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FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MAR 12 1970
JAMES R. COONEY, CLERK
BY DEPUTY

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

S. R. POTTER

vs.

FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL

CIVIL ACTION
NO. 6329

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

TO: THE PLAINTIFF,
S. R. POTTER and/or
Mr. Ward Stephenson
Stephenson Building
Orange, Texas

His Attorney of Record

Comes now this Defendant, PITTSBURGH CORNING CORPORATION, and files this its Answers to the Second Set of Interrogatories propounded by the Plaintiff in the above-styled and numbered cause, each numbered Answer corresponding to the numbered Interrogatory propounded:

Interrogatory Number 1:

A Department of Health, Education and Welfare, U. S. Public Health Service, Occupational Health Program Study of the Asbestos Industry, was commenced approximately five years ago and still continues. As part of this, both Pittsburgh Corning Corporation's Port Allegheny, Pennsylvania and Tyler, Texas plants were studied. The study is under the direction of:

Louis J. Cralley, Ph. D.,
United States Public Health Service,
1014 Broadway
Cincinatti, Ohio 45202.

In response to this continuing study, Pittsburgh Corning Corporation has, and is improving its in-plant ventilation to control better the asbestos exposures of its employees. Also, in response to both this study and

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National Insulation Manufacturer's Association recommendations, this Defendant Pittsburgh Corning Corporation, labels its products with a label quoted in the Answer to Interrogatory Number 18 of Plaintiff's First Set of Interrogatories.

This Defendant, Pittsburgh Corning Corporation, is engaged only in the manufacture of its product, UNIBESTOS, and it is not engaged in, nor does it participate in any manner in the application procedures of said product, such product being sold to distributors, independent contractors and agencies of the United States Government for ultimate application thereof. Nevertheless, this Defendant, Pittsburgh Corning Corporation, distributes to such independent contractors, distributors and agencies who use its products, the National Insulation Manufacturer's Association booklet:

"Recommended Health Safety Practices for Handling And Applying Thermal Insulation Products Containing Asbestos."

Copies of this booklet may be obtained from the Executive Secretary, National Insulation Manufacturer's Association, Inc., 441 Lexington Avenue, New York, New York, 10017.

In addition, there are other studies made by the Industrial Hygiene Foundation, 5231 Centre Avenue, Pittsburgh, Pennsylvania 15232. These studies were sponsored by member companies of the National Insulation Manufacturer's Association, Inc., and have been set forth in Answer to Interrogatories Numbered 3 and 23 to the First Set of Interrogatories Propounded by Plaintiff.

Interrogatory Number 2:

See the Answer to Interrogatories Numbered 3 and 23 of the First Set of Interrogatories and the Answer to Interrogatory Number 1, above.

Interrogatory Number 3:

See the Answer to the Interrogatories Numbered 3 and 23 of Plaintiff's First Set of Interrogatories and Answer to Interrogatory Number 1 above.

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Interrogatory Number 4:

See the Answer to Interrogatory Number 18 of the First Set of Interrogatories, as well as the Answer to Interrogatory Number 3 above.

Objection to Interrogatory Number 5:

This Defendant objects to Intertogatory Number 5, for the reason that the Plaintiff uses the word "asbestos" generally, and does not attempt to define or delineate the numerous types of asbestos mined and manufactured throughout this country and the world, but treats it merely as a general term. This Defendant manufactures a product which contains only a certain percentage of a certain type of asbestos as opposed to other types of asbestos. Additionally, this Defendant objects to answering this Interrogatory, for the reason that the same inquires into medical theory and medical facts necessary to be developed through expert testimony at the time of trial. It is submitted that this Defendant should not be called upon to answer a question calling for medical conclusions, which may invade the province of this Court and of the jury, and may also be one of the ultimate issues to be tried in this case, there being a wide difference of medical and expert opinion regarding the same.

In Answer to Interrogatory Number 5, subject to Objection:

Subject to the above Objection, and without waiving the same, this Defendant denies that its product, which contains some asbestos, is "dangerous," or "of a dangerous nature," and states affirmatively, that this product is reasonably fit and reasonably safe for the purpose for which it is manufactured and sold.

It is admitted only that it has been recognized that a certain percentage of persons who are subjected to excessive exposure to dust from asbestos products over a period of many years, may develop asbestosis from that and related causes. These conditions are generally brought about by such persons who fail to take ordinary and reasonable precautions to prevent the inhalation of the asbestos dust, or persons whose employers do not take reasonable precautions to reduce their exposure to dust, or take reasonable

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precautions to furnish a reasonably safe place to work, and who may develop asbestosis after excessive exposures to such dust, due to the above reasons, over a period of from twenty to thirty years or more.

This Defendant further states that all independent contractors and their employees, who use products containing asbestos know that such products contain asbestos, and know that they should avoid breathing dust. This is particularly true by virtue of the literature which is furnished to such independent contractors, as for example, the "Recommended Health Safety Practice," printed and supplied by the National Insulation Manufacturer's Association; by safety discussions and lectures conducted by the Union to which employees of such contractors belong; and by safety personnel at the various plants at which the products are being applied. Customarily, in the insulation contracting trade, the employer furnishes respirators for the use of its employees, especially where they may be subjected to an excessive amount of dust. Since this Defendant has no control over the independent contractors which obtain and apply its products, it is assumed that at all times the independent contractor employer or the owner of the plant premises, would exercise customary and usual good industry practice in seeking to eliminate excessive dust exposure, and to furnish respirators where needed, and otherwise to furnish such employees a reasonably safe place to work.

DATED this 9th day of March, 1970.

Respectfully submitted,

WELLS, DUNCAN, BEARD,
GREENBERG AND HUNT

By George E. Duncan
George E. Duncan
515 Beaumont Savings Building
P. O. Box 3708
Beaumont, Texas 77704

Attorneys for Defendant, PITTSBURGH CORNING CORPORATION

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THE STATE OF TEXAS)
:
COUNTY OF JEFFERSON)

GEORGE E. DUNCAN, being duly sworn, on oath says that he is one of the attorneys of record for the Defendant, PITTSBURGH CORNING CORPORATION, in the above-styled and numbered cause, and that as such he 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 the above and foregoing Answers, and the same are true and correct to the best of his knowledge and belief. That the sources of his knowledge and the basis for his belief are information, records and other data supplied to him by Defendant, Pittsburgh Corning Corporation.

George E. Duncan
George E. Duncan

SWORN TO and SUBSCRIBED BEFORE ME, this 9th day of March, 1970, to certify which WITNESS MY HAND AND SEAL OF OFFICE.

Marita A Bennett
Notary Public in and for Jefferson County, Texas

Certificate of Service

I, George E. Duncan, attorney of record for the Defendant, Pittsburgh Corning Corporation, in the above-styled and numbered action, do hereby certify that a true and correct copy of the above and foregoing Answers to Plaintiff's Second Set of Interrogatories was, on this 11th day of March, 1970, served upon the Plaintiff, by depositing the same in the United States Mail, postage prepaid, addressed to Mr. Ward Stephenson, Stephenson Building, Orange, Texas, attorney of record for the Plaintiff; and also true copies of said Answers to Plaintiff's Second Set of Interrogatories were, on this 11th day of March, 1970, served upon all other Defendants in this action, by mailing copies of the same to said attorneys at their respective addresses.

George E. Duncan
Attorney for Defendant, PITTSBURGH CORNING CORPORATION

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ET AL

ANSWERS OF THE DEFENDANT,
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TO THE SECOND SET OF INTER-
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THE PLAINTIFF

LAW OFFICES OF
WELLS, DUNCAN AND BEARD
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