IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
APR 3 - 1970
JAMES R. COONEY, CLERK
BY DEPUTY

CLARENCE BOREL

VS.

FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL

CIVIL ACTION NO. 6449

ANSWERS OF THE DEFENDANT, FIBREBOARD CORPORATION, TO INTERROGATORIES PROPOUNDED BY PLAINTIFF

TO: PLAINTIFF, CLARENCE BOREL, AND MR. WARD STEPHENSON, STEPHENSON & THOMPSON, STEPHENSON BUILDING, ORANGE, TEXAS, HIS ATTORNEY OF RECORD:

Defendant, Fibreboard Corporation, sued herein as Fibreboard Paper Products Corporation, in response to interrogatories propounded under Rule 33, Federal Rules of Civil Procedure, served on defendant's counsel on or about March 21, 1970, herein files its answers to such interrogatories. Such answers to each interrogatory bears the same number as the request:

INTERROGATORY NO. 1:

Please give the names and trade names of all types of insulating materials manufactured by you, giving the dates that you began to manufacture such materials, starting in 1940, a description of the materials and what they contain.

ANSWER:

1. a. Prasco Pipe Covering, Block, Cement. These products were manufactured from 1940 to January, 1957, and contained 85% diatamaceous earth and 15% asbestos.

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b. 85% Magnesia (Precision Molded) Pipe Covering, Block, Cement. These products were manufactured from 1941 until 1966 and contained 85% Basic Magnesium Carbonate with 15% Asbestos.

c. Caltemp and Super Caltemp (Precision Molded) Pipe Covering, Block, Cement. Caltemp was manufactured from 1950 to 1968 and Super Caltemp from 1968 to the present. Both contain Hydrous Calcium Silicate with less than 15% Asbestos.

d. F. I. Cement and #127 Cement. F. I. Cement was manufactured from 1963 to 1966 and #127 Cement from 1966 to the present. Both contain Hydrous Calcium Silicate with mineral binders and less than 5% Asbestos.

INTERROGATORY NO. 2:

Objected to.

INTERROGATORY NO. 3:

What studies have you made to determine the effect of your products on the lungs and physical condition of persons employed as insulators and asbestos workers who use your products?

ANSWER:

3. No studies have been made directly by this defendant. Studies have been made by scientists engaged by the United States Government and others.

Supplementing the answer to Interrogatory No. 3, the question is unlimited and non-specific as to time, and this answer is likewise not limited as to time.

The studies referred to were:

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(1) Threshold Limit Values for 1961 - adopted at the 23rd Annual Meeting of the American Conference of Governmental Industrial Hygienists, Detroit, Michigan, April 9-12, 1961.

(2) Threshold Limit Values for Air-borne Contaminants for 1968 - Recommended and Intended Values - adopted at the 30th Annual Meeting of the American Conference of Governmental Industrial Hygienists, St. Louis, Missouri, May 13, 1968.

(3) A Health Survey of Pipe Covering Operations in Constructing Naval Vessels by Walter E. Fleischer, Frederick J. Viles, Jr., Robert L. Gade and Philip Drinker, published in The Journal of Industrial Hygiene & Toxicology, Vol. 28, #1; 9-16 (January) 1946.

(4) Documentation of Threshold Limit Values 1966.

(5) Asbestos Exposure During Naval Vessel Overhaul, by W. T. Marr. American Industrial Hyg. Assn. Journal, Vol. 25, Pg. 264-268, 1964.

(6) Evaluation and Control of Asbestos Exposures In the Insulating Trade by W. Clark Cooper, M. D. and J. LeRoy Balzer, M. S. - prepared for presentation at the Second International Conference on the Biological Effects of Asbestos, Dresden, Germany; April 22-25, 1968.

This defendant knew of the disease or condition of asbestosis which occurred in mining and in plants which manufactured products containing some asbestos. In its manufacturing facilities it provided for dust control and dust collecting systems to provide safe working conditions for its employees engaged in manufacturing. This defendant's present plant has reasonable and proper dust controls which has eliminated dust

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as much as is reasonably possible, and the threshold limit values in the plant were well within the recommended Threshold Limit Values for dust from products containing some asbestos.

Defendant was not engaged in the application of its pipe insulation or products in construction, but such products were used by independent contractors and owners, and the working conditions were the legal responsibility of the contractors and owners as this defendant had no control or right to control such premises or the working conditions.

Defendant through its employees had general knowledge of recommended Threshold Limit Values, and knew of no problem as far as contractors or construction workers working with its prod-cuts which contain approximately 12 to 15% asbestos fibers. All research up to 1963-1964-1965 or later had shown that the Threshold Limit Values of dust to which asbestos workers in the construction industry were ordinarily and usually subjected were below the recommended limit value of 5 million parts per cubic foot of air. Some of the material referred to has been developed as a result of research and studies made since 1963-1964.

At the suggestion of an industry wide committee, beginning in 1966, containers of our products have had the following warning labels on them - "This product contains asbestos fibers. If dust is created when this product is handled, avoid breathing the dust. If adequate ventilation control is not possible, wear respirator approved by U. S. Bureau of Mines."

We were of the opinion that contractors engaged in the insulation business, and insulation workers, were well aware of the problem created by inhalation of dust, and that respirators

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or masks had been in use by asbestos workers for a number of years, but notice was placed on our product to transmit the information contained in the notice to contractors and their employees if they did not already have this information,

INTERROGATORY NO. 4:

Who made such studies, when were they made, and attach copies of the reports of such studies.

ANSWER:

4. See answer to No. 3.

INTERROGATORY NO. 5:

Did you package and sell any products containing asbestos from the years 1940 to 1967? If so, how were the products sold, how were the products packaged, and were these products universally used throughout the United States?

ANSWER:

5. Yes. These products were sold to distributors, contractors and agencies of the United States Government. The products were packaged in cartons or bags. The products were not sold universally throughout the United States.

INTERROGATORY NO. 6:

If these products were used primarily in any specific location or area, please explain where such products were primarily used.

ANSWER:

6. These products were sold primarily in the west and mid-west for use in new construction of refineries, petrochemical plants and power plants.

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INTERROGATORY NO. 7:

Objected to.

INTERROGATORY NO. 8:

Has your company done any studies or has your company conducted any studies concerning the effects of inhalation of asbestos dust or fibers by one using or being exposed to any of the asbestos materials manufactured by your company? In answer to this question, please give the date and nature of your studies, if any, the name or names of the persons conducting the studies and their address, what the purpose of the studies were, and attach a copy of any report based upon such studies, showing to whom such report was given and when.

ANSWER:

8. No studies have been made directly by this defendant. Studies have been made by scientists engaged by the United States Government and others. See answer to Interrogatory No. 3.

INTERROGATORY NO. 9:

Have you or any of your employees conducted studies designed to minimize or eliminate the inhalation of asbestos dust and fibers by those exposed to the use of your company's products? If so, give the name or names of such persons conducting such studies, attach copies of such studies, by whom they were made, and to whom they were given, and when, and state what action, if any, was taken based upon such studies in an effort to minimize or eliminate the effects of inhalation of asbestos dust or fibers upon those using or being exposed to the dust and fibers contained in such products as manufactured by your company.

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ANSWER:

9. No.

INTERROGATORY NO. 10:

Do you or your company have any regular inspection of areas where workers are using products manufactured by your company containing asbestos as to the dust count? If you do not, then please explain why this is not done, and if you do, please explain what action, if any, is taken by your company following the taking of dust counts at any of the locations referred to above. Also please give the dates, if any, that your company first started making this dust count.

ANSWER:

10. We do not regularly inspect the area where workers are using products manufactured by our company. Scientists engaged by the United States Government and others, as well as published literature, indicate that in areas where workers are using our products dust counts have been below the threshold limit values set by the American Conference of Governmental Industrial Hygienists. See answer to Interrogatory No. 3.

INTERROGATORY NO. 11:

Objected to.

INTERROGATORY NO. 12:

Objected to.

INTERROGATORY NO. 13:

Objected to.

INTERROGATORY NO. 14:

Do you agree that once asbestos fibers or dust are inhaled into the lungs, there is no way to eliminate such dust or fibers from the lungs for the balance of such person's life?

ANSWER:

14. No.

INTERROGATORY NO. 15:

What technique, if any, does your company use to make dust samplings, explaining the technique and when it was commenced and what the purpose was and what action has been taken in response to the findings as to the dust samples.

ANSWER:

15. We do not make dust samplings in the field.

INTERROGATORY NO. 16:

Objected to.

INTERROGATORY NO. 17:

Objected to.

INTERROGATORY NO. 18:

Does your company place any warning signs on its asbestos products? If so, please state exactly what the warning is, where it is used, and when its use was first begun. If your answer to this question is "Yes", then please explain why your company uses such warning notices?

ANSWER:

18. Yes. Since 1966 containers of our products have had the following warning labels on them - "This product contains asbestos fibers. If dust is created when this product is handled, avoid breathing the dust. If adequate ventilation control is not possible, wear respirator approved by U. S. Bureau of Mines." We were of the opinion that this information should be transmitted to workers using the product if they did not already have this information. We began the use of this printing at the suggestion of an industry-wide committee.

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INTERROGATORY NO. 19:

Objected to.

INTERROGATORY NO. 20:

Does your company recognize that asbestos fiber exists for an infinity of years? In other words, unlike some dangerous products, it does not eventually dissipate or reduce itself in danger to those who might be exposed to it?

ANSWER:

20. Nothing exists for an infinity of years. Asbestos is certainly a durable material. The answer is "No."

INTERROGATORY NO. 21:

Does your company recognize that year-by-year, more asbestos is used in the United States, and therefore the public is thereby exposed to a greater and greater extent to the inhalation of asbestos dust and fiber? If your answer is "Yes", then please state what action your company has taken to reduce or eliminate this danger and what action, if any, you have taken to notify the public at large of this danger?

ANSWER:

21. We recognize more asbestos is being used, but as to the rest of the question we answer "No."

INTERROGATORY NO. 22:

Has your company consulted with Dr. Iving J. Selikoff, of New York, New York, concerning asbestosis, and if so, please state when and under what circumstances and what information, if any, was furnished by your company, giving dates, to him.

ANSWER:

22. No.

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INTERROGATORY NO. 23:

Does your company contribute any funds to research concerning asbestos and its relation to lung and larynx disease? If so, please state the amount of money contributed, when and to whom, attaching any report or reports from such individual or organization to whom your funds were contributed.

ANSWER:

23. Not directly.

INTERROGATORY NO. 24:

Do you have any labor inspectors or anyone from your company whose job it is to go to areas where your products are being used to make a dust level count, and if so, please state when your company started such procedure, the purpose of it, and what action, if any, was taken in response to your findings.

ANSWER:

24. No. See answer to No. 10.

INTERROGATORY NO. 25:

Is your company familiar with the hearing conducted in March, 1967, before the House of Representatives of the United States Congress Sub-Committee on Labor?

ANSWER:

25. No.

INTERROGATORY NO. 26:

Objected to.

INTERROGATORY NO. 27:

Objected to because of Objection to No. 26.

INTERROGATORY NO. 28:

Objected to.

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INTERROGATORY NO. 29:

Is it possible with all of your products containing asbestos to distinguish your products from those manufactured by a competitor? If your answer is "Yes", please describe how you contend your products in all instances can be distinguished from that of a competitor. If there are products which cannot be, in your opinion, distinguished from products of a similar kind manufactured by a competitor, please state the name of such product, who manufactures it, as well as the product manufactured by your competitor.

ANSWER:

29. It is possible in most cases to distinguish our products by color and appearance.

INTERROGATORY NO. 30:

It is true, is it not, that most of the products manufactured by your company containing asbestos will in most instances have to be cut, sawed, scribed, shaped or mixed by the ultimate user and his employees?

ANSWER:

30. No.

INTERROGATORY NO. 31:

Please give the state of incorporation of your company, the date it was organized, and the domicile of your company at this time.

ANSWER:

31. Delaware, November 19, 1917; San Francisco.

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INTERROGATORY NO. 32:

How many years has your company been engaged in the manufacture of products containing asbestos and which are commonly used by insulators and asbestos workers?

ANSWER:

32. Approximately 40 years.

INTERROGATORY NO. 33:

If you, your company, or your company's attorneys, contend that any respirators or other breathing device is currently on the market that will prevent the inhalation of asbestos dust and fibers, give the detailed description of such respirator or other breathing device, together with how you know this will prevent the inhalation of such dust and fibers, what tests were conducted, by whom and where, with sufficient detail to enable us to obtain the results of such tests.

ANSWER:

33. Defendant contends that respirators are currently on the market which will materially reduce inhalation of asbestos dust and fibers. Such respirators are available under the United States Bureau of Mines Schedule 21B. Tests upon which said approval are based were designed and conducted by that governmental agency and are described in the Respiratory Protective Devices Manual published by the American Industrial Hygiene Association, American Conference of Governmental Hygienists, 1963. One such respirator, "Dustfoe 77", Catalog No. 10-9600, is manufactured by the Mine Safety Appliances Company.

INTERROGATORY NO. 34:

It is true, is it not, that your company has for many years manufactured insulating materials containing asbestos and

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that such products have been placed upon the open market to be purchased and used by the public?

ANSWER:

34. Products have been manufactured for years, but are not placed on the open market to be purchased and used by the public.

INTERROGATORY NO. 35:

Do you or your company recognize that such asbestos insulating materials are dangerous and harmful to human beings and to the health of man? If your answer to this question is "Yes" then please explain when you came to this conclusion and what, if anything, you have done about it to notify the public. If your answer is that your products are not harmful then explain what tests were made upon which you base such conclusion.

ANSWER:

35. We do not believe our calcium silicate insulation products are harmful or dangerous in themselves. We rely on tests conducted by the American Conference of Governmental Industrial Hygienists and scientists employed by the United States Government and others.

INTERROGATORY NO. 36:

Please state whether or not your company has had knowledge of any deaths or serious lung disease among your employees which has been attributed to the inhalation of asbestos dust or fibers. If so, please give the number, the name where known, and address of such persons, together with the name and address of the doctor who administered treatment to such persons, if known.

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ANSWER:

36. Two cases of lung disease in a manufacturing company acquired by Fibreboard:

(1) Paul DeBenedetti
1021 Hilton
Redwood City, California

Physician: E. F. Rowles
Medical Plaza
Suite B-3
1101 Welch Road
Palo Alto, California

(2) John Peretti
1099 Tulane Avenue
San Leandro, California

Physician: George Stevens
1826 B Street
Hayward, California

INTERROGATORY NO. 37:

Objected to.

INTERROGATORY NO. 38:

If your company manufactures any insulating products which are commonly used by insulators and which contain asbestos, please describe how the following products are cut, shaped, mixed and applied on the jobs:

(1) Asbestos cement;

(2) Asbestos pipe covering;

(3) Asbestos bricks or blocks;

(4) Asbestos sheeting;

(5) Asbestos insulation used to cover extremes of heat as well as cold;

(6) Asbestos insulation in loose form which may be blown into homes or buildings;

(7) Asbestos in spray form.

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giving particular reference as to whether or not the materials have to be sawed or cut on the job, blown into confined areas, or mixed with water into a cement or paste. Then please state if there is any way known to you that the above products can be used and applied without the worker inhaling any of the asbestos dust or fibers.

ANSWER:

38. We do not make the products described in the seven examples. Our Super Caltemp is for the most part applied in the field as it is taken out of the shipping carton. When it becomes necessary to cut the pipe covering or block this is done in two ways. Almost all cutting for mitreing or tees or short sections, etc. is done on a band saw in an area where dust is expected to be controlled and away from the worker. When it becomes necessary to cut on the job at the point of application, the applicator will use a hand saw for this operation.

Our cements are mixed by pouring, from the 50 lb. sealed shipping bag into a pail or into a plasterer's type mixing box, enough dry cement to satisfy the immediate requirements of the job. Water is then added with mixing until the proper consistency is obtained.

Our Super Caltemp is Precision Molded with a hard rind surface which is relatively dust free and any dust generated during the trimming operation in our process is removed before it is packed. Having mixed our cements with water, there is no dust present. Therefore these products can be used without contributing dust to the environment.

INTERROGATORY NO. 39:

Do you have any statistical figures available showing the number of employees employed with your company who are exposed to asbestos dust and fibers and who have worked for your company twenty years or longer who have lung disease? If so, please give such figures.

ANSWER:

39. These statistics are not presently available but if they can be ascertained, they will be furnished plaintiff.

INTERROGATORY NO. 40:

If you have available, do you have any medical information or information of your own knowledge, concerning the most common cause of death of one having asbestosis, then please describe what the most frequent cause of death from one suffering from such disease is.

ANSWER:

40. No.

INTERROGATORY NO. 41:

Please state the net profit made by your company for each of the years since and including the year 1960.

ANSWER:

41. This information is attached as a part of the interrogatories from our 1967 and 1968 Annual Reports.

INTERROGATORY NO. 42:

Please give the net worth of your company as of the end of your annual accounting period for each of the years since 1960.

ANSWER:

42. This information is attached as a part of the interrogatories from our 1967 and 1968 Annual Reports.

INTERROGATORY NO. 43:

Please give the total volume of sales of products manufactured by your company and include,if possible, the total amount of sales of products of your company containing asbestos for each of the years since 1960.

ANSWER:

43. This information is attached as a part of the interrogatories from our 1967 and 1968 Annual Reports.

INTERROGATORY NO. 44:

Please give the name and address of the president of your company; and also the name and address of the Chairman of the Board of Directors.

ANSWER:

44. This information is attached as part of the interrogatories from our 1968 Annual Report.

INTERROGATORY NO. 45:

If your company has been unable to answer any of the foregoing interrogatories herein propounded, or any of the interrogatories hereinafter propounded, please state the name and address of the person in your company having knowledge of the matters inquired about in these interrogatories.

ANSWER:

45: Not applicable.

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INTERROGATORY NO. 46:

Does your company recognize that Dr. Irving J. Selikoff, of New York, is an outstanding authority in the field of asbestosis, particularly among insulation workers?

ANSWER:

46. We have no basis upon which to form an opinion regarding this question.

INTERROGATORIES NOS. 47 THROUGH 84, INCLUSIVE:

Objected to.

INTERROGATORY NO. 85:

This defendant has objected to Interrogatory No. 85.

DATED this 1st day of April, 1970.

WELLER, WHEELUS, GREEN & BROCATO
P. O. BOX 350
BEAUMONT, TEXAS 77704

BY _____
GEO. A. WELLER,
ATTORNEYS FOR DEFENDANT,
FIBREBOARD CORPORATION.

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THE STATE OF TEXAS)

COUNTY OF JEFFERSON)

Geo. A. Weller, being duly sworn, on oath says that he is attorney of record for the defendant, Fibreboard Corporation, in the above cause, and as such is duly authorized to make, file and serve the foregoing answers to the interrogatories indicated in this affidavit, and that he does so acting on such authority and authorization; that he has read over the foregoing answers and the same are true and correct.

Geo. A. Weller

GEO. A. WELLER

SUBSCRIBED AND SWORN TO before me by the said Geo. A. Weller, to certify which witness my hand and seal of office this, the 1st day of April, A. D. 1970.

Ouida L. Swope

NOTARY PUBLIC, JEFFERSON COUNTY, TEXAS

OUIDA L. SWOPE, Notary Public
In and for Jefferson County, Texas

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing instrument was served on the following attorneys by mailing a true and correct copy thereof to their respective offices, this 2nd day of APRIL, 1970.

Mr. Ward Stephenson
Stephenson & Thompson
Stephenson Building
Orange, Texas

Mr. George E. Duncan
P. O. Box 3708
Beaumont, Texas 77704

Mr. Gordon R. Pate
Beaumont Savings Building
Beaumont, Texas 77701

Mr. W. N. Arnold, Jr.
Fulbright, Crooker, Freeman, Bates & Jaworski
Bank of the Southwest Building
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Mr. Ben L. Reynolds
Royston, Rayzor & Cook
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ANSWERS OF THE DEFENDANT, FIBREBOARD CORPORATION, TO INTERROGATORIES PROPOUNDED BY PLAINTIFF.

WELLER, WHEELUS, GREEN & BROCATO
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