IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
DEC 29 1969
JAMES R. COONEY, CLERK
BY DEPUTY Myra Barton

SAMUEL R. POTTER

VS.

FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL

CIVIL ACTION NO. 6329

ANSWER OF DEFENDANT ARMSTRONG CONTRACTING AND SUPPLY CORPORATION TO INTERROGATORIES HERETOFORE SERVED UPON DEFENDANT'S COUNSEL

Armstrong Contracting and Supply 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

None.

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

This defendant was never a manufacturer of insulating products.

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 TO INTERROGATORY NO. 3

None.

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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.

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

No products were manufactured by this company or were packaged or sold between the years 1940 to 1967.

INTERROGATORY NO. 6

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

ANSWER TO INTERROGATORY NO. 6

Not applicable.

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

Not applicable.

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 TO INTERROGATORY NO. 8

Not applicable.

INTERROGATORY NO. 9

Have you or any of your employees conducted studies designed to minimize or eliminate the inhalation of asbestos

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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

Not applicable.

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

Not applicable.

INTERROGATORY NO. 11

Does your company recognize that as early as the year 1900 Dr. H. Montague Murray, 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

Our corporate records do not disclose recognition or non-recognition.

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

Our corporate records disclose neither recognition nor non-recognition. The balance of the interrogatory is not applicable to your defendant.

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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 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 theeffects 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

Our corporate records do not disclose either recognition or non-recognition. With respect to our own employees, your defendant employs health and safety experts through its own individual insurance program, and follows their recommended procedure to reduce all health and safety hazards at our job sites.

INTERROGATORY NO. 14

Do you agree that one 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 persons life?

ANSWER TO INTERROGATORY NO. 14

Do not know.

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

Inasmuch as your defendant is not a manufacturer of insulating products, it has not made any samplings or tests.

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 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.

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ANSWER TO INTERROGATORY NO. 16

With respect to the 16th interrogatory your defendant says that it does not have knowledge of the matters inquired about. With respect to the employees of your defendant, it follows the safety and health program recommended by its insurance carriers.

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

With respect to the 17th interrogatory your defendant has no information one way or the other with respect thereto.

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

Inasmuch as your defendant does not manufacture any asbestos products, a reply to such interrogatory is not called for.

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 has no knowledge or information one way or the other with respect to the matters inquired about in the 19th interrogatory.

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 has no knowledge or information one

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way or the other with respect to the matters inquired about in the 20th interrogatory.

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

As a non-manufacturer, this defendant is not aware of the matters inquired about in interrogatory No. 21.

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 dates, 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

No.

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

Not applicable.

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.

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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

Not applicable.

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

Not applicable.

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

With respect to the 28th Interrogatory your defendant has no knowledge or information with respect thereto, and therefore neither admits nor denies the same.

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

Inasmuch as your defendant is not a manufacturer of asbestos products, or any insulating products, no answer is called for.

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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

Not applicable.

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 domicile of your defendant corporation is the State of Delaware. It was incorporated on November 26, 1957.

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

Not applicable.

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 TO INTERROGATORY NO. 33

Your defendant is in the contracting field, and when it handles insulating products as a contractor, and not as a manufacturer, your defendant uses or instructs its employees to use approved respirators recommended by the 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?

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ANSWER TO INTERROGATORY NO. 34

No. Your defendant does not now nor has it ever manufactured insulating materials containing asbestos.

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

Not applicable.

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 has no knowledge of any deaths or serious lung disease among persons employed by it in its contracting capacity which have been medically attributed to the inhalation of asbestos dust or fibers.

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

The answer to this question requires an assumption of truth that cannot be made upon available knowledge by your defendant.

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:

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(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. Them 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 TO INTERROGATORY NO. 38

Not applicable.

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?

ANSWER TO INTERROGATORY NO. 39

Your defendant does not have such statistical data available.

INTERROGATORY NO. 40

If you have available, do you have any medical information or information of your own knowlege, 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 does not have any medical information available with respect to the matters inquired about in Interrogatory No. 40.

INTERROGATORY NO. 41

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

ANSWER TO INTERROGATORY NO. 41

I am unable to supply this information.

INTERROGATORY NO. 42

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

ANSWER TO INTERROGATORY NO. 42

I am unable to supply this information.

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.

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ANSWER TO INTERROGATORY NO. 43

Not applicable.

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

J. W. Lidell
President and Acting Chairman of the Board
1303 Marietta
Lancaster, Pennsylvania 17603

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

J. W. Lidell
1303 Marietta
Lancaster, Pennsylvania 17603

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 can neither confirm nor deny the the statement.

INTERROGATORIES NO. 47 THROUGH 84.

ANSWERS TO INTERROGATORIES NO. 47 THROUGH 84.

Your defendant is engaged in the contracting business, and as such it has in force and effect workmen's compensation insurance required by the various states in which it has or does contracting business. In the event a claim arises involving any employee of your defendant in connection with its contracting business, the claim is processed by The Aetna Casualty and Surety Company, its compensation carrier. Therefore, your defendant does not have any knowledge of any specific history or content of the applicable laws of the various states inquired about in Interrogatories 47 to and including 84.

DATED this the 22 day of December, 1969.

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ARMSTRONG CONTRACTING AND
SUPPLY CORPORATION

By D. F. Krank
D. F. Krank
Corporate Counsel

THE STATE OF PENNSYLVANIA
COUNTY OF Lancaster

BEFORE ME, the undersigned authority, on this day personally appeared D. F. KRANK, Corporate Counsel of Armstrong Contracting and Supply 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 22nd day of December, 1969.

Jane E. Pinkerton
NOTARY PUBLIC IN AND FOR
Lancaster COUNTY, PENNSYLVANIA
JANE E. PINKERTON, Notary Public
Lancaster, Lancaster County, Pa.
My Commission Expires Nov. 3, 1973

I certify that the above and foregoing Answer of Defendant, Armstrong Contracting and Supply Corporation, to Written Interrogatories was served upon plaintiff, Samuel R. Potter, by mailing a copy thereof to his attorney Mr. Ward Stephenson, Stphenson, Thompson and Morris, P. O. Box 68, Orange, Texas 77630, by certified mail, return receipt requested, on the 24 day of December, 1969.

W. N. Arnold, Jr.

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ANSWER OF DEFENDANT ARMSTRONG CONTRACTING AND SUPPLY CORPORATION TO INTERROGATORIES HERETOFORE SERVED UPON DEFENDANT'S COUNSEL

FULBRIGHT, CROOKER, FREEMAN, BATES & JAWORSKI

ATTORNEYS AT LAW

BANK OF THE SOUTHWEST BUILDING

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