IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
JUL 7 - 1970
JAMES R. COONEY, CLERK
BY DEPUTY Margaret Lanier

CLARENCE BOREL §

V. § CIVIL ACTION NO. 6449

FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL §

ADDITIONAL ANSWERS OF THE DEFENDANT PHILIP CAREY CORPORATION TO CERTAIN NUMBERS OF FIRST SET OF INTERROGATORIES PROPOUNDED BY PLAINTIFF

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

COMES NOW Philip Carey Corporation, pursuant to Order entered herein on June 15, 1970 overruling certain objections to the interrogatories heretofore propounded under Rule 33, Federal Rules of Civil Procedure, and files this its answer to such interrogatories.

The Defendant's answers to each interrogatory bear the same number and letter as the interrogatory is numbered in the Plaintiff's request.

INTERROGATORY NO. 7

Do you recognize that prolonged use of the insulating materials manufactured by you can cause or contribute to cause various occupational diseases, including asbestosis, silicosis and dermatitis?

ANSWER TO INTERROGATORY NO. 7

Based on the assumption that the interrogatory refers to the usual, customary and expected use of the products containing asbestos which are manufactured by this Defendant, the answer is no.

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INTERROGATORY NO. 11

Does your company recognize that as early as the year 1900 Dr. H. Montague Murray, a physician in London's Charing Cross Hospital, found spicules of asbestos in the lung tissue? If you agree with this, then state what action, if any, your company has taken since 1900 to reduce or eliminate the dangers to those using your asbestos products from inhaling the dust and fibers.

ANSWER TO INTERROGATORY NO. 11

Your Defendant has no particular information or independent knowledge as to the matters referred to or inquired about in Interrogatory No. 11. Since the inception of this suit it has become aware of the existence of such a report, but does not recognize that the report is applicable to its products by construction workers who are exposed only part-time to dust, and then to dust counts below the threshold limit values published by the American Conference of Governmental Industrial Hygienists.

INTERROGATORY NO. 12

Does your company recognize that in 1924, Dr. W. E. Cook, also of England, found clear evidence of asbestosis and that such discovery was published in the British Medical Journal of July 26, 1924, and re-published in 1927? If you do, then please state what action, if any, was taken by your company based upon these studies to reduce or eliminate asbestosis in those using your products. If your answer is that you do not recognize the truth of such statement, then please state what your company has done in an effort to keep abreast of medical literature concerning the disease produced from the products which you manufacture, if in truth you have.

ANSWER TO INTERROGATORY NO. 12

In reply to Interrogatory No. 12, this Defendant

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has no information or independent knowledge of the matters referred to or inquired about in said interrogatory. We are now generally aware of his report, but do not recognize that this report is applicable to use of our product by construction workers, who are exposed only part-time to dust, and then to dust counts below the threshold limit values published by the American Conference of Governmental Industrial Hygienists.

INTERROGATORY NO. 13

Does your company recognize that in 1931, an English Parliament passed legislation making asbestosis a compensable disease and requesting improved methods of exhaust ventilation and dust suppression in asbestos-textile factories, and also instituted periodical medical examinations for workers engaged in particularly dusty processes in the asbestos-textile industry? If you do recognize the truth of the statement above, please state what action, if any, your company took in response to such knowledge in an effort to reduce or eliminate the effects of asbestos to those using your products. If you do not recognize the truth of such statement, then please state why your company did not keep in touch with legislation and programs adopted endeavoring to reduce or eliminate the disease of asbestosis in those using asbestos products.

ANSWER TO INTERROGATORY NO. 13

In reply to Interrogatory No. 13, this Defendant has no information or independent knowledge of the matters referred to in said interrogatory, but we are now aware of this legislative history. The English Parliament's legislation related to workers in asbestos-textile factories where dust was extremely heavy and was 100% asbestos fibers, and exposure was continuous during the working day. There is no

reason to correlate the legislation of the English Parliament with use of our product by insulation workers who are exposed only part-time to dust, and even then to dust counts below the threshold limit values published by the American Conference of Governmental Industrial Hygienists.

INTERROGATORY NO. 14

Did 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 TO INTERROGATORY NO. 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 TO INTERROGATORY NO. 15

Since the 1930's, dust samplings at our Lockland, Ohio plant have been taken by the Division of Safety and Hygiene, Industrial Commission of Ohio. The Division employs either an electrostatic precipitator owned by it or a "midgit impinger" produced by Mine Safety Applicances Company. We believe that these devices charge dust particles either negatively or positively and impinge them on a plate oppositely charged. The samples thus collected are applied against screens in order to measure the size and number of dust particles and determine if the area sampled is within the safe standards prescribed by the Division. Dust collectors are in constant operation to maintain safe levels. An authority of the Commonwealth of Pennsylvania followed similar

procedures at our Plymouth Meeting, Pennsylvania insulation plant prior to its close in 1962. At the present time, we are participating with a number of other companies in a program conducted by the U. S. Department of Public Health to determine safe dust limits in areas in which products composed in part of asbestos, talc, mica or stone dust are produced.

INTERROGATORY NO. 17

Does your company recognize there is a direct connection between the inhalation of asbestos dust and fibers and the disease mesothelioma? If your answer is "Yes" to this question, then please advise what notices were given to those exposed to your asbestos products of this fact.

ANSWER TO INTERROGATORY NO. 17

Your Defendant objects and excepts to Interrogatory No. 17 for the following reasons:

(a) That such interrogatory is vague, and indefinite; your defendant does not understand what is meant by the term "recognize" as used therein;

(b) Such interrogatory does not inquire as to any matter of fact authorized by the Federal Rules of Procedure.

(c) Such interrogatory inquires as to a medical opinion which is not required to be answered under the Rules of Federal Procedure.

(d) Such interrogatory inquires as to an ultimate issue in the case at bar, which is to be determined by the fact finder.

Subject to the above and foregoing objections and exceptions your Defendant answers "no". Your Defendant knows of no case of mesothelioma among its employees, or those working with its products.

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

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answer to this question is "yes", then please explain why your company uses such warning notices.

ANSWER TO INTERROGATORY NO. 18

No. However, persons working with your Defendant's asbestos products are furnished, and urged to use, masks recommended by the U. S. Bureau of Mines, and dust collectors attached to saw.

INTERROGATORY NO. 19

Do you agree that asbestos has been directly associated medically with the disease of cor pulmonale?

ANSWER TO INTERROGATORY NO. 19

This Defendant does not know if asbestos has been directly associated medically with the disease cor pulmonale.

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 TO INTERROGATORY NO. 21

Your Defendant says that it is not familiar with all of the work conditions where asbestos products are used, and therefore must answer that it does not know.

INTERROGATORY NO. 22

Has your company consulted with Dr. Irving 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 dated, to him.

ANSWER TO INTERROGATORY NO. 22

No.

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 TO INTERROGATORY NO. 23

Your Defendant objects and excepts to Interrogatory No. 23 for the reason that the same is irrelevant and immaterial to any issue in this action.

Subject to the above and foregoing objection and exception your Defendant says that it has not contributed to any research concerning asbestosis and its relation to lungs and larynx disease. It understands that a subsidiary of your Defendant, which is a member of a Quebec Mining Association, made some contribution, the amount of which is unknown, and your defendant has not received any report from such association or research organization.

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 TO INTERROGATORY NO. 24

No. The areas in which your Defendant's products are applied are on construction sites, marine vessels and the like, which are owned and controlled by others.

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 TO INTERROGATORY NO. 25

No.

INTERROGATORY NO. 26

Do you agree that the problem of asbestos dust extends further than to those merely using your products but that the exposure is shared with other construction workers as well?

ANSWER TO INTERROGATORY NO. 26

No.

INTERROGATORY NO. 27

If your answer to the preceding Interrogatory No. 26 is "no", then please state whether or not you have familiarized yourself with Dr. William H. Stewart, Surgeon-General of the United States, testifying before the Committee mentioned above that probably three and one-half million construction workers are being exposed to asbestos dust in addition to those workers actually using the materials containing asbestos?

ANSWER TO INTERROGATORY NO. 27

No.

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.

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ANSWER TO INTERROGATORY NO. 29

"Careytemp" may be distinguished from insulation products manufactured by others through its formulation protected by patents in the United States and certain other countries. We have only one licensee, whose limited right to manufacture "Careytemp" is described in our answer to Interrogatory No. 30. We discontinued the manufacture of 85% magnesia approximately ten years ago. The cartons in which our 85% magnesia products were shipped would distinguish the products from like products manufactured at that time by Fibreboard Paper Products Corporation, John-Manville Products Corporation, The Ruberoid Company, Baldwin-Ehret Hill, Inc., and Mundet Cork Corporation. We believe that today 85% magnesia products are manufactured by only a few companies, all of which are outside of the United States. We discontinued the manufacture of asbestos paper insulation products approximately eight years ago. The cartons in which these products were shipped would distinguish them from like products of others. Without cartons, these products of our manufacture would be difficult to distinguish from like products manufactured at that time by Ace Asbestos Company, Empire-Ace Asbestos Company, Badham Insulation Company, Norristown Insulation Company, Standard Asbestos Manufacturing & Insulating Company, Johns-Manville Products Corporation, Baldwin-Ehrey Hill, Inc., and Smith & Kanzler Corporation. Today, such products are manufactured by Empire Asbestos Company only to the best of our knowledge.

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 names where known, and address of such persons, together with

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the name and address of the doctor who administered treatment to such persons, if known.

ANSWER TO INTERROGATORY NO. 36

Your Defendant has knowledge of the following dates of lung disease cases among its employees which may have been attributed to the inhalation of asbestos dust or fibers:

(1) Henry N. Hoerst, 10109 Wayne Avenue, Cincinnati, Ohio 45215, Dr. Ralph C. Scott, Holmes Hospital, Cincinnati, Ohio; Dr. R. J. Duffner, 406 West Benson St., Cincinnati, Ohio 45215; Dr. J. E. Singer, 4026 Clifton Avenue, Cincinnati, Ohio; Dr. Frank Princi, address unknown.

(2) Clarence Hulette, 9163 Winton Road, Cincinnati, Ohio 45231.

(3) William E. Latto, 1073 Mason Street, Warren, Ohio. Dr. F. O. Kravic, address unknown; Dr. Carl Bruckner, Ormond Beach, Florida.

(4) Essie Jackson, 3425 Bevis Street, Cincinnati, Ohio, 45215. Dr. V. A. Plessinger, Central Trust Tower, Cincinnati, Ohio 45202.

(5) Roosevelt Cross, 747 Jackson Street, Cincinnati, Ohio 45215. Dr. F. Jay Ach, 8337 Vine Street, Cincinnati, Ohio 45215.

(6) R. L. Griffith, 2713 Vine St., Cincinnati, Ohio. Dr. V. A. Plessinger, Central Trust Tower, Cincinnati, Ohio 45202.

(7) Harlan Williams, 9880 Dick Road, Harrison, Ohio 45030. Dr. V. A. Plessinger, Central Trust Tower, Cincinnati, Ohio 45202.

(8) Earl B. Bolds, 625 Oak Street, Cincinnati, Ohio 45215. Dr. V. A. Plessinger, Central Trust Tower, Cincinnati, Ohio; Dr. Carl G. Ruehlmann, Crescent & Cooper, Cincinnati, Ohio 45215.

(9) Robert J. Horsman, 1726 Hayter Street, Lakewood, California, Dr. George H. Derry and Dr. Reginald Smart, addresses unknown; Mr. Horsman worked for our company 80 hours in June, 1967 and 83 hours in December, 1967.

(10) William C. McCormick, 3169 Live Oak, Huntington Park, California. Dr. Carlos A. Prietto, St. Francis Hospital. Mr. McCormick worked for our company 112 hours in October, 1967.

(11) Edward L. Pfleghaer, 141 Monterey Street, Brisbane, California. Dr. Manuel Morales, address unknown. Mr. Pfleghaer worked for our company for a short period in 1956, earning gross wages of $260.35 and a short period in 1958, number of hours and wages unknown.

(12) Wayne E. Boyer, 1122 Palm Street, Las Vegas, Nevada. Dr. J. K. McBeath, 637 East Sahara Avenue, Las Vegas, Nevada. Mr. Boyer worked for our company on a part-time basis, earning gross wages of $631.10 in 1966 and $2,164.38 in 1967.

(13) Lowel M. Pond, 10989 Amery Avenue, South Gate, California. Dr. Carlos Prietto and Dr. Frank F. Frazier, addresses unknown. We have no record of employing Mr. Pond. We have a record of employing one Milton L. Pond from December 7, 1967 until December 27, 1967.

(14) Morris L. Frislie, 2436 West Lomita Blvd., Lomita, California. Dr. John A. Chapman and Dr. John Reeves, Torrance Memorial Hospital. Mr. Frislie worked for our company from August 29, 1966 to January 10, 1969.

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 TO INTERROGATORY NO. 39

No.

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 TO INTERROGATORY NO. 40

No.

INTERROGATORIES 47 THROUGH 84

ANSWERS TO INTERROGATORIES 47 THROUGH 84

Your Defendant says that it does not have direct knowledge of the workmen's compensation law of states other than Pennsylvania, Ohio, New Jersey and Texas. Under the workmen's compensation law of the State of Ohio asbestosis is not mentioned. Your Defendant recognizes that states which have workmen's compensation law which cover occupational diseases

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would in reasonable probability cover the disease of asbestosis. Some states specifically list asbestosis as an occupational disease, and it is understood that other states merely interpret the occupational disease statute to cover asbestosis. In Texas asbestosis is a specific occupational disease by name. According to the statute asbestosis was added as an occupational disease by the Acts of the Fiftieth Legislature, 1947, Article 8306, §25.

Your Defendant does not have sufficient knowledge nor information upon which to predicate a sworn statement to interrogatories 47 through 84 other than as above indicated.

DATED this 6 day of July, 1970.

FULBRIGHT, CROOKER, FREEMAN,
BATES & JAWORSKI

By _____
W. N. Arnold, Jr.

Bank of the Southwest Building
Houston, Texas 77002 224-7070

Attorneys for Defendant, Philip
Carey Corporation

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared W. N. ARNOLD, JR., known to me to be the attorney of record for the Defendant mentioned above and to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and that the same is true and correct.

Given under my hand and seal of office this the 6 day of July, 1970.

_____
NOTARY PUBLIC IN AND FOR
HARRIS COUNTY, TEXAS

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 on this 6th day of July, 1970.

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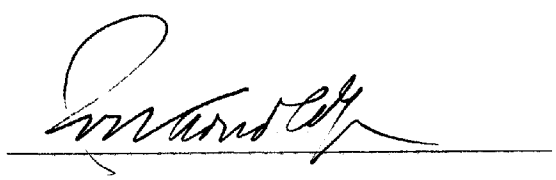
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