IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
NOV 5 - 1970
JAMES R. COONEY, CLERK
By Virginia R. Sens

SAMUEL R. POTTER V. FIRBRBOARD PAPER PRODUCTS CORPORATION, ET AL	CIVIL ACTION NO. 6329
CLARENCE BOREL V. FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL	CIVIL ACTION NO. 6449
J. J. CRAWFORD V. FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL	CIVIL ACTION NO. 6492

ANSWERS TO SUPPLEMENTAL INTERROGATORIES PROPOUNDED TO DEFENDANT PANACON CORPORATION [FORMERLY PHILIP CAREY CORPORATION]

TO: PLAINTIFFS, SAMUEL R. POTTER, CLARENCE BOREL AND J. J. CRAWFORD, AND THEIR ATTORNEY WARD STEPHENSON, STEPHENSON & THOMPSON, STEPHENSON BUILDING, ORANGE, TEXAS

COMES NOW Panacon Corporation, formerly Philip Carey Corporation, one of the defendants in the above entitled and numbered causes, and through its attorney of record, makes the following answers to supplemental interrogatories:

SUPPLEMENTAL INTERROGATORY NO. 1

In connection with your answer to Supplemental Interrogatory No. 3, what material in your product produced since September 23, 1969 is smaller than asbestos dust or fibers?

ANSWER TO SUPPLEMENTAL INTERROGATORY NO. 1

None.

SUPPLEMENTAL INTERROGATORY NO. 2

In considering the relative size of asbestos

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fibers and the material in your currently manufactured product, which produces five million parts of dust per cubic feet of air, which is the larger, asbestos fibers or the ingredient producing fifty million parts of dust per cubic feet of air?

ANSWER TO SUPPLEMENTAL INTERROGATORY NO. 2

It is believed that the propounder of this interrogatory has not understood our previous answers. When employed in accordance with the practice of the trade of insulating applicators, neither the product produced prior to September 23, 1969, nor the product produced thereafter necessarily would produce five million parts of dust per cubic feet of air. We have stated in answer to prior interrogatories that the threshold of five million parts of dust per cubic feet of air and fifty million parts of dust per cubic feet of air, for asbestos containing an asbestos free product, respectively, were set by governmental authorities named in our answer. A particle of asbestos dust is smaller than a particle of dust of any other ingredient contained in either the pre- or post- September 23, 1969 product.

SUPPLEMENTAL INTERROGATORY NO. 3

In answer to Supplemental Interrogatory No. 7, you omitted answering the part which asked when you got such information. Please give the exact date.

ANSWER TO SUPPLEMENTAL INTERROGATORY NO. 3

Your defendant got the information upon receipt of Data Sheet No. 531 "Dusts, Fumes and Mists in Industry", published in 1963 by the National Safety Council, which quoted threshold limits published by the American Conference of Industrial Hygienists in 1962.

SUPPLEMENTAL INTERROGATORY NO. 4

In answer to Supplemental Interrogatory No. 7, you omitted answering that part of the question which asked what your company has done to advise those who might use your product of the information you claim you have obtained. Please set out in detail exactly what your company has done.

ANSWER TO INTERROGATORY NO. 4

Please see answer to prior interrogatory No. 6.

The 1967 test results were given to Union Carbide, Dow Chemical, Inc., and other significant users of our company's products. Since no user required formulation or performance changes, the company continued to manufacture products in accordance with applicable Federal and Military Specifications.

SUPPLEMENTAL INTERROGATORY NO. 5

Do employess of Philip Carey Corporation apply and install its products containing asbestos?

ANSWER TO SUPPLEMENTAL INTERROGATORY NO. 5

Yes.

SUPPLEMENTAL INTERROGATORY NO. 6

Do the employees of Philip Carey Corporation apply and install products manufactured by the other defendants in these actions?

ANSWER TO SUPPLEMENTAL INTERROGATORY NO. 6

Yes.

SUPPLEMENTAL INTERROGATORY NO. 7

If your answer to the preceding question is "Yes", then please state which of the defendants' products Philip CArey Corporation employees use or have used in the last ten years.

ANSWER TO SUPPLEMENTAL INTERROGATORY NO. 7

Our employees use calcium silicate pipr and block covering, amosite asbestos pipe covering, and various types of mineral wool and asbestos finishing cements manufactured by the defendants named in these actions. In addition, our employees use similar products manufactured by manufacturers not parties defendant in these actions. In addition, our employees have used similar products manufactured by certain defendants and non-defendants more than ten years ago, the exposure to which in the ordinary course of their employment is highly significant in view of the allegation of plaintiffs' own "exposure" in these cases.

SUPPLEMENTAL INTERROGATORY NO. 8

Has Philip Carey Corporation warned its

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employees of any danger incident to the use and installation of products containing asbestos?

ANSWER TO SUPPLEMENTAL INTERROGATORY NO. 8

Yes, and for decades the company has required its employees to employ the dust collector at the saw and masks or respirators in the application area.

SUPPLEMENTAL INTERROGATORY NO. 9

If your answer to the preceding question is "Yes," please explain when, giving the date, and what, setting out the full context of such advice or notice, and setting out in your answer exactly to whom such advice or notice was given, giving their names and addresses or the class of worker or employee so that the same may be identified by plaintiffs.

ANSWER TO SUPPLEMENTAL INTERROGATORY NO. 9

The advice or notice was given on all occasions, too numerous to date, to all employees, all of whom were members of Asbestos Workers Locals having jurisdiction. The context thereof was to employ the company furnished dust collector at the saw and masks or respirators, because of job site dust conditions created by all construction crews. In general, the dust collector at the saw was employed. In general, the employees objected to the use of masks or respirators, particularly those who smoked cigarettes. Hot weather was another basis for employee's refusal to employ masks or respirators. It has no record of the names and addresses of each employee.

SUPPLEMENTAL INTERROGATORY NO. 10

When did Union Carbide, Dow Chemical, Inc. and other of your customers who you refer to as "etc." become aware of the problems and threshold limits of your products containing asbestos which were used by them in their organizations? Give the exact date, advise exactly how you have such information and advise where you obtained such information, giving the names and addresses of such person or persons who furnished the same to you. Explain fully what problems Union Carbide, Dow Chemical, Inc., etc. are well aware of, setting out in detail the problems you refer to. Please explain in detail the threshold limits on products used in their organizations, or that is, Union Carbide, Dow Chemical, Inc., which you refer to in your answer to Supplemental Interrogatory No. 2.

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ANSWER TO SUPPLEMENTAL INTERROGATORY NO. 10

The company does not know of any "problems" with the product of which Union Carbide, Dow Chemical, Inc. or other of our customers became aware, nor do we know when they became aware of threshold limits. Inasmuch as Union Carbide and Dow Chemical, Inc. are large corporations employing full time hygienists and other technical personnel, we assume they have full access to and are aware of threshold limits of all substances, including asbestos containing products, employed in industry and which may be hazardous. We believe their interest, in addition to airborne dust particles, includes all chemical compounds in liquid, solid or gaseous forms. We do not know what threshold limits Union Carbide and Dow Chemical, Inc. have established for asbestos containing products. We have given them the composition of our products and the results of dust tests made in the Union Carbide shops. Since these companies continue to purchase our products, we assume that threshold limits acceptable to them have been met.

SUPPLEMENTAL INTERROGATORY NO. 11

In your answer to Supplemental Interrogatory No. 6, you stated dust counts were made in April, 1967 in your plant and also at Union Carbide shops. Explain in detail why no dust counts were made prior to April, 1967.

ANSWER TO SUPPLEMENTAL INTERROGATORY No. 11

Dust counts were made in our Lockland plant and the Union Carbide shops in 1967 to determine whether our products were acceptable for use in Union Carbide's fabrication shops. Since Union Carbide's first attempt to make use of our products in a prefabrication shop occurred in 1967, there was no need to make dust counts for Union Carbide prior to 1967. In our Answer to Interrogatory 15, we stated that dust samplings have been taken at our plants by state authorities since the 1930's.

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SUPPLEMENTAL INTERROGATORY NO. 12

In your answer to Supplemental Interrogatory No. 6, you stated you have "been advised that Philip Carey meets current standards." Please explain who advise you, giving their names and addresses, what the advice was, and who has established any "current standards."

ANSWER TO SUPPLEMENTAL INTERROGATORY NO. 12

We do not know at what level of acceptability Union Carbide's standards are established. Considered products are submitted to their technical department which tests the products and advises our approved distributor whether our products are acceptable. Our approved distributor in the case of Union Carbide is Allied Services, Inc., Charleston, West Virginia and our approved distributor in the case of Dow Chemical, Inc. is Industrial Insulations, Inc., Bay City, Michigan.

SUPPLEMENTAL INTERROGATORY NO. 13

In your answer to Supplemental Interrogatory No. 6, you stated, "Results of these tests have been given to Union Carbide, Dow Chemical and other significant users of this product." Please set out in detail the results of the tests which were given to Union Carbide, Dow Chemical and "other significant users of this product," and state (a) When such results were given, (b) where a copy of such results might be obtained, giving the full address, and (c) the names of "Other significant users" to whom you refer in your answer to Supplemental Interrogatory No. 6.

ANSWER TO SUPPLEMENTAL INTERROGATORY NO. 13

Please see attached copy of report dated January 2, 1968 of Dust Tests conducted by Kettering Laboratory with respect to our product containing asbestos. The report was furnished to Union Carbide on January 16, 1970 and Dow Chemical, Inc. on March 4, 1970. In addition, it was furnished to certain of our field representatives, but we have no record of the distribution, nor the date thereof, nor the distribution the field representatives made of the report.

SUPPLEMENTAL INTERROGATORY NO. 14

In the answers your attorney prepared to supplemental interrogatories submitted to Armstrong Cork Company, your co-defendant herein, in answer to Supplemental

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Interrogatory No. 2, it is indicated that "advice to purchasers concerning such values (speaking of threshold limit values) would probably have been ineffective and could have been adverse to the best interests of persons installing such products." Is it the contention of Philip Carey Corporation that advice to purchasers concerning threshold limit values have been given by Philip Carey Corporation, and (a) that such advice was effective, and (b) that such advice was to the best interest of persons installing such products?

ANSWER TO SUPPLEMENTAL INTERROGATORY NO. 14

We have given advice concerning threshold limits to our purchasers requesting it. The purchasers have continued to purchase our products and we assume they have found the threshold limits acceptable. However, we are in no position to either confirm or deny that such advice was effective and to the best interests of persons installing such product.

DATED this 4th day of November, 1970.

FULBRIGHT, CROOKER, FREEMAN, BATES & JAWORSKI

By _____
W. N. Arnold, Jr.

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

Attorneys for Defendant Panacon Corporation [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 4th day of November, 1970.

_____
NOTARY PUBLIC IN AND FOR
HARRIS COUNTY, T E X A S

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing instrument was served on the following attorneys by mailing a true and

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correct copy thereof to their respective offices on this 4th day of November, 1970.

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

Mr. Geo. A. Weller
Weller, Wheelus, Green & Brocato
Beaumont Savings Building
P. O. Box 350
Beaumont, Texas 77704

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

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

Mr. Ben L. Reynolds
Royster, Rayzor & Cook
877 San Jacinto Building
Houston, Texas 77002

Mr. Dale Dowell
707 Beaumont Savings Building
Beaumont, Texas 77701

Mr. James W. Mehaffy, Sr.
San Jacinto Building
Beaumont, Texas 77701

Mr. Charles S. Pipkin
P. O. Box 1632
Beaumont, Texas 77704

Mr. John G. Tucker
Orgain, Bell & Tucker
Beaumont Savings Building
Beaumont, Texas 77701

Mr. Gerald P. Coley
Vinson, Elkins, Searls & Connally
First City National Bank Building
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Mr. Robert E. Barnes, Jr.
P. O. Box 5098
Beaumont, Texas 77706

Mr. Frank Bean
Bean & Manning
500 Jefferson Building
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Mr. George E. Murphy
615 San Jacinto Building
Beaumont, Texas 77701

W. N. Arnold, Jr.

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JAMES O. PIERCE, SC.D.
KETTERING LABORATORY
EDEN AND BETHESDA AVENUE
CINCINNATI, OHIO 45219

January 2, 1968

Mr. Arthur P. Mueller
Research Division
Philip Carey Manufacturing Company
320 South Wayne Avenue
Cincinnati, Ohio 45215

Dear Mr. Mueller:

We have completed our analyses of samples of air taken during fabrication of Carey Temp insulation at the Union Carbide Plant in Charleston, West Virginia. I do not know if you wish to have a formal report, complete with recommendations, etc., for methods of control of dust. Unless I hear otherwise, I will assume that this letter will suffice.

I do not feel it necessary to describe to you the conditions under which these samples were taken, since you were present during the entire operation. All of the impinger samples were breathing zone samples collected directly below the face of the operator. These samples are representative of an individual's exposure to the dust produced at the operation in question.

The impinger samples numbered 1 through 3 were collected during one "run," whereas numbers 4 through 6 were taken during the second cutting operation. The electrostatic precipitator samples were located near the saw table and could not be as representative of breathing zone samples as are the impinger samples. In addition, a high volume air sampler was used to collect dust from the air during the total period of time we were there. This sample naturally includes some down-time.

The samples were analyzed by standard procedures. A sample of dust collected with the high volume air sampler was prepared for examination by X-ray diffraction to determine the per cent of crystalline free silica and asbestos in the airborne dust. The X-ray diffraction pattern failed to indicate the presence of crystalline material in the dust. The probable limit of detection by X-ray diffraction for asbestos or quartz in untreated samples is approximately 5 per cent for each material.

Microscopic examination of the samples of dust indicated the presence of some fibers, but it was not always possible to differentiate between glass fibers or asbestos fibers. As you are aware, the threshold limit value for asbestos is 5 million particles per cubic foot of air and for inert or nuisance particulates this value is raised to 50 mppcf or 15 mg/m^3, whichever is the smaller (source: Threshold Limit Values for 1967, ACGIH). Since asbestos is known to be an ingredient of the parent material, my personal recommendation would be to use the lower value even though the analysis indicated that the dust contained less than 5 per cent asbestos.

The results of the sampling are given in the attached table. If additional information is required, please do not hesitate to let me know. Also enclosed is a statement of charges involved, including charges for analyses incurred by the Kettering Laboratory. Please make the check payable directly to me personally for the full amount and I will reimburse the Laboratory.

Sincerely yours,

J. O. Pierce, Sc.D.
Assistant Professor of
Environmental Health

JOP:egm

Enclosures

RESULTS OF SURVEY
AT THE UNION CARBIDE PLANT, CHARLESTON, WEST VIRGINIA
DURING FABRICATION OF PHILIP CAREY (CAREY TEMPE) INSULATION BOARD

DESCRIPTION AND LOCATION OF SAMPLER	MILLIONS OF PARTICLES PER CUBIC FOOT OF AIR Mppcf	MILLIGRAMS OF PARTICULATE PER CUBIC METER OF AIR Mg/M^3
#1-Impinger- located at breathing zone of Mr. D. E. Raines, operator at saw #1 during unloading and cutting of insulation board	16.4	-
#2-Impinger- same as #1 except attached to other operator, Mr. W. L. Alford	15.9	-
#3-Impinger- located at breathing zone of Mr. J. Jordan, operator at saw #2 during 1st phase of sawing	19.5	-
#4-Impinger- located at breathing zone of Mr. W. L. Alford, operator at saw #2 during second phase of sawing operation	19.9	-
#5-Impinger- located at breathing zone of Mr. J. Jordan, operator at saw #2 during second phase of sawing operation	23.8	-
#6-Impinger- same as #5 except attached to other operator, Mr. H. Witt	27.3	-
#7-Electrostatic Precipitator Sampler- located appr. 5" above plate of saw #1 during first unloading and cutting cycle	8.65	64.3

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DESCRIPTION AND LOCATION OF SAMPLER	MILLIONS OF PARTICLES PER CUBIC FOOT OF AIR Mppcf	MILLIGRAMS OF PARTICULATE PER CUBIC METER OF AIR Mg/M^3
#8-Electrostatic Precipitator- located at same location as #7 during clean-up operation between runs	5.5	29.1
#9-Electrostatic Precipitator- located at saw #2, left side, appr. 8-10" above plate of saw during second phase of cutting operation	3.0	21.1
#10-High Volume Air Sampler using fluted filter- located at the right side, appr. 4' from saw #1 during entire operations	-	37.3*

* X-Ray Diffraction indicates no detectable crystalline material present in this sample

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