

FILE NAME: International Harvester (INTH)

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72-73-75 I.H. Warnings 1981 or 1982
under to IH ~~that~~ insert 1975

116 Fishing for substitutes in late 1960s

dipo of James Shuman II
Corporate rep. Navistar

*International Harvester
(incl. back cover notes)*

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

IN RE: ASBESTOS LITIGATION:
122011P&S TRIAL GROUP

Limited to:

MELVIN CARL GORDON and
CAROL ANN GORDON,

Plaintiffs,

vs.

C.A. NO. N10C-08-307 ASB

A.O. SMITH CORPORATION, et al.,

Defendants.

VIDEOTAPED

DEPOSITION OF:

JAMES SHUMAN, II

DATE:

June 1, 2011

TIME:

9:06 a.m to 3:37 p.m.

PLACE:

Tampa Marriott Westshore
1001 North Westshore Boulevard
Tampa, Florida

BEFORE:

Dorothy A. King, RPR
Notary Public, State of
Florida

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

3 ASBESTOS LITIGATION

4 JOHN A. COWAN and
5 THELMA COWAN, Husband
and Wife

6 Plaintiffs,

7 vs.

DOCKET NO. MID L-008122 09

8 AGCO CORPORATION f/k/a
9 ALLIS CHALMERS COMPANY
(sued individually and successor to
10 MASSEY FERGUSON CO); et al.

11 Defendants.
_____ /

12 VIDEOTAPED

13 DEPOSITION OF: JAMES SHUMAN, II

14 DATE: June 1, 2011

15 TIME: 9:06 a.m to 3:37 p.m.

16 PLACE: Tampa Marriott Westshore
1001 North Westshore Boulevard
17 Tampa, Florida

18 BEFORE: Dorothy A. King, RPR
19 Notary Public, State of
Florida

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6

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Plaintiffs'

Marked

Defendant 's

Marked

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1 MR. HAFNER: Just for the record, my name is
2 Bob Hafner, I'm an attorney representing a company
3 called Navistar, Inc.

4 We're here today for the purpose of taking the
5 deposition of a corporate representative of Navistar.
6 By agreement of counsel, we're actually producing
7 Mr. James Shuman as a corporate representative of
8 Navistar to be deposed in two different cases: The
9 John and Thelma Cowan matter, which is pending in the
10 Superior Court of New Jersey, Middlesex County, and
11 the --

12 MR. PANATIER: Melvin Gordon case.

13 MR. HAFNER: -- the Melvin Gordon case, which is
14 pending in the State Court in Delaware. We're going
15 to be doing a single deposition for both cases.

16 Before we go on the video record, I just wanted
17 to get a couple of stipulations on the record so we
18 can hopefully streamline the process here.

19 First, there's an agreement of counsel, I
20 believe, all objections except as to form of the
21 question are preserved until the time of trial. I
22 believe, in fact, a stipulation of that is not
23 necessary because I understand the New Jersey rules
24 of court which I know for certain provide for that,
25 and I believe the Delaware court rules provide for

1 that as well.

2 But, again, the only objection that need be
3 stated on the record at this point is as to the form
4 of the question.

5 Secondly, I understand we have an agreement that
6 an objection by one party enures to the benefit of
7 all parties, so we don't need to have six, seven
8 people making separate objections on the written
9 record, if that's acceptable to plaintiff's counsel?

10 MR. PANATIER: Indeed.

11 MR. HAFNER: And then third and finally, I don't
12 think this is an issue for anybody, but just in case,
13 not that we have an agreement that an appearance of
14 any party at this deposition, appearance of attorney
15 on behalf of any party at this deposition, does not
16 constitute a waiver of any defenses or objections to
17 plaintiff's complaint they may have and, in
18 particular, concerning service or manner of service
19 of process.

20 At this point, hopefully, those aren't any
21 issues that are outstanding for anyone; is that
22 acceptable to plaintiff's counsel?

23 MR. PANATIER: Yes.

24 MR. HAFNER: Then, finally, before we go on the
25 written record, I'm just going to mark as

1 Defendant's Exhibit 1, in the Cowan matter, we had
2 served earlier in the week objections to the notice
3 of deposition. They speak for themselves,
4 Plaintiffs' counsel has them, I suspect there's not
5 going to be any issue, but just so it's part of the
6 record, I'll just mark it as Exhibit 1 and they'll be
7 marked part of the transcript.

8 (Defendant's Exhibit Number 1 was marked for
9 identification.)

10 MR. PANATIER: And Plaintiffs' Exhibits 1 and 2
11 are going to be the notice in the Cowan and Gordon
12 cases, that's 1 and 2, and the rest likely will be
13 Plaintiffs' exhibits.

14 (Plaintiffs' Exhibit Numbers 1 and 2 were marked
15 for identification.)

16 (Discussion off the record)

17 THE VIDEOGRAPHER: We are now on the video
18 record. Today is July 1st, 2011. The time is 9:06.
19 Today's deposition is of Mr. James Shuman.

20 You may swear in the witness in.

21 JAMES SHUMAN, II

22 the witness herein, being first duly sworn on oath, was
23 examined and deposed as follows:

24 THE WITNESS: I do.

25

1 DIRECT EXAMINATION

2 BY MR. PANATIER:

3 Q. Sir, can you go ahead and just tell us your
4 name?

5 A. My name is James Arthur Shuman, II.

6 Q. And, sir, are you currently working or are you
7 retired?

8 A. Both.

9 Q. All right. Go ahead and tell us kind of what
10 you do day-to-day in terms of being both retired and doing
11 some work.

12 A. I am retired from Navistar. Actually, I worked
13 about 30 years for the International Harvester Company and
14 about three years for Navistar.

15 Before I retired, I then went to work for a
16 forensic engineering firm in Aurora, Illinois for about
17 five years. I then left that firm and moved to Florida,
18 formed my own consulting firm, which I still operate.

19 Q. What's your consulting firm that you still
20 operate called?

21 A. Shu-Con, Inc.

22 Q. Is that S-H-U C-O-N?

23 A. Yes, Shu, hyphen, Con.

24 Q. Okay. What kind of work does your consulting
25 firm do?

1 A. Basically, it was formed to do accident
2 reconstruction, truck design, some truck design, that sort
3 of thing.

4 Q. Do you serve as an expert witness from time to
5 time in litigation involving truck design, accidents and
6 so forth?

7 A. I have, yes.

8 Q. How many times have you served as an expert
9 witness in that kind of context?

10 A. Over the years?

11 Q. Yeah.

12 A. I have no idea.

13 Q. Do you have a ballpark?

14 A. No.

15 Q. Is it less than 50 or more than 50?

16 A. It would be 50 but I can't take you any further
17 that than.

18 Q. Okay. So you have some what would at least
19 moderate to broad experience serving as an expert witness
20 in litigation?

21 MR. HAFNER: Objection to form.

22 A. Yes.

23 Q. Today you understand that you are here as the
24 corporate representative for
25 Navistar/International Harvester?

1 A. I understand that I'm a corporate witness and
2 not an expert witness, yes.

3 Q. Okay. And you understand, you've actually
4 served in that capacity in depositions in asbestos cases
5 before; true?

6 A. I have.

7 Q. You understand that today you are the
8 representative of Navistar in this deposition?

9 A. Yes, sir.

10 Q. And you understand that when you talk, you're
11 talking for the company, Navistar; correct?

12 A. Yes.

13 Q. You understand you're also being deposed today,
14 you're doing one deposition but it's going forward in two
15 different cases, it's going forward in the John Cowan case
16 and Melvin Gordon case; correct?

17 A. I understand that.

18 Q. Sir, did you review anything, any type of
19 documents, any testimony before you came here to testify
20 today in preparation for this depo?

21 A. I did.

22 Q. What did you look at?

23 A. I saw several volumes of Mr. Cowan's deposition;
24 I saw -- I also saw some discovery in the Cowan case. I
25 saw several depositions of Mr. Gordon in the Gordon case;

1 A. No, I don't.

2 Q. Was it while you were employed?

3 A. Yes.

4 Q. So the first time you testified for

5 International Harvester in an asbestos case would have

6 been sometime either during or prior to 1993?

7 A. That's correct.

8 Q. Sir, did International Harvester ever include
9 with any of the replacement friction products it sold in
10 any context, whether that be gaskets, clutches, brake
11 friction materials for trucks, tractors, agricultural
12 equipment, any type of warning or instructions pertaining
13 to the care that should be used when replacing or handling
14 asbestos-containing materials?

15 MR. HAFNER: Objection to the form.

16 You can answer.

17 A. The question is where?

18 Q. When did you ever?

19 A. Did we ever?

20 Q. Yes.

21 A. I believe there was a period of time somewhere
22 that we included within the service manual and the
23 operator's manual a caution or warning and a citation of
24 the OSHA standards when they came in effect. I found,
25 when I was working on a separate brake problem in the

1 field, an insert in a box of service brakes in 1975.

2 Q. Okay. So in 1975, you are aware of an insert in
3 a box of service brakes. What's service brakes mean?

4 A. Brakes that are being used to replace a set of
5 brakes in the field.

6 Q. Were those -- what types of -- what type of
7 truck or tractor or whatever were those brakes for?

8 A. Happened to be a Travelall that was there at the
9 time, yes.

10 Q. What is a Travelall?

11 A. I guess the best way to explain it would be,
12 you're probably familiar with a Suburban, General Motors
13 Suburban? It was predecessor of General Motors Suburban.

14 Q. This was for a -- not a tractor/trailer type
15 vehicle, this was much smaller?

16 A. It was not.

17 Q. Okay. What did this insert say?

18 A. I don't remember the exact wording, but it was a
19 caution that said a list of don'ts on one side and a list
20 of do's on the other side.

21 (Plaintiff's Exhibit Number 3 was marked for
22 identification.)

23 Q. I'm marking this document as Exhibit 3. Is that
24 the document you're talking about?

25 A. This is a representative of the document.

1 This -- it was not a eight and a half by eleven document,
2 but yes.

3 Q. So that's just a replica of kind of what you saw
4 in 1975?

5 A. This is a Xerox copy of the record or the
6 caution that I saw, yes.

7 Q. And is that blown up?

8 A. No. This is -- this portion of it is not blown
9 up.

10 Q. That's the actual size?

11 A. Of what you see with the outline on it, yes, not
12 the total page.

13 Q. Sure. There's what appears to be a document,
14 there was with some wording on it, and that's the actual
15 size of what you found in the replacement set of brakes?

16 A. Sure. The copy machine makes the outline of
17 exactly what it has.

18 Q. You can hand this back. So this document says:

19 "Caution: Contains asbestos fibers. Avoid
20 creating dust. Breathing asbestos dust may cause
21 serious bodily harm."

22 Does International Harvester agree with that
23 statement?

24 A. In a general statement of asbestos, I believe
25 that International believes an overexposure of asbestos

1 can cause an issue, yes.

2 Q. And, specifically, International Harvester
3 believes that creating dust from brakes can cause serious
4 bodily harm; correct?

5 A. In an overabundance of caution, our supplier put
6 that in the box.

7 Q. And International Harvester sold the replacement
8 brakes with this admonition in it?

9 A. I would assume that when we were selling them or
10 when they were delivering them for sale that, yes, we
11 would have sold them, we would have had them available to
12 sell, yes.

13 Q. Right. And I take it since International
14 Harvester did not pull this label or this caution out of
15 the box, that International Harvester believed it was a
16 good idea for it to go out?

17 A. By this time, in 1975 at least, this is
18 generally the accepted practice in an overabundance of
19 caution in the OSHA standard.

20 Q. At any point, did International Harvester place
21 a statement either in the packaging for replacement brakes
22 or in any of its manuals, that we don't believe that the
23 asbestos in any of the friction materials in your vehicle
24 or for use as a replacement part presents a hazard?

25 A. We didn't put it one way or the other. We said

1 to refer to the OSHA standard and to, in an overabundance
2 of caution, to handle the material as the
3 Federal Government suggested.

4 Q. The other statement that's on this caution that
5 was put in the packaging of this replacement brake product
6 from International Harvester, says:

7 "Important, asbestos dust hazard. Do not
8 breathe dust. Do not use air hose for cleaning.
9 Do not machine without dust collection equipment.
10 Do use vacuum or wet cleaning methods. Do dispose
11 of dust in concealed container. Do wear a mask."

12 Does Internal Harvester still agree with those
13 admonitions for when an individual is doing a brake
14 replacement job?

15 A. We believe they should follow the recommendation
16 of OSHA, the OSHA standard, yes.

17 Q. The OSHA standard as it pertains to asbestos;
18 correct?

19 A. Yes.

20 Q. Now, other than what you found in the box of
21 replacement service brakes, was there ever a time where
22 International Harvester placed a warning or caution
23 pertaining to asbestos in the replacement packages or
24 replacement brakes, clutches or gasket kits for its large
25 highway tractors?

1 A. I can't answer that question. I don't know one
2 way or the other whether those are put in by our suppliers
3 or not, although I would suspect that since Bendix was a
4 supplier of those brakes, that if they did it in this
5 application, they would do it in all.

6 Q. But you don't know that for a fact, you're
7 speculating; correct?

8 MR. HAFNER: Objection to the form.

9 A. I'm not speculating, I'm suggesting to you that
10 if they would do it in one place, they would do it in
11 another.

12 Q. In your over 30 years with International
13 Harvester/Navistar, did you ever actually see such an
14 insert in the replacement kits for any asbestos-containing
15 component that would have gone to a highway tractor?

16 A. I don't know that I ever saw one, one way or the
17 other. I don't believe I ever saw a service part going
18 into a tractor within normal limits.

19 Q. All right. So, but the next sort of evolution
20 of this question is, was there ever an admonition or
21 precaution pertaining to asbestos that you saw in any
22 manuals or service manuals for any International Harvester
23 piece of equipment?

24 A. Yes.

25 Q. And when was the first time that that caution

1 appeared?

2 A. I don't know.

3 Q. When is the first time you're aware of it being
4 present?

5 A. The first time I was -- the first time I was
6 able to find anything many years ago was in service
7 manuals and in the operator's manuals, the language coming
8 from our suppliers into those manuals, and I believe I
9 found them in 1981 or '82; whether those are the first or
10 not, I don't know.

11 Q. Those are the first you're aware of?

12 A. I suspect because they refer to the OSHA
13 standard, that there was something there prior to that.

14 Q. The first ones you're actually aware of were
15 '80, '81; right?

16 A. The first ones I found were '80, '81, '82, that
17 timeframe.

18 Q. Okay.

19 A. We don't have a library of them.

20 Q. Sir, what I have here is Exhibit 4.

21 (Plaintiff's Exhibit Number 4 was marked for
22 identification.)

23 Q. I don't have another copy, it's got the
24 International Harvester logo on it. Can you see that?

25 A. It does.

1 Q. Says service manual?

2 A. Yes.

3 Q. Foundation: Brake air cam-actuated type; right?

4 A. Yes.

5 Q. And there is a caution inside that manual;
6 correct?

7 A. Yes.

8 Q. Now, that manual was put together by
9 International Harvester; correct?

10 A. From information, in this particular instance,
11 supplied to us by, I believe, Eaton.

12 Q. Okay. So, in this case, what International
13 Harvester does is it puts together a service manual, and
14 then it will take information from various sources and
15 compile it together; correct?

16 A. Yes, from our suppliers, yes.

17 Q. And International Harvester saw no reason not to
18 include that caution; correct?

19 A. In an overabundance of caution, we would include
20 it.

21 Q. All right.

22 Go ahead and hand that back.

23 The caution in this case reads:

24 "Caution: Because studies have indicated that
25 exposure to excessive amounts of asbestos dust may

1 be a potential health hazard, OSHA has set maximum
2 limits of levels of airborne asbestos dust to which
3 workers may be exposed. Since most automotive
4 friction materials normally contain a sizeable
5 amount of asbestos, it is important that people who
6 handle brake linings be aware of the problem and
7 note the precautions to be taken.

8 "OSHA standards should be consulted with
9 respect to mandatory requirements, as well as for
10 suggested procedures to minimize exposure."

11 Now, does International Harvester agree with all
12 those statements it put it in its own manual?

13 A. International Harvester put those in there in an
14 overabundance of caution, as recommended by the people who
15 designed and manufactured the asbestos-containing product.

16 Q. You've said that. And the question I have is
17 does International Harvester agree with that caution it
18 chose to place in its own manual?

19 A. I just -- I think I answered your question the
20 best that I can answer it.

21 Q. Does International Harvester agree with that
22 statement that these various -- that:

23 "Because studies have indicated that exposure
24 to excessive amounts of asbestos dust may be a
25 potential health hazard, OSHA has set maximum

1 limits of levels of airborne asbestos dust to which
2 workers may be exposed."

3 Does International Harvester agree with that
4 statement?

5 MR. HAFNER: Objection, asked and answered.

6 You can answer it again.

7 A. I believe that International Harvester believes
8 that the overexposure of asbestos, just like the
9 overexposure of water, can be a health hazard.

10 Q. You know, that's an interesting point. So, if
11 you take in too much water, it can be a health hazard;
12 right?

13 A. Yes.

14 Q. And if you take in too much asbestos, it can be
15 a health hazard; right?

16 A. Or wood dust or silica or many things.

17 Q. Peanut butter?

18 A. Anything.

19 Q. Yeah, could be anything. So here's a question I
20 have for you. Does asbestos have any beneficial health
21 effects, to your knowledge?

22 A. I don't know. At one time it was called the
23 miracle fiber and I don't know why.

24 Q. Do you know if it had any beneficial health
25 effects?