CERTIFIED COPY

UNITED STATES DISTRICT COURT

NORTHEASTERN DISTRICT OF CALIFORNIA

--o0o--

JOHN MANSVILLE SALES CORPORATION, Plaintiff,	)	
vs.	)	No. 81-4561-RFP
UNITED STATES OF AMERICA, Defendant.	)	

THURSDAY, DECEMBER 6, 1984

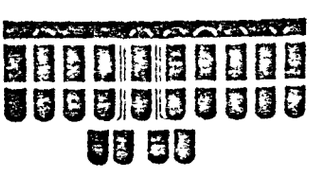
10:00 O'CLOCK A.M.

--o0o--

DEPOSITION OF JOHN C. CAPITOLO

Patrick R. Enck, CSR License No. 1425

Butte County Deposition Reporters
Certified Shorthand Reporters
P.O. Box 1269
Oroville, California 95965
(916) 895-3103



Point?

A. Packing items for machinery.

Q. So you would be promoting products --

A. Yes.

Q. Were any of those products asbestos-containing products?

A. Yes, a few of them.

Q. And what need did Hunter's Point have for these products during this period?

A. Well, to replace packing in machinery that started to leak oil, or gas, or something of that sort, or through the piston rods that would rotate -- it was just a medium to prevent leakage, and retain the oil so it doesn't leak out.

Q. As a packing salesman was it part of your job to know how Hunter's Point would be able to use your products?

A. Yes.

Q. And why would you visit the planners when you went to Hunter's Point?

A. To leave a catalog with them so that they would know the various John Mansville products that may meet their requirements, and then they would specify the type of materials -- not so much John Mansville, but a generic description of the materials, and then put it out for bid.

Q. And by leaving off this catalog the planners would know the type of John Mansville products that were available to satisfy their needs?

A. That's right.

Q. By reading the catalog?

Published by AsbestosClaims.Law
asbestosclaims.law/library/24458/2

A. That's right.
Q. Do you recall the names of any of the planners that you talked to?
A. No, I can't remember now.
Q. And why would you visit the storekeepers at Hunter's Point?
A. To see what level of inventory they had, and again acquaint them with John Mansville materials, so that when they received them they would know what it was all about, and where to send it, and how to use it within the base.
Q. And why would you visit the procurement people at Hunter's Point shipyard?
A. To be sure that either our distributor, or John Mansville would receive a requirement bid -- that is one of their bids so we could bid on the materials.
Q. You would want to assure that John Mansville, or one of your distributors would receive an invitation to bid?
A. That's right.
Q. And why would you visit the procurement people for that purpose?
A. That is what you just asked.
Q. But why would you visit them for that purpose -- what is their function at the shipyard?
A. They are purchasing agents.
Q. Do you recall the name of any of the storekeepers or procurement people that you talked to?
A. Can't remember them.
Q. Sir, do you know if any other representatives from John

Published by AsbestosClaims.Law
asbestosclaims.law/library/24458/3

Shop 64?

A. No, I don't. I wouldn't recall that. No, I don't.

Q. You don't recall the number of the shop?

A. I do not recall the number of the shop.

Q. Did you walk down to the ships during this visit with Mr. Gerlach?

A. No.

Q. Did Mr. Gerlach provide any indication to you during this trip that he had been to that shop previously?

A. Yes.

Q. What did he say to you in this regard?

A. That he met the foreman, and that was -- that was the extent of the conversation, outside of talking, and leaving the catalogs.

Q. And why would you leave the catalogs there?

A. Again for, to familiarize the individual about our products and to know how they should be used.

Q. Would you in your mind, or did you consider that one of the purposes of dropping off these catalogs with the people in the shop was to promote the use, and sale of John Mansville asbestos-containing insulation products?

A. Well, it was the idea to acquaint them with what John Mansville material could be used for, and to meet the specifications. Again, it requires the price, the specifications, and if it meets their requirements.

Q. But it was your feeling, was it not, that by acquainting these people in the shop with the material in the catalog, that that would be a promotion method of selling your

Published by AsbestosClaims.Law
asbestosclaims.law/library/24458/4

products?

MR. MONTGOMERY: I would object to asking for his feelings, as far as the form of the question. Mr. Capitolo said that he was there to acquaint them with the products of John Mansville, and to inform them they met Federal specifications. Object to the form of the question.

QUESTION BY MR. AUSTIN: Q. Let me rephrase the question.

You indicated that your purpose in dropping off the catalog was to acquaint these workers with your products, is that correct?

A. Yes.

Q. Was one of your purposes as territorial salesman in acquainting, in attempting to acquaint these workers with your products, so that that could ultimately aid the sale of John Mansville asbestos-containing thermal insulation products?

A. Your use of the word "sale," we can sell if we have the right price. If we don't have the right price, we don't sell. So in talking to the planners, or the foreman, or someone else, I am just saying that John Mansville materials meet the specification, and it goes to the procurement people, and they in turn put the invitation in to bid, and if we are the low bidder, we get the job, and if we are not, then there are other manufacturers that manufacture those materials, and if they happen to be the low bidder, even though I do a lot of promotional work, I don't do the selling.

Q. But nonetheless, sir, isn't it true that if these shop people know of your product, you are more likely to

Published by AsbestosClaims.Law
asbestosclaims.law/library/24458/5

these visits to Mare Island naval shipyard about three times a year, from the time you made this initial trip with Mr. Gerlach, until 1972, I think, 1973, is that correct?

A. Correct, yes.

Q. Would you be dropping this literature off during all of these visits?

A. No.

Q. Okay. What time period would you be dropping off the literature during?

A. The first time, and if there was any change in the catalog, which was an update, then we would give them a new catalog.

Q. Did you drop off any of these changes, or new catalogs after that first visit at Mare Island naval shipyard?

A. Yes. We had a new catalog out.

Q. And how often was that -- or how many different times did you drop off literature at Mare Island naval shipyard after this initial visit with Mr. Gerlach with you?

A. I would say maybe one or two.

Q. And when were those one or two occasions?

A. About a year or two after the first initial visit -- if we had a new catalog, and then another one two or three years later, if a new catalog came out.

Q. Okay. That's all the questions that I have. Thank you.

(Whereupon a short discussion was held off the record, and after which the deposition continues as follows:)

Published by AsbestosClaims.Law
asbestosclaims.law/library/24458/6

A. Oh, Sarah Paige.

Q. All right. How long did you meet with Miss Paige?

A. About three or four hours.

Q. And did your discussion with Miss Paige have to do with that deposition?

A. Yes, we were discussing the case with the deposition with the insurance company.

MR. AUSTIN: Okay. Nothing further.

(Whereupon a short discussion is held off the record, and after which the deposition continues as follows:)

QUESTION BY MR. AUSTIN: Q. Have you ever met with me, sir, to discuss any of your deposition?

A. With you?

Q. Yes.

A. No.

Q. Okay. Have you ever met with any other representative of the United States Department of Justice to discuss your testimony?

A. No.

Q. Okay. I promise, no further questions.

EXAMINATION BY MR. MONTGOMERY

QUESTION BY MR. MONTGOMERY: Q. Just a few. Mr. Capitolo, you mentioned in your direct testimony that you would provide catalogs of John Mansville material to planners at shipyards, did those catalogs make reference to Federal specifications?

A. Yes.

Published by AsbestosClaims.Law
asbestosclaims.law/library/24458/7

Q. And what type of reference?

A. Either within the description of the material under the trade name, or in the back of the book where we had a complete specification list we would show the trade name, the type of insulation it was, the type of material that were used to manufacture that, plus the fact that either at the bottom, at the bottom we would say, "This meets Federal Specification No. so-and-so," or in the back we would list the products, and then show the specification which it would meet, and then at one time we had a specification book where it was just nothing but Federal specifications, military, and some State specifications where we showed the trade names.

Q. Were you involved in the process at John Mansville whereby a product would be qualified for a specification?

A. No.

Q. Would you receive your information on whether or not a product had met a specification from John Mansville headquarters -- was that the source of your information?

A. It was through headquarters, in bulletin form, or catalog, or booklet form.

Q. Mr. Austin asked you the question, was it your understanding that all the district managers received the health hazards-related bulletin that you said you received in mid-1960, and you said, "No," did you mean by that, that you know that the district managers all did not receive it, or that you didn't know, or you don't know whether they did or not?

A. I don't know whether they received it or not.

Q. In 1968 when your territory, or late 1960's when your

Published by AsbestosClaims.Law
asbestosclaims.law/library/24458/8

territory expanded to include the Mare Island naval shipyard, and you gave us some testimony about visits that you and Mr. Gerlach had made to Mare Island, at the time when you first expanded, had Thermo-12 been approved by the United States Navy for use in their shipyards?

MR. AUSTIN: The problem I am having with that, you are talking now specifically about the first visit --

QUESTION BY MR. MONTGOMERY: Q. In your first visit, if you know.

A. I don't know. The only thing is, that we were in the process of coming out with the new product, and whether it was specified, or approved at that time, I don't know, but it was later approved.

Q. Would the items that you would promote when you went to shipyards be items that were, that met Federal specifications?

A. Yes. All of the products that we promoted, we were talking about met specifications.

Q. And Mr. Austin asked you a couple of questions concerning whether you knew whether or not the use by the Navy of John Mansville products on board ships created dust, and you indicated you had not seen it applied. Did anyone in the United States Navy, or associated with the United States Navy during any of your visits, or discussions with them, ever inform you that the United States Navy was using John Mansville products in such a way to create excessive dust so as to injure the health of Navy employees?

MR. AUSTIN: Objection.

Published by AsbestosClaims.Law
asbestosclaims.law/library/24458/9

QUESTION BY MR. MONTGOMERY: Q. Did anyone from the Navy ever tell you that?

A. No.

Q. Mr. Austin asked you a couple of questions concerning whether the catalog that you took with you, and distributed to the personnel at Mare Island naval shipyard after 1968 contained anything regarding the health hazards of asbestos products. Were you aware that prior to 1968 the United States Navy was fully aware of any potential health hazards associated with asbestos-containing products?

MR. AUSTIN: Objection.

QUESTION BY MR. MONTGOMERY: Q. Were you aware of that?

A. No, I wasn't aware of it.

Q. All right. Was it in your bailiwick as a sales representative to be discussing health problems, or that type of thing?

A. No.

MR. MONTGOMERY: Okay. Those are all the questions I have.

(Whereupon a short discussion is held off the record, and after which the deposition continues as follows:)

MR. MONTGOMERY: I will say again for the record, Mr. Capitolo, that you have a right to read and sign this deposition after it has been typed up to insure that it has been taken down accurately. And do you want to exercise that right?

Published by AsbestosClaims.Law
asbestosclaims.law/library/24458/10