

Exhibit 4

COURT REPORTERS
OF AKRON CANTON AND CLEVELAND

Transcript of the Testimony of
Todd Rhett Hawkins

Taken On: August 20, 2008
Case Number: 2:06-CV-2141-DGC

Case: Soilworks, LLC, vs. Midwest Industrial Supply, Inc.,

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<p style="text-align: right;">122</p> <p>1 A. Personally, no.</p> <p>2 Q. Do you know if anyone else at Midwest</p> <p>3 Industrial Supply ever did?</p> <p>4 A. I don't know.</p> <p>5 Q. So if I can just kind of go back and</p> <p>6 summarize a little bit with respect to</p> <p>7 Exhibit 23, in the first two pages, which</p> <p>8 constitutes essentially a letter to the Patent</p> <p>9 and Trademark Office, correct?</p> <p>10 A. Correct.</p> <p>11 Q. And that letter was written because it was</p> <p>12 the feeling of the applicant, in January of '05,</p> <p>13 or the belief of the applicant in January of</p> <p>14 '05, that there was an infringing device or</p> <p>15 product actually on the market, correct?</p> <p>16 A. Correct.</p> <p>17 Q. And that one of those products was the</p> <p>18 Soilworks Durasoil product?</p> <p>19 A. Yes.</p> <p>20 Q. For which no chemical testing or analysis</p> <p>21 had been done by you at that point, correct?</p> <p>22 A. I personally had not done any chemical</p> <p>23 analysis.</p> <p>24 Q. Are you aware of any that had been done?</p> <p>25 MR. SKERIOTIS: Objection, based</p>	<p style="text-align: right;">124</p> <p>1 Durasoil product?</p> <p>2 MR. SKERIOTIS: Same objection. I</p> <p>3 mean, if, in fact, some testing was done, it</p> <p>4 would be in anticipation of litigation. So to</p> <p>5 the degree that your objection is -- I mean, it</p> <p>6 clearly references "allegedly infringing</p> <p>7 product," and should Midwest have received the</p> <p>8 patent as these claims were drafted on page 3, I</p> <p>9 would assume litigation would be anticipated;</p> <p>10 and therefore, I would maintain the objection.</p> <p>11 And if, in fact, any of your response</p> <p>12 would be that any testing or not was done with</p> <p>13 an attorney present, then I instruct you not to</p> <p>14 answer that question, unless you have knowledge</p> <p>15 prior to any attorney being involved, of any</p> <p>16 testing done.</p> <p>17 THE WITNESS: I have no knowledge</p> <p>18 of any testing being done without the attorney</p> <p>19 being present.</p> <p>20 BY MR. DOSEK:</p> <p>21 Q. Do you have knowledge of testing being done</p> <p>22 with an attorney present?</p> <p>23 MR. SKERIOTIS: Objection.</p> <p>24 Instruct you not to answer. Same objection.</p> <p>25 MR. DOSEK: And you are</p>
<p style="text-align: right;">123</p> <p>1 upon -- same objection I lodged in the prior</p> <p>2 depositions, that with respect to any testing</p> <p>3 that's been done pursuant to an attorney or not,</p> <p>4 we maintain the attorney work product.</p> <p>5 If there was any testing done prior</p> <p>6 to any attorney being involved and prior to this</p> <p>7 litigation, you are free to answer that</p> <p>8 question.</p> <p>9 MR. DOSEK: I don't think there</p> <p>10 is any work product in January of '05, John.</p> <p>11 MR. SKERIOTIS: You didn't limit it</p> <p>12 to January '05.</p> <p>13 MR. DOSEK: Well, January '05</p> <p>14 is the time that this exhibit was prepared,</p> <p>15 Exhibit 23.</p> <p>16 THE WITNESS: I am thoroughly</p> <p>17 confused now.</p> <p>18 BY MR. DOSEK:</p> <p>19 Q. Okay.</p> <p>20 A. If you would re --</p> <p>21 Q. Fine, we will back up.</p> <p>22 As of January '05, are you aware of any</p> <p>23 chemical analysis or any other kind of analysis</p> <p>24 that had been performed by or on behalf of</p> <p>25 Midwest Industrial Supply with respect to the</p>	<p style="text-align: right;">125</p> <p>1 claiming that whether or not he knows whether</p> <p>2 there was any testing done by any lawyer is</p> <p>3 privileged?</p> <p>4 MR. SKERIOTIS: Yes. It's attorney</p> <p>5 work product, absolutely. Because then you</p> <p>6 would know whether or not any testing was done.</p> <p>7 And that whether or not any attorney did any</p> <p>8 testing on any product pursuant to this</p> <p>9 litigation in anticipation thereof is absolutely</p> <p>10 privileged.</p> <p>11 MR. DOSEK: And you're --</p> <p>12 MR. SKERIOTIS: And that's the same</p> <p>13 objection, Scott, I've noted in the Detloff</p> <p>14 deposition and the Vitale deposition as well,</p> <p>15 and I have never been questioned until today.</p> <p>16 So --</p> <p>17 MR. DOSEK: Well, just because</p> <p>18 you haven't been questioned doesn't mean that</p> <p>19 your objection is not ill founded, because it</p> <p>20 is, John, particularly when you are talking</p> <p>21 about something that is in the time frame of</p> <p>22 January of '05, a year and a half before any of</p> <p>23 the -- before the patent was issued, before any</p> <p>24 of this --</p> <p>25 MR. SKERIOTIS: Sure.</p>

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1 **MR. DOSEK:** -- controversy ever
2 arose.
3 **MR. SKERIOTIS:** You are absolutely
4 true.
5 **MR. DOSEK:** That is akin to an
6 insurance company claiming work product whenever
7 it drafts an insurance policy, because there may
8 be litigation about the insurance policy.
9 And, John, you know as well as I do
10 that the attorney work product doctrine does not
11 extend that far.
12 **MR. SKERIOTIS:** And I think we
13 disagree with respect to patent cases,
14 especially where you've got a document, Scott,
15 that says that they believe that there is a
16 product that is being infringed. How that's not
17 in anticipation of litigation is beyond question
18 to me.
19 So I am maintaining the objection and
20 you are welcome to disagree with it.
21 **MR. DOSEK:** All right. Just so
22 I am clear then, you are saying that this, in
23 January of '05, constitutes something that is in
24 anticipation of litigation, even though you
25 filed, in your motion to dismiss this lawsuit,

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1 an argument that your letters to Polar Supply in
2 the summer of '06 did not constitute threats of
3 litigation, is that what you are saying?
4 **MR. SKERIOTIS:** That's exactly what
5 I am saying, with one caveat.
6 **MR. DOSEK:** Okay.
7 **MR. SKERIOTIS:** If you would take a
8 look, Scott, at page 3, the claim at issue is "A
9 compound for chemical soil stabilization and
10 dust control, the compound comprising: a
11 synthetic isoalkane," period. If that claim
12 were to have issued, that is exactly my
13 position.
14 **BY MR. DOSEK:**
15 **Q.** Are you aware of any chemical analysis or
16 testing that has been done with respect to the
17 Durasoil product?
18 **MR. SKERIOTIS:** Same objection.
19 Other than if an attorney was working on it --
20 **THE WITNESS:** Same answer as I
21 gave before.
22 **MR. DOSEK:** And you are saying,
23 John, that whether he knows if any such testing
24 has even been done -- I am not asking him for
25 the results of any such testing -- whether he

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1 knows whether any such testing has been done is
2 privileged and work product?
3 **MR. SKERIOTIS:** If an attorney was
4 present, correct. You can ask him that
5 question, if an attorney wasn't present, if it
6 was done, yeah. That's exactly what I am
7 saying.
8 **BY MR. DOSEK:**
9 **Q.** The question was, are you aware of any
10 testing that's been done, chemical testing of
11 the Durasoil product, by anybody?
12 **MR. SKERIOTIS:** Same objection.
13 **THE WITNESS:** Same answer. Not
14 without the attorney present.
15 **BY MR. DOSEK:**
16 **Q.** So you are aware of testing of the Durasoil
17 product that was done under the supervision of
18 lawyers; is that correct?
19 **MR. SKERIOTIS:** Objection. Again,
20 he already asked and answered this question
21 already. So, I mean, to the degree you got your
22 answer, you got your answer. Let's move on.
23 You are just asking the same question a
24 different way.
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1 **BY MR. DOSEK:**
2 **Q.** You are not aware of any testing of the
3 Durasoil product that's ever been done by the
4 Corps of Engineers?
5 **A.** Yes, I am aware of testing that was done to
6 the Durasoil product through the Corps of
7 Engineers. Chemical testing, no.
8 **Q.** What kind of testing are you referring to?
9 **A.** They were involved -- Durasoil was a
10 product that was tested at Yuma, Arizona the
11 following year that -- my previous reference.
12 **Q.** Is it fair to characterize that testing at
13 Yuma as performance testing?
14 **A.** Yes.
15 **Q.** As opposed to chemical analysis?
16 **A.** Yes.
17 (Thereupon, Plaintiff's Exhibit 10 of
18 the T.R. Hawkins deposition was
19 marked for purposes of
20 identification.)
21 **THE WITNESS:** Can I take a
22 lavatory break here real quick?
23 **MR. DOSEK:** You bet. You bet.
24 **THE VIDEOGRAPHER:** We're off the
25 record.