FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MAR 13 1970
JAMES R. COONEY, CLERK
BY DEPUTY

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

S. R. POTTER I

vs I CIVIL ACTION NO. 6329

FIBREBOARD PAPER PRODUCTS CORPORATION I

ADDITIONAL ANSWERS OF THE DEFENDANT, JOHNS-MANVILLE PRODUCTS CORPORATION, TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

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

COMES NOW the Defendant, Johns-Manville Products Corporation, and pursuant to the Court's Order over-ruling certain objections to Interrogatories submitted to Defendant by Plaintiff, files this its Answers to such Interrogatories within the time permitted by the Court.

Based on information obtained from Defendant's employees, with the advice of its counsel, Defendant has attempted to furnish the information requested in the Interrogatories, but it reserves the right to amend or supplement its answers if it finds that inadvertent omissions or errors have been made, or if additional or more accurate information becomes available. Such answers to each Interrogatory bears thesame number as the request:

INTERROGATORY NO. 1.

See previous answer.

INTERROGATORY NO. 2.

Defendant does not recognize that its products are dangerous. Further, Defendant says that each of the products manufactured by it were suitable and reasonably fit for the purpose for which the products were intended.

Published by AsbestosClaims.Law
asbestosclaims.law/library/10503/1

On or about December 15, 1964, Defendant began (and has since continued) to place a precautionary label on the following products: THERMOBESTOS: #500 INSULATING CEMENT: #450 INSULATING CEMENT: #301 CEMENT: #302 ASBESTOS CEMENT: #0352 ASBESTOS CEMENT: #304 ASBESTOS CEMENT: #400 ASBESTOS CEMENT: #319 REF. CEMENT; #678 SEMI-REF. CEMENT: 85% MAGNESIA CEMENT: SUPEREX CEMENT: MAGNESIA & SUPEREX P/I: MAGNESIA & SUPEREX BLOCK: AND #352 CEMENT. Said precautionary label read and reads as follows:

CAUTION

THIS PRODUCT CONTAINS ASBESTOS FIBER.

INHALATION OF ASBESTOS IN EXCESSIVE QUANTITIES OVER LONG PERIODS OF TIME MAY BE HARMFUL.

IF DUST IS CREATED WHEN THIS PRODUCT IS HANDLED, AVOID BREATHING THE DUST.

IF ADEQUATE VENTILATION CONTROL IS NOT POSSIBLE, WEAR RESPIRATORS APPROVED BY THE U. S. BUREAU OF MINES FOR PNEUMOCONIOSIS PRODUCING DUSTS.

In addition, Defendant has participated in a program designed to communicate to the employers of workers who work with insulation products that contain asbestos that inhalation of asbestos fibers in excessive quantities over long periods of time in the course of continuous employment under certain conditions may be harmful to some persons; and has communicated means for minimizing the inhalation of asbestos fibers by their workers to such employers.

INTERROGATORY NO. 3.

See previous answer.

INTERROGATORY NO. 4.

See previous answer.

INTERROGATORY NO. 5.

Industrial insulations products containing asbestos in the nature of those indicated in Exhibit "A" hereto and which were designated in response to Interrogatory No. 1, were sold by the Defendant during the years 1959 through 1967. Many of these products were also sold during the period 1940 through 1959. The products were sold to the trade by a sister corporation, Johns-Manville Sales Corporation, A Delaware cor-

The Potter v. Fibreboard Case File (1969-1972), Additional answer to third set of interrogatories
ACL Doc 10503 · Page 2 of 13
Published by AsbestosClaims.Law
asbestosclaims.law/library/10503/2

INTERROGATORY NO. 5. (continued)

poration. Johns-Manville Sales Corporation sold such products primarily to distributors, but occasionally directly to owners of installations, all tiers of contractors, subcontractors and equipment manufacturers, etc. Such products were sold in boxes and/or cartons and/or packages and/or skids and/or bales. The products were generally universally used throught the United States.

INTERROGATORY NO. 6.

The products were not used primarily in any specific location or area.

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. 8.

Defendant understands this Interrogatory to relate to persons working with and/or installing and/or applying industrial insulation products after they leave Defendant's place of manufacture. Accordingly, Defendant answers that it is participating, directly or indirectly in the studies described in Defendant's response to Interrogatory No. 3, supra.

The Potter v. Fibreboard Case File (1969-1972), Additional answer to third set of interrogatories
ACL Doc 10503 · Page 3 of 13
Published by AsbestosClaims.Law
asbestosclaims.law/library/10503/3

INTERROGATORY NO. 9.

Defendant states that no one is "exposed" to the use made of its products once they have been applied and/or installed. Assuming this question relates to persons working with and/or installing, and/or applying industrial insulation products after they leave Defendant's place of manufacture, then Defendant says it has participated in, and contributed to, the informational and education program of the National Insulation Manufacturers Association. This program is designed to educate the insulation contractors' industry with respect to the health aspects of fibrous materials through regional meetings of insulation contractors' associations (IDCNA meetings). The purpose of these meetings is to aid the contractors in minimizing or eliminating the inhalation of -- among other matters -- asbestos dust and fibers by those working with and/or installing and/or applying the products of Defendant and other manufacturers, i. e. industrial insulation applicators. In 1967, and again in 1968, programs have been presented at the regional meetings of industrial insulation contractors. Approximately 400 industrial insulation contractors have attended each year. These programs include a verbal review (of approximately three hours duration) of the biological effects of fibrous materials, the threshold limit value of fibrous materials, methods for evaluating concentrations of dust, and engineering and method change recommendations to assist the contractors in dust abatement and environmental control. In addition to the verbal presentations, two booklets have been prepared by the National Insulation Manufacturers Association, largely through Defendant's participation and efforts. One is entitled "Recommended Safe Practices for Handling and Applying Materials Containing Asbestos Fiber", printed 19__, and the second is entitled "Recommended Safe Practices for Handling and Applying Materials Containing Mineral Fibers" printed 19__. These books were written by members of the NIMA Education and Information Committee of which Clifford L. Sheckler, who is Manager, Accident Preventions and

The Potter v. Fibreboard Case File (1969-1972), Additional answer to third set of interrogatories
ACL Doc 10503 · Page 4 of 13
Published by AsbestosClaims.Law
asbestosclaims.law/library/10503/4

Health Administration of Johns-Manville Corporation, the parent of Defendant, is Chairman. Other members of the Committee include John Vyverberg, Owens-Corning Fiber Glas Corporation; Harry Mesler, Ruberoid Company; Leon Horowitz Certain-teed Corporation; and Jack Barnhart, Executive Secretary of the National Insulation Manufacturers Association. Based on the studies and information provided throughout the 1967 meetings, the need for literature in conjunction with the problem became obvious. Therefore, the aforesaid booklets were produced and circulated during the 1968 meetings. Also, subsequent to the meetings with the contractors considerable work has been done in conjunction with environmental control, especially in the area of fixed machinery and equipment.

Since 1967, Defendant has been participating in the Insulation Industry Hygiene Research Program of Mt. Sinai Hospital. The purposes of this study are: (1) to develop improved methods for minimizing inhalation by insulation workers of dust and fumes encountered in their work; (2) to disseminate knowledge of these improved methods of dust and fumes control wherever they may be applied advantageously; and (3) to offer cooperation, advice and assistance toward their universal adoption. The program director is Dr. Irving J. Selikoff, Director of the Environmental Sciences Laboratory, Mt. Sinai School of Medicine, New York, N.Y. These studies are currently underway; they have not been concluded and no reports have been published to date. Additionally, an epidemiological study on the biological effects of asbestos dust among the Port of Genoa and LaSpezia Arsenal insulation workers, among others, is being conducted by the Clinica del Lavoro, Milano, Italy, under the sponsorship of the Institute of Occupational and Environmental Health, which Institute in turn is funded by the Quebec Asbestos Mining Association. An affiliate corporation of Defendant is the principal contributor to the funding of the Quebec Asbestos Mining Association. This study was initiated early in 1968, and is scheduled to be completed within three to four years from its inception. There are no written reports of such study yet available.

The Potter v. Fibreboard Case File (1969-1972), Additional answer to third set of interrogatories
ACL Doc 10503 · Page 5 of 13
Published by AsbestosClaims.Law
asbestosclaims.law/library/10503/5

It was not until about 1963 when Dr. Irving J. Selikoff et al. made public the contents of a paper entitled "Asbestosis Among Insulation Workers" that anybody in the asbestos industry or in the scientific or medical world apprehended the possibility that there might be any danger to the health of those working with and/or installing and/or applying industrial insulation products such as those of Defendant.

Since Interrogatory No. 9 is limited to whether Defendant or any of its employees conducted studies Defendant is not answering here with respect to studies other than those in which Defendant or an affiliate of Defendant has participated directly or indirectly.

There is presently in existence a proposed program to take dust counts at certain construction sites where employees of Defendant or of its affiliates are employed. It is contemplated that this will be done in conjunction with the study now being conducted by the Insulation Industry Hygiene Research Program.

INTERROGATORY NO. 10.

See previous answer.

INTERROGATORY NO. 11.

Defendant recognizes that in 1907 Dr. H. Montague Murray stated that seven years earlier he had found spicules of asbestos in the lung tissue of a single patient. Defendant states that it cannot answer the question posed in the second sentence of this Interrogatory as it constitutes a non sequitor because it relates to the year 1900 and not 1907 and because Dr. Murray's findings did not deal with "the dangers to those using... asbestos products". Dr. Murray's findings did not recognize or discuss any such problem.

INTERROGATORY NO. 12.

With respect to the questions posed in the first sentence of this Interrogatory Defendant answers that it recognizes that Dr. W. E. Cook found evidence of asbestosis and that such discovery was pub-

The Potter v. Fibreboard Case File (1969-1972), Additional answer to third set of interrogatories
ACL Doc 10503 · Page 6 of 13
Published by AsbestosClaims.Law
asbestosclaims.law/library/10503/6

lished in the British Medical Journal of July 26, 1924, and re-published in 1927. Defendant states that it cannot answer the question posed in the second sentence of the Interrogatory because it is a non sequitor since Dr. Cook's study did not relate to or make any mention of a possible problem of asbestosis with respect to persons using finished products.

INTERROGATORY NO. 13.

Yes. Defendant states that it cannot answer the question posed in the second sentence of this Interrogatory because it is a non sequitor in that the legislation did not in any way relate to or appreciate or suggest the possible effects of asbestos on those using asbestos products. The legislation was confined to "in factory" asbestos exposure as stated in the first sentence of the Interrogatory.

INTERROGATORY NO. 14.

No.

INTERROGATORY NO. 15.

See previous answer.

INTERROGATORY NO. 16.

No. Defendant does, however, recognize that epidemiological data published in conjunction with studies of American installers of industrial insulation products indicate a greater incidence of bronchogenic cancer than that found in the general public. Defendant does not know the cause of bronchogenic cancer, mesothelioma or any other type of lung cancer.

INTERROGATORY NO. 17.

No.

INTERROGATORY NO. 18.

See previous answer.

INTERROGATORY NO. 19.

No.

INTERROGATORY NO. 20.

No.

The Potter v. Fibreboard Case File (1969-1972), Additional answer to third set of interrogatories
ACL Doc 10503 · Page 7 of 13
Published by AsbestosClaims.Law
asbestosclaims.law/library/10503/7

INTERROGATORY NO. 21.

See previous answer.

INTERROGATORY NO. 22.

See previous answer.

INTERROGATORY NO. 23.

Defendant does contribute funds to research concerning asbestos dust and its relation to lung disease. Defendant does not contribute funds to research concerning asbestos dust in relation to larynx disease.

INTERROGATORY NO. 24.

Defendant has no such labor inspectors but Defendant does provide the services of an industrial hygienist to Dr. Selikoff and the Mt. Sinai Hospital, New York, New York, for the purpose of making environmental evaluations including dust counts at the construction sites where thermal insulation products are being installed. This service is being provided in conjunction with the joint scientific research program being conducted by the Mt. Sinai Environmental Sciences' Laboratory, Johns-Manville Corporation, and the Heat and Frost Insulators and Asbestos Workers Union.

INTERROGATORY NO. 25.

Defendant is aware that the hearing described was conducted.

INTERROGATORY NO. 26.

No.

INTERROGATORY NO. 27.

Defendant is aware of the statement of the surgeon-general.

INTERROGATORY NO. 28.

No.

INTERROGATORY NO. 29.

Defendant understands this question to relate to industrial insulation products containing asbestos. Defendant states that all commercial insulating products look alike. Trained technicians

The Potter v. Fibreboard Case File (1969-1972), Additional answer to third set of interrogatories
ACL Doc 10503 · Page 8 of 13
Published by AsbestosClaims.Law
asbestosclaims.law/library/10503/8

could possibly identify by their appearance alone the different asbestos papers, cements and molded insulation made by different manufacturers. The Defendant doubts that a worker or layman could do so. The visual variations are those of color and the degree of color variations is usually very slight. Each manufacturer has his own carton or container marking which is distinctive, but the product, once outside of the container, is not in Defendant's opinion distinguishable by the worker or layman as aforesaid.

The sole exception to the foregoing rule is that some THERMOBESTOS block produced by Defendant during the period 1940 - 1967 had the initials "JM" or some Johns-Manville trade-mark imprinted thereon.

INTERROGATORY NO. 30.

No.

INTERROGATORY NO. 31.

See previous answer.

INTERROGATORY NO. 32.

See previous answer.

INTERROGATORY NO. 33.

See previous answer.

INTERROGATORY NO. 34.

See previous answer.

INTERROGATORY NO. 35.

See previous answer.

INTERROGATORY NO. 36.

See previous naswer.

INTERROGATORY NO. 37.

Answer will be furnished when information becomes available.

INTERROGATORY NO. 38.

See previous answer.

INTERROGATORY NO. 39.

No.

The Potter v. Fibreboard Case File (1969-1972), Additional answer to third set of interrogatories
ACL Doc 10503 · Page 9 of 13
Published by AsbestosClaims.Law
asbestosclaims.law/library/10503/9

INTERROGATORY NO. 40.

See previous answer.

INTERROGATORY NO. 41.

YEAR	NET PROFIT
1960	$ 6,809,000
1961	5,165,000
1962	5,781,000
1963	6,847,000
1964	9,263,000
1965	6,982,000
1966	8,147,000
1967	8,829,000
1968	13,849,000
1969	9,427,000

INTERROGATORY NO. 42.

YEAR	NET WORTH
1960	$ 62,775,000
1961	67,940,000
1962	73,722,000
1963	80,569,000
1964	89,832,000
1965	102,362,000
1966	103,007,000
1967	101,436,000
1968	115,286,000
1969	124,712,000

INTERROGATORY NO. 43.

YEAR	NET SALES
1960	$ 77,720,000
1961	169,189,000
1962	178,148,000
1963	190,046,000
1964	217,707,000
1965	224,308,000
1966	232,993,000
1967	227,199,000
1968	246,207,000
1969	262,900,000

Defendant does not have available the total amounts of sales of its products containing asbestos.

INTERROGATORY NO. 44.

See previous answer.

INTERROGATORY NO. 45.

See previous answer.

INTERROGATORY NO. 46.

See previous answer.

The Potter v. Fibreboard Case File (1969-1972), Additional answer to third set of interrogatories
ACL Doc 10503 · Page 10 of 13
Published by AsbestosClaims.Law
asbestosclaims.law/library/10503/10

INTERROGATORIES NO. 47 - 84.

Answers to Interrogatories No. 47 - 84 inclusive.

Defendant agrees that the states mentioned had Workmen's Compensation Laws covering occupational diseases, beginning in the years mentioned, but disagrees that all of these Workmen's Compensation Laws specifically covered asbestosis by name.

Respectfully submitted,

Gordon Pate

GORDON R. PATE
1119 Beaumont Savings Building
Beaumont, Texas 77701

Attorney for Johns-Manville Products Corporation

JOHN G. TUCKER
Orgain Bell & Tucker
Beaumont Savings Building
Beaumont, Texas

THE STATE OF TEXAS I

COUNTY OF JEFFERSON I

GORDON R. PATE, being duly sworn, upon oath states that he is the attorney of record for the Defendant, Johns-Manville Products Corporation, and authorized in thecourse of his employment to make and present the foregoing answers to Plaintiff's Interrogatories, which he does under said authority, and being cognizant of the matters therein set forth and based upon the information furnished him and the investigation conducted as to the subject matter of the Interrogatories, says that the said answers are true and correct.

Gordon Pate

GORDON R. PATE

SWORN TO AND SUBSCRIBED before me, the undersigned authority, on this the 12th day of March, 1970.

Jean K. Boone

NOTARY PUBLIC IN AND FOR JEFFERSON COUNTY, TEXAS.

The Potter v. Fibreboard Case File (1969-1972), Additional answer to third set of interrogatories
ACL Doc 10503 · Page 11 of 13
Published by AsbestosClaims.Law
asbestosclaims.law/library/10503/11

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing answers to Interrogatories was on the 12th day of March, 1970, forwarded to all counsel of record.

Gordon R. Pate

GORDON R. PATE

The Potter v. Fibreboard Case File (1969-1972), Additional answer to third set of interrogatories
ACL Doc 10503 · Page 12 of 13
Published by AsbestosClaims.Law
asbestosclaims.law/library/10503/12

CIVIL ACTION NO. 6329

S. R. POTTER

vs

FIBREBOARD PAPER PRODUCTS CORPORATION

ADDITIONAL ANSWERS OF THE DEFENDANT, JOHNS-MANVILLE PRODUCTS CORPORATION, TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

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

GORDON R. PATE
ATTORNEY AT LAW
1119 BEAUMONT SAVINGS BUILDING
BEAUMONT, TEXAS 77701