

1978

Leerco v. Boise Cascade and Sanford Corp : Brief of Appellant

Utah Supreme Court

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Leonard H. Russon; Attorney for Appellant;

Joseph C. Fratto and James N. Barber; David R. Olsen; Attorney for Defendants and Respondents;

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IN THE SUPREME

STATE OF

LEERCO, a partnership

vs.

BOISE CASCADE

PAPER COMPANY

JOSEPH C. FRATTI
JAMES N. BARBER
431 South 300 East
Suite 204
Salt Lake City, Utah
Attorney for Respondent

DAVID R. OLSEN
Suite 2150 Beneficial Building
36 South State Street
Salt Lake City, Utah 84111
Attorney for Defendant Boise

IN THE SUPREME COURT OF THE
STATE OF UTAH

LEERCO, a partnership,

Plaintiff and
Respondent,

Case No. 15925

vs.

BOISE CASCADE and
SANFORD CORPORATION,

Defendants and
Appellant.

BRIEF OF APPELLANT
SANFORD CORPORATION

Appeal from the Judgment of the
Third Judicial District Court for Salt Lake County
Honorable Peter F. Leary, Judge

LEONARD H. RUSSON
HANSON, RUSSON, HANSON & DUNN
702 Kearns Building
Salt Lake City, Utah 84101

ATTORNEY FOR APPELLANT
SANFORD CORPORATION

JOSEPH C. FRATTO and
JAMES N. BARBER
431 South 300 East
Suite 204
Salt Lake City, Utah 84111
Attorney for Respondent, Leerco

DAVID R. OLSEN
Suite 2150 Beneficial Life Tower
36 South State Street
Salt Lake City, Utah 84111
Attorney for Defendant Boise Cascade

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IN THE SUPREME COURT OF THE
STATE OF UTAH

LEERCO, a partnership,	:	
Plaintiff and	:	
Respondent,	:	Case No. 15925
vs.	:	
BOISE CASCADE and	:	
SANFORD CORPORATION,	:	
Defendants and	:	
Appellant.	:	

BRIEF OF APPELLANT
SANFORD CORPORATION

STATEMENT OF NATURE OF CASE

This is a products liability action filed by the Plaintiff-Respondent, Leerco, claiming damages as a result of using rubber cement manufactured by Defendant-Appellant, Sanford Corporation.

DISPOSITION IN LOWER COURT

The case was tried to a jury before the Honorable Peter F. Leary, Third Judicial District Court Judge. At the end of the evidence, and upon all parties resting, Defendant Boise Cascade's motion for a directed verdict was granted.

Defendant Sanford Corporation also moved for a directed verdict. The trial court took the motion under advisement and submitted the case to the jury on special interrogatories. The jury returned a special verdict and two months later the Court ruled on Sanford Corporation's motion for directed verdict, denying the same. The Court also denied Sanford Corporation's motion for judgment notwithstanding the verdict or, in the alternative, for a new trial.

RELIEF SOUGHT ON APPEAL

Respondent Leerco claims it was damaged as a result of Appellant Sanford Corporation's rubber cement causing its photographic mosaics to turn yellow. Sanford Corporation claims that the evidence clearly shows that it was impossible for its cement to have caused the yellowing. that its product was free from defect, that Leerco was not damaged, and, therefore, its motions for directed verdict or for judgment notwithstanding the verdict should have been granted by the trial court. Appellant Sanford Corporation requests this Court to reverse the judgment of the lower court and to remand this case to the lower court with directions for judgment to be entered against Leerco and in behalf of Sanford Corporation, no cause of action.

STATEMENT OF FACTS

Leerco, Respondent herein, is engaged in business as consulting geologists. They are involved in photo-interpretation of the earth's surface for purposes of oil and mining exploration. In this regard, they create mosaics of photographs of the earth's surface.

In early 1975, Leerco purchased, from the United States Government, negatives of photographs taken of the earth's surface by the earth satellite. (R. 415-416, 435.) From these negatives, Leerco made prints. Each print covered a tiny portion of the earth's surface. (R. 416.) Leerco took the prints and grouped them together, therein creating mosaics covering larger areas of the earth's surface. (R. 416.) The mosaics were made by cementing the individual prints onto a plastic-like base called Mylar. (R. 435,500.) They were cemented with rubber cement, and each mosaic measured approximately 3 feet by 3 feet. (R. 444.) Almost 200 mosaics were made.

Immediately after each mosaic was made, a master negative of the mosaic was obtained. (R. 437, 486-487.) Each master negative is the same size as the mosaic. (R. 487, 435-436, Ex. 8-P.)

From the master negatives of the mosaics, Leerco made prints, hundreds of which were sold to purchasers worldwide. (R. 435, 465, 487, Ex. 20-P.) Leerco fulfilled its contract with Exxon in this regard. (R. 488-489.) Leerco is the owner of the negatives and the mosaics and merely sells the prints taken from such master negatives. (R. 437, 487.) The negatives will produce as many prints as needed, as long as the negative remains in good condition. (R. 436, 487, 549.) The negatives will last for decades. (R. 603.) Leerco keeps the original mosaic for updating purposes. (R. 491.)

In January, 1975, Leerco commenced the mosaic project in question, using Best-Test brand cement. (R. 442.) Toward the end of January, having run out of Best-Test brand cement, Leerco called Pembroke's (Defendant Boise Cascade) to order more. (R. 445.) Pembroke's informed Leerco that they were out of Best-Test brand, but had another brand, Sanford's Rubber Cement, "which was just as good." (R. 447.) Leerco purchased Sanford's Rubber Cement and proceeded with the mosaics. (R. 447, 449.)

Several months later, Leerco noticed the mosaics were turning yellow. (R. 452, 535.) They immediately discontinued using Sanford's and returned to Best-Test brand. (R. 454-455.)

Leerco does not know and has no way of ascertaining how many mosaics were made with Best-Test cement before they purchased Sanford's cement. (R. 527.) Leerco has no records which would indicate which mosaic was made with which cement. (R. 528-529.)

Leerco does not know which day or week any one mosaic was made. All mosaics were made in 1975, and all were produced with either Best-Test or Sanford's cement. (R. 535-537.)

Leerco had used three and one half gallons of Sanford's Rubber Cement prior to discontinuing the same. (R. 509.) They had purchased seven gallons of Sanford's cement and 8 pints (1 gallon) of thinner. (R. 509, Ex. 16-P.) Three gallons of the rubber cement were eventually returned to Pembroke's. (R. 509.) Of some 200 mosaics created, 94 turned yellow. (R. 457.)

Sanford's Vice President in Charge of Research and Development testified that one gallon of Sanford's Rubber Cement would cover 60 to 80 square feet per gallon, depending upon how thick the cement was applied, or one gallon of rubber cement would make 7 or 8 mosaics, cemented on one surface. (R. 684.) If one coat was applied on each surface, then coverage would be less. (R. 684.) He also testified

that Sanford's thinner added to rubber cement does not change the volume, but replaces the solvent which has evaporated. (R. 712-713.)

Pembroke's (Boise Cascade) ran a test as to coverage of Sanford's Rubber Cement and found that one gallon of cement would create six mosaics, measuring 3 feet by 4 feet. (R. 707-708.)

The Sanford's Rubber Cement costs \$7.00 per gallon. (R. 507, Ex. 16-P.) Leerco purchased seven gallons (R. 509, Ex. 16-P.) and returned three gallons (R. 509) and had half of one gallon left over. (R. 509.) Leerco's president testified that each mosaic required \$1.00 worth of rubber cement to make one 3 foot by 4 foot mosaic. (R. 509.) He testified that utilizing his figures, only about 28 mosaics could have been made from the Sanford's cement. (R. 510.)

The master negatives had been made of each mosaic before the yellowing appeared. (R. 531) Leerco's president testified that the mosaics are needed for purposes of "updating." (R. 491.) He testified that the "yellow" interferes with the gray tones and, therefore, if a new master negative were ever needed, a new mosaic would have to be made. (R. 473-474, 550.) None of the mosaics have been

redone in nearly three years, although Leerco's president did hear that three or four had been done during that time. (R. 530.)

Photographic experts, Borg Anderson and Kenneth Morrison, testified that the yellowing of the mosaics creates no problems in making new negatives from the mosaics, since such yellowing can be removed by filters without affecting the quality of the photograph and without affecting the gray tones. (R. 605-606; 649.)

These same experts also testified that it was unnecessary to keep the mosaics, since updating can be done with ease utilizing the master negative. (R. 621-622; 648-649.)

These experts also testified that negatives last for many years, and that negatives 100 years old can produce prints of the same quality as when originally made. (R. 603-604.) Negatives can produce "thousands and thousands" of prints. (R. 605.)

The Sanford label on the can stated that Sanford's Rubber Cement is transparent, and will not curl, shrink, or wrinkle. (Ex. 15-).) Leerco's president testified that the rubber cement is transparent when spread out and acknowledged that in the business, a film is transparent if it can be

seen through and can be of any color. (R. 515-517.)
Leerco had no other problems with their mosaics than the yellowing. (R. 505.)

The Sanford container states its purpose for cementing paper, and speaks throughout the label only in terms of "paper." (Ex. 15-P, also see Appendix A--photographic copies of all sides of container.) The Best-Test brand container states that it may be used with photographs. (Ex. 14-P, also see Appendix B--photographic copies of all sides of Best-Test container.)

Leerco's president did not read the label on the Sanford container prior to using. (R. 513.) He testified that the label did not mention photographs, nor did it mention plastics, but mentioned only paper. (R. 513-514.) He testified that his previous brand of rubber cement, Best-Test brand, did indicate on its label its use with photographs. (R. 514.)

Leerco's process called for cementing chemically treated photographic paper to a plastic base called Mylar. (R. 435.) Photographic paper has an emulsion of silver halides and is backed with plastic backing. (R. 650, 521.) This photographic paper is put through a process containing

several chemicals during developing. (R. 649-652.) This photographic printing paper, with its chemical substances, having gone through additional chemical processes, was then applied to a plastic Mylar background. (R. 521-523; 500.) Leerco's president testified that photographic printing paper was not ordinary paper but was chemically treated, plastic coated, and that there were things you could not do with it that you could with ordinary paper. (R. 567-568.)

Leerco's president, as well as the photographic experts, testified that yellowing of photographs can be caused by improper processing during the photographic developing procedures. (R. 543, 652.) It generally is due to improper "fixing" and improper "washing." (R. 543, 652.)

Sanford Corporation has been manufacturing rubber cement since 1948. (R. 679.) They produce 100,000 to 120,000 gallons of rubber cement a year. (R. 682.) They have not changed the formula in over 30 years. (R. 679.) During this 30 years, Sanford Corporation has received only two complaints concerning discoloration, this one by Leerco, and one other subsequent complaint from the East. (R. 680.) The subsequent complaint was traced to the use of a dirty

dispenser. The rubber cement in that case was free from defect. (R. 681-682.)

Sanford Corporation chemists tested a sample of the Sanford's Rubber Cement received from Leerco. (R. 682.) The usual quality control tests were made, as well as an infrared spectrophotometer test. (R. 682.) The sample received from Leerco was found to be free from defect and found to be equal in all respects to the standards set forth in the laboratory. (R. 683.)

ARGUMENT

POINT I. THE TRIAL COURT ERRED IN DENYING SANFORD CORPORATION'S MOTION FOR DIRECTED VERDICT.

A. It was impossible for Sanford's Rubber Cement to have caused the yellowing of the mosaics.

Leerco created nearly 200 photographic mosaics utilizing rubber cement manufactured either by the Best-Test company or by Sanford Corporation. Of the nearly 200 mosaics, 94 mosaics turned yellow. Leerco's president admits that he does not know which mosaic was made by which rubber cement, and does not know the date each mosaic was made. He further admits that he has no record which would reveal such information.

The evidence is without contradiction that Sanford's Rubber Cement could not have been used with more than 24 mosaics. Sanford's Rubber Cement may not have been involved with any of the yellowed mosaics, but without question could not possibly have been involved with more than 24 mosaics. The 70 remaining yellowed mosaics had to have been made with Best-Test brand rubber cement. This evidence is as follows:

Leerco used only three and one half gallons of Sanford's Rubber Cement on the mosaic project. It had purchased seven gallons of Sanford's from Pembroke's and returned three gallons. It still has one half gallon.

Every single witness, including Leerco's president, testified that one gallon of Sanford's Rubber Cement would make seven mosaics. Sanford's Vice President in Charge of Research and Production testified that one gallon of Sanford's Rubber Cement would make about seven mosaics. Pembroke's (Boise Cascade) ran an experiment which proved, as they testified, that one gallon of Sanford's Rubber Cement would make six mosaics size 3 feet by 4 feet. Leerco's president, James Lindsay, testified that their costs indicated that each mosaic required one dollar's worth of rubber cement.

They paid \$7.00 per gallon for the rubber cement, which meant that they could make seven mosaics with one gallon. He admitted that based on his own figures, Sanford's Rubber Cement could only have been used on 28 mosaics (which was assuming that four gallons had been used.)

It is noted that in addition to the seven gallons of Sanford's Rubber Cement (three of which were returned) Leerco also purchased one gallon (8 pints) of thinner. Sanford Corporation's Vice President testified that the addition of thinner to rubber cement does not increase the volume, but only replaces the solvent that has evaporated. In any case, the thinner could add only one additional gallon or seven additional mosaics.

The evidence is clear that most of the yellowed mosaics (about 70) were made with Best-Test rubber cement. There is no evidence that any of the yellowed mosaics were made with Sanford's cement. As to Sanford's, the only evidence is that Sanford's Rubber Cement may possibly have been used on 24 mosaics.

There is no evidence that either Best-Test or Sanford's caused any yellowing of the mosaics. The only evidence as to causation of yellowing was in regard to

improper developing of the photographs themselves.

Sanford Corporation submits that it was error to submit this case to the jury, on this point alone. There were no questions of fact to be decided. The evidence clearly showed, without question, that Sanford's Rubber Cement was not the cause of the yellowing of the 94 mosaics.

B. There is no evidence of negligence or of proximate cause on the part of Sanford Corporation.

Leerco's president admits that he does not know which mosaic was made with which rubber cement or when. He knows only that the nearly 200 mosaics were made in 1975, utilizing either Best-Test or Sanford's Rubber Cement.

Leerco's president does admit that yellowing of photographs can occur by improper developing. This testimony was consistent with the testimony of photographic expert Kenneth Morrison, of Cartwright Aerial Photography, who testified that photographs can turn yellow because of improper "fixing" and "washing."

The only testimony and evidence in this case as to "causation" of the yellowing of the photographic mosaics was the above testimony in reference to improper developing.

There is no evidence, and there was no testimony, indicating that either Best-Test Rubber Cement or Sanford's Rubber Cement had caused the yellowing. Therefore, Leerco never established a case to be submitted to a jury.

Even if causation between the rubber cement and the yellowing had been established, Leerco would still fail in establishing a case against Sanford Corporation. The evidence indicates the rubber cement in question was free from defect. Furthermore, Leerco used the rubber cement in a process not to be contemplated by Sanford Corporation. The jury, in answering Special Verdict Interrogatory No. 8, specifically found that Sanford Corporation "did not contemplate the use to which Leerco was going to place its rubber cement." Instead of using the Sanford's Rubber Cement in cementing paper, as indicated on the label, the cement was used to cement chemically treated photographic paper, which had gone through several chemical solutions, and which contained a plastic backing, to another plastic surface, Mylar.

Leerco's president admitted that the Sanford's Rubber Cement container did not mention use of the cement with plastic, or with photographs, but that only paper was mentioned. He further admitted that the Best-Test brand

of rubber cement did specifically state on the container that it could be used with photographs.

Leerco's president admitted that photographic paper is different from ordinary paper and cannot be treated in the same manner. He admitted, and the photographic experts testified, that photographic paper is actually a sandwich wherein the paper is situated between a chemical emulsion on one side, and a plastic backing on the other side. They all admitted that this special sandwich paper was placed through several chemical substances and acids during the developing process. In Leerco's operation, this photograph, following process, was then cemented to a plastic-like substance called Mylar.

Sanford Corporation has produced rubber cement since 1948. In over 30 years, it has never changed its formula. It produces 100,000 to 120,000 gallons of rubber cement a year, which, over 30 years, would amount to more than 3,000,000 gallons. In that same time, Sanford Corporation has received no similar complaint of yellowing.

The rubber cement in question, a sample of which was received from Leerco, was fully tested in Sanford's laboratories and found to be free from defect. It was found to be consistent with the standard rubber cement kept in

Sanford Corporation's laboratories.

In Bennett v. Pilot Products Co., Inc., 120 Utah 474, 235 P.2d 525, a beautician suffered dermatitis after using a mixture of defendant's permanent wave lotion and another product--a fixative. The trial court granted a directed verdict to the manufacturer of the lotion. The Utah Supreme Court affirmed the trial court, stating:

We believe, that under the facts of this case, the trial judge strained neither common sense nor realism in concluding that appellant's ailment, being the result of an allergy, was not compensable as a matter of law. We are sympathetic with appellant and her misfortune, but cannot require the merchant to assume the role of absolute insurer against physiological idiosyncrasy. To do so also would invest the elusive ordinary prudent man with a quality of foreseeability that would take him out of character completely. Every substance, including food which is daily consumed by the public, occasionally becomes anathema to him peculiarly allergic to it. To require insurability against such an unforeseeable happenstance would weaken the structure of common sense, as well as present an unreasonable burden on the channels of trade.

The Supreme Court continued:

Counsel for appellant very ably urged that there was sufficient evidence to reach the jury on the question of

negligence. Examination of the authorities requires that we differ, and in doing so we believe that there was no evidence to go to the jury on the question of the reasonable foreseeability of danger and harm to the normal person contemplated by law. Most of the cases cited deal primarily with situations where a defect or danger was established, or where the facts showed a reasonable foreseeability that the normal person would be injured by use of a product.

The Supreme Court further stated:

We must adhere to the philosophy enunciated by the cases reflected in respondent's citations and which was put so aptly by Dean Prosser in his work on Torts, p. 679, to the effect that:
"The manufacturer is at least entitled to assume that the chattel will be put to a normal use by a normal user, and is not subject to liability where it would ordinarily be safe, but injury results from some unusual use or some personal idiosyncrasy of the consumer."
Citing Walstrom Optical Co. v. Miller,
Tex. Civ. App., 1933, 59 S.W.2d 895.

In Merrill v. Beaute Vues Corp., 235 F.2d 893 (C.A. 10 1956) a woman used defendant's product on her hair and suffered a negative reaction resulting in permanent impairment to her vision. The trial court granted a judgment in favor of the manufacturer, notwithstanding the jury verdict, which judgment was affirmed by the Tenth Circuit Court of Appeals. The Court expressly found it significant

that the plaintiff's injury was the only one reported among many millions of users of the product. The Court stated:

Although there was no direct evidence tending to show that the plaintiff was allergic to defendant's product or that her injury constituted an isolated injury to an unusually susceptible individual, the undisputed evidence is that with the exception of two cases referred to in the Robson-Cameron article, the injury to plaintiff's optic nerve is the only one reported out of five hundred million users of the product. This in itself is sufficient to sustain the court's finding on this subject.

The Court continued:

We therefore have the question as to whether a manufacturer who places a product on the market, knowing that some unknown few, not in an identifiable class which could be effectively warned, may suffer allergic reactions or other isolated injuries not common to the ordinary or normal person, must respond in damages. Although there is authority to the contrary, we think the prevailing and better rule is that the injured persons in such cases cannot prevail. The reason generally given for the rule is that the injury is caused by allergy or the unusual susceptibility of the person and not the product. The essence of these decisions is that a reasonable person could not foresee the purchaser's condition and could not anticipate the harmful consequences.

The Court further stated in regard to warranty:

Neither do we think that the defendants are liable to plaintiff on an implied or express warranty. Warranties do not extend to injuries caused by peculiar idiosyncracies or physical condition of a user which are not reasonably foreseeable. The rule as to negligence in such cases applies to warranties.

In Price v. Ashby's, Inc., 11 Utah 2d 54, 354 P.2d 1064, the plaintiffs were injured in an automobile accident and sued the manufacturer of the automobile, alleging defect. The trial court held the evidence to be insufficient to establish that the alleged defect in the automobile was the probable cause of the accident. In that case, the Court stated:

With two or more possible causes such as an inattentive driver and a mechanical defect that would have made it harder to turn; proof that it may have been either is not proof that it was in fact either. No evidence indicated that either cause was the more probable.

In the case at bar, there is no evidence whatsoever of defect in the Sanford's Rubber Cement. There is no evidence, whatsoever, establishing that Sanford's Rubber Cement caused the yellowing in the photographic mosaics. The only testimony indicates that the yellowing probably was due to improper developing of the photographs themselves.

It is respectfully submitted that there were no facts to be considered by the jury, and that Sanford Corporation's motion for directed verdict should have been granted.

C. There is no evidence of breach of warranty on the part of Sanford Corporation.

Even if it could have been established that sufficient quantities of Sanford's Rubber Cement had been purchased to make the 94 mosaics, there is no evidence that the rubber cement was defective, and there is no evidence that the rubber cement caused the yellowing of the mosaics. There is no evidence of breach of warranty.

Leerco's president testified that he did not read the Sanford label before using the product. One cannot read the entire labeling on the container of the Sanford's Rubber Cement without concluding that Sanford's Rubber Cement is for cementing papers together. The Sanford container is in evidence as Exhibit 15-P, and a photocopy of each side of the container has been attached to this brief as Appendix A. It will be noted that the rubber cement is "for pasting and mounting paper." It states that this rubber cement "will not wrinkle paper." It instructs on one side of the container to "apply rubber cement to both

papers, and allow both to dry." The same side further discusses the handling of both papers in regard to this cement. The back of the can speaks only in regard to paper, and the directions on the back of the can apply only to paper. And, the back of the can indicates that the rubber cement is "a transparent, waterproof adhesive which, unlike paste and mucilage, will not curl, shrink or wrinkle even the thinnest paper."

Leerco's president admitted that photographic paper is different from ordinary paper and cannot be treated in the same manner. He admitted that photographic paper has an emulsion on one side and is backed with plastic. He admitted that during the developing process, this photographic paper is placed through several chemical and acid baths. Also, he admitted that in Leerco's operation, these photographs, following such processes, were then cemented to a plastic-like substance called Mylar.

He further testified that the Sanford's Rubber Cement was transparent when spread out and, furthermore, acknowledged that "in the business" a film is transparent if it can be seen through and can be of any color. He further acknowledged that Leerco claimed no other problems

with the mosaics other than their turning yellow.

Leerco's president admitted that the Sanford container did not prescribe its use with plastic or with photographs. He further admitted that the other brand of rubber cement, Best-Test brand, specifically indicated its use with photographs.

Even the jury found, in answer to Special Verdict Interrogatory No. 8, that "Sanford Corporation did not contemplate the use to which Leerco was going to place its rubber cement."

In spite of the fact that Leerco misused the Sanford product, it still accomplished what it stated it would accomplish by its label. It did not curl, shrink, or wrinkle, and it was transparent.

However, since most of the yellowed mosaics were actually made with Best-Test rubber cement, and since Best-Test rubber cement's container indicated that it could be used with photographs (Appendix B is a photocopy of the Best-Test container), it is obvious that the cause of the yellowing goes beyond the rubber cement of either brand.

D. The evidence clearly indicates that Leerco suffered no damages because of the yellowed mosaics.

Leerco claims it was damaged because the mosaics

had turned yellow. However, Leerco admits that it obtained a master negative of each and every mosaic before any of them turned yellow. Leerco further admits that they can make hundreds of prints from such negatives, and, in fact, had done just that, selling the same all over the world. Leerco further admits that they fulfilled their contract with Exxon Corporation. They further admit that they will be able to make prints from the negatives as long as the negatives last.

Leerco claims, however, that the mosaics are needed for updating, and that the yellowed mosaics are unuseable for this purpose, since the yellow interferes with the gray scale of the photographs. However, both photographic experts testified that the yellowing is unimportant since such can be completely eliminated by use of filters in creating new negatives. They testified that the filters will remove the yellow without affecting the quality of the picture and without affecting the gray scales.

Both experts also testified that it would be unnecessary to have the original mosaic for the purpose of updating, since the master negative could be used for this purpose.

Therefore, since Leerco has the original mosaics, all of which are useable, and since Leerco has master negatives of all mosaics, taken before the yellowing set in, and since either the yellowed mosaics or the negatives can be used for updating, and since negatives last for decades under proper care, and since Leerco fulfilled its contract with Exxon Corporation, and since Leerco can still produce prints of all the mosaics utilizing the master negatives, it is clear that Leerco has not been damaged because of the yellowed mosaics, regardless of the cause.

Even where negligence and proximate cause are present, one cannot recover unless one is damaged. It is clear from the evidence that Leerco suffered no damage.

POINT II. THE TRIAL COURT ERRED IN DENYING SANFORD CORPORATION'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT.

Sanford Corporation submits that it was error for the trial court to allow this case to go to the jury to begin with. Its motion for directed verdict was well taken, and should have been granted.


Sanford Corporation further submits that its

motion for judgment notwithstanding the jury verdict should have been granted. The argument put forth in Point I above is applicable here and is referred to and incorporated herein.

CONCLUSION

It is respectfully submitted that the trial court erred in denying Sanford Corporation's motion for directed verdict and its motion for judgment notwithstanding the verdict, and that the judgment of the trial court should be reversed and the case remanded to the trial court with directions for judgment to be entered against Respondent Leerco and in favor of Appellant Sanford Corporation, no cause of action.

Respectfully submitted this 8th day of December, 1978.


LEONARD H. RUSSON
HANSON, RUSSON, HANSON & DUNN
702 Kearns Building
Salt Lake City, Utah 84101
Attorney for Defendant-Appellant
Sanford Corporation

CERTIFICATE OF MAILING

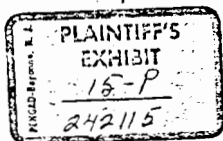
Two copies each of the foregoing Brief of Appellant Sanford Corporation were posted in the U. S. mail, postage prepaid, and addressed to the Attorneys for Respondent, Joseph C. Fratto and James N. Barber, 431 South 300 East, Suite 204, Salt Lake City, Utah 84111, and to the Attorney for Defendant Boise Cascade, David R. Olsen, Suite 2150 Beneficial Life Tower, 36 South State Street, Salt Lake City, Utah 84111, this 8th day of December, 1978.

APPENDIX A

Sanford's Rubber Cement Container Label

Four Sides

NO. 490

ONE GALLON
3785 cc.*Sanford's*

Rubber Cement

*Better-
Neater*

WILL NOT
REINFORCE PAPER
EXPOSED CEMENT
RUBS OFF

*Artists
Quality*

FOR STUDIO AND
GRAPHIC ARTS
WORK

**DANGER!****EXTREMELY FLAMMABLE**

See complete warning statement
on other side of container

Sanford's Rubber Cement

A transparent, waterproof adhesive which, unlike paste and mucilage, will not curl, shrink or wrinkle even the thinnest paper. Used in the graphic arts in the preparation of layouts, sketches, comprehensives, dummies, finished art, paste-ups, presentations, etc.

Paper mounted with rubber cement sticks tight and remains flat, but can be peeled off at any time. Mounted paper can be trimmed with a razor blade after it is in place, and unwanted parts can be lifted off without damage. Surplus cement along edges rubs off easily and completely after it has dried.

To thin, use Sanford's Thinner or a rubber solvent.

DANGER — EXTREMELY FLAMMABLE MIXTURE
DO NOT USE NEAR FIRE OR FLAME
N. Y. F. D. C. of A. No. 1610
CONTAINS NAPHTHA

Harmful or fatal if swallowed. Keep away from heat, sparks and open flame. Avoid frequent or prolonged contact with skin. Use only in well ventilated area. If swallowed, do not induce vomiting. Call physician immediately.

KEEP OUT OF THE REACH OF CHILDREN

DIRECTIONS

1. **Quick Mounting:** Apply cement to the paper and press in place immediately. Position of paper can be adjusted as long as the cement remains wet.
2. **Dry Mounting:** For most work, and especially for large areas or heavy papers, apply cement to both the paper and the surface on which it is to be placed. Allow both surfaces to dry, then press together.
3. **Maximum Permanence:** Apply to both surfaces and allow both to dry. Apply again to one surface, and press together immediately.
4. **Masking:** To mask out areas in painting, spraying or air-brushing, apply cement to the areas you do not wish painted. Allow cement to dry, then apply paint over everything. When the paint is dry, remove the cement from the protected areas with a rubber cement pick-up.
5. **To make a rubber cement pick-up:** Pour out two or three tablespoons of cement on a plate and allow to dry. Roll up the dried cement into a ball of rubber. This can be used as an "eraser" to pick up excess cement around the edges of the work. Sanford's Rubber Cement Magnet, an ideal pick-up, is available in most stores.

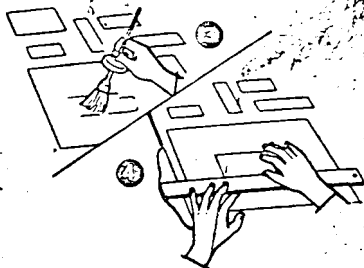
SANFORD'S

BELLWOOD, ILLINOIS

© Sanford Ink Company, Bellwood, Illinois

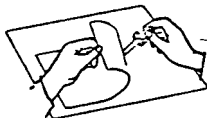
Made in U.S.A.

A GOOD WAY TO MOUNT SMALL PIECES FOR MAXIMUM PERMANENCE



1. First cut each small piece to its approximate size, leaving enough margin for convenient handling.
2. Apply cement to the separate pieces, and also to the paper on which they are to be mounted. Allow both to dry.
3. Apply a second coat to a small area of the paper where a piece is to be mounted (illustrated above).
4. Immediately place the corresponding small cemented piece over the wet cement, adjust position, and press down firmly. As long as the cement remains wet, position can be adjusted (illustrated).
5. Continue, one small area at a time, until all pieces have been mounted. Then trim the pieces to their final sizes, and remove surplus cement with a pick-up.

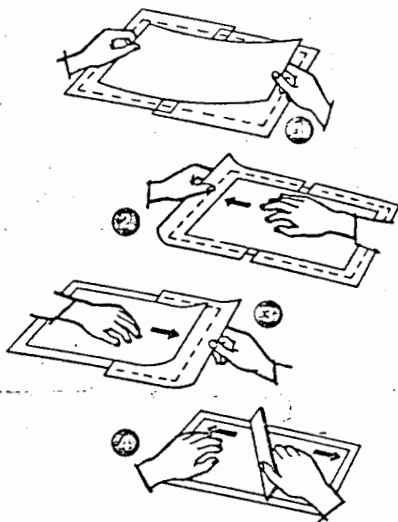
TO SEPARATE CEMENTED PAPERS



Papers that are thin, fragile or heavily cemented can be separated without damage by applying a few drops of Sanford's Thinner between them. Apply with a medicine dropper or a small brush as the papers are carefully pulled apart.

Appendix A
Sanford Label
Side 3

A GOOD TIP FOR MOUNTING LARGE AREAS



1. Apply rubber cement to both papers, and allow both to dry. Place slip-sheets of thin paper over one cemented surface, overlapping the slip-sheets slightly at the center. Lay the other cemented paper in place and adjust its position. The slip-sheets will prevent contact of the cemented surfaces.

2. Pull out one slip-sheet far enough to allow the cemented surfaces to join along a narrow band at the center. Press papers together along this band. Continue to press, always from the center outward, as you slowly withdraw the slip-sheet. This will keep air pockets from forming and assure perfect smoothness.

3. Withdraw the other slip-sheet in a similar manner, pressing the papers together from the center outward.

4. Finally press the entire area of the papers thoroughly with a straight-edge, always applying pressure from the center outward.

APPENDIX B

Best-Test White Rubber Paper Cement
Container Label
Four Sides

APPENDIX B

BEST-TEST

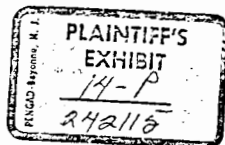
REG. U.S.

WHITE
RUBBER

PAT. OFF.

PAPER CEMENT

A Real Adhesive



NO
WRINKLING
CURLING
SHRINKING

DANGER: EXTREMELY FLAMMABLE
HARMFUL OR FATAL IF SWALLOWED
READ INSTRUCTIONS ON SIDE PANEL BEFORE USING

UNION RUBBER & ASBESTOS CO.

TRENTON, N. J. 08606

CONTENTS 1 GAL.

Made in U.S.A. 3.785 LITERS CODE No. 103

Appendix

Best-Test

Side 2

BEST-TEST

REG. U.S.

WHITE
RUBBER

PAT. OFF.

PAPER CEMENT

A Real Adhesive

NO
WRINKLING
CURLING
SHRINKING

DANGER: EXTREMELY FLAMMABLE
HARMFUL OR FATAL IF SWALLOWED
READ INSTRUCTIONS ON SIDE PANEL BEFORE USING

UNION RUBBER & ASBESTOS CO.

TRENTON, N. J. 08606

CONTENTS 1 GAL.

Made in U.S.A. 3.785 LITERS CODE No. 103

THE BEST-TEST CEMENT DISPENSER



Available in nine and sixteen ounce sizes.

The convenient and economical way of applying cement.



For thinning "BEST-TEST" we recommend our "Bestine" Solvent & Thinner.

Available in Pint, Quart and Gallon cans.

Also packed in five-gallon drum.

UNION RUBBER & ASBESTOS CO.

TRENTON, N. J. 08606

Made in U.S.A.

Appendix B

Best-Test Label

Side 3

**CAUTION—FLAMMABLE MIXTURE
DO NOT USE**

NEAR FIRE OR FLAME
N.Y.F.D. C. of A. No. 686

DIRECTIONS

Apply an even coat of cement to one surface and join immediately. Cemented mountings can be peeled apart if a hard surface paper is used.

On heavy mounts or if a strong bond is desired, apply cement to both surfaces and allow to dry. Press firmly together, making sure entire surfaces are in contact to avoid air pockets.

Excess or misplaced cement can be removed by rubbing with the finger.

For coating Frisket Paper, mix thoroughly equal parts of cement and our "Bestine" Solvent & Thinner. Apply a light coat and when dry apply a second coat.

BEST-TEST

REG. U.S.



PAT. OFF.

PAPER CEMENT

An excellent adhesive for all paper pasting purposes. Use it for mounting drawings, sketches, dummies, layouts, photographs and for frisket work in the Graphic Arts field.

This cement will congeal in cold weather. When this occurs, store in a temperate place until returned to normal consistency. Do not expose to excessive heat at any time.

DANGER: EXTREMELY FLAMMABLE.

KEEP AWAY FROM HEAT, SPARKS AND OPEN FLAME

CONTAINS PETROLEUM DISTILLATES

USE WITH ADEQUATE VENTILATION. AVOID CONTACT WITH SKIN. CLOSE CAN WHEN NOT IN USE. IF SWALLOWED, DO NOT INDUCE VOMITING. CALL A PHYSICIAN.

KEEP OUT OF REACH OF CHILDREN

UNION RUBBER & ASBESTOS CO.
TRENTON, N. J. 08606

Appendix B

Best-Test

Side 4