

IN THE SUPERIOR COURT OF THE
STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

JAMES FARRELL AND
LEOTA FARRELL, HIS WIFE

PLAINTIFFS

-vs-

CIVIL ACTION NO:77,1973

KEENE CORPORATION, ET AL

DEFENDANTS

DEPOSITION OF MR. GEORGE BARGE TAKEN AT
MONTREAL, QUEBEC ON APRIL 5, 1979

APPEARANCES:

William J. Wier, Jr., Esq.,
Robert Jacobs, Esq.,
Attorneys for Plaintiffs

Michael Goodrick, Esq.,
Attorney for Atlas Asbestos Co.
and Bell Asbestos Mines Ltd.

William Alsentzer, Esq.,
Attorney for Gale Corporation

James Geddes, Esq.,
Attorney for Armstrong Cork

WITNESS:

George Barge

BARGE

educational background?

A It is brief. Highschool, night school, and night school.

Q After finishing your formal education would you give us a brief resumé of your employment?

A After I graduated from highschool, I went to work for Keaseby & Mattison Co. in St. Louis, Missouri, in 1934, as a factory labourer. Do you want me to go through this a little bit?

Q If you would, sure.

A After several years I was transferred to the office on a temporary basis. After a number of years I was made office manager. In 1947 I transferred from St. Louis to Ambler, Pennsylvania.

Q Still in the employ of Keaseby, Mattison?

A In the employ of Keaseby, Mattison as assistant treasurer. I was made treasurer in 1951. Vice-President of finance 1960. And left Keaseby and Mattison in 1963 moving to Atlas Abestos Co. in May '63, in Montreal. In May '63 as Vice-President of finance. In May '64 I became the chief executive officer but I think my title was executive Vice-President

BARGE

sometime after because we were part of Bell but that was confusing to the public so sometime later I assumed the title of President but it was "of the Atlas Division" so I was the chief executive officer from '64, Presi- some time along the line and I retired March 31, 1973.

Q During the period of your employment what if any associations, formal or otherwise, have you had with Bell Asbestos Mines Ltd?

A I was from October '34 until sometime around March 1977 I was a director of Bell Asbestos Mines Ltd.

Q What were your duties in that capacity?

A It was being general manager of the Atlas Division of Bell.

BY ROBERT JACOBS, ESQ:

You were a director of...

A He said what was my relation with Bell.

Q That was in '64, not '34, right?

A Did I say '34?

BY WILLIAM ALSERTZER, ESQ:

I think you did.

A '64, excuse me. Well thank you. From October 1964 this is when Atlas was a division of Bell

BARGE

BY WILLIAM J. WIER, JR., ESQ:

Q Let me hand you a file which has been marked for identification as Exhibit 7 and refer you specifically to the agreement which appears as the first document in the file. I would like to know if you recognize that agreement?

A I don't recognize it but I can identify it.

Q Okay. I take that...

A This is not signed nor dated agreement, is it?

Q I believe you said I can identify it.

A You said am I familiar with it and I said no but I can identify it.

Q Yes?

A This is an agreement between J.W. Roberts, Armstrong Contracting and Supply Corporation and Atlas Asbestos Company dated 1967.

Q Pertaining to what?

A Spray mineral fibers.

Q Do you know of any of the events which preceded and led to the execution of that agreement?

A Well first I would have to read the agreement to know which one this is. There were many agreements and I don't know what this one did without reading...

Q I will represent to you this is known as the

BARGE

Triparte agreement which led to the assignment of the patents and trademarks relating to Limpet and the head licensing agreement leading to the distribution of Limpet from Armstrong Contracting and Supply to Atlas, the Atlas Division of Bell.

A Okay. Well would I be right in identifying this then as the agreement which gave Atlas the position to ship from Canada to the United States?

Q Yes sir, correct.

A And become the main licensee for the United States?

Q Yes.

A Yes. Your question is what led to this?

Q Yes.

A The deteriorating economic market I believe in which it wasn't feasible to ship fibers from England to the U.S. and it was possibly, didn't prove to be but we would expect it to be, to ship the spray fibers from Canada to the U.S.

Q Did you have any role in the formulation of that agreement?

A Yes. As an executive officer of the company

BARGE

I participated in the agreements in the decisions to do this.

Q Would you tell us the extent of your participation?

A Executive discussion.

Q With whom?

A The executive officers of the company.

Q About what?

A About the Limpet market.

Q Was the deteriorating economic conditions in the Limpet market I assume you meant to say in the United States the sole reason for the execution of the agreement between the parties?

A From Atlas' interest I believe so. That is all I can speak for. Atlas was manufacturing Limpet in Canada and thought that it would be an advantage to be able to ship it to the United States instead of somebody else shipping it from England. That was the economics to Atlas which was our interest.

Q Do you know whether or not the decision on the part of Armstrong Cork to produce a product known as arm-spray and the decision of Armstrong Contracting and Supply to market Arm-spray had any effect on the decision to

BARGE

execute that agreement?

BY JAMES GEDDES, ESQ:

Objection. I don't think there has been any foundation with regard to Armstrong Cork and Arm-spray.

BY WILLIAM J. WIER, JR., ESQ:

Q You may answer.

BY THE WITNESS:

A I know nothing about the decisions or activities of the Armstrong Company.

Q I see. Would you turn to page 5 of the agreement. You will note that on that page there commences a list of various machines or equipment for use in applying Limpet sprays asbestos.

A Yes.

Q Could you tell us what the various numerical designations which appear on the right hand side mean with regard to that equipment?

A I will tell you what I think they mean.

Q Yes.

A I think the numeric numbers mean the style of the machine, I mean the alpha designation, it is the style of the machine and the numeric number is the serial number of the machine.

BARGE

Q Would you turn to the next page.

A Yes.

Q Next to the geographical designation listed as Wilmington, Delaware.

BY MICHAEL GOODRICK, ESQ:

Objection to any reading in any way of any wording from this contract into the record.

BY WILLIAM J. WIER, JR., ESQ:

Would you tell us what is indicated to you by the numerical designation?

BY MICHAEL GOODRICK, ESQ:

It has been asked and answered I believe.

BY THE WITNESS:

A It is the style and the serial number of the machine.

BY WILLIAM J. WIER, JR., ESQ:

Q Do you know whether or not at or about the time of this agreement there was a Limpet spray asbestos application machine in Delaware?

A I think there was.

Q Do you have any knowledge as to who was the licensee of that machine?

BY MICHAEL GOODRICK, ESQ:

When?

BARGE

BY WILLIAM J. WIER, JR., ESQ:

At or about the time of the execution of the agreement.

A Yes.

Q Who?

A What was the question again?

Q Who was the licensee of the machine?

A Well if you want me to answer from what I read out of this contract, from what I imply from this contract I would...

BY MICHAEL GOODRICK, ESQ:

I object. Objection to any question which calls upon the witness to conjecture or imply.

BY ROBERT JACOBS, ESQ:

But you can answer him.

A I assume from the document you gave me that it was the responsibility of someone described as "Armstrong".

BY WILLIAM J. WIER, JR., ESQ:

Q Would you give me the file U.S.A. Limpet operations. While they are attempting to locate that file, excuse me, let me ask you if you know who it was that composed the Triparte agreement which we have been discussing. Who drew it up, who drafted it?

BARGE

A J.W. Roberts.

Q Let me show you a document which appears in the file which is Exhibit 7. It is a letter dated April 17, 1967 from Mr. Barr to a Mr. Reats. Incidentally who was Mr. Barr, could you tell us?

A Mr. Barr was Vice-President of sales of Atlas Asbestos Company in 1967.

Q Let me show you the document and ask you to read at least the third or the first paragraph.

BY MICHAEL GOODRICK, ESQ:

Read that to yourself. While he is doing that for the record I would object to any questions based upon any letter that it has been established that this witness hasn't any personal knowledge of.

BY THE WITNESS:

A I have read the first two paragraphs as you requested.

BY WILLIAM J. WIER, JR., ESQ:

Q Does that information refresh your recollection as to who drafted the Triparte agreement?

A No, but it states differently than I did.

Q Would that change your answer that the agreement was drafted by J.W. Roberts?

BARGE

A Well I answered as my memory dictated. This states contrary to that. This states that in 1967 it was indicated that someone else prepared the Triparte agreement.

Q Who was that?

A An employee of Armstrong C & S.

Q Name?

A Bill Noble.

Q I gather you have never discussed the Triparte agreement neither before it was executed or any time after its execution with Mr. Noble?

A This is the first time I have heard his name but I knew about the agreement. Incidentally I am not sure this is the agreement that was signed. This is a draft that was received in April 1967 but it doesn't tell me whether the agreement was signed. From my experience everybody issues a suggested agreement but only one of them gets signed.

Q I am sorry and apologize for being so long but we as you probably know have not been allowed to copy these documents so we have to keep attempting to find them in their existing files.

Mr. Barge I would like to hand you or show to

BARGE

you a letter which is contained in a file that has been marked as Todd Exhibit number 3. It purports to be a letter from Mr. Bateman to yourself.

A Yes, I read this letter from Mr. Bateman to Mr. Barge.

Q Do you recall receiving that letter?

A I don't remember receiving it but I know I did because I initialled it.

Q Who is Mr. Bateman?

A Mr. Bateman was an officer of Turner Newall Limited.

Q Do you recall the discussions or events which either precipitated that letter or followed receipt by you?

A Not specifically but it is a normal letter in the channel of transactions.

Q Did you respond, did anybody else on your behalf respond to the letter?

A No. This was a letter I think that it didn't require any response. It seems to be the end of the transaction.

Q Well do you know why Mr. Bateman was raising the questions which are indicated in the letter?

A No.

BARGE

Q Did you have any view as to how they should be answered?

A Well it didn't require an answer. He made a reference that he didn't understand why it was necessary but he says...

Q Why what was necessary?

A For Atlas to take over the Armstrong agreement instead of Roberts. It is a moot point at this time as far as I am concerned.

Q Instead of Roberts did you say?

A Instead of J.W. Roberts. It just doesn't hit me.

Q I gather you made no written response to the letter as far as you can recall. Is that right?

A From my habits and so forth, I am sure that I didn't reply. He didn't ask any questions really.

Q Were there discussions in your organization with representatives of the parent company or J.W. Roberts regarding the necessity of entering into the formal Triparte agreement?

A Yes.

Q Prior to its execution?

A Yes.

BARGE

with various insulation products and I know that we sold various insulation products to Armstrong Contracting and Supply.

Q Do you know or can you tell us what is the agreement that is referred to in the last paragraph on page 1?

A No.

Q You don't know?

A I don't know.

(Discussion off the record).

BY WILLIAM J. WIER, JR., ESQ:

Q Mr. Barge I have had the Court Reporter mark as Barge Exhibit number 4 a file entitled Limpet Royalty. I direct your attention to a document which appears in that file of October 22, 1969 apparently relating to Limpet Royalties written by J.R. Ralphs to two individuals. To one individual, Mr. R.H. Pernata of J.W. Roberts Limited. In addition there are a number of abbreviations indicating other individuals got a copy of the letter. Would you first tell us who Mr. Pernata is and then identify the recipients, the other recipients of that letter?

A I never met Mr. Pernata. He was someone in