IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MAR 6 1970
JAMES R. COONEY, CLERK
BY DEPUTY Margaret Driver

SAMUEL R. POTTER

VS.

FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL

CIVIL ACTION NO. 6329

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

TO THE PLAINTIFF, SAMUEL R. POTTER, AND MR. WARD STEPHENSON, STEPHENSON BUILDING, ORANGE, TEXAS, HIS ATTORNEY OF RECORD:

COMES NOW the defendant, Fibreboard Corporation, and files this, its objections and answers to the second set of interrogatories propounded under Rule 33, Federal Rules of Civil Procedure:

INTERROGATORY NO. 1:

In connection with Interrogatory #3 of the first set of interrogatories propounded to you, you have indicated that your company is familiar with the studies made by various other agencies, including the United States Government. Please state the names of the persons or agencies making such studies, the date and identification of such studies or reports, with sufficient detail to enable the plaintiff to obtain copies of any such studies to which you refer. Also, state what action, if any, your company took in response thereto.

ANSWER TO INTERROGATORY NO. 1:

In making answer to Interrogatory No. 3 of the first set of interrogatories, the question was unlimited and non specific as to time and this answer is likewise not limited as to time.

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The studies referred to in the original answer were:

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

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

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

(4) Documentation of Threshold Limit Values 1966.

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

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

This defendant knew of the disease or condition of asbestosis which occurred in mining and in plants which manufactured products containing some asbestos. In its manufacturing facilities it provided for dust control and dust collecting

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systems to provide safe working conditions for its employees engaged in manufacturing. This defendant's present plant has reasonable and proper dust controls which has eliminated dust as much as is reasonably possible, and the threshold limit values in the plant were well within the recommended Threshold Limit Values for dust from products containing some asbestos.

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

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

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

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We were of the opinion that contractors engaged in the insulation business, and insulation workers, were well aware of the problem created by inhalation of dust, and that respirators or masks had been in use by asbestos workers for a number of years, but notice was placed on our product to transmit the information contained in the notice to contractors and their employees if they did not already have this information.

INTERROGATORY NO. 2:

In connection with Interrogatory #8 of the first set of interrogatories propounded to you, you have indicated that your company is familiar with studies made by various other agencies, including the United States Government. Please state the names of the persons or agencies making such studies, the date and identification of such studies or reports, with sufficient detail to enable the plaintiff to obtain copies of any such studies to which you refer. Also, what action, if any, did your company take based upon these studies to prevent anyone using your products from contracting the disease of asbestosis?

ANSWER TO INTERROGATORY NO. 2:

See answer to Interrogatory No. 1.

INTERROGATORY NO. 3:

In answer to Interrogatory #10 of the first set of interrogatories propounded to you, you have indicated that dust counts have been made by independent organizations, as well as by various contractors, and by various governmental agencies. Please state the names of the persons or agencies making such studies, the date and identification of such studies or reports, with sufficient detail to enable the plaintiff to obtain copies of any such reports to which you refer. Also, what action, if any, did your company take based upon these studies?

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ANSWER TO INTERROGATORY NO. 3:

See answer to Interrogatory No. 1.

INTERROGATORY NO. 4:

In connection with Interrogatory #18 of the first set of interrogatories propounded to you, you have indicated that your company started placing warnings on containers containing asbestos materials. Please state what knowledge or information caused you to start using the warning on the date that you started using such warning, and why did you not use such warnings long prior thereto?

ANSWER TO INTERROGATORY NO. 4:

This interrogatory is answered in Interrogatory No. 18.

The request in Interrogatory No. 18, after asking if this defendant placed any warning signs on its product and to state what the warning sign was, asks: "If your answer to this question is 'yes,' then please explain why your company uses such warning notices." The second set of interrogatories, Interrogatory No. 4, asks the same question and the same information.

We refer to the answer to Interrogatory No. 18 of the first set of interrogatories and to Interrogatory No. 1 of this set for answer.

INTERROGATORY NO. 5:

Does your company recognize that asbestos causes asbestosis? 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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OBJECTION TO INTERROGATORY NO. 5:

Defendant objects to this interrogatory because the plaintiff is inquiring into medical facts and medical theory which will necessarily have to be developed through expert testimony at the time of the trial, and further, the question is too general and is not limited to the products manufactured by this defendant but deals with asbestos as a general term, whereas the product containing asbestos manufactured by this defendant is different from straight asbestos and contains a different kind of asbestos as opposed to some types of asbestos, and therefore this interrogatory is argumentative and improper. This defendant should not be called upon to answer a question which calls for a medical conclusion and may also be one of the ultimate issues to be tried in this case because there is a wide difference of medical and expert opinion.

ANSWER TO INTERROGATORY NO. 5, SUBJECT TO OBJECTION:

Subject to the objection, and while still insisting on the objection, this defendant does not admit the premise that its products which contain some asbestos are "dangerous" or "of a dangerous nature," but says that its products are reasonably fit and reasonably safe for the purpose for which they are manufactured.

This defendant admits only that it has been recognized that persons who are subjected to excessive exposure to dust from asbestos products who fail to take ordinary and reasonable precaution to prevent the inhalation of asbestos dust, or employees whose employers do not take reasonable precautions to reduce exposure to dust or take reasonable precautions to furnish a reasonably safe place to work, may develop asbestosis after excessive exposures over a period of thirty (30) years or more.

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Studies made of asbestos workers in naval shipyards as early as 1944, and again in 1964, and studies in regard to asbestos workers in construction insulation work have shown that exposures of such workers were below the threshold limit values of 5 million parts of dust per cubic foot of air, which is the threshold limit value for dust containing asbestos particles recommended by the Conference of Governmental Industrial Hygienists through 1968.

One researcher reports that after study of 541 employees in three asbestos textile plants using crysotile, a particular type of asbestos, and working where the threshold limit value of dust exposure was under 5 million particles per cubic foot, only three doubtful cases of pneumoconiosis were found. As heretofore stated in answer to Interrogatory No. 18 of the first set of interrogatories, and in answer to Interrogatory No. 1, this defendant placed a warning label on the packing container stating: "This product contains asbestos fibers. If dust is created when this product is handled, avoid breathing the dust. If adequate ventilation control is not possible, wear respirator approved by the U. S. Bureau of Mines."

All contractors and applicators using products containing asbestos know that such product contains asbestos and know that they should avoid breathing dust. It is customary in the asbestos insulation contracting trade for the employer to furnish respirators for the use of employees, especially where they are subjected to an unusual amount of dust. This defendant has assumed at all times that the contractor employer or owner

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would exercise good industry practice seeking to eliminate unusual dust exposure and to furnish such employees a reasonably safe place to work.

DATED this 6th day of March, 1970.

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

BY Geo. A. Weller
GEO. A. WELLER,
ATTORNEYS FOR DEFENDANT,
FIBREBOARD CORPORATION.

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THE STATE OF TEXAS §

COUNTY OF JEFFERSON §

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

GEO. A. WELLER

SUBSCRIBED AND SWORN TO before me by the said Geo. A. Weller, to certify which witness my hand and seal of office this, the 6th day of March, A. D. 1970.

NOTARY PUBLIC, JEFFERSON COUNTY, TEXAS

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

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing instrument was served on the following attorneys by mailing a true and correct copy thereof to their respective offices, this 6th day of March, 1970.

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

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

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

Mr. W. N. Arnold, Jr.
Fulbright, Crooker, Freeman, Bates & Jaworski
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Houston, Texas 77002

Mr. Ben L. Reynolds
Royston, Rayzor & Cook
877 San Jacinto Building
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Mr. Dale Dowell
707 Beaumont Savings Building
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