

FILE NAME: Eagle-Picher (EP)

DATE: 1982

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DOCUMENT DESCRIPTION: Legal - Direct Examination of Robert Borkstahler

STATE OF WISCONSIN :

CIRCUIT COURT : MILWAUKEE COUNTY :
BRANCH 32

ANNA MAE WESTER, as an individual
and as Personal Representative of
the Estate of Walter J. Wester,

Plaintiff,

-vs-

SOUTHERN TEXTILE CORP., a
foreign corporation, and
EAGLE-PICHER INDUSTRIES, INC.,
a foreign corporation,

Case No. 508-108

Defendants,

-vs-

BUILDING SERVICE INDUSTRIAL SALES
CO., a domestic corporation,

Defendant and Third-
Party Plaintiff,

-vs-

OWENS-ILLINOIS, INC., a foreign
corporation,

Third-Party Defendant.

Date: November 18, 1982

Witness: ROBERT BOCKSTAHLER

Time: 10:30 -- 12:00 NOON

Proceedings Held Before The
Honorable MICHAEL D. GUGLIE
Circuit Court Judge

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Robert Bockstahler - Witness

November 18, 1982

10:30 -- 12:00 noon - Time

Before the HONORABLE MICHAEL GOULKE
and a Jury

A P P E A R A N C E S:

QUARLES & BRADY, by Attorney Frank J. Daily, appearing on behalf of the Plaintiff.

ATTORNEY RONALD MOTLEY, Assistant Counsel, appearing on behalf of the Plaintiff.

ATTORNEY THOMAS HART, Assistant Counsel, appearing on behalf of the Plaintiff.

GODFREY, TRUMP & HAYES, by Attorney James Samuelson, appearing on behalf of Defendant, Southern Textile Corp.

KASDORF, DALL, LEWIS & SWIETLIK, by Attorney Jeffrey Schmeckpeper, appearing on behalf of Defendant Eagle-Picher.

ALBERT, JUDE & VAN REMMEN, by Attorney John S. Jude, appearing on behalf of Defendant and Third-Party Plaintiff, Building Service Industrial Sales Co.

GIBBS, ROPER, LOOTS & WILLIAMS, by Attorney John Hoaglund, appearing on behalf of Third-Party Defendant, Owens-Illinois, Inc.

ATTORNEY RICK FORMAN, Assistant Counsel, appearing on behalf of the Third-Party Defendant, Owens-Illinois, Inc.

GIBBS, ROPER, LOOTS & WILLIAMS, by Attorney Robert Wrenn, appearing on behalf of the Third-Party Defendant, Owens-Illinois, Inc.

ATTORNEY LOUIS WOOLF, Assistant Counsel, appearing on behalf of the Third Party Defendant, Owens-Illinois, Inc.

PROCEEDINGS

D [BY THE CLERK: Would you state your name and spell your last name? *yes*]

THE WITNESS: Robert Bockstahler, B-o-c-k-s-t-a-h-l-e-r.]

DIRECT EXAMINATION BY MR. SCHMECKEPELER:

Q Mr. Bockstahler, I will give you the same admonition that we give every witness. We are not using microphones so keep your voice up so we all can hear you. Would you please state your name again for the record?

A Robert Bockstahler.

Q Where do you presently live?

A Cincinnati, Ohio.

Q Would you please give us an outline of your formal education?

A I have a Bachelor's Degree in Business from the University of Cincinnati in 1954.

In Q Where are you presently employed?

A In Cincinnati, Ohio.

Q With whom?

A Eagle-Picher Industries. *yes*

Q How long have you been employed there?

A Twenty-seven years.

Would you briefly outline for the Court and Jury your work history with Eagle-Picher, what your jobs were and what your responsibilities were?

A Certainly. I joined the company in October 1, 1955 and spent the first eleven years with the firm working for the Minerals Division, which is a division which mines and markets diatomaceous earth products.

Q What is diatomaceous earth?

A That is a mineral used primarily as a filler in certain products that primarily infiltrates. The last five years of that eleven year period I served as General Manager of Export Sales for this product line. December 1 of 1966 I assumed the duty of Vice-President of Sales for the Fibers Department, which is the operation of the company that manufactures industrial insulating materials. August 3 of 1971 I was appointed President and General Manager of a division known as the Chemical and Fibers Division, that consisted of lead chemical operations in Joplin, Missouri, zinc oxide manufacturing facility in Hillsborough, Illinois, fibers and insulating plant also in Joplin, a diatomaceous cooling plant in St. Louis. In November of 1981 I was transferred to Cincinnati and assumed my current position which is Litigation Assistant for the corporation. Yes

Q You said the Fibers Department which you went to in December, 1966, was that a portion of the company which manufactured and sold insulation products?

A Yes.

Q When you were President and General Manager of the Chemical

and Fibers Division in 1971, did you still have supervision over that portion of the company which manufactured and sold insulation products?

A Yes.

Q I take it then that when we refer to insulating products we are referring, at least in part, to insulating products that at one time contained asbestos fibers?

A In part that is correct.

Q Did the company manufacture insulation products that did not contain asbestos fibers?

A Yes. ☐ q e t e b

Q Could you briefly outline for the Court and Jury how it is that you have become familiar with Eagle-Picher's experience with asbestos containing insulation products?

A That essentially concerns the time frame of December 1966 up to and including my current capacity

Q Have you become familiar with companies with asbestos containing insulation prior to 1966?

A Yes.

Q And how did this come about?

A Through review of historical documentation, production records that had been made available to me during my capacity as General Manager of the division and my capacity during the last year being concerned with the corporation's litigation activities.

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Q When did Eagle-Picher first manufacture an insulating cement that contained asbestos fibers?

A The time frame is either late 1931 or early 1932.

Q Could you describe for the Court and Jury why Eagle-Picher put asbestos fibers into this cement when they first manufactured it?

A At that state the company -- the company's operation I should say began in 1929 and they were essentially as they are today involved with production of mineral fiber products.

Q Let's stop there. Is mineral fiber different than asbestos fiber?

A Yes, mineral fiber is a material which is manufactured in our case from lead, zinc and iron slag materials.

BY THE COURT: You said the company started in 1929?

A Yes.

MR. SCHNECKEPEPER: Your Honor, the company meaning the Fiber Department.

Q Eagle-Picher itself goes back to the 19th Century, correct?

A That is correct.

Q Would you continue, please?

A From 1929 to 1932 the company's activities, again referring to the fact in the frame of reference to the Fibers Department was solely in the residential insulation activity involving mineral fiber products. It was discovered ---

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Q Let me stop you. Did the residential insulation in that period of mineral fiber and mineral wool have asbestos fiber in it?

A No, sir, this was purely granulated mineral fiber.

Q All right, continue.

A It was discovered by a new employee of the company that there was additional sales possibilities to the military and henceforth to private industry if we manufactured and could manufacture insulation, high temperature insulation product known in those days as insulating cement. At that time there were two companies, Weber 48 and Johns-Manville that had been in production of approved products by the Navy and the company literally evaluated those products and duplicated those formulations and henceforth in approximately 1931 the product was submitted for naval approval and I believe in early 1934 that approval was granted.

yes.

BY THE COURT: I didn't get when you started working at Eagle-Picher?

A 1955.

MR. MOTLEY:

Q I assume your testimony is based on review of documents?

A That is correct, sir.

MR. SCHMECKPEPER:

Q The Weber cement and Johns-Manville cement that you referred

yes.

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to as being in existence prior to 1931, did those contain asbestos?

A Yes.

Q Why did the company seek approval from the Department of the Navy of its cement with asbestos fiber in it?

A At that time frame that type of product for example insulation cement product for high temperatures was not conventionally used by private industry. Private industry was either oil refinery power plants, chemical plants utilized technology available through the government at that time so therefore in the early 1930's, in the middle of the depression, death of the depression, it was necessary to sell products to private industry by having government approval for the same for employing the new technique and new technology.

Q ^{Dr} Was the Eagle-Picher cement approved by the government -- by the Navy back in the early 1930's?

A The formal approval as a qualified product, I believe, was certified in 1933. *sky go tall*

Q Could you tell us how that certification came about?

A Any product that was certified for use by the Navy in that time frame was approved by their experimental station which was headquartered at Annapolis, Maryland.

Q Did you have to send your product out there to be tested by them?

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A It was taken there by an employee.

Q And after the Navy tested it they gave you certification?

A That is correct.

Q And you referred to Johns-Manville earlier, did they ever manufacture an asbestos containing product for a considerable period of time?

A Yes.

MR. NOTLEY: I would like to know what document now that you base that on? I don't think he said he was employed by Johns-Manville.

BY THE COURT: Well, overruled. I think his earlier qualification was that he said he became familiar with this through the various work in the company.

MR. SCHNECKENBERGER:

Q On all the information we relay here there were specifications published by the government or the Navy as far back as World War I days, 1916, 1918, that specified asbestos products?

A I can only assume that since Johns-Manville was a miner of that material they were in the business back as far as that.

Q In your work for the company taking it from December of '66 on in trying to sell your product, I assume that one of the things you had to do was to become familiar with your competitors?

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A Yes.

Q Was Johns-Manville a competitor with Eagle-Picher for the sale of insulating products?

A Yes.

Q During the course of your work as Litigation Assistant, have you also had occasion to review Johns-Manville add sheets and similar information?

A On occasion, yes.

Q Are you familiar with a Johns-Manville product known as No. 352 Cement?

A Yes.

Q Do you know how long Johns-Manville have manufactured that product?

A Not exactly, I would not know that.

A In the terminology of the insulating industry, is 352 a true cement and if not, why not?

A Though it is not a true cement it is actually one hundred percent asbestos fiber.

Q Why is that considered a cement?

A It has no hydraulic setting properties.

Q What do you mean by that?

A Well, by itself where cement is mixed with water once the water evaporates the fibers would fall off — if just like this railing right here it would fall off. There is nothing in the product to hold it on there.

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Q From your experience, do you know how 352 Cement was typically used in insulating pipes, if at all?

A It was used in the form of more or less of a patching material to fill the voids around the material being insulated to prevent hot spots.

Q How would it be worked with by the insulator?

A It would be worked by hand either in the dry form or mixed with a small amount of water.

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Q

Eagle-Picher manufactured a product known as Super 66 Plastic Insulating Cement, correct?

A That is correct.

Q Could you explain to the Court and Jury how that product was used in insulating?

A The material initially called Eagle 66 and later termed Super 66 was a high temperature insulating cement, when sent to the insulating location was mixed with a prescribed amount of water and applied by hand or trowel to various fittings, butt joints between pipe coverings and in some occasions of the pipe coverings as an additional insulating material.] Stop, go to 12

yes

Q Did that Super 66 product have something in it that after the water evaporated it would stay where it was put? You mentioned in reference to 352, you said you would mix it with water and that the 352 would fall down. Did the Super 66, did it do the same thing?

A No, sir.

Q It would stay where it was placed?

A That is correct.

Q Could you tell us from your experience how Super 66 was typically used in shipyards in terms of where it was mixed, how it was transported by the workers, that kind of thing?

A Conventionally the product was mixed on dockside, either in the wheelbarrow, then the soft mixture in a small pail and transferred to the location, to the area of application.

Q There has been testimony in this case from the insulation foremen of Peterson Builders that their procedure for the insulating crew was to mix Super 66 in a five gallon pail somewhere off ship and then carry it on to the ship, mix, and then apply it. Would that, from your experience, be the conventional way the material was used in the shipyards?

A Yes.

Q In the period of time from 1950 to 1960, did Super 66 have asbestos fiber in it?

A Yes, it did. *slp 90 + .14*

Q What was the percentage of asbestos fiber?

A It varied between 8 1/2 to 10 percent by weight.

Q Did the variations occur during different periods of time and depend on how the product happened to be mixed in the plant?

A No, the variation was due to recommendations that were issued

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through the Research Department to improve the performance and quality of the product?

This would be Eagle-Picher's Research Department?

That is correct.

During a period of time from 1950 to 1960, was Super 66 on the qualified products list of the United States Navy?

A Yes, it was.

Q Would you explain to the Court and Jury what the qualified products list was?

A Well, the qualified products list was and is a certification of a company's product that qualified it to receive bids from the government for use. In this case, on Navy vessels and Navy installations. Without that qualified products list you would not recognize its use and approval for the Navy or the government.

Q In other words, you could not sell to the Navy or the government if you were not on the qualified products list?

A That is correct.

Q How do you get on the qualified products list?

A Initially, in this case of Super 66 product, that dates back to 1933, and which periodically with no set intervals, but sometimes it ran — the Navy or the government branch would periodically check the product to maintain and assert on records that the material was still the same quality as originally qualified as certified.

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Q During the ten year period from 1950 to 1960 were there other insulating products on the qualified products list, other than Super 66?

A Yes.

Q ~~As far as you knew, did any of the other cements not contain asbestos? Let me rephrase it. Were all of the insulating cements on the qualified products list between 1950 and 1960, cements which contained asbestos fiber?~~

Yes

A Yes.

IN [Q When did Eagle-Picher first learn that the asbestos containing insulation products may pose a health hazard to the insulator who worked with it?

A In the spring of 1964.

Q And how did this information or knowledge come to the company?

A Through our anticipation and attendance at an annual meeting of the International Insulation Manufacturer's Association.

Q Do you know who it was at this meeting that made that announcement, put out that information that there may be a health hazard?

A One of the member directors of that organization announced at that meeting that their company was considering placing a caution label on their container that the product contained asbestos.

Q What company was that?] stop - go to 17

A Johns-Manville.

Q Did Eagle-Picher ever mine asbestos?

A No, sir.

Q I assume that you did have to buy asbestos to put it into the mix that turned out to be Super 66?

A That's right.

Q Did you actually have employees who worked on an assembly line putting asbestos fiber and other materials into the mix that created Super 66?

A Yes.

Q As of 1964, had Eagle-Picher ever had a Worker's Compensation claim where an employee alleged, even alleged that they had asbestos related disease?

A There were no workmen's complaints at that time.

Q The testimony in this case has shown that Mr. Wester died in June of 1977. As of that time had Eagle-Picher ever had a Worker's Compensation claim among its employees where it was even alleged that the employee had an asbestos related disease?

A No.

Q What did Eagle-Picher do in 1964 when you learned that there might be a health hazard to insulators working with your product?

A The company decided at that time that we would, in fact, use the suggested wording and place that caution label on the

container containing the product.

Q Did you, in fact, do that in 1964?

A That was accomplished initially in June of 1964.

Q I show you a series of letters marked as Exhibit No. 236 and Exhibit No. 240. Those are letters from Mr. John Harrington who worked for Eagle-Picher in 1964, is that correct?

A That is correct.

Q Did you know Mr. Harrington?

A Yes, I did.

Q Could you tell the Court and Jury the nature of the relationship between Eagle-Picher and the companies that those letters were sent to?

A The relationship concerns the fact that our company re-branded certain cement products for those companies shown in this Exhibit under their names. We re-branded Super 66 under their names rather than our own name.

Q You would put their name on the Super 66?

A That is right.

Q Now, what was the purpose in sending out those letters to those companies in June of 1964?

A To advise them that our firm was placing that cautionary label on the package and we were leaving it at their option if they wanted to follow suit.

Q You believe Mr. Harrington was the one who gave permission

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for that?

A That was the company's indication.

Q Who was the first company in the industry who put a warning on their asbestos containing products?

A To the best of my knowledge, Eagle-Picher Industries.

Q Now, after 1964, did Eagle-Picher develop asbestos free cement in their insulation products?

A Yes, in due course.

Q When did you begin the actual retail sale of asbestos free cement?

A The first actual sale occurred in late 1970.

Q And when we say asbestos free cement, we're talking about the insulating cement that does not have any asbestos fiber in it, right?

A That is right.] step 1, page 20

Q Could you describe to the Court and Jury the process that went on in developing asbestos free cement and deciding to go ahead and put it on the retail market?

A That development initially began in early 1960. However, the problems encountered at the production level were so involved and complicated it actually took a ten year period to develop our own grain and fiber of such a module.

Q Could you tell us what a module is?

A A module is taking a fibrous material, associating it to a granulating system and roll it into a small granular balls

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as the case may be.

Q Go ahead.

A We had to change our furnaces and raw material supplies to our furnaces in order for us to have the proper fibers and when we were able to make our modules, when this was accomplished we submitted several trial lots of the asbestos free product to the trade and initially efforts were not successful, but by August of 1971, we were able, we had been able to develop the product to a certain degree and it was accepted from us by the general industry. no

Q In your opinion, from a strictly functional standpoint, did the asbestos free cement being sold at this time work as well as the cement which had been used in insulation? From a strictly functional standpoint.

A No, sir, they do not.

Q At the time Eagle-Picher started to sell asbestos or sold asbestos free cement, did you end the sale of asbestos containing cement?

A Yes, sir.

Q At the time that occurred, was the Navy still requiring asbestos fiber in its cement?

A Yes.

Q I show you what has been marked as Exhibit 487, which is a letter apparently undated but there's a stamp "Received" May 28, 1969. Was this a letter sent to Eagle-Picher?

A Yes, it appears to be.

Q And on whose letterhead is that letter?

A Department of Navy.

BY THE COURT: ~~What~~ is that exhibit number?

MR. SCHNECKEPEPER: 487.

Q What is the general thrust of the letter?

A The general thrust seems to be their acknowledgement of the serious hazards of using asbestos and they are requesting us in order to minimize those hazards, did we or could we develop asbestos free products.

BY THE COURT: ~~What~~ is the date of that letter, sir?

A There was no date, Your Honor, from the Navy but there is a receiving stamp of 28 of May, 1969.

MR. SCHNECKEPEPER:

Q Finally, Mr. Bockstahler, there was testimony in this case last week by Dr. Schepers that in 1964 he co-authored an article with a doctor by the name of W.J. Hannon (phonetically) who he said was a medical consultant to Eagle-Picher. At my request, have you reviewed the records and other material available to see if Dr. Hannon was a medical consultant?

A Dr. Hannon, to the best of my knowledge, is unknown to Eagle-Picher.

MR. SCHNECKEPEPER: Thank you. I have nothing further.

BY THE COURT: Anything else?

MR. JUDE: I have nothing, Your Honor.

MR. HOAGLUND: No questions, Your Honor.

CROSS EXAMINATION BY MR. MOTLEY:

Q You pronounce your name Bockstahler, sir?

A That is correct.

Q I don't believe I ever met you, but in and out of the hallway a while ago, and it is nice to meet you, Mr. Bockstahler.

A Thank you.

IN [Q Are you a stockholder of Eagle-Picher?

A In a very modest way, yes.

Q You do own stock in the company?

A Yes, I do.

Q And did I understand that your present role for this company is ~~Special~~ Litigation Administrator?

A Actually I am Litigation Assistant to the General Counsel.

Q So are you practicing law?

A No, sir.

Q Tell the Jury what your responsibilities are as ~~Special~~ Litigation Assistant to the Eagle-Picher lawyers.

A Due to my background in the fibers department or in the insulating manufacture side of the business, my purpose with the company is to collect data, organize information to assist our Legal Department, to answer interrogatories and also due to my background with the products, to assist our

Defense Counsel from an educational standpoint so they become well versed in the company's background in our involvement in the insulating business.

You mean you've got a fulltime job assisting Mr. Schneckpeper?

A Not that gentleman particularly.

Q More than Mr. Schneckpeper?

A Yes, more than Mr. Schneckpeper.

Q People not lawyers, not working in Milwaukee?

A Yes.

Q You help lawyers representing Eagle-Picher in South Carolina?

A Yes.

MR. SCHNECKPEPER: Your Honor, I object at this point. I think we're getting afar.

BY THE COURT: Sustained.

MR. MOTLEY:

Q Well, do you testify, Mr. Bockstahler, do you testify for Eagle-Picher, is that part of your job as a ~~Special~~ Litigation Assistant?

A Yes, I have testified in the past.

Now, did I understand you to say that the first time that Eagle-Picher found out about asbestosis in insulation workers was in 1964?

A In 1964 the company learned of the possible potential hazards

of the product, yes.

Q And you said you knew a Mr. John P. Harrington, is that correct?

A Yes.

MR. MOTLEY: May I give the witness Exhibit No. 187, Your Honor, which I have blown up?

BY THE COURT: Yes.

MR. MOTLEY:

Q Have you ever seen this letter of Mr. Harrington on asbestosis among insulation workers, dated September, 1962?

A I have not seen this correspondence, sir.

Q Well, let's read along with the Jury now. You told Mr. Schneckpeper one of your jobs was to research all of the documents, didn't you say that, relating to asbestos?

A To the best of my ability that is correct.

Q How come you didn't find this one?

A I don't know. 7/14/63 + 23

Q Do you know that your company produced this in a lawsuit in another State, out of their own records that you claim to be familiar with?

MR. SCHNECKPEPER: The records reproduced them in this case also.

MR. MOTLEY:

Q Did you review it before you came up here today?

A No, sir, I never saw it before.

MR. MOTLEY: Your Honor, may I display the bulletin?

BY THE COURT: Yes.

MR. MOTLEY:

Would you agree with me that paragraph 2 talks about asbestosis among insulation workers --- say filed 13 in California, one in Connecticut, one in Florida, one in Pennsylvania, one in New York --- that it is a fad for making asbestosis claims for these insulation workers --- the asbestos workers were taking x-rays because they were getting sick --- the cost of medical aid and welfare has doubled. Most of the contract associations were interested in obtaining information from any of the manufacturers that include asbestos on their experience with it and that the western contractor's association was putting together a study on this problem. Do you see that, sir?

A Yes, I do.

D-Q [Would you change your opinion now, sir, that the first information your company had that insulation workers were getting sick from asbestos was 1962?

A On the basis of the correspondence you have just shown me I would say that is accurate.] slip 190 to 25

Q So it should have been '62. Well, in your research of records did you come across a lawsuit where your company was sued for selling this same cement that ~~the~~ claim would not cause harm until 1964 by Mrs. Gladys ~~Polino~~, F-a-c-i-a-n-o,

who sued the Eagle-Picher Company, attention of Mr. Richard ^{out} Ferrel (phonetically), Legal Department, and the basis for that suit was that you sold that cement and didn't tell anybody it would make them sick and her husband died from asbestos poisoning and it was filed March 27, 1961 in the State of Louisiana. Have you ever seen that through your search of the records?

A Last evening our Defense Counsel reminded me of this case of which I had no prior knowledge.

Q Well, what about Mr. Russell Pickard, your own employee? You said you didn't have any claims. Didn't you know he sued your company in 1962 and on Page 4 in his Workmen's Compensation claim he claimed that he had been injured by insulation wool asbestos and granulated insulation?

A I am familiar with the Pickard case, that is correct. However, Mr. Pickard was not claiming asbestos complications.

Q Well, he sure claimed it on Page 4, didn't he, sir?

A Mr. Pickard was actually claiming respiratory problems from fugitive dust. There were a number of dust than asbestos.

Q Fugitive dust?

A Fugitive dust.

Q Well, isn't asbestos one of those fugitive dusts he is claiming about right here? He says plastic material, insulation material, that's what you were talking about Eagle 66 was a plastic insulation material, wasn't it?

A That's what it was normally known as, yes.

Q Plastic material continue throughout the time of employment and that the mixture of chemical insulation wool, asbestos and granulated insulation mixed in a cement mix caused dust from the said chemicals that float in the air. Do you recall that?

A There was a claim, yes.

Q Did you see --- your company was a member of an association, was it not, called National Insulation Manufacturers Association?

A Yes, that is correct.

Q That is the organization you claim first told you about the hazards of asbestosis, isn't it?

A That is the organization that first advised us that one of its members was going to place a caution label on its container.

Q And you knew this through G.J. Christner, an employee of Eagle-Picher Company back in 1960?

A Yes.

Q And do you know that he attended a meeting of the National Insulation Manufacturers Association January 13, 1960, in your research documents, do you see that, sir?

BY THE COURT: What exhibit is that?

MR. MOTLEY: Exhibit 90.

A 90, I don't find it.

Q Do you see that now, sir?

A I do recall seeing this, sir, yes.

Q You did see that?

A Yes.

Q They recommended, this group, of which your company belonged, should for the organization to look into health problems for your industry?

A That is so indicated, yes.

Q And that at the next meeting on May 6, 1980, they voted that down. Did you know that, sir?

A No, sir, I did not.

Q Did your company receive copies of the minutes of the meetings?

A Yes, certain members of the company received copies of the minutes.

MR. MOTLEY: Now we are on 91, Your Honor.

Q Were you aware that they voted it down, sir?

A No, sir, as I mentioned, I was not aware of this.

Q Well, when you were searching those records and helping the lawyers around the country defending Eagle-Picher, did you go over to the Eagle-Picher Medical Library?

A There is no library that could be called the Eagle-Picher Medical Library. There is a library maintained by research, industrial research, in Joplin, Missouri.

Q And its got medical stuff in it, does it?

A Some may be considered medical, but primarily it is scientific.

Q Well, what about if I ask you to assume, sir, that a deposition was taken in this case of Mr. Herman Heulster, do you know who Mr. Heulster is?

A Yes.

Q H-e-u-l-s-t-e-r. He was employed by Eagle-Picher for a long time, wasn't he?

A Yes, that is correct.

Q And he dealt with insulation materials, did he not, and he would be the Plant Manager, right?

A He was prior to his retirement the Plant Manager over the Fibers Department.

Q And he was listed as a witness in this case, did you know that?

A I believe he was at one time, yes.

Q When he took his deposition in this case, it was stipulated that these documents I have in my hand are xerox copies of the articles that appeared in the Research and Development Library of Eagle-Picher. Would you enter that stipulation or would you have reason to dispute Mr. Heulster's testimony?

MR. SCHMECKPEPER: We would stipulate to Mr. Heulster's deposition.

BY THE COURT: All right, sir, you have to take that as a fact.

A Well, may I clarify?

BY THE COURT: No, he will ask the question. I am just telling you your counsel stipulated that is a fact those documents were part of the deposition.

MR. MOTLEY:

Q And that you had in the Research and Development Library which I take it you say you never looked at. Have you been over there and looked to see what they have on asbestos in your own library, sir?

A Some people from the firm have done that. I have not personally done that.

Q Well, did they report back to you what they found?

A Nothing specific.

Q Did they tell you there was a 1936 textbook over there in your library on industrial dust by Phillip Drinker and Theodore Hatch that had a whole section on asbestosis and how it had been reported to kill people? Did they tell you that, sir?

A No.

Q Did they tell you there was a textbook in there dated 1940 called the Chemistry of Industrial Toxicology, by a Dr. Elkins, that it had a whole section on asbestos in it?

A No response.

Q Did they tell you that in 1930 a publication of the International Labor Office of Geneva that has a whole chapter on

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asbestos and asbestosis? I take it from your silence
nobody told you that, did they?

A Those articles are perhaps dealing with general problems
that apply in insulation application.

Q Did they show you this one specifically, doctor, a text-
book on ---

A I am not a doctor.

Q I am sorry, did they show you a textbook called Occupational
Medicine and Industrial Hygiene by Louis Batiste Johnston
(phonetically), dated 1948 and bears a stamp of having been
received in your Research Library, Joplin, Missouri,
August 29, 1953, and Dr. Johnston writes in 1948 that
asbestosis is a comparatively new disease. The first
comprehensive report regarding asbestosis came from an
English writer in the years 1920 and 1925. In America in
the early '30's studies were made by Lanza, Bahrs, Blumfield
and others. Asbestos is a hydrated magnesia silicate.
Occupational exposure occurs in those trades where it is
used for packing, insulating, or fireproofing or where it
is combined with cotton or other materials and textile
process. And then it goes on and discusses the fact of how
asbestosis kills human beings. Did you know that was in
your library, sir, where it talks about the people that work
with insulation products are exposed and at risk?

A It seems to infer that, yes.

all

yes

BY THE COURT: The question is, did you know it was in your library?

A No, I did not.

Q Do you know anybody associated with your company who ever bothered to go over there and read what you had in your own library about how asbestos was killing human beings in the '20's, '30's and '40's, sir?

A That library you refer to was maintained in Joplin, Missouri and served several operating divisions of the company, most of them were in the metal and chemical business, not insulation.

Q Well, did you ever call these fellows up and ask them what might be available if you were going to get into the asbestos business in 1931?

A The fiber people were not in direct contact with this particular research group.

Q Well, did you know where they were?

A They knew where they were, yes.

Q Did they know where you were?

A I would assume so.

Q You fellows talked to one another, didn't you? Didn't you have company meetings and picnics or something?

A I would assume they had company picnics, yes.

Q Now, Mr. Bockstahler, the truth of the matter is the library was not but two hundred yards away from the headquarter

isn't it?

A It's about that distance from the fiber manufacturing plant, yes. *shp*

Q Now, do you know about a gentleman named Mr. Losse, L-o-s-s-e, Paul Losse, Manager of Research Fibers?

A Yes, that is pronounced Lousey, Paul Losse.

Q Do you know he got fired from your company for misrepresenting about the hazards of asbestos to shipyards in Pennsylvania?

A I don't recall that Mr. Losse was fired from the company for that reason. *out*

Q If Mr. Huesler testified that he was discharged for his misleading the Navy yard on April 8, 1968, about the hazards of asbestos, what document do you have here to dispute that?

A There is no document to dispute that, but I don't believe personally that was the sole reason.

Q Was that one of the reasons?

A That could have been one of the reasons.

Q Mr. Huesler said that was the major reason. Would you have any reason to dispute that?

A That, of course, would be Mr. Huesler's opinion.

Q He was the Plant Manager, wasn't he?

A That is correct.

Q Now, as you sit here today, sir, do you believe that asbestos is toxic to human beings? *yes*

A In some human beings, I believe I do.

Q Well, what kind of human beings do you believe it is toxic to?

A I think excessive exposures of certain types of fiber could be hazardous to certain individuals. *skip 140 to*

Q Let me ask you, sir, if I can turn to another subject. If

Mr. Huesler testified that these military specifications that you were talking about where the Navy specified this, that and the other, were a creature of the industry growing. Would you agree with that?

A I would disagree with that.

Q Would you agree with Mr. Huesler that the asbestos companies had great input into the Navy and in the creation of these standards, sir?

A I have no knowledge of that.

For
Q In all of these documents that you have looked at that were recently produced, a big stack of documents where Eagle-Picher was writing the Navy back and forth and criticizing their standards and asking them to change the standards, you didn't look at those before you came here?

A I am not sure what you are speaking of.

Q You didn't give your cement away to the Navy, did you, sir?

A No, nor anyone else.

Q I understand that. You sold it to the Navy, didn't you?

A That's right.

Q And in 1964, when you wrote those letters to the people that rebranded your product, did you write a letter to the Navy and ask their permission to put that label on their sacks of cement?

A I do not believe there was correspondence with the Navy.

Q So you just put it on the sacks of cement and sold it, is that correct?

A Are you speaking of the Navy or the rebranding?

Q To anybody. You didn't sell cement to some folks that had a warning label on it and sell it to others that didn't, did you?

A No, we did not.

Q And you didn't have to go to the Navy to get their permission to put that warning label on there, did you?

A The Navy many times specified things on packages.

Q Well, please try to answer my question. You are supposed to be familiar with these documents. You have got a document in your pocket or in this mass of documents over there that shows where you wrote the Navy and asked their permission to put that label on the side of that package?

A No, I don't.

Q The truth of the matter is you didn't have to write the Navy a caution label on the side of the package, isn't that true?

A That is correct.

Stop 190 to 34

Q And those letters that were brought in here, do they have the language somewhere?

A I don't understand.

Q The letters that were brought here, do they have the ---

A Caution label itself?

Q Yes.

A I don't believe that has.

MR. MOTLEY: Do you have an exhibit Mr. Schmeckpeper, that has language on it? I think I know it fairly well myself.

In
[Q

Do you agree with me, sir, there ain't no skull or cross bones on there?

A On the label itself?

Q Yes, sir.

A No, sir.

Q Would you agree with me that if the Jury looked real hard they would never find the word "cancer" on there, would they?

A The word "cancer" is not in the caution label.

Q It doesn't even say "danger", just caution, doesn't it?

A I believe it says caution.

Q Has anybody from Eagle-Picher ever been on national T.V. to tell the public about the hazards of asbestos to the wives and children when the husband brings it home in their clothing?

no

ye
✓

all in
↓

A I don't believe so.

Q In fact, all you ever did from 1964 to 1972 was to slap that caution label that says caution; avoid breathing the dust. Excessive quantities of asbestos fibers may cause bodily harm, on the side of your packages, isn't that true?

A For most of that time period it was printed on the back.

Q Printed or slapped it, that's all you did?

A All in what regard?

Q To warn human beings that it contained asbestos which would kill you?

A The caution label I don't believe used that term either.

Q That it would kill you?

A That's right.

Q Did I understand you to tell your counsel that your asbestos free cement was not as good as your asbestos cement? Did I understand you to say that?

A Yes, I did say that.

Q Do you know a gentleman named P.K. Maitra?

A Yes.

Q Did he work for your company?

A Yes, he did.

Q Did you ever get a document from him where he said tests that we have run establish that asbestos free cements are equally as good as or better than our prior ~~One-Cote~~ and Super 66 Cement, which contain asbestos?

A Mr. Maitra is a research man and this is a laboratory test.

Q Well, you got a copy of the laboratory test, didn't you?

A

~~Yes.~~

MR. MOTLEY: Your Honor, I didn't have anything fancy to stick on here last night, but I marked that as Exhibit 620 and I ask Mr. Reporter to mark it now.
(Plaintiff's Exhibit 620 marked for identification.)

MR. MOTLEY:

Q

Did you ever see a document from Eagle-Picher where he suggested that the reason that asbestos had been an ingredient in the cement product over the years for economic reasons?

A

I don't think I understood the question.

Q

Did you ever see a document where somebody in your company wrote that asbestos had been an ingredient in our cement product over the years for economic reasons versus other fiber probabilities?

A

Well, the purchase of asbestos, of course, was economic reason and economic excess costs.

Q

So you put it in there because it cost more?

A

No, sir, we took it out because it cost more.

Q

Oh, you didn't take it out for health reasons, you took it out because it cost more. That's the truth of the matter, isn't it?

A

That was one of the primary reasons.

MR. MOTLEY: I don't have any further questions of this witness, Your Honor. Thank you, Mr. Bockstahler. no

BY THE COURT: Anything else?

REDIRECT EXAMINATION BY MR. SCHNECKENBERGER:

Q Let's take a look at Mr. Harrington's memorandum here of 1962. It does have in it the information about the fact that people were just started filing, apparently started filing asbestos Workmen's Comp claims out in the west, correct?

A Yes.

Q But when we get to the point where I believe Mr. Daily stopped it says The Associated Insulation Contractors of the Western States is now compiling information on this problem and I believe we have an excellent opportunity to place our case in the record as not being a contributing cause of any of these types of claims. Now, in 1962, what was Eagle-Picher's record with respect to workers compensation claims for asbestosis or asbestos related disease?

A We had no worker's comp claims.

Q Do you still have the complaint in the Faciane case that Mr. Motley showed you?

A Yes.

Q In reviewing this complaint, do you know that in addition to suing people who manufactured insulation, Mrs. Faciane claimed that her husband's condition was caused by things

such as fiberglass, foanglass or cork?

A That seems to be indicated here, yes.

Q Did they sue a couple of tobacco companies also claiming that the cigarettes that her husband smoked contributed to his problem?

A I can't detect that. I am not sure if that is correct. Should I review this?

BY THE COURT: I am not sure that is necessary. I don't know if we really need that. We are not trying that lawsuit.

MR. SCHMECKEPEPER:

Q Well, let me ask you one more question about this. The fact of the matter is that both Plaintiffs in answer to our interrogatories that this lawsuit if dismissed by the Court against Eagle-Picher as having no basis, correct?

A Well, since I have no prior knowledge of the case I don't know what the disposition was.

Q If that's what was stated in our answer to the Plaintiff's interrogatories which came from the record of Eagle-Picher I assume you would agree that information is correct?

A I would make that assumption, yes.

Q One more question. I show you my copy. Paragraphs 30 and 31, Mrs. Paciane claims that Reynolds Tobacco Company and P. Lorillard Company were also responsible for her husband's condition, correct?

A That is what 30 and 31 indicates, yes.

Q You also have the complaint of Pickard in front of you. I guess you didn't get that one.

A I don't believe I do.

Q Would you explain to the Jury what you mean when you said fugitive dust?

A Fugitive dust or nuisance dust is a term the hygienists use for commodities they don't consider endangers anyone's health.

Q And Mr. Pickard in addition to the word "asbestos" which appears on Page 4, also complains of things such as waste from iron-ore slag, mineral slag, silicate, smoke, fumes, insulation wood and a number of other things, correct?

A That is correct, those were all elements that exist in a mineral fiber plant.

Q In addition to the copy of the complaint in Pickard, which we provided the Plaintiff, and also give the Plaintiff a copy of Mr. Pickard's medical report from Mr. Pickard's doctor, correct?

A I believe that is correct.

Q Mr. Pickard's doctor did not diagnose Mr. Pickard as having an asbestos related disease, did he, according to what is on the face of the report?

A That is also correct.

Q Mr. Motley made reference to the memorandum by Mr. Maitra.

Would you tell the Jury what you meant when you said that although you testified in your opinion that asbestos free cement didn't work as well, Maitra said it worked as well or better but he was a researcher. Tell the Jury what you meant by that.

A Mr. Maitra at that particular time frame, which is August of 1971, did have the opinion, however, his evaluation of any product, including insulation cement was one of laboratory nature and taking that product from a half pound sample and having that performed under controlled situations in laboratories is not necessarily the same as taking the fifty pound bag of the product out in Green Bay, Wisconsin, in the middle of the winter and having it work the same as an asbestos containing product.

Q When you started sending the test batches of asbestos free cement to the trade to be tested, what kind of response did you get?

A Our initial efforts were quite disastrous.

MR. SCHECKPEPER: Thank you, nothing further.

RECROSS EXAMINATION:

MR. MOTLEY:

Q Would you agree, Mr. Bockstahler, that one of the most common and also one of the most dusty operations faced by asbestos and worker is hand mixing asbestos cement?

A I would not agree with that.

Q You weren't here when your lawyer made his opening argument to the Jury, were you?

A I don't believe so.

Q Would you accept my word that he said Dr. Belikoff was a good scientist and brought to the attention of the asbestos companies that hazards of asbestos?

MR. SCHMECKPEPER: I would stipulate what I said.

A How do you define asbestos companies?

MR. MOTLEY:

Q Well, your attorney just stipulated that he said that.

A Well, if you go on that basis.

Q You were in the asbestos business, weren't you?

A For a while. A portion of our company manufactured an asbestos containing insulation product. I don't know if that would classify us as an asbestos manufacturer.

Q Did you make a product called Eagle-Picher 20?

A No response.

Q Didn't you testify in the United States District Court of Virginia before a federal judge that you had a product called 20 or Eagle-Picher 20 that contained 100 percent asbestos?

A Yes, I did.

Q Well, this same Dr. Belikoff who your lawyer said is a fine scientist wrote this document, Exhibit 215, that I read to you, you don't agree with him?

BY THE COURT: What is the date of the document, please?

MR. MOTLEY: 1970.

A I don't personally agree with Dr. Selikoff, no.

Q Have you ever been abroad ship and watched them mix it up?

A Yes.

Q You have. Do you think this is dusty, Mr. Bockstahler?
(Mr. Motley showing Mr. Bockstahler a photo.)

A That appears dusty, yes.

Q Have you ever seen any photographs of cement being mixed up creating that kind of dust?

A No. Is that what this is allegedly?

Q What do you think it is?

A I have no idea.

MR. MOTLEY: I have no further questions, Your Honor.

MR. SCHMECKPEPER: No questions.

BY THE COURT: All right, you may step down.
(Witness Excused)

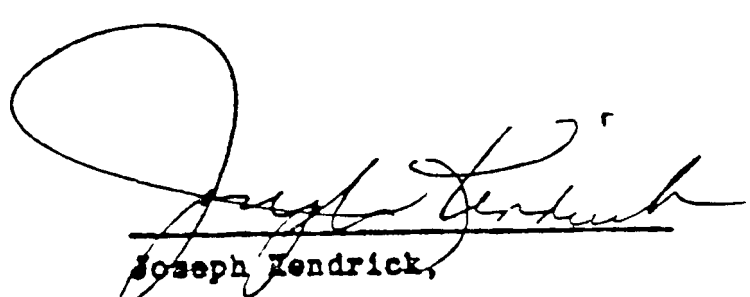
BY THE COURT: Let's take a short break. We will give you until 11:30.

(Hearing resumed and there was a reading of depositions which are not a part of this transcript.)

STATE OF WISCONSIN)
) SS.
MILWAUKEE COUNTY)

I, HEREBY CERTIFY that I am an official Court Reporter in and for Branch 32 of the Circuit Court, County of Milwaukee, State of Wisconsin; that I was present at the taking of the foregoing proceedings and that I recorded said proceedings in machine shorthand; that I have carefully compared said machine shorthand notes with the foregoing transcript, consisting of Pages 1 through 43, and find the same to be a full, true and correct copy, in typewritten longhand, of my original machine shorthand notes taken at said proceedings.

Dated at MILWAUKEE, WISCONSIN, this 19th day of November, 1982.



Joseph Hendrick,
Official Court Reporter
Branch 32