of bedding the tape.
7 It is the adhesive of the tape to the Gypsum Wallboard
8 only, no top surface.

9 Q Next one mentioned was Best Wall Topping
10 Compound. What was the purpose or intended use of
11 that product?

12 MR. NIFONG: On all your purposes
13 and intended use questions, that's as it
14 relates to wallboards, correct, or as it
15 relates to spackling compounds or joint
16 compounds? You don't want the purpose of
17 why the product was manufactured in the
18 first place?

19 MR. CARROLL: I don't care about
20 their civic mindedness.

21 MR. NIFONG: I think they had plenty
22 of that.

23 Q (By Mr. Carroll.) I'm only interested in
24 what the intended use of the product was by the
25 purchaser, what you hoped the purchaser would do with

1 the product.

2 A All right.

3 Q Now we were down to Best Wall Topping
4 Compound.

5 A Best Wall Topping Compound was used in the
6 next step, after the material was bedded. It was a
7 specific product designed to finish off the -- either
8 the joint or the surface of the Gypsum Wallboard.

9 Q The next product was Best Wall Joint
10 System Product. Is that singular product or -- I have
11 an S here or if you meant there was more than one?

12 A There are, but they fall into the category
13 we term as Joint System Product.

14 Q Can you break it down for me, perhaps?

15 A They were generally products used,
16 packaged differently, but were an all purpose product.
17 It was used for taping, bedding, and the finishing.

18 Q And the next one, I believe the last one,
19 you initially mentioned was Best Wall One Day Joint
20 Cement. What was the intended purpose of that?

21 A That was a quick setting product, used
22 primarily to bed the tape. Joint System products have
23 to dry for an extended period of time. This was a
24 product specifically developed to cut down on that
25 drying time, but used in the bedding of tape.

1 Q Earlier you said that the products were all
2 in existence at the time you started with Georgia
3 Pacific Corporation in 1965, with the exception of
4 Best Wall Ready Mix Joint System Compound. Do you
5 know when each of the other products actually began
6 their life as a product, commercial product?

7 A Not specific dates, no.

8 Q Do you know when any of these products --
9 I'm including even the Ready Mix Joint System
10 Compound, when they, if they have, terminated their
11 existence as a product?

12 A All of those products we've produced today.
13 There's one product that just comes to my
14 mind that should be on that list. That's Triple Duty
15 Joint Compound.

16 Q Is that Best Wall Triple Duty or just
17 Triple Duty?

18 A To the best of my knowledge, that would
19 be Georgia Pacific Triple Duty Joint Compound.

20 Q Do you know when that came into existence?

21 A I believe sometime after 1965.

22 Q Is that still being produced?

23 A Yes.

24 Q Is the full title, Georgia Pacific Triple
25 Duty Compound?



1 A. Joint Compound.

2 MR. NIFONG: Georgia Pacific Triple
3 Duty Joint Compound? Is that what it is?

4 THE WITNESS: Yes.

5 Q (By Mr. Carroll.) I think you're
6 indicating that it was never a Best Wall product?

7 A I'm not positive about that. I think it
8 was introduced after Georgia Pacific acquired Best
9 wall.

10 Q What was the purpose or intended use of
11 Georgia Pacific Triple Duty Joint Compound?

12 A The same as the others. It was an all
13 purpose product used to embed the tape and finish the
14 joints and also finish the surface of the wallboards.

15 Q I'm trying to think of a way to identify
16 these products in a shorter fashion, but I guess I'll
17 have to say the name each time.

18 Let me ask you a question concerning them
19 generally. Maybe that will avoid the necessity to
20 ask as many questions about them specifically.

21 When these products came on the market,
22 when they began to be produced or when you were first
23 aware of them being produced and sold in the market-
24 place, were they sold nationwide?

25 MR. NIFONG: I object to the form

1 of the question. Answer it if you can.

2 A (By the witness.) When they came on the
3 market? Would you repeat it for me?

4 Q (By Mr. Carroll.) Let's go with 1965, the
5 date that you started with Georgia Pacific. To your
6 knowledge, in 1965, were these products marketed and
7 distributed nationwide?

8 MR. NIFONG: Note my objection
9 to the form of the question and answer
10 it if you're able to, Mr. Burch.

11 A (By the witness.) There would be parts of
12 the nation where they were not distributed.

13 Q (By Mr. Carroll.) Let me ask you then
14 specifically about the State of Florida. I'll ask you
15 if you have knowledge of whether or not these
16 products were distributed and marketed in Florida in
17 1965?

18 A In 1965, I'm not certain.

19 Q How can we find that out?

20 A I'm not certain that we can find out for
21 sure if they were distributed in 1965 in the State of
22 Florida.

23 Q Did --

24 A You're referring to them as a group, a
25 whole now. We know for instance that -- I believe it

1 would be safe to say that in 1965 they were distributed
2 in the State of Georgia, yes.

3 Q Now I don't know that there would be
4 something unique about the Tampa Bay area which would
5 mean they would not be distributed there? Would that
6 be a fair statement?

7 A That's correct.

8 Q Were these products -- I'm taking them
9 initially as a group in hopes that maybe these
10 questions will not require us to go through each one
11 of them. Were they distributed as materials to be
12 used in construction industry as opposed to products
13 that were primarily intended and packaged for the
14 handyman or homeowner to use? For example, the very
15 small containers you see in some of the hardware
16 stores now.

17 MR. NIFONG: Let me caution the
18 witness that to the extent you need these
19 products broken down product by product,
20 please ask Mr. Carroll to do so because
21 you can't paint this question with broad
22 brushes as to all these products.

23 A (By the witness.) Would you please repeat
24 the question now, please?

25 Q (By Mr. Carroll.) I'm just trying to take

1 it as a total group for the time being. If you tell
2 me that we can't do that, we'll move into individual
3 products.

4 But my question is whether all of these
5 products, to your knowledge, were initially and then
6 continuously from that point onward, marketed for the
7 construction industry instead of primarily for the
8 homeowner's use or handyman's use in very small
9 containers such as you might see in the hardware store?

10 MR. NIFONG: I object to the form
11 of the question. Answer if you can,
12 Mr. Burch. If you need the products
13 broken down, ask that they be broken
14 down.

15 A (By the witness.) The product was
16 intended for use for both classes of trade.

17 Q (By Mr. Carroll.) Well, was there a
18 specific product or products among this group that
19 was primarily intended for the individual homeowner,
20 the small handyman that does one job a year or
21 something like that?

22 A No.

23 Q Did the products, did they come in
24 different size packages to accommodate the market?

25 A Yes.

1 MR. NIFONG: All the products, you're
2 talking about?

3 Q (By Mr. Carroll.) At this point in time,
4 I am. If you need to make a distinction, please tell
5 me.

6 A Again, referring to individual products,
7 the One Day Joint Cement would not have come in but
8 one size container.

9 Q What was the only size container that the
10 One Day Joint Cement came in?

11 A Twenty-five pound. Now would you read back
12 the list for me so that I can be sure I haven't misled
13 you?

14 Q I'll read them as Best Wall.

15 A That's fine.

16 Q Best Wall Ready Mix Joint System Compound,
17 Best Wall Bedding Compound, Best Wall Topping --

18 A Best Wall Bedding Compound would be in one
19 container.

20 Q What was the size of that?

21 A Twenty-five pound.

22 Q Then Best Wall Topping Compound?

23 A One container, 25 pound.

24 Q Best Wall Joint System Products, you said --

25 A Various containers.

1 Q Then Georgia Pacific Triple Duty Joint
2 Compound?

3 A One container, 25 pounds.

4 Q Now maybe the best thing to do, as much as
5 possible, is to take these products one at a time.
6 Maybe a little more time consuming, but I can see
7 there are some variations.

8 A Yes, there are.

9 Q What was the packaging of Best Wall Ready
10 Mix Joint System Compound? I have reference to
11 whether it came as a dry product or a paste of some
12 sort. How did it come and what kind of container was
13 it in?

14 A It came as a ready mix paste, moist, in the
15 container.

16 Q What was the type of container?

17 A Initially -- what period of time are you
18 speaking about now?

19 Q I would like to go back to your earliest
20 recollection of the product and then if it changed, if
21 you would tell me.

22 A Initially a five-gallon container and then
23 a one-gallon container.

24 Q Initially a five gallon and now a one
25 gallon?



1 MR. NIFONG: He said later a one
2 gallon.

3 Q (By Mr. Carroll.) It went from five to
4 one or from five to five and one?

5 A From a five to a five and a one then to
6 four also. It included a four-gallon container.

7 Q What was the container? What was the
8 actual container? Was it metal or was it a plastic
9 container?

10 A Initially the five and one were metal
11 containers.

12 Q Then later they moved to --

13 A It came to a plastic container. The
14 four-gallon container, from its inception, was a box.
15 The four-gallon container -- when I make reference to
16 the four gallon and the five-gallon container, they
17 are today designated by pounds.

18 Q Let's move to Best Wall Bedding Compound
19 and tell me whether that was a dry product or paste
20 product?

21 A That was a dry product.

22 Q Was that produced or marketed in a bag
23 type arrangement?

24 A That was in a bag. Now very recently,
25 within the past couple of years, we have also -- not



1 bedding -- I'm getting ahead of myself. Scratch that.

2 Q As far as you know, the bedding compound
3 started in a bag and stays in a bag?

4 A Right.

5 Q By the way, when we were talking about
6 Best Wall Ready Mix Joint System Compound and about
7 the Best Wall Bedding Compound, I also meant to
8 include the period of time when it was known as
9 Georgia Pacific, in each instance. You understand
10 that?

11 A In ready mix, there was no --

12 Q Correct. There was no Best Wall. I think
13 you did tell me that.

14 Okay. Let's move to Best Wall and
15 Georgia Pacific Topping Compound. That was a
16 25-pound container. Was that dry?

17 A That's correct. Although that one, I
18 started to say about two years ago, we began
19 manufacturing a Best Topping Compound also. That's
20 in a plastic container.

21 Q The dry would have been manufactured and
22 distributed in a bag?

23 A That's correct.

24 Q We come then to Best Wall and Georgia
25 Pacific Joint System Products. I don't believe we

1 discussed the size of the containers yet. Can you
2 tell me about that?

3 A They were in a 25-pound bag, a 22-pound bag
4 and a five-pound bag.

5 Q And was that from the inception of the
6 product or did they add bags and sizes as they went
7 along?

8 MR. NIFONG: Read that back.

9 (Thereupon, the designated portion
10 was read back by the court reporter.)

11 MR. NIFONG: To the extent that
12 you asked from the inception of the
13 product, I object to the form of the
14 question.

15 Q (By Mr. Carroll.) I want to be clear. I
16 understand that you're indicating that you were not
17 there when somebody invented these products, but you
18 have indicated the period of your knowledge. I guess
19 it's -- it's a little confusing, but I don't intend
20 for you to say something now that you don't mean to
21 say about your knowledge. But from the time you had
22 your initial awareness, from the Best Wall System
23 Products, were those products always produced in these
24 three size bags?

25 A Yes, from the time period of time that I've

1 had knowledge of it.

2 Q Now, we'll go to Best Wall and Georgia
3 Pacific One Day Joint Cement. You indicated that was
4 produced and marketed in 75-pound containers -- no --
5 25. That's my handwriting. Was that a dry bag?

6 A Yes.

7 Q Is that the only container you're aware of?

8 A Yes.

9 Q Then the last one was Georgia Pacific
10 Triple Duty Joint Compound. Was that a 25-pound dry
11 bag container?

12 A Yes.

13 Q I assume those products that you've
14 identified as being dry, as opposed to wet or pasty
15 type material, they had to be mixed in some fashion
16 where they could be used?

17 A That's correct.

18 Q And were normally mixed with water,
19 presumably?

20 MR. NIFONG: I object to the form
21 of the question. Answer if you can.

22 A (By the witness.) Normally would be water.

23 Q (By Mr. Carroll.) You expected them to be
24 mixed with water?

25 A Yes.

1 Q Somebody might have had another pr
2 they mixed it with, but that's what they were supposed
3 to be used with?

4 A Yes.

5 Q Were any of these products also intended to
6 be used in some spray type operation to provide a
7 finish on a dry wall surface?

8 A Primarily intended for that? Could you
9 clarify that for me?

10 Q I'm not concerned in this question with
11 their primary intent, but were any of these products
12 intended at all by your company to be sprayed in some
13 fashion to produce a texture of some fashion on a dry
14 wall surface?

15 A No. None of those products.

16 Q Do you know that there are certain products
17 where you can produce a popcorn effect on a ceiling
18 or a little more of an abrasive effect on the wall?
19 Are you aware of the general industry of those sorts
20 of products?

21 A I am.

22 Q Are any of these products in that
23 category?

24 A Some of these products have been used for
25 spray-on textures, primarily on the surface, the walls

1 of the unit being constructed.

2 Q Which products are you aware of that have
3 been used in that fashion? Do you want me to go
4 through the list?

5 MR. NIFONG: Fashion per his
6 testimony.

7 MR. CARROLL: Yes.

8 A (By the witness.) I can tell you. Ready
9 mix has been used in that fashion. The next one,
10 please.

11 Q (By Mr. Carroll.) Bedding compound.

12 A Never.

13 Q Toppoing compound.

14 A Has been used in that fashion.

15 Q Joint System Products.

16 A They have been used in that fashion.

17 Q One Day Joint Cement.

18 A No.

19 Q And Triple Duty Joint Compound.

20 A Has been used in that fashion.

21 Q Is that use considered by Georgia Pacific,
22 to your knowledge, to be an improper use of the
23 product?

24 A No.

25 Q Is it a use that is encouraged by either

1 advertising or something written on the product itself?

2 MR. NIFONG: Objection to the form
3 of the question. Answer it if you're able
4 to.

5 Do you mean encouraged by Georgia
6 Pacific in some of its advertising?

7 MR. CARROLL: Yes.

8 A (By the witness.) I'm not aware of any
9 advertising where that particular use is recommended
10 for these particular products.

11 Q (By Mr. Carroll.) When would you say that
12 type of use was first brought to your attention?

13 A The spray application of Gypsum Wallboard
14 probably started in the early seventies, late sixties.

15 Q From your knowledge of that sort of
16 operation, where the products were being sprayed on
17 the walls, were the products being added to other
18 products prior to the spraying? Were they simply being
19 mixed generally in accordance with your instructions
20 and being sprayed?

21 MR. NIFONG: I object to the form
22 of the question. Answer it if you can.

23 A (By the witness.) It's difficult to say
24 what people in the field do with our products. That's
25 almost impossible.

1 Q (By Mr. Carroll.) I wonder if you are
2 aware now of what they did when they sprayed it?

3 A To my personal knowledge, the material was
4 watered considerably prior to the spray application.

5 Q If we wanted to get to the hard records,
6 perhaps computer records or other sorts of written
7 documents concerning the distribution patterns of these
8 products, to whom would we have to turn to get to
9 those records?

10 MR. NIFONG: Records just relating
11 to distribution?

12 MR. CARROLL: Distribution, marketing.

13 A (By the witness.) I believe you'd have to
14 turn to me.

15 Q (By Mr. Carroll.) I mean those records --

16 MR. NIFONG: Perhaps others. It's
17 a large organization. Do you mean on
18 what specific issue, just distribution
19 or just sales?

20 MR. CARROLL: Distribution, sales,
21 marketing, techniques or strategies, those
22 sorts of things which presumably, if you're
23 the General Sales Manager, would certainly
24 come within your jurisdiction. But is
25 there someone at a level below you that is

1 more intimately so involved with collecting
2 that information and preserving it?

3 MR. NIFONG: I object to the form
4 of the question. Answer it if you can.

5 A (By the witness.) I'm a little unclear.
6 Could you repeat it for me?

7 Q (By Mr. Carroll.) Is there someone within
8 your organization, and perhaps below you in the
9 organizational chart, who is in charge of maintaining
10 the records of sales patterns; for example, over the
11 last 15 or 20 years of these products?

12 A No.

13 Q Is there someone who is in charge of
14 maintaining copies of the advertising materials that
15 have been used concerning these products over the last
16 15 or 20 years?

17 A There would be somebody who would have
18 access to the advertising copies.

19 MR. NIFONG: For 15 or 20 years?

20 THE WITNESS: Not for 15 or 20 years.

21 MR. NIFONG: You have to listen to
22 the question real carefully.

23 Q (By Mr. Carroll.) How far back would you
24 estimate that person would have access to those types
25 of materials?

1 A I'm not certain how far back.

2 Q Who would the person be?

3 A Allen Thielman, our Director of
4 Advertising.

5 MR. NIFONG: If you want, if
6 you're thinking ahead to records
7 custodian or a deposition of that nature,
8 check with me because I am not certain
9 that he's the records custodian for
10 the Advertising Division. I wouldn't
11 want us to be stuck with that.

12 Q (By Mr. Carroll.) How long has Allen
13 Thielman been the Director of Advertising, to your
14 knowledge?

15 A I'm not certain.

16 Q Has he been the Director of Advertising
17 at least as long as you've been the General Sales
18 Manager?

19 A No.

20 Q Do you know who his predecessor was?

21 A I don't remember his immediate predecessor.

22 Q Who was your immediate predecessor in the
23 position of General Sales Manager?

24 A It was a created position at that time.

25 Q That's a nice situation. You can't be



1 judged against anything else.

2 Are you aware of any changes which occurred
3 in the advertising of these products, the products
4 we've been discussing, to include the statement that
5 the products did not contain asbestos?

6 MR. NIFONG: I object to the form
7 of the question. Answer it if you are
8 able.

9 A (By the witness.) Would you repeat the
10 question, please?

11 Q (By Mr. Carroll.) Are you aware of any
12 occasions when the advertising on these particular
13 products was changed to include references to the
14 fact that the products did not contain asbestos?

15 A I am.

16 Q Do you know approximately when that
17 occurred?

18 MR. NIFONG: As to each product or
19 in bulk?

20 Q (By Mr. Carroll.) I would like to take it
21 in bulk, if in bulk it can be answered. If it's
22 different for each product, I would move to that level.
23 If you have an answer for all of them, that's fine.

24 A I'm not -- no, I wouldn't be able to
25 pinpoint the exact or close date of each product, when

1 the advertising included that it was asbestos free.

2 MR. NIFONG: Did you get that it
3 was asbestos free?

4 THE COURT REPORTER: Yes, sir.

5 Q (By Mr. Carroll.) Do you know for any of
6 the products, when the advertising was changed to
7 indicate the product was asbestos free?

8 A I don't know any of the exact date for any
9 of the products, when it indicated asbestos free.

10 Q Do you know -- and I appreciate the fact
11 that your expertise is in sales as opposed to the
12 more technical questions -- do you know whether there
13 was a time when the products contained asbestos? I'm
14 referring to all of them, to begin with, that we've
15 been referring to.

16 MR. NIFONG: You mean all of the
17 products that you've been through, if they
18 contained asbestos?

19 MR. CARROLL: Yes.

20 MR. NIFONG: Do you know?

21 Q (By Mr. Carroll.) To your knowledge.

22 A Yes. All contained asbestos.

23 Q Would it be a fair statement that the fact
24 that they contained asbestos was known to you as early
25 as 1965?



1 MR. NIFONG: I object to the form
2 of the question. Answer it if you're able
3 to.

4 A (By the witness.) No. It wouldn't be a
5 fair question.

6 Q (By Mr. Carroll.) When did you have, to
7 your recollection, an awareness that the products all
8 contained asbestos?

9 MR. NIFONG: I think on that issue,
10 you're going to have to break it down for
11 him because you've got seven or eight
12 products there and I'm going to ask that
13 you break it down on that question.

14 Q (By Mr. Carroll.) I want to say that as
15 I've said many times before, I am trying to short
16 circuit some of the questions by asking a group
17 question because the titles are very lengthy and there
18 are six or seven of them. I don't mean to imply that
19 you have to give me an answer if you can't, because
20 it doesn't apply to all of them.

21 Do you have a specific recollection of the
22 product that was first brought to your attention as
23 containing asbestos, from among this group?

24 A No specific product. No specific
25 recollection of when that was.

1 Q The first one that came to your attention?

2 A That's right.

3 Q Can you give me a date by which you
4 definitely had knowledge of these products that we
5 have been discussing, contained asbestos?

6 MR. NIFONG: I object to the form
7 of the question.

8 THE WITNESS: Can I answer it?

9 MR. NIFONG: Yes.

10 MR. CARROLL: He's going to kick
11 you when you can't answer it.

12 MR. NIFONG: I'll tell you not to
13 answer it, you can be sure.

14 A (By the witness.) I was certain that I
15 was aware of those products containing asbestos by
16 1975, '74 perhaps.

17 Q (By Mr. Carroll.) Were you ever involved
18 in any of the discussions and considerations within
19 Georgia Pacific concerning the fact that the products
20 were determined to contain asbestos?

21 A Yes, I am.

22 Q Do you remember what the occasions were of
23 those early discussions? I have reference to the fact
24 that perhaps some bulletin came out from someone or
25 perhaps an article in the newspaper or perhaps you

1 were watching television one day. There might have
2 been a specific occasion that you can link to that
3 initial involvement and the discussion or consideration

4 MR. NIFONG: I object to the form
5 of the question -- or perhaps anything
6 on earth, if you can follow that question
7 and pick up a specific occasion, please
8 do so.

9 A (By the witness.) I'm sorry. I couldn't
10 pick out a specific occasion.

11 Q (By Mr. Carroll.) Were those discussions
12 and considerations within your company concerning the
13 asbestos content of these products, were those formal
14 discussions and considerations, to the extent that
15 records were made of them?

16 MR. NIFONG: I object to the form
17 of the question. You may answer it to
18 the extent that you're able to.

19 A (By the witness.) To the discussions or
20 meetings that may have occurred where I was in
21 attendance, they were informal, no record.

22 Q (By Mr. Carroll.) With whom would you have
23 met and had these sorts of discussions? I don't care
24 for everybody's name, but the type of people or
25 category of people.

1 A Our manufacturing and our technical people.

2 Q Were some of these meetings, meetings that
3 produced reports?

4 MR. NIFONG: Object to the form of
5 the question.

6 A (By the witness.) I can't recall any
7 specific meetings that would be so formal as to
8 produce reports.

9 Q (By Mr. Carroll.) Were any of the meetings
10 occasions when reports were submitted and considered
11 or reviewed?

12 A Are you referring to internal reports?

13 Q Yes, any sort. Maybe a consultant's
14 report, internal reports, anything of that sort.

15 MR. NIFONG: I object to the form
16 of the question. Answer it if you're able
17 to, Mr. Burch.

18 A (By the witness.) Any meeting that I can
19 recall where I was in attendance, there were no
20 formal reports presented or given.

21 Q (By Mr. Carroll.) Approximately how many
22 such meetings can you recall being in attendance at?

23 MR. NIFONG: What period of time were
24 you starting at?

25 MR. CARROLL: Whenever he first

1 remembers having such meetings. I don't
2 care to take it beyond 1980.

3 MR. NIFONG: So your question is
4 from the first occasion up until May 7,
5 1980?

6 A. (By the witness.) There would have been
7 a number of meetings, but I have no way of knowing.

8 Q. (By Mr. Carroll.) Would it have been more
9 than ten meetings?

10 A. Yes, I think so.

11 Q. Do you remember the names of any of the
12 people that attended any of those meetings?

13 A. Yes.

14 Q. Could you tell me who some of those people
15 are, sir?

16 A. Mr. C. W. Lehnert.

17 Q. What is his title or position?

18 A. He's our Technical and Product Development
19 Manager and that title may not be exact.

20 Q. Okay. So he's still with the company?

21 A. Yes, he is.

22 Q. Please continue.

23 A. Mr. T. W. Richards.

24 Q. What is his present title?

25 A. Gypsum Operations Manager.

1 Q Please continue.

2 A Mr. J. C. Corkill.

3 Q What is his position?

4 A Product Manager.

5 Q Anyone else?

6 A And at various times, Mr. G. E. Wilson.

7 Q His position?

8 A Division Vice-President.

9 Q Anyone else?

10 A Legal counsel at times.

11 Q Can you think of anyone else?

12 A No, I'm sure there would have been staff
13 members.

14 Q At any of the meetings in which you were
15 involved, was there a decision made to recommend the
16 removal of the asbestos content from the product?

17 A At any of the meetings?

18 Q Yes.

19 MR. NIFONG: I object to the question
20 to the extent that it would include any
21 meetings where legal counsel was in
22 attendance. I am going to instruct you not
23 to answer, if your answer calls for a meeting
24 wherein a lawyer, either in-house or outside
25 counsel, was present in any capacity whatsoever

1 participating in the meeting. So if
2 you can answer the question that he's
3 just asked, excluding any meeting where a
4 lawyer attended, in-house or out of house,
5 you may do so. To the extent that your
6 answer might require you to testify about
7 a meeting where a lawyer was present, I'll
8 instruct you not to answer.

9 If you need to think about that a
10 minute before you answer it, please do so.
11 I want you to be very careful on that issue.

12 A (By the witness.) I can't answer that.

13 Q (By Mr. Carroll.) Okay. You can't answer
14 because of his instruction or you don't have a
15 recollection of any such occasion?

16 A If you wouldn't mind rewording the
17 question for me. Restate the question for me.

18 Q It may have been confusing. I apologize.

19 I'm interested in whether or not you were
20 ever present in a meeting in which -- or at which --
21 it was eventually decided that it would be
22 recommended that asbestos would be removed from any of
23 these products that we have been discussing. Your
24 counsel has instructed you to just delete any meetings
25 at which an attorney was present.

1 MR. NIFONG: I think, if I can
2 interject here, he can answer a yes or
3 no without getting in privilege. If you
4 can say no, you may say no. If it's yes,
5 you can answer yes then he will take it
6 further and we'll get back into the
7 attorney/client privilege where we may
8 not need to go that far.

9 A (By the witness.) Yes.

10 Q (By Mr. Carroll.) Let me be sure I
11 understand your answer. There was at least one
12 meeting at which the final decision was made to
13 recommend that asbestos be removed from one or more
14 of these products?

15 A Yes.

16 Q Do you remember the particular product or
17 products involved?

18 MR. NIFONG: Now, to the extent that
19 the meeting where the recommendation was
20 made, involved the presence of legal
21 counsel or Georgia Pacific in-house or
22 outside counsel, I'm not going to allow you
23 to testify on it.

24 If you can remember a meeting where
25 no legal issues were discussed, where legal



1 counsel was not present, you may answer
2 the question.

3 If you're uncertain, I'd rather
4 you not answer the question. I'm sure
5 he can certify it and we can get back on
6 it, but we're not going to get into any
7 areas where there were discussions where
8 legal counsel was present.

9 A (By the witness.) I'm uncertain whether
10 legal counsel was present, so I can't answer that.

11 Q (By Mr. Carroll.) Let me ask you a
12 question. I was just thinking down the road of any
13 hearings we may have.

14 How are we going to be able to tell at
15 these meetings whether an attorney was present or not?
16 What kind of efforts could all of us make to find that
17 out?

18 A My best recollection.

19 Q So you can remember meetings clearly enough
20 to remember some of them when attorneys were present?

21 A I can remember --

22 MR. NIFONG: Just yes or no. Don't
23 get into the details of the meetings.

24 A (By the witness.) Yes.

25 Q (By Mr. Carroll.) And you're going to be



1 able to differentiate, in your mind, meetings when
2 attorneys were present and the decisions at those
3 meetings as opposed to meetings when attorneys were
4 not present?

5 A. No. I'm not going to be able to.

6 MR. CARROLL: I'd like to suggest --
7 and I do this very respectfully -- that
8 possibly, unless the attorney made
9 recommendations, if the recommendation
10 is a lay recommendation from the
11 organization, even though they may have
12 heard the attorney or the attorney may
13 have offered advice or listened in, I'm
14 not entirely sure that it does amount to
15 privilege since they have to run their
16 business and make lay decisions all the
17 time.

18 I respectfully suggest that perhaps
19 he can't make a distinction anyway in his
20 mind as to when attorneys were present
21 and when they weren't and these were
22 basically lay decisions. That's all I'm
23 asking, management type decisions, not
24 the lawyer's decisions where he says, this
25 is what we're going to do with a given

1 lawsuit.

2 I would like to be able to go
3 further, since I'm here, and I just ask
4 that you permit --

5 MR. NIFONG: I think the Supreme
6 Court has defined it for us in the last
7 18 months, in their last session, as to
8 the attorney/client privilege, I think
9 it's entitled to a very restrictive use
10 in this particular context. Given, if
11 this lawyer did not make the final
12 recommendation, but was a part of the
13 process and if the group called upon him
14 and he was in attendance, I think you've
15 got privileged information there and I
16 have no basis to waive at this time.

17 I'll instruct the man not to answer
18 it. If he's able to differentiate any
19 meetings where there were recommendations
20 made or decisions made about the use of
21 asbestos in Georgia Pacific Corporation
22 products, I will allow him to testify on
23 this issue. To the extent that he cannot
24 differentiate, I am not going to waive the
25 attorney/client privilege. I think he



1 already testified he cannot differentiate
2 at this point.

3 Can you think of any specific
4 meetings where counsel was not present?

5 THE WITNESS: No.

6 MR. NIFONG: I am not going to allow
7 him to testify about recommendations in
8 meetings made where counsel was present.

9 I think my interpretation of the
10 privilege is correct on this point. I do
11 see your point.

12 Q (By Mr. Carroll.) The types of decisions
13 I am talking about are not legal decisions. I am
14 after the kind of management decisions that every
15 corporation has to make from time to time, even though
16 that decision may incorporate or may be partially
17 based upon statements made by an attorney or group of
18 attorneys. Those are what I'm referring to as
19 decisions or recommendations made by the group. The
20 group I'm talking about is really the management
21 people who were in attendance from Georgia Pacific
22 Corporation.

23 Do you understand that proposition because
24 then I want to ask you another question.

25 A Yes.



1 Q Were there those sort of decisions
2 reached and those sorts of recommendations made at any
3 of the meetings that you recall being at?

4 MR. NIFONG: Read that back.

5 (Thereupon, the designated portion
6 was read back by the court reporter.)

7 MR. NIFONG: Let me object to the
8 question for numerous reasons. If you
9 can understand the question, answer it
10 yes or no. Without getting into the
11 contents, I will allow you to answer that
12 with the caveat that I have numerous
13 objections to the form of the question.

14 A (By the witness.) Yes.

15 Q (By Mr. Carroll.) I guess I have to
16 officially ask you the next question, although, I
17 suspect you're going to be instructed not to answer.

18 What were those decisions or recommendations
19 at the meetings in which the management people made?

20 MR. NIFONG: I think it's clear that
21 you're getting into the privilege
22 information here and I object to the form
23 of the question and I instruct you to not
24 to answer it.

25 (Thereupon, a short break was held.)



1 Q (By Mr. Carroll.) Did you ever personally
2 formulate any opinions concerning the hazard of having
3 asbestos in any of the products that we've been
4 discussing?

5 MR. NIFONG: I object to the form
6 of the question. Answer it if you can.

7 A (By the witness.) Did I ever formulate
8 any opinions?

9 Q (By Mr. Carroll.) Yes, sir. Did you ever
10 arrive at any opinion concerning the hazards or lack
11 of hazards of having asbestos in any of these
12 products?

13 MR. NIFONG: To the extent that that
14 is the same question or a different
15 question, note my objection to the form
16 of the question.

17 A (By the witness.) I'm not certain I
18 understand the question.

19 Q (By Mr. Carroll.) Did you ever conclude
20 that it was hazardous to users or people in the
21 vicinity of the use of the product, for these products
22 to contain asbestos?

23 MR. NIFONG: I object to the form of
24 the question.

25 A (By the witness.) I don't think I had the

1 facts to make any such conclusion.

2 Q (By Mr. Carroll.) Do you know whether any-
3 one within Georgia Pacific Corporation has ever
4 arrived at a conclusion that there was a hazard to the
5 users or persons in the vicinity of the use of these
6 products because of the asbestos content?

7 MR. NIFONG: I object to the form
8 of the question. Read that back to me
9 in addition.

10 (Thereupon, the designated portion
11 was read back by the court reporter.)

12 A (By the witness.) I don't know of anyone.
13 I wouldn't have any knowledge of that.

14 Q (By Mr. Carroll.) Have you been called
15 upon to provide testimony concerning asbestos
16 litigation in any other cases?

17 MR. NIFONG: In any other asbestos
18 cases?

19 Q (By Mr. Carroll.) Any other asbestos cases.

20 A No.

21 Q This is the very first time you have
22 provided information concerning asbestos litigation?

23 A That's correct.

24 Q I'm not limiting that just to taping
25 compounds, but as it may pertain to dry wall or lathe



1 or anything of that sort?

2 A No, I've never given deposition testimony
3 on asbestos.

4 Q Have you ever prepared any reports or
5 memorandums concerning this subject of asbestos as
6 an ingredient in any of the products that we have been
7 discussing?

8 A I have never prepared a report of any kind
9 concerning asbestos in Joint System Products.

10 Q Have you ever prepared a memo or letter or
11 summary -- the terminology might be different -- but
12 a document that pertains to the asbestos content of
13 any of the products that we've been discussing?

14 A That would be outside of my realm of
15 responsibility.

16 Q I'd like to add, I don't mean this to be
17 facetious. I would like to see if you have ever had
18 any contact with asbestos as a concept and concern of
19 yours, other than this deposition?

20 My initial question, as a starting point,
21 have you ever had occasion to correspond with anyone,
22 either internally within the company or outside of the
23 company, concerning asbestos?

24 A In Joint Cement Compound?

25 Q Yes.



1 A Yes, I have.

2 Q Using that as a starting point, can you
3 tell me what the general nature of the correspondence
4 or communication would have been? I'm talking about
5 written communication.

6 MR. NIFONG: I object to the form
7 of the question. You're going back to
8 1965.

9 MR. CARROLL: At any time. He's
10 been with the company since '65, yes.

11 MR. NIFONG: To the extent that you
12 can answer the question, I'll allow you to
13 do so.

14 A (By the witness.) Okay. Would you repeat
15 it again now?

16 Q (By Mr. Carroll.) I think we've established
17 that you have corresponded with people, either
18 internally or externally, concerning asbestos. Is
19 that a fair statement?

20 A That's a fair statement.

21 Q I'm just wondering who those people were,
22 what the circumstances were?

23 A I've had occasion to correspond as to the
24 timetable for moving the asbestos-free product. I
25 can remember that specifically. I've had other

1 correspondence with other people in the organization
2 concerning asbestos in Joint Cement Products.

3 Q How can we get copies of these documents?

4 MR. NIFONG: If you make the proper
5 demand and do a request to produce that
6 we don't object to, then we would review
7 it carefully as counsel for Georgia
8 Pacific --

9 MR. CARROLL: You don't need to say
10 any more. That was a poorly phrased
11 question.

12 Q (By Mr. Carroll.) I was going to finish
13 my question when he started his objection. How do we
14 go about finding, within your organization, those
15 particular documents? If I wanted to check with a
16 particular person or go to a particular person, where
17 would I go to try to find those documents?

18 MR. NIFONG: You mean such as a
19 records custodian?

20 Q (By Mr. Carroll.) A records custodian, a
21 computer, a bin, a receptacle some place, a file.

22 A Within the realm of Georgia Pacific's
23 corporate retention policy, I would have copies of
24 those correspondence.

25 Q So if I were to just designate



1 communications generated by you, that dealt with
2 asbestos, you could go through your records and
3 produce those documents?

4 MR. NIFONG: To the extent that we
5 didn't have an objection to those and to
6 the extent that it still exists.

7 A. (By the witness.) That's correct.

8 Q. (By Mr. Carroll.) I appreciate that.

9 Has there been any change in the sales or
10 sales patterns of any of these products as a result of
11 the process by which your company went from products
12 containing asbestos to asbestos-free products?

13 A. Would you define what you mean by sales
14 patterns?

15 Q. I'm really talking about something that
16 would not be explained by merely a seasonal variation
17 or the fact that a product is getting a little old on
18 the market. I'm talking about something more
19 dramatic, a vast increase in sales or dramatic drop
20 in sales, in either a particular location or
21 throughout the country, that happened to coincide
22 with your marketing asbestos-free products in these
23 areas, concerning these products?

24 MR. NIFONG: What is the question?

25 Q. (By Mr. Carroll.) I am wondering whether



1 or not there was a -- I'll use the term dramatic or
2 large variation -- in the sales of any of these
3 products, either up or down, that coincided with the
4 marketing of the asbestos-free product?

5 MR. NIFONG: I object to the form
6 of the question, but if you're able to
7 answer that, you may feel free to do so.

8 A (By the witness.) It is difficult to
9 answer the question as you put it because I don't
10 know your definition of dramatic. I don't know
11 coinciding with the --

12 MR. NIFONG: And also you've got
13 a very compound situation because some
14 of the products are there for a long
15 period of time.

16 Q (By Mr. Carroll.) Has there been any
17 change in the sales figures concerning Georgia
18 Pacific Ready Mix Joint System Compound that your
19 company attributed to the fact that it became an
20 asbestos-free product?

21 A Yes, there has.

22 Q Was that --

23 A Or there was.

24 Q There was. Was that an increase or
25 decrease?



1 A Decrease.

2 Q Was a decrease which occurred within a
3 one-year period, that was noticeable with a one-year
4 period, to the asbestos-free status?

5 MR. NIFONG: If you know. Be
6 careful and don't guess at these.

7 A (By the witness.) The timing, I would be
8 uncertain of.

9 Q (By Mr. Carroll.) Now is this within your
10 bailiwick, are these things that you would be aware
11 of?

12 A Yes, I would.

13 Q Maybe I can ask you the same question
14 concerning the Best Wall Bedding Compound, whether or
15 not there was a change in the sales figures of Georgia
16 Pacific Bedding Compound, that your company attributed
17 to the move to asbestos-free products?

18 A I'm not aware of any such change.

19 Q Same question. If I don't need to repeat
20 it, concerning Georgia Pacific Topping Compound.

21 A I'm not aware of any such change.

22 Q What about the Georgia Pacific Joint System
23 Products?

24 A I'm not aware of any change.

25 Q How about One Day Joint Cement?



1 A I'm not aware of any change.

2 Q Triple Duty Joint Compound.

3 A I'm not aware of any change.

4 Q Did anybody ever arrive at any conclusions
5 as to why there was a change concerning the Ready Mix
6 Joint Compound, Joint System Compound, within your
7 company?

8 A It was attributed to the working qualities
9 of a reformulated product.

10 Q To your knowledge, was there just the one
11 new formula and that has continued from that time or
12 has there been more than one formula tried?

13 A I don't have any specific knowledge of
14 the formulas themselves.

15 Q But certainly people within the sales
16 force attributed the decrease in sales to the problems
17 with the new formula?

18 A The people within the sales force attributed
19 it to such, yes.

20 Q Was there a time when these products --
21 I'll take them initially as a group then break them
22 out, if they're different in each instance or in any
23 instance. Was there a time when they were marketed
24 with asbestos, but with warnings attached to them?

25 A Yes, there was.

1 Q Do you know the period of time that was?
2 I'm not referring to another date, but a year, two
3 years or five years. Do you know the approximate
4 length of time?

5 MR. NIFONG: I object to the form
6 of the question. Are you talking about
7 as to all seven products?

8 MR. CARROLL: Yes, my initial question
9 goes to all seven products. If it's
10 different, then we'll take it one at a
11 time.

12 A (By the witness.) To the best of my
13 recollection, you would have to take them one at a
14 time.

15 Q (By Mr. Carroll.) Concerning Georgia
16 Pacific Ready Mix Joint System Compound, was there a
17 period of time in which that product was marketed
18 with asbestos, but with a warning?

19 A Yes, there was.

20 Q Do you know the time period involved? I'm
21 not referring to dates at this moment, but the length
22 of time period.

23 A I would know an approximate time length.

24 Q Can you tell me what that was?

25 A Approximately three years.



1 Q Can you help me with either of the
2 parameters, the beginning date or ending date,
3 approximately?

4 A We still have a warning label on Ready Mix
5 Products.

6 Q That's due to asbestos, a warning of
7 asbestos?

8 A No, just not --

9 Q The warning label you're referring has to
10 do with what aspect of the product?

11 A Dust.

12 Q In the case of Georgia Pacific Bedding
13 Compound, was there a time period in which the
14 product was manufactured with asbestos, but with a
15 specific warning concerning the asbestos?

16 A Yes, there was.

17 Q Can you tell me the length of that period
18 of time?

19 A Approximately the same period of time.

20 Q Approximately three years?

21 A Yes.

22 Q To your knowledge, the beginning date or
23 ending date of that period, approximately?

24 A I know the ending date.

25 Q All right.

1 A 1977, for any of them.

2 Q Okay. Because that's the date you ceased

3 including the asbestos?

4 A That's correct.

5 MR. NIFONG: I object to the form

6 of the question. Is it to each one of

7 these products or in bulk?

8 MR. CARROLL: I thought he said all

9 of them.

10 THE WITNESS: If I did, I'm in

11 error.

12 Q (By Mr. Carroll.) Then I apologize. Your

13 testimony may be different from that.

14 A What I'm saying is by 1977 all warning

15 references to asbestos had been eliminated.

16 Q To be sure I understand you, because by

17 that time you were no longer including asbestos in any

18 of these products?

19 A In any product.

20 Q Okay. Let's turn to the Georgia Pacific

21 Joint System Products. Was there a period of time in

22 which the products contained asbestos and a warning

23 was put on the products?

24 A Yes, there was.

25 Q What was the length of that period?

1 MR. NIFONG: The question now is --
2 would you rephrase the question. I'm not
3 sure I follow you here.

4 Q (By Mr. Carroll.) My initial question was
5 the same as in the other products that has to do with
6 the period of time. Was there a period of time in
7 which the products contained asbestos and also had on
8 the packaging a warning concerning the fact that they
9 contained asbestos? Your answer was --

10 A Yes, there was.

11 Q Then I followed that up by asking you what
12 the length of that period of time was.

13 MR. NIFONG: That we had the warning
14 on the package?

15 Q (By Mr. Carroll.) Yes, and the asbestos
16 in the product.

17 A To the best of my recollection,
18 approximately three years. However, I would like to
19 make it clear that I'm not absolutely certain it was
20 three years. It could be four years or it -- it could
21 be two years.

22 Q I appreciate that. You can't be more
23 specific about that on the ending date of that other
24 than to say '77 again, as you did on the others?

25 MR. NIFONG: That's not his testimony

1 on this product.

2 A (By the witness.) I didn't say that.

3 Q (By Mr. Carroll.) What would be the
4 beginning date or ending date on that, if you know?

5 A I don't know the ending date on many of
6 these products. I'm simply saying by 1977 there was
7 none on it.

8 MR. NIFONG: That is a clear
9 distinction.

10 Q (By Mr. Carroll.) Let's go to Georgia
11 Pacific One Day Joint Cement. Was there a period of
12 time during which this product has asbestos as one
13 of its ingredients and there was in fact a warning of
14 asbestos contents on the package?

15 A I'm not certain on that product.

16 Q Concerning Georgia-Pacific Triple Duty
17 Joint Compound, was there a time that the product
18 contained asbestos and had a warning concerning
19 asbestos content?

20 A Yes, there was.

21 Q Can you tell me that length of time?

22 A Approximately three years.

23 Q Can you help us in that regard, concerning
24 the beginning date or ending date?

25 A No, only there was nothing on any of them

1 after 1977 because there was no asbestos products
2 produced. Sometime in 1977 it ended.

3 Q During the time you have been with Georgia
4 Pacific, has the company manufactured dry wall as a
5 commercial product for use in the construction
6 industry?

7 A Yes, they have.

8 Q Is that dry wall or has that dry wall, to
9 your knowledge, always just carried one brand name or
10 has it had different brand names?

11 A May I clarify dry wall? Do you mean Gypsum
12 Wallboard?

13 Q Yes, sir.

14 A Did it have one brand name?

15 Q Yes, sir.

16 A It had various brand names.

17 Q Can you give me the brand names for which
18 you are familiar?

19 A Georgia Pacific Gypsum Wallboard.

20 Q Okay.

21 A Best Wall Gypsum Wallboard.

22 Q Okay.

23 A Fire-Stop Gypsum Wallboard.

24 Q Okay.

25 A Tile Backer Gypsum Wallboard.



1 Q Please continue.

2 A Georgia Pacific Gypsum Sheathing.

3 Q You're saying sheathing?

4 A S-h-e-a-t-h-i-n-g.

5 Q Sheathing?

6 A Sheathing.

7 Q Okay. Got you.

8 A Best Wall Gypsum Sheathing. By the way,
9 all of these could be Best Wall or Georgia Pacific.

10 Veneer Plaster Base, V-e-n-e-e-r. That's
11 about it. Those are the primary products, at least.

12 Q Would the products that you identified as
13 Gypsum Wallboard, would those products be generally
14 referred to in the industry as dry wall?

15 A Yes, they would, with the exception of the
16 Veneer Base.

17 Q To your knowledge, have any of these
18 products contained asbestos at any time?

19 A No, they haven't.

20 Q Maybe I'll take a real shortcut when it
21 comes to lathing. Did your company also product
22 lathing during the time of your employment?

23 A Yes, they did.

24 Q Without going through the products, did any
25 of those products contain asbestos, to your knowledge?



1 A. No, they didn't. Got rid of that one.

2 Q Should have done that on the dry wall.

3 During the time that you have been employed
4 with Georgia Pacific, has Georgia Pacific maintained
5 any business offices within the State of Florida?

6 A. Yes, they have.

7 Q Can you tell me when you remember them
8 first having a business office in the State of
9 Florida?

10 A. My personal knowledge?

11 Q Yes, sir.

12 A. 1965.

13 Q What would have been the location of that
14 office or those offices?

15 A. Well Georgia Pacific had distribution
16 centers in Florida. Would you clarify it for me? Are
17 you saying from the first date of my recollection?

18 Q Yes, sir. That's what I wanted to start
19 with, yes.

20 A. I would say Miami, Tampa, Orlando and
21 Jacksonville, from the first of my recollection.

22 Q Would it be fair to say that that from
23 that time, even though the locations may have
24 changed or been added to or some have been closed,
25 that Georgia Pacific has continuously maintained

1 business offices of that nature in the State of
2 Florida?

3 A. That's true.

4 Q Are those distribution points identified
5 as Georgia Pacific distribution points rather than
6 some other name?

7 A. Georgia Pacific Distribution Centers.

8 Q Have you been familiar with the individuals
9 who have been responsible for the distribution center
10 in the Tampa Bay area for the last 15 years or so?

11 A. I've been familiar since 1969.

12 Q Okay. Who is the individual that,
13 according to your earliest recollection, was
14 responsible for that Tampa Bay Distribution Center?

15 A. William Moore.

16 Q William Moore?

17 A. Yes, sir. I'm sorry. I don't know his
18 middle initial.

19 Q Is he still there?

20 A. Yes, he is.

21 Q Is he still the head of that distribution
22 center?

23 A. Yes, he is.

24 MR. NIFONG: He's a Branch Manager?

25 THE WITNESS: Correct.



1 Q (By Mr. Carroll:) In your corporate
2 setup, that location is considered a branch?

3 A A distribution center, yes.

4 MR. CARROLL: I've run dry. When
5 it happens, it happens, and you've got
6 to know when to quit. Thank you very
7 much. You have been very cooperative.

8 THE WITNESS: Thank you, sir.

9 MR. NIFONG: I have no questions.

10 THE COURT REPORTER: Mr. Carroll,
11 would you like to have this transcribed?

12 MR. CARROLL: Certainly.

13 THE COURT REPORTER: Mr. Nifong,
14 would you like a copy?

15 MR. NIFONG: I would like a copy.

16 I would like for you to review it
17 as opposed to waiving and signing it.

18 THE WITNESS: Okay.

19 MR. NIFONG: We are not waiving and
20 reading and signing. Would you make
21 arrangements with Mr. McClendon.

22 (Deposition concluded.)
23
24
25

1
2
3 OLIVER EUGENE BURCH
4

5 SUBSCRIBED AND SWORN TO before me this, the
6 ____ day of January, 1984.
7

8
9 NOTARY PUBLIC,
10 My commission expires the ____
11 day of ____, 19__
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Butt & Associates
COURT AND
DEPOSITION
REPORTERS

CERTIFICATE

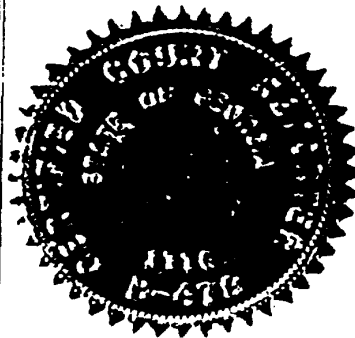
STATE OF GEORGIA:

COUNTY OF FULTON:

I hereby certify that the foregoing deposition was stenographically recorded by me, as stated in the caption. The deponent was duly sworn to tell the truth, the whole truth and nothing but the truth. The colloquies, statements, questions and answers thereto were reduced to typewriting under my direction and supervision and the deposition is a true and correct record of the testimony/evidence given by the deponent.

I further certify that I am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel, nor am I financially interested in the action.

This, the 1st day of January, 1984.



Betty J. Catlett
BETTY J. CATLETT,
Certified Court Reporter and
Notary Public (B-479)
My commission expires: 3-12-86.





February 22, 1984

TO: The Honorable Clerk
Pinellas Circuit Court
Pinellas County, Florida

RE: Bennett vs. National Gypsum Co. et al.; Circuit Civil No. 82-5351-2

DEPOSITION OF: Oliver Eugene Burch, taken on 12/5/83

*Testimony re types of
products made
otherwise largely
useless.*

TK 6-25-84

Dear Sir:

In regard the above-captioned case, the jurate page from said deposition has never been returned to our office properly signed as we requested. (Copy of our correspondence attached).

We are, therefore, filing the deposition absent the deponent's signature.

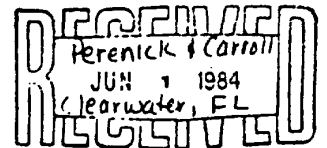
Sincerely,

BELL & ASSOCIATES

Bennie J. Taylor
Bennie J. Taylor

Enclosure-Original unsigned deposition
Correspondence dated - 1/16/84

CC: Attorney Robert J. Carroll
Attorney J. Michael Nifong



1
Jurat-Oliver E. Burch

Phillip McClendon, Esq.

Handwritten signature and date
1935



January 16, 1984

Mr. Phillip McClendon
Attorney at Law
11th Floor
Georgia Pacific Bldg.
133 Peachtree Street
Atlanta, GA 30303

RE: PINELLAS COUNTY CIRCUIT COURT - STATE OF FLORIDA
Bennett vs. National Gypsum Co.
C/C File No. 82-5351-20

DEPOSITION OF: OLIVER EUGENE BURCH TAKEN ON 12/5/83

Enclosed is your copy of the deposition, which was stenographically reported in the above-captioned matter.

Also, enclosed is the jurat page from the original deposition.

It is requested that the deponent read the deposition for accuracy, making certain the court reporter correctly reported the testimony.

If there are corrections to typing or spelling, et cetera, these should be noted on a separate sheet of paper, indicating the page and line numbers on which these appear.

In addition to the foregoing, it is requested that the personally subscribed jurat page, together with the errata sheet, if any, be returned to the office of Bull & Associates, within the next thirty-day period. We shall, upon receipt, include same with the original deposition and file the complete deposition with the Clerk of the Court.

Your assistance and cooperation in this matter is appreciated.

Sincerely,

BULL & ASSOCIATES

Bunnie J. Taylor
Bunnie J. Taylor
Administrative Assistant

Enclosure-Copy of deposition
Original jurat page
CC: Robert J. Carroll, Esq.
J. Michael Nifong, Esq.



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Attorney J. Michael Nifong



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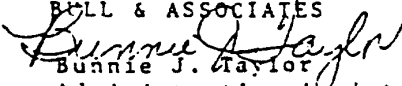
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Bunnie J. Taylor
Administrative Assistant

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CC: Robert J. Carroll, Esq.
J. Michael Nifong, Esq.



ACKNOWLEDGMENT OF DELIVERY

from:



388-233

Stamp UPS shipper number above

Turat-Oliver E. Burch

(Invoice or order number)

Receiving Company's Name Phillip McClendon, Esq.

Receiver's Signature (X) _____

Date 1/1/80

INSTRUCTIONS TO DRIVER: Obtain receiver's signature and date above. Detach card, and turn in to operating center that day. Signature must also be obtained on the delivery record.