IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MAR 5 1970
JAMES R. COONEY, CLERK
BY Margaret Driver

SAMUEL R. POTTER		
VS.		CIVIL ACTION NO. 6329
FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL		

ADDITIONAL ANSWERS OF THE DEFENDANT, FIBREBOARD CORPORATION, TO CERTAIN NUMBERS OF THE FIRST INTERROGATORIES PROPOUNDED BY THE PLAINTIFF

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

COMES NOW the defendant, Fibreboard Corporation, pursuant to order entered on the 10th day of February, 1970, overruling its objections to certain interrogatories propounded under Rule 33, Federal Rules of Civil Procedure, and files this, its answers to such interrogatories, within the time permitted by the Court. This defendant's answer to each interrogatory bears the same number and letter as the interrogatory is numbered in the request.

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 does not recognize that its products are dangerous but says that each of the products manufactured by it which contain some asbestos were and are suitable and reasonably fit for the purpose for which the products were intended.

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This defendant had no contact with construction asbestos workers who were employed by contractors engaged in insulation work. No warnings were placed on its product until 1966. Since 1966, containers of our products have had the following warning label 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." It is assumed that this warning was transmitted to the contractor or supplier using this product and to its employees.

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:

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

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:

In reply to Interrogatory No. 11, this defendant has no information or independent knowledge of the matters referred to or

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inquired about in said interrogatory. We are now generally aware of his report, but do not recognize that this report is applicable to use of our product by construction workers, who are exposed only part time to dust, and then to dust counts below the threshold limit values published by the American Conference of Governmental Industrial Hygienists.

INTERROGATORY NO. 12:

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

ANSWER TO INTERROGATORY NO. 12:

In reply to Interrogatory No. 12, this defendant has no information or independent knowledge of the matters referred to or inquired about in said interrogatory. We are now generally aware of his report, but do not recognize that this report is applicable to use of our product by construction workers, who are exposed only part time to dust, and then to dust counts below the threshold limit values published by the American Conference of Governmental Industrial Hygienists.

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

ANSWER TO INTERROGATORY NO. 13:

In reply to Interrogatory No. 13, this defendant has no information or independent knowledge of the matters referred to in said interrogatory, but we are now aware of this legislative history. The English Parliament's legislation related to workers in asbestos-textile factories where dust was extremely heavy and was 100% asbestos fibers, and exposure was continuous during the working day. There is no reason to correlate the legislation of the English Parliament with use of our product by insulations workers, who are exposed only part time to dust, and even then to dust counts below the threshold limit values published by the American Conference of Governmental Industrial Hygienists.

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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.

ANSWER TO INTERROGATORY NO. 16:

This defendant has insufficient knowledge as to the causes of lung cancer either to recognize or not recognize that it is caused by asbestos. Medical experts have long recognized that medical science has been unable to determine the cause of cancer.

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:

This defendant has insufficient information relating to the disease mesothelioma to venture an opinion as to a direct connection between inhalation of asbestos dust and fiber and this disease.

INTERROGATORY NO. 19:

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

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ANSWER TO INTERROGATORY NO. 19:

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

INTERROGATORY NO. 26:

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

ANSWER TO INTERROGATORY NO. 26:

No.

INTERROGATORY NO. 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:

This defendant does not recognize that it has been known for many years that dust and fibers from products which contain some asbestos have been dangerous to human beings engaged in construction work. We cannot assume the truth of such statement because such statement is not correct. See this defendant's answers to the second set of interrogatories, Interrogatory No. 1 and the answer to Interrogatory No. 5. If required to answer, Fibreboard Corporation and its predecessors did not place a notice on their products until the year 1966, as stated in answer to Interrogatory No. 18.

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ANSWER TO INTERROGATORIES NOS. 47 THROUGH 84, INCLUSIVE:

Answering Interrogatories Nos. 47 through 84, inclusive, this defendant says that it does not have direct knowledge of the Workmen's Compensation Law of states other than the State of California and the State of Texas. This defendant recognizes that states which have workmen's compensation laws which cover occupational disease would in reasonable probability cover the disease of asbestosis. Some states merely cover occupation diseases and the inclusion of a specific occupational disease such as asbestosis is a matter of interpretation by the Industrial Accident Board or Courts. Some states specifically list asbestosis as an occupational disease.

Specifically answering Interrogatory No. 50, defendant admits that the State of California has a workmen's compensation law which covers occupational diseases, but the date on which it was first recognized that the disease of asbestosis was an occupational disease is not known.

In Texas, asbestosis is a specific occupational disease by name. According to the statute, asbestosis was added as an occupational disease by the Acts of 1947, 50th Legislature, Article 8306, Section 25.

This defendant does not have sufficient knowledge or information upon which to predicate a sworn statement to Interrogatories 47 through 84 other than as herein indicated.

DATED this 6th day of March, 1970.

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

BY _____
GEO. A. WELLER,
ATTORNEY 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

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.

Ouida L. Swope

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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Mr. Ben L. Reynolds
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Mr. Dale Dowell
707 Beaumont Savings Building
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