FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
DEC 23 1969
JAMES R. COONEY, CLERK
BY DEPUTY

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT, DIVISION

SAMUEL R. POTTER

VS.

FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL

CIVIL ACTION NO. 6329

REPLY OF DEFENDANT, PHILIP CAREY CORPORATION TO PLAINTIFF'S INTERROGATORIES

Philip Carey Corporation, one of the defendants in the above entitled and numbered cause, through its attorneys of record, makes the following answers to the written interrogatories heretofore served on it on or about October 14, 1969, time within which to answer having been extended to December 24, 1969.

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 TO INTERROGATORY NO. 1

Plymouth Meeting, Pennsylvania

	Name, Trade Name and Description	Date of Manufacture	Contents
(1)	85% Magnesia Pipe Covering and Block	1906-1961	Basic magnesium Carbonate and asbestos fiber
(2)	No. 19 Hitemp Pipe Covering and Block	1906-1961	Diatomaceous earth and asbestos fiber
(3)	Temp-Chek Pipe Covering and Block	1940-1954	Diatomaceous earth, basic magnesium carbonate and asbestos fiber
(4)	Alltemp Pipe Covering and Block	1954-1958	Expanded Perlite, Bentonite clay and asbestos fiber
(5)	Careytemp Pipe	1958-1962	Expanded Perlite Bentonite clay, chopped glass roving and asbestos fiber

Lockland, Ohio

(1)	Careytemp Pipe Covering and Block	1958-Sept. 1969	Expanded Perlite, Bentonite clay, chopped glass roving and asbestos fiber

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(2)	New Careytemp 1500 Pipe Covering and Block	Sept. 23, 1969 to present	Expanded Perlite, Bentonite clay and chopped glass roving
(3)	Aircell Pipe Covering and Board	1906-1960	Asbestos paper (asbestos fiber and starch) and sodium silicate
(4)	Excel Pipe Covering and Board	1906-1960	Asbestos paper and sodium silicate
(5)	Careycel Pipe Covering and Board	1906-1960	Asbestos paper and sodium silicate
(6)	Asbestos Rope and Wick	1906-1954	Asbestos Fiber and cotton fiber
(7)	MW 50 Cement	1940-1967	Mineral Wool fiber, asbestos fiber and Bentonite clay
(8)	MW 1 Cement	1950-1967	Mineral wool fiber, Portland cement and Bentonite clay
(9)	Asbestos Finishing Cements #100 #303 #707 #LF20 #7M90	1940-1967	Asbestos fiber, ground gypsum and Bentonite clay
(10)	No. 19 Vitricel Cement	1940-1967	Asbestos fiber, and mica
	Linden, New Jersey		
(1)	Asbestos Paper Pipe Covering (4, 6 and 8 ply Aircell Coverings)	Feb. 18, 1969 to present	Asbestos paper and sodium silicate

Since September of 1969 asbestos fiber has been eliminated from regular Careytemp and fiberglass has been substituted therefor. It was felt that Careytempreinforced with glass fiber is less susceptible to breakage.

INTERROGATORY NO. 2.

Did you ever at any time give warnings to workers of the dangerous nature of your products? If so, describe your warnings and to whom such warnings were given.

ANSWER TO INTERROGATORY NO. 2

The allegations and implications of Interrogatory No. 2 as to your defendant's insulating material being of a "dangerous nature" is specifically denied. Your defendant does not believe that any of its industrial insulating material is of a "dangerous nature." Inasmuch as your

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defendant has no control, or right of control, over employees of insulating contractors, or other contractors or owners with respect to the working conditions of any non-Philip Carey Corporation employees, it has assumed that the employees of such insulating workers have been furnished with a safe place in which to work.

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 product?

ANSWER TO INTERROGATORY NO. 3

We have made no studies to determine the effect of our products on the lungs and physical condition of persons employed as insulators and as asbestos workers by independent contractors or owners who use our products.

INTERROGATORY NO. 4

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

ANSWER TO INTERROGATORY NO. 4

Not applicable. See answer to Interrogatory 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 TO INTERROGATORY NO. 5

Yes. Products were sold to the distributor trade, to insulation application contractors, and to owners who used their own application crews, or who contracted with insulation application contractors. Pipe covering and block were packaged in cardboard cartons. The products have been used 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.

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ANSWER TO INTERROGATORY NO. 6

The products were used primarily in industrial metropolitan areas east of the Mississippi River.

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

Your defendant objects to Interrogatory No. 7 for the reason that the same is wholly irrelevant and immaterial to any issue in the case at bar.

Subject to the above and foregoing objections your defendant answers by stating that assuming that the interrogatory refers to the usual, customary and expected use of its products, the answer is no. Your defendant knows of no case in which any period of use, commercial, residential or other, of its insulating materials has caused any disease.

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 andwhen.

ANSWER TO INTERROGATORY NO. 8

No.

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.

ANSWER TO INTERROGATORY NO. 9

No.

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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 TO INTERROGATORY NO. 10

Inasmuch as your defendant's products are sold to insulation application contractors, and/or to owners who may and do use their own insulation application employees, and such products are used at various points in the United States, a program as suggested in Interrogatory No. 10 is not feasible.

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 objects to Interrogatory No. 11 for the following reasons:

(a) The same is too vague and to indefinite. Your defendant does not understand what is meant by the term "recognize" as used therein;

(b) Such interrogatory inquires as to matters which upon its face, reflects that it is within the personal knowledge of your defendant, and is therefore outside of the purview and intent of the federal laws of procedure, and particularly Federal Rule 33;

(c) Such interrogatory does not inquire as to any matter of fact as authorized by Federal Rule 33;

(d) Such interrogatory inquires to to a medical opinion which is not required to be answered under Federal Rule 33.

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(e) The interrogatory inquires as to a matter which is immaterial and irrelevant to any issue in this action.

Subject to the above and foregoing objections and exceptions, your defendant says that it is not familiar with Dr. Murray's findings.

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

Your defendant objects to Interrogatory No. 12 for the following reasons:

(a) The same is too vague and indefinite. Your defendant does not understand what is meant by the term "recognize" as used therein;

(b) The same inquires as to a matter that, upon its face, reflects that it is not within the personal knowledge of your defendant, and is therefore outside the scope of Federal Rule 33;

(c) The same does not inquire as to any matter of fact as authorized by Federal Rule 33;

(d) The same inquires as to a medical opinion which is not required to be answered by Federal Rule 33;

(e) The matter inquired about is immaterial and irrelevant to any issue in this action.

Subject to the above and foregoing objections and exceptions, your defendant says that it is not familiar with Dr. W. E. Cook's findings.

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

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exhault 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

Your defendant objects to Interrogatory No. 13 for the following reasons:

(a) Such interrogatory is vague and indefinite;

(b) Such interrogatory does not inquire as to any matter of fact as authorized by the applicable federal rules;

(c) Such interrogatory inquired as to a matter of law, which is not required to be answered by the Federal Rules of Procedure;

(d) Such interrogatory inquires as to matters irrelevant and immaterial to any issue in this action.

Subject to the above and foregoing objections and exceptions your defendant says that it is not familiar with the described legislation allegedly passed by an English Parliament. Your defendant has never had a producing plant in England or subject to English law. Your defendant has always complied with all applicable legislation and programs of jurisdictions to which it is subject. Your defendant assumes that contractors and/or owners using your defendant's products have complied with legislation and programs of the law making bodies having jurisdiction over them.

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 TO INTERROGATORY NO. 14

Your defendant objects and excepts to Interrogatory

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No. 14 for the following reasons:

(a) Such interrogatory does not inquire as to a fact, but calls for the explanation of a medical opinion, and therefore does not fall within the purview of the applicable federal rules.

Subject to the above and foregoing exception and objection your defendant says that its answer is "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 Appliances Company. We believe 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. 16

Does your company recognize that asbestos causes asbestos-induced lung cancer? If your answer is "Yes", when did you come to such realization and what action did you

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take in response thereto? If your answer is "No", then please explain why no studies were made by your company to ascertain that this fact was indeed true and thereafter to take action to advise those exposed to your products of their dangerous nature.

ANSWER TO INTERROGATORY NO. 16

Your defendant objects and excepts to Interrogatory No. 16 for the following reasons:

(a) Such interrogatory does not inquire as to any matter of fact as authorized by the applicable Rules of Federal Procedure;

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

(c) Such interrogatory inquires as to an ultimate issue, which is solely to be determined by the fact finder on the trial hereof.

Subject to the above and foregoing objections and exceptions, your defendant says that "it does not know."

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.

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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 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

Your defendant objects and excepts to Interrogatory No. 19 for the following reasons:

(a) Your defendant says that such interrogatory is vague and indefinite. Your defendant does not understand what is meant by the term "directly associated" as used therein;

(b) Such interrogatory does not inquire as to any matter of fact as authorized by Federal Rule 33;

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

(d) Such interrogatory inquires as to an ultimate issue which is to be determined solely by the fact finder on a trial hereof.

Subject to the above and foregoing objections and exceptions your defendant answers "No."

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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 TO INTERROGATORY NO. 20

Your defendant objects and excepts to Interrogatory No. 20 for the following reasons:

(a) 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 by Federal Rule 33;

(c) Such interrogatory inquires as to a scientific opinion not required to be answered by the applicable Federal Rules of Procedure.

Subject to the above and foregoing objections and exceptions your defendant says that it understands that asbestos fiber is inorganic.

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 if "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 objects and excepts to Interrogatory No. 21 for the following reasons:

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

(b) The same is irrelevant and immaterial to any issue in this action.

Subject to the above and foregoing objections and exceptions your defendant says that it is not familiar with all of the working conditions where asbestos products are used, and therefore must answer that it does not know.

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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

Your defendant objects and excepts to Interrogatory 22 for the reason that the same is immaterial and irrelevant to any issue in this action.

Subject to the above and foregoing objection and exception the answer is "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.

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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

Your defendant objects and excepts to Interrogatory No. 25 for the following reasons:

(a) The same is vague and indefinite inasmuch as your defendant does not understand what is meant by the term "familiar" as used therein;

(b) The same does not inquire as to any matter of fact as authorized by the applicable Federal Rules of Procedure;

(c) The same does not set forth sufficiently and with particularity the specific hearing inquired about;

(d)Such interrogatory is immaterial and irrelevant to any issue in this action.

Subject to the above and foregoing objections and exceptions the answer is "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

Your defendant objects and excepts to Interrogatory No. 26 for the following reasons:

(a) The same does not inquire as to any matter of fact as authorized by the applicable Federal Rules of Procedure;

(b) Such interrogatory inquires as to a medical or scientific opinion which is not required to be answered under Federal Rule 33;

(c) Such interrogatory is immaterial and irrelevant to any issue in this action.

Subject to the above and foregoing objections and

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exceptions your defendant says its answer is "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

Your defendant says that its answer is that it does not know. Your defendant objects and excepts to Interrogatory No. 27 for the following reasons:

(a) Such interrogatory is vague and indefinite. Your defendant does not understand what is meant by the term "familiarized" as used therein;

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

(c) Such interrogatory inquires as to a matter involving an medical opinon, which is not required to be answered under the Federal Rules of Procedure;

(d) Such interrogatory is immaterial and irrelevant to any issue in this action.

Subject to the above and foregoing objections and exceptions your defendant says that it is not familiar with said testimony.

INTERROGATORY NO. 28

Do you recognize or agree that the problems of air laden with asbestos dust is so great that possibly millions of the people in the United States are being exposed to the inhalation of asbestos dust who have nothing to do with its use or application? If your answer is "Yes", then please advise what action your company has taken, if any, to advise the general public of the dangerous nature of asbestos and what steps have been taken to endeavor to protect the general public from the dangerous effects of the inhalation of the asbestos dust and fibers, when such action was taken, and what it consists of.

ANSWER TO INTERROGATORY NO. 28

Your defendant objects and excepts to Interrogatory No. 28 for the following reasons:

(a) Such interrogatory does not inquire as to

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a matter of fact as authorized by Federal Rule 33;

(b) Such interrogatory inquires as to a scientific or medical opinion which is not required to be answered under the applicable Federal Rules of Procedure;

(c) Such interrogatory is immaterial and irrelevant to any issue in this action.

Subject to the above and foregoing objections and exceptions your defendant answers "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.

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 of others. Without cartons, 85% magnesia products of our manufacture would be difficult to distinguish 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

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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 and Insulating Company, Johns-Manville Products Corporation, Baldwin-Ehret-Hill, Inc., and Smith & Kanzler Corporation. Today, such products are manufactured by Empire Asbestos Company only to the best of our knowledge.

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 TO INTERROGATORY NO. 30

The statement is untrue. In 1959, we licensed B & B Engineering & Supply Company, Inc., Houston, Texas, to manufacture and use, transfer or sell "Careytemp" insulation elements molded to fit valves, tube turns, tees, ells, unions, flanges and other fittings of boilers, breachings, piping and the like requiring insulation. We purchase the elements from our licensee and furnish them to our customers purchasing conventional forms of "Careytemp." The availability of such elements has eliminated the cutting, sawing, scribing, shaping and mixing by the ultimate purchaser and his employees. There have been isolated instances in which insulation workers and their local unions have resisted the use of such elements. Non-standard fittings require a minor amount of on-site cutting or sawing.

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 TO INTERROGATORY NO. 31

The State of Ohio. December 1, 1966. It is domiciled in the State of Ohio.

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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 TO INTERROGATORY NO. 32

Ten years and nine months.

INTERROGATORY NO. 33

If you, your company, or your company's attorneys, contend that any respirators or other breathing devise 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 TO INTERROGATORY NO. 33

No contentions are made with respect to masks or respirators recommended by U. S. Bureau of Mines.

INTERROGATORY NO. 34

It is true, is it not, that your company has for many years manufactured insulating materials containing asbestos and that such products have been placed upon the open market to be purchased and used by the public?

ANSWER TO INTERROGATORY NO. 34

See our answer to Interrogatory No. 5.

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 TO INTERROGATORY NO. 35

Your defendant objects and excepts to Interrogatory No. 35 for the following reasons:

(a) Same is vague and indefinite. Your defendant does not understand what is meant by the term "recognized" as used therein;

(b) The same does not inquire as to any matter of fact as authorized by Federal Rule 33;

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

(d) Such interrogatory inquires as to an ultimate fact issue which is to be determined solely by the fact finder upon the trial hereof.

Subject to the above and foregoing objections and exceptions your defendant says that it does not recognize the accuracy of the statement made. It is possibile that most toxic substances may be injurious to health only when the quantity of airborne particles exceed certain levels over a period of time.

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.

ANSWER TO INTERROGATORY NO. 36

Your defendant objects and excepts to Interrogatory No. 36 for the following reasons:

(a) The same does not inquire as to any matter of fact authorized by the applicable Federal Rules of Procedure;

(b) The same inquires as to a matter of medical opinion which is not required to be answered under Federal Rule 33;

(c) The same is immaterial and irrelevant to any issue in this action.

Subject to the above and foregoing objections and exceptions your defendant answers that it 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:

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(1) Henry N. Hoerst, 10109 Wayne Avenue, Cincinnati, Ohio 45215, Dr. Ralph C. Scott, Holmes Hospital, Cincinnati, Ohio; Dr. R. J. Duffner, 406 W. 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 45202; Dr. Carl G. Ruehlmann, Crescent & Cooper, Cincinnati, Ohio 45215.

(9) Robert J. Horsman, 1725 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. Pfleghaar, 141 Monterey Street, Brisbane, California. Dr. Manuel Morales, address unknown. Mr. Pfleghaar 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) Lowell 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 Boulevard, 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.

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INTERROGATORY NO. 37

Assume for the purpose of this question that it has been known for many years that asbestos dust and fibers have been dangerous to human beings: Assuming the truth of such statement, has your company done anything prior to 1966 to notify any segment of the American population of such danger? If so, please explain what.

ANSWER TO INTERROGATORY NO. 37

Your defendant objects and excepts to Interrogatory No. 37 for the following reasons:

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

(b) Such interrogatory poses a hypothetical question to your defendant, to which no answer is required under the Federal Rule of Procedure;

Subject to the above and foregoing objections and exceptions your defendant says that it does not accept the truth of the question as stated. For many years prior to 1966 your defendant has advised its employees concerning the breathing of any kind of dust, and has furnished its employees with masks, and has installed mechanical dust collectors.

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,

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.

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ANSWER TO INTERROGATORY NO. 38

(1) Not applicable;
(2) Cut with a knife or saw;
(3) Cut with a knife or saw;
(4) Not applicable;
(5) Cut with a knife or saw;
(6) Not applicable;
(7) A blend of asbestos fibers, white mineral wool fibers and inorganic binders is applied by mechanical spray equipment, which, at a nozzle, combines atomized water mist with the mix to form a lightweight mat. The dry mix is conveyed pneumatically to the nozzle through an airtight hose. Applicators wear masks to prevent inhalation of any free asbestos dust or fibers.

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

Your defendant objects and excepts to Interrogatory No. 39 for the reason that such interrogatory is immaterial and irrelevant to any case at bar.

Subject to the above and foregoing objections and exceptions your defendant answers "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

Your defendant objects and excepts to Interrogatory No. 40 for the following reasons:

(a) Such interrogatory does not inquire as to any matter of fact as authorized by Federal Rule 33;

(b) Such interrogatory inquires as to a matter of medical opinion which is not requires to be answered;

(c) Such interrogatory is immaterial and irrelevant to any issue in this case.

Subject to the above and foregoing objections and

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exceptions the answer is "No."

INTERROGATORIES NO. 41, 42 and 43

Interrogatories No. 41, 42 and 43 and the answers thereto are as follows:

ANSWERS TO INTERROGATORIES 41, 42 and 43

YEAR	CONSOLIDATED Net Profit ($000's)	Net Worth ($000's)	Net Sales* ($000's)
1960	2,404	35,238	69,569
1961	2,806	36,082	69,953
1962	1,875	36,329	73,202
1963	2,142	36,843	69,363
1964	3,102	38,282	75,931
1965	2,614	38,848	78,454
1966	2,874	40,279	80,988
1967	1,280	41,162	85,047
1968	4,670	44,331	96,632

*Approximately 12% of the amounts shown is derived from sales of products purchased from others for resale.

43. (Continued). The total amount of sales of insulation products containing asbestos is as follows:

YEAR	NET SALES ($000's)*
1960	2,672
1961	2,405
1962	2,389
1963	1,763
1964	1,948
1965	2,417
1966	2,739
1967	2,567
1968	2,398

*Approximately 9% of the amounts shown is derived from sales of products purchased from others for resale.

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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 TO INTERROGATORY NO. 44

Charles E. Tennesson, Jr.
7285 Post and Rail Lane
Cincinnati, Ohio 45243

Paul A. Johnston
51 Oakwood Drive, Box 1034
Chapel Hill, North Carolina.

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 TO INTERROGATORY NO. 45

Not applicable.

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 TO INTERROGATORY NO. 46

Your defendant objects and excepts to Interrogatory No. 46 for the following reasons:

(a) The same is vague and indefinite inasmuch as this 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 as authorized by Federal Rule 33;

(c) Such interrogatory inquires as to a matter of medical opinion for which an answer is not required by Federal Rule 33;

(d) Such interrogatory is irrelevant and immaterial to any issue in this action.

Subject to the above and foregoing objections and exceptions your defendant answers:

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We can neither affirm nor deny the statement.

INTERROGATORIES 47 through 84

ANSWERS TO INTERROGATORIES 47 through 84

With respect to Interrogatories 47 through and including Interrogatory 84, your defendant objects and excepts for the following reasons:

(a) The same do not inquire as to a matter of fact as authorized by the applicable Federal Rules of Procedure;

(b) Such interrogatories inquire as to a matter of law which does not require to be answered under Federal Rule 33;

(c) Such interrogatories are immaterial and irrelevant to any issue in the case at bar.

Subject to the above and foregoing your defendant says that it is not familiar with the laws of any state other than the one in which it operates. Under the Workmen's Compensation law of the State of Ohio asbestosis is not mentioned.

DATED this the 19th day of December, 1969.

PHILIP CAREY CORPORATION

By L. A. Pechstein, Jr.
Secretary

STATE OF OHIO

COUNTY OF HAMILTON

BEFORE ME, the undersigned authority, on this day personally appeared L. A. Pechstein, Jr., Secretary of Philip Carey Corporation, a corporation, known to me 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, in the capacity therein stated, and as the act and deed of said corporation.

Given under my hand and seal of office, this 19th day of December, 1969.

William J. Oliverio
NOTARY PUBLIC IN AND FOR
HAMILTON COUNTY, OHIO

WILLIAM J. OLIVERIO
Notary Public, Hamilton County, Ohio
My Commission Expires Apr. 8, 1970

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I certify that the above and foregoing Answers of Defendant, Philip Carey Corporation, to Written Interrogatories was served upon plaintiff, Samuel R. Potter, by mailing a copy thereof to his attorney Mr. Ward Stephenson, Stephenson, Thompson and Morris, P. O. Box 68, Orange, Texas 77630, by certified mail, return receipt requested, on the 22 day of December, 1969.

W. N. Arnold, Jr.

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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT, DIVISION

. . . . . .

SAMUEL R. POTTER

VS.

FIBREBOARD PAPER PRODUCTS
CORPORATION, ET AL

. . . . . .

CIVIL ACTION NO. 6329

. . . . . .

REPLY OF DEFENDANT,
PHILIP CAREY
CORPORATION TO PLAINTIFF'S
INTERROGATORIES

FULBRIGHT, CROOKER, FREEMAN, BATES & JAWORSKI
ATTORNEYS AT LAW
BANK OF THE SOUTHWEST BUILDING
HOUSTON, TEXAS 77002

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