



NO. 92-C-2440

AUDREY J. BODINE, ET AL.	§	IN THE DISTRICT COURT OF
	§	
VS.	§	BRAZORIA COUNTY TEXAS
	§	
OWENS-CORNING FIBERGLAS	§	
CORPORATION, ET AL.	§	23RD JUDICIAL DISTRICT

MOTION FOR CONTEMPT AND SANCTIONS

TO THE HONORABLE JUDGE OF THE COURT:

COME NOW PLAINTIFFS, by and through counsel, and request the Court, after notice and hearing, to enter its Orders for Contempt of Court and Sanctions against OWENS-CORNING FIBERGLAS CORPORATION ("OCF"). This Motion for Contempt of Court and Sanctions is sought against OCF under this Court's inherent powers necessary for the enforcement of its lawful orders, Rules 13 and 215 of the Texas Rules of Civil Procedure. Further, Plaintiffs request that this Court hear evidence, make findings and take appropriate action within the inherent powers of this Court, and Rules 13 and 215 of the Texas Rules of Civil Procedure, against the party, person, or persons responsible for the preparation, execution and filing in this case of groundless and false affidavits of OCF's house counsel, Robert A. McOmber. Notice of this motion is being provided to OCF, Robert A. McOmber, and this Defendant's local counsel.

The affidavits of Robert A. McOmber were filed by OCF to verify the truth this Defendant's answers to interrogatories,

after this Court's Order of March 2, 1993 for OCF to provide full, complete, responsive and nonevasive answers to Plaintiffs' first and second sets of interrogatories in this case.

I.

This Motion for Contempt and Sanctions relates to the first and second set of interrogatories of Plaintiffs seeking factual information from OCF for the proper development of Plaintiff's case, and relevant to the defense contentions of OCF. OCF responded to Plaintiffs' first set of interrogatories on December 21, 1992, and to Plaintiffs' second set of interrogatories on February 16, 1993. See Exhibits 1 and 2. On February 18, 1993 Plaintiffs filed their Motion to Compel answers to certain interrogatories from the first and second sets. See Exhibit 3.

On March 2, 1993 this Court conducted a hearing on Plaintiffs' Motion to Compel answers to interrogatories. Plaintiffs' counsel and OCF's counsel, Frank Bean, were present for the hearing and the Court's order. This Court's order of March 2, 1993 called for OCF to provide full, complete, responsive and nonevasive answers to Plaintiffs' first and second sets of interrogatories. See Exhibit 4. On March 2, 1993 Plaintiffs' counsel forwarded a fax letter to OCF's counsel further stating the necessity for providing information as ordered by this Court. See Exhibit 5.

On March 12, 1993 OCF filed its responses to interrogatories in the first and second sets. The interrogatories were signed on

behalf of OCF by William J. Cozort, Jr., and the affidavits verifying the truth of the answers were signed by Robert A. McOmber.

The Court ordered answers provided by Owens-Corning and its counsel were filed in bad faith, and in flagrant and callous disregard for the discovery process, and this Court's March 2, 1993 Order. The papers filed by OCF and its counsel were known to be groundless and false for the purpose of delaying this cause and preventing the Plaintiffs from properly preparing for trial. There is no good cause for the preparation, signing and filing of such groundless and false statements in contempt and defiance of this Court's March 2, 1993 Order.

Such bad faith filing by OCF and its counsel, including the filing of false affidavits by Robert A. McOmber, is a willful, deliberate and knowing disregard for this Court's March 2, 1993 Order. Such disregard for the discovery process, the Texas Rules of Civil Procedure and this Court's March 2, 1993 Order demonstrates the callousness and misconduct that can only serve to further burden and consume the time of this Court. Such conduct also prevents the orderly preparation of Plaintiffs' case against this Defendant.

Plaintiffs request this Court to conduct a hearing and enter its Orders for contempt and sanctions against the party, and/or attorneys, responsible for the filing of false answers and affidavits concerning this Court's March 2, 1993 Order.

Plaintiffs request that this Court impose a daily sanction of Five Thousand Dollars (\$5,000) per day, as of March 12, 1993, against OCF for knowingly and deliberately filing false answers and affidavits in defiance of this Court's Order of March 2, 1993.

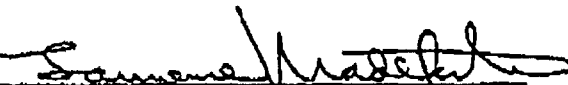
Further, Plaintiffs request that this Court impose, under Rules 13 and 215 of the Texas Rules of Civil Procedure, and this Court's inherent powers, a daily sanction within the range of Ten Thousand Dollars (\$10,000) to Twenty-Five Thousand Dollars (\$25,000) against OCF and/or its attorneys that are responsible for filing the false answers and affidavits to the Court ordered interrogatories. Plaintiffs request that the daily sanction remain in place until OCF and/or its attorneys fully comply with this Court's Order of March 2, 1993.

Plaintiffs further request that the Court determine during the hearing as to whether or not the imposition of daily monetary sanctions would threaten OCF's ability or willingness to continue this litigation. If OCF's ability to continue this litigation is not jeopardized by the imposition of daily sanctions, Plaintiffs request that such sanctions be imposed and paid to the Plaintiffs at 15 day intervals until OCF has complied with the March 2, 1993 Order of this Court, or until further orders from this Court. If OCF does not have the ability to pay a daily imposition of sanctions, any accumulated sanctions imposed should be deferred until final judgment is entered in this cause.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs request the Court to conduct a hearing and enter such additional orders as are necessary to uphold the integrity of the laws of the State of Texas, the Texas Rules of Civil Procedure and the March 2, 1993 Order entered by this Court.

Respectfully submitted,

LAW OFFICES OF LAWRENCE MADEKSHO

BY 
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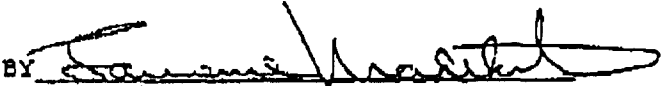
AND

ROBERT E. BALLARD
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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing instrument has been forwarded to counsel of record by certified mail, return receipt requested and other counsel by regular mail, on this the 20th day of April, 1993.

BY 
LAWRENCE MADEKSHO

FILED
at o'clock M

NO. 92-C-2440

JUN 14 1993

AUDREY J. BODINE,
SURVIVING WIDOW OF
HARVEY M. BODINE, ET AL

§

IN THE DISTRICT COURT OF
Brazoria County, Texas
BY _____ DEPUTY

VS.

§

BRAZORIA COUNTY, TEXAS

OWENS-CORNING FIBERGLAS
CORPORATION, ET AL

§

23RD JUDICIAL DISTRICT

ORDER

On May 24, 1993, this Court conducted a hearing on Plaintiffs' Motion for Contempt and Sanctions against Owens-Corning Fiberglas Corporation, ("OCF"), relating to this Court's Order of March 2, 1993, which stated that OCF shall provide full, complete, responsive and nonevasive answers to interrogatories 3 and 4 of Plaintiffs' first set, and interrogatories 3, 4, 5, 6, 8, 9, 10, 11 and 16 of Plaintiffs' second set in accordance with the Texas Rules of Civil Procedure.

At the May 24, 1993 hearing, this Court received the Robert A. McOmber testimony of May 22, 1993, including the evidentiary exhibits, along with additional documents from both parties and heard arguments of counsel on the motion. OCF subsequently submitted testimony from several of its employees; Saxby, Dr. Konzen and Helser, plus interrogatory answers of 1968 by Edwards from the Tomplait case. OCF also submitted testimony from witnesses that are not OCF employees. The Court finds that the interrogatories were directed to OCF; that litigation should be resolved on the basis of truth and the merits; that fraud, deceit, bad faith and deception by OCF have been demonstrated; and that such conduct should not go uncorrected.

The Court finds that two critical issues in asbestos litigation concern asbestos products exposing users and consumers to an unreasonable risk of harm, and when was such danger known, so as to trigger a duty to provide a timely and adequate warning; that the McOmber testimony presented to this Court shows that OCF concedes that its asbestos-containing product, Kaylo, when used in a manner reasonably to be anticipated, exposed users to a risk of asbestosis, lung cancer and mesothelioma (a cancer that is invariably fatal), risks for users and consumers which require a timely and adequate warning. McOmber's testimony acknowledged that this fact information is an important element in the asbestos litigation. McOmber acknowledged that it would be fraud to knowingly and intentionally file false information in litigation, and that he would call it fraud if discovery responses were filed with the thought that the responses were incorrect and purposely trying to mislead the court and the other side.

On March 2, 1993, this Court entered its Order "that OCF shall provide full, complete, responsive and nonevasive answers" to the above described interrogatories. On March 12, 1993 OCF filed its responses to the interrogatories, which were signed by William J. Cozort, Jr., of the law firm of Bean & Manning, and were sworn to as truthful by Robert A. McOmber. Any reviewing court is requested to read this testimony of McOmber and the evidentiary exhibits attached to his May 23, 1993 deposition, which this Court finds provides part of the basis for this Order.

Further, the McOmber testimony revealed that the following

persons were involved with preparing the answers to the OCF interrogatories that were the subject of this Court's March 2, 1993 Order. The persons are: Ron Wagner, of the law firm of Kitch, Saurbier, Drutchas, Wagner & Kenney of Detroit, Michigan (OCF outside counsel), James Crosby, of the law firm of Crosby, Saad & Beebe of Mobile, Alabama, (OCF outside counsel), Frank Bean, of the law firm of Bean & Manning, (OCF's local counsel), Kelley Johnston, of the law firm of Wright, Robinson, McCammon, Osthimer & Tatum of Richmond, Virginia, (OCF outside counsel), and Robert A. McOmber. The testimony of McOmber also established that OCF has "standard answers" to interrogatories, such as number 3 to the first set in this case. McOmber testified that he does not even read the answers before he signs affidavits swearing to their truth; that OCF's standard answers were drafted by the Wright Robinson firm of Richmond, Virginia; that they are filed in litigation all across the country; and that McOmber swears to their truthful nature even though he has not seen the answers. McOmber also testified that he signed affidavits without knowing the case they were for.

McOmber further testified that OCF has the United States divided up into six or seven regions, with each region having a designated regional manager who is responsible for the day-to-day activity of its cases, including strategy. He testified that Jack Manning, of Bean & Manning, was the regional manager for Texas.

McOmber also testified that as of the end of 1991, he had never made any of the decisions as to whether a document was privileged or non-privileged. He stated he had reviewed documents, but was

unable to recall and had no idea as to crucial admissions in OCF's documents. As an example, McOmber was confronted with the statement from Summary F from this Court's November 30, 1992 Order relating to the admission of OCF's house counsel, Joseph A. Stancati in the January 7, 1981 Summary of Key Asbestos Documents relating to the November 21, 1944 draft of a letter from Dr. Canfield to Edward Ames. When McOmber was asked the question about this November 21, 1944 letter showing Owens-Corning had "knowledge that asbestosis was a disease connected with pipe insulators," McOmber responded that he didn't know that to be true and it didn't ring a bell with him. McOmber was not only asked about a document he allegedly reviewed, he was shown the actual document that was the subject of this Court's February 16, 1993 Order. Exhibit 12 to McOmber's testimony is entitled "Corporate Conduct Testimony - Major Topic Areas", and bears OCF's document numbers 33 105 0058-0061. Looking at the actual document, McOmber testified he didn't think he had ever seen the document before and didn't remember having seen it. McOmber's own sworn testimony contradicts the affidavits he has previously filed with this Court concerning an alleged review of documents and asserting claims of privilege on behalf of OCF.

The Court finds that the testimony and evidence from the May 22, 1993 deposition shows that OCF has filed false statements in the United States Supreme Court, and in this Court. These false statements are in OCF's November 1989 brief filed in this Court from the Wilson, et al case, which was in the United States Supreme

Court. In November 1989, OCF stated that sometime after October 1988 OCF "recently discovered two legal department memoranda dated September 4, 1980 and October 14, 1980" that made its prior answer concerning knowledge of asbestos related workers compensation claims "partially inaccurate". The same interrogatory answered by Owens-Corning, in 1984, through its senior litigation counsel, Daniel M. Phillips, in federal court in Galveston pursuant to Court Order by the Honorable Hugh Gibson is as follows:

"Did any division of your company or subsidiary company engaged in the contract business of applying insulation products or your workmen's compensation carrier ever have any claims for lung diseases or death from lung disease, whether directly or indirectly attributed to asbestosis, mesothelioma, lung cancer, or any exposure to asbestos products prior to 1972? If the answer is "yes", give the name of such employees and attach copies of such claims and copies of all documents relating to the disposition and handling of such claims."

To which OCF answered,

"Yes, this Defendant is currently involved with such claims. This Defendant does not have the necessary information, with which to answer this interrogatory; however, Defendant's insurance carrier may be able to supply the information."

The May 22, 1993 McOmber testimony, and exhibits 5, 6, 14, 15, 16, 17, 18, 19, 20, 21 and 22 show that OCF's statements in its brief of November 1989 with The United States Supreme Court, and filed in this Court in June of 1990, are patently false.

At the May 24, 1993 hearing, OCF again submitted to this Court its state of the art defense documents to the effect that some doctors, scientists or government agencies did not know what OCF actually knew about the dangers of asbestos-containing insulation products, and when OCF knew of these dangers. OCF has not sub-

mitted evidence to this Court that this Defendant ever shared its admitted knowledge about the dangers of asbestos-containing insulation products in the early 1940's with the few doctors, scientists or government agencies referenced in this Defendants' exhibits.

The evidence presented by the parties, and the evidence pending before this Court in Heathman and Searls, was considered by this Court in reviewing OCF's answers to interrogatories filed pursuant to the March 2, 1993 Order.

The evidence before this Court shows that OCF first started producing, supplying or selling asbestos-containing products in 1938, the year it was formed by Owens-Illinois and Corning Glass. In 1953, OCF became the national distributor for the Kaylo asbestos pipe covering and block insulation products that had been manufactured and sold by its parent corporation, Owens-Illinois, since 1943. In 1958, OCF bought the Kaylo division and plant of Owens-Illinois in Berlin, New Jersey, where this product was manufactured. OCF became the manufacturer, seller and distributor of the Kaylo asbestos pipe covering and block insulation after 1958.

The 1968 interrogatory answers of Mr. Edwards in the Tomplait case state that OCF first used a caution label on its asbestos products in 1967, which contradicts the 1966 date testified to by Mr. Helser, and other testimony from Mr. Saxby indicates the year a caution label was first used on Kaylo by OCF could be 1970, or later.

The testimony of Mr. Saxby, a former senior Vice President of OCF, and Dr. Konzen, this Defendant's medical director from January 1968 to December 1992, discuss the asbestos disease and cancer cover-up by OCF, starting from the early 1940's, to conceal the dangers of asbestos products from the users and consumers.

Mr. Saxby testified that OCF's threat to warn users and insulators about the dangers in 1942 was not carried out, and never done at that time, and was "probably considered to be a very bad idea." Mr. Saxby further testified that the OCF's lawyers had not shown him all the documents on the Saranac Laboratory animal studies on Kaylo prior to the time he had testified and reached previous conclusions.

Dr. Konzen's testimony included the asbestos disease and cancer cover-up by OCF starting from 1942, including a February 6, 1956 letter from the Saranac Laboratory advising OCF that they were already probably aware that asbestos had been incriminated as a carcinogen. Dr. Konzen testified that OCF did not tell its own employees that were making asbestos products in their plants that asbestos caused cancer until 1971, although cancer was directly linked to asbestos exposure by 1935. He also agreed there were published cases in the medical literature before the year 1935 of individuals who had worked or been exposed to asbestos-containing products that developed asbestos-related diseases.

Dr. Konzen's testimony further shows that OCF could not identify any present or past employee who had ever given testimony that OCF ever relied on threshold limit values (TLV's) or the

Fleischer-Drinker report for not providing warnings on asbestos products before Dr. Konzen became employed in 1968. Dr. Konzen's testimony also showed Kaylo still contained low concentrations of asbestos in 1984, although OCF had previously claimed this insulation product was asbestos free after 1972. Dr. Konzen further testified that dust diseases, and the concepts of dose and latency, have been known for hundreds of years, and go back before the middle ages in occupational medicine.

Konzen's testimony further shows that Dr. Konzen believed that Dr. W. C. Hueper, chief of the national cancer institute in the 1960's, was a dedicated scientist of whom Dr. Konzen had consulted with as a young physician. Dr. Konzen stated that Dr. Hueper's 1964 presentation at the New York Academy of Science on Occupational and Non-occupational Exposures to Asbestos and that,

"Since 1935, an increasing amount of epidemiologic, clinical and pathological evidence moreover incriminates this health hazard as one of the environmental sources of cancer of the lung, and more recently, also a mesothelioma of the pleura and peritoneum, although some commercially interested parties and their medical guardians and protectors still prefer, for their own reasons and motives, to deny the existence of these dangerous and usually fatal sequela of the respiratory contact with asbestos dust"

was too sweeping of an indictment.

Likewise, OCF's medical director was not sure of his opinion concerning Dr. Hueper's 1943 statements, in the American Society for Control of Cancer Bulletin, that industrial concerns are in general not particularly anxious to have the occurrence of occupational cancers among their employees, or of environmental cancer among the consumers of their products, made a matter of public

record. Dr. Konzen testified that the threat of Owens-Corning to send information warning about asbestosis and cancer in 1942 had no relevance to insulation workers that would be using asbestos products. Dr. Konzen also testified as to the Two Million Dollars (\$2,000,000) recently paid to him through benefits from OCF in expressing his opinions.

This testimony and evidence set the background of this Court's considering OCF's answers to the two sets of interrogatories made the subject of the March 2, 1993 Order.

THE FIRST SET OF INTERROGATORIES

Interrogatory 3, inquired as to whether or not OCF, its agents, employees or representatives ever acknowledged the fact that the dangers and/or risks from exposure to asbestos-containing products were known before the year 1964. Interrogatory 3 has subparts for providing additional information. It is considered with Interrogatory 4, which asked OCF to identify each document and/or deposition that contains and/or reflects any of the information and evidence sought in Interrogatory 3, by identifying the documents and depositions, as well as any documents for which this Defendant claims a privilege over concerning information sought in Interrogatories 3 and 4. OCF responded "no" to Interrogatory 3, and that Interrogatory 4 was not applicable since the answer to number 3 was "no". Robert A. McOmber signed the affidavits verifying the truth of OCF's answers to these two interrogatories. OCF's local counsel, Frank Bean, argued at the hearing that these were truthful answers. This is the same OCF counsel that has

previously stated that the trial court does not have the authority or power to order a party to amend discovery responses.

On November 30, 1992 this Court entered an Order in Heathman and Searls specifically finding OCF's same response to be false, based upon the Stancati summary alone, which was before the Court in camera because of OCF's claims of privilege for the document. Because of the evidence presented at the hearing; the Saxby and Konzen testimony and evidence already before the Court in camera, the Court finds that OCF's answers to Interrogatories 3 and 4 and the McOmber affidavit in support, are knowingly and intentionally false.

The Court finds that OCF and its lawyers have attempted to engage in semantic gymnastics, and, even when confronted with irrefutable documentary evidence continue to deny the truth of this Defendant's knowledge. This Court has previously found that OCF has routinely used counsel for the purpose of carrying out conduct that, which if not criminal, borders on being criminally culpable conduct, and these findings are so made in these proceedings as a basis for this Order.

THE SECOND SET OF INTERROGATORIES

Interrogatory 3 of the second set requested OCF to identify the date, author, addressee and subject matter for documents identified or listed in this Defendant's documents that have specific Bates stamp numbers, which in turn are some of the attorney summaries identified in this Court's November 30, 1992 Order in Heathman and Searls. Instead of identifying the specific

documents and subject matter as ordered, OCF responded that the information requested could be derived or ascertained from the documents themselves, pursuant to Rule 168 (2) (b), T.R.C.P. This Court is aware that OCF has previously produced some of these documents to the Court and to the Plaintiffs. The Court is also aware that of these documents produced, there were numerous inconsistencies in the documents, including blank pages. OCF has not complied with this Court's Order on Interrogatory 3 and has attempted to evade providing the ordered information.

Interrogatories 4 and 5 from the second set requested market share information for the sales of asbestos containing pipe covering and block insulation for the state of Texas and the United States between the years 1958 and 1972. This Court is aware that this Defendant has not provided full, complete information on these interrogatories since the Plaintiffs have identified and requested production of additional market share documents in their third and fourth requests for production in this case.

In Interrogatory 6, OCF continues to insist upon its objections and refused to abandon its answer previously provided. A simple, straight forward "None" would have been a nonvasive, full and responsive answer, and should have been initially provided.

Interrogatories 8 and 9 request the earliest year this Defendant suspected and knew there was a danger or risk of harm to human beings exposed to asbestos dust and fibers. OCF responded "1941, assuming a sufficient concentration of dust and a sufficient duration of exposure." Documentary evidence on this Defendant's

own letterhead that was submitted at the hearing shows this answer to be false.

Interrogatory 10 requested OCF to state the first year that this Defendant first suspected there was a danger or risk of harm to human beings exposed to asbestos that was in asbestos pipe covering and block insulation products. OCF's response was "Unknown". The documentary evidence before the Court shows this answer is also knowingly false.

Interrogatory 11 requested OCF to state the first year that Owens-Corning first knew there was a danger or risk of harm to human beings exposed to asbestos that was in asbestos pipe covering and block insulation products. OCF responded "1973, assuming, a sufficient concentration of dust and sufficient duration of exposure". The Court finds that this answer is also knowingly false, and that the sworn affidavit of Robert A. McOmber verifying the truth of this answer, is likewise knowingly false. McOmber testified repeatedly that this answer was truthful, and vividly illustrates this witness has no reluctance to swear to false statements. At the May 24, 1993 hearing, Plaintiffs presented evidence of answers to interrogatories that were given under oath by OCF in 1979 in California. The interrogatory in California stated, "When did you (being OCF) learn for the first time of a diagnosed case of asbestosis or any asbestos-induced carcinoma involving users of asbestos insulation products?" In 1979, OCF's answer to this interrogatory in California was "1941".

OCF's counsel, Frank Bean, argued at the hearing that the

1973 date to Interrogatory 11 was truthful, and that it takes weeks to try these things as to when a defendant had knowledge. This OCF counsel also argued at the hearing that he would stand on the testimony of Robert A. McOmber and OCF's answers, both of which this Court finds to be false.

Interrogatory 16 requested information as to whether or not a judgement in this case assessing money damages for gross negligence or punitive damages in an amount up to Ten Million Dollars (\$10,000,000) against OCF would be paid by insurance coverage, and if so, by which carrier, and if not, why not. OCF responded by insisting upon its prior objections and still standing upon those objections, and then providing a qualified "No" answer which does not reveal the full extent of the insurance coverage available to this Defendant once it launches into its generalized answer. This Defendant's 1992 Annual Report does not reveal the full extent of the insurance coverage available and speaks in global terms that this Defendant "has substantial unexhausted insurance coverage under certain non-products liability insurance policy". None of OCF's answers to interrogatories have revealed the full extent of insurance coverage that is now known to be available for future payments in the asbestos litigation. The answer is evasive by not disclosing the true amount of all coverage now known to OCF.

Despite this Court's Order of March 2, 1993, that OCF shall provide full, complete, responsive and non-evasive answers to the enumerated interrogatories, this Defendant did not do so.

FINDINGS

This Court makes the following findings in support of this

Order:

1. Owens-Corning Fiberglas Corporation has knowingly and intentionally failed to comply with this Court's discovery order of March 2, 1993, and appropriate sanctions under Rule 215(2)(b) of the Texas Rules of Civil Procedure, as are just, should be imposed for such willful disobedience.

2. OCF's annual report as of December 31, 1992 establishes that the pending personal injury and property damage asbestos claims, and additional similar asbestos claims filed in the future, will not have a materially adverse effect on this Defendant's financial position.

3. OCF spent One Hundred and Seventy-Five Million Dollars (\$175,000,000) for outside legal expenses for asbestos litigation in 1991.

4. The imposition of daily monetary sanctions for disobeying this Court's March 2, 1993 discovery order does not threaten or impair OCF's willingness or ability to continue litigation in this case.

5. OCF, with the assistance of counsel, knowingly, intentionally and in bad faith filed false and evasive answers to interrogatories in defiance of this Court's March 2, 1993 Order.

6. Owens-Corning Fiberglas Corporation had knowledge in 1941, as previously admitted, of a diagnosed case of asbestosis or asbestos-induced carcinoma involving users of asbestos insulation products.

7. Owens-Corning Fiberglas Corporation was involved in a cover-up starting from the early 1940's to conceal the dangers of asbestos products from the users and consumers.

8. OCF, and its counsel, have knowingly, willfully, intentionally, in flagrant bad faith and callous disregard, disobeyed this Court's March 2, 1993 discovery order in an attempt to burden this Court and impair the ability of the Plaintiffs to develop their case.

9. The conduct of Owens-Corning Fiberglas Corporation and its counsel in willfully disobeying an order of this Court by knowingly filing false answers to Plaintiffs' interrogatories is a continuation of its pattern of obstructing justice in the asbestos cases.

10. Frank Bean knowingly participated in filing false answers to interrogatories on behalf of OCF in this case.
11. Ron Wagner knowingly participated in filing false answers to interrogatories on behalf of OCF in this case.
12. James Crosby knowingly participated in filing false answers to interrogatories on behalf of OCF in this case.
13. Kelley Johnston knowingly participated in filing false answers to interrogatories on behalf of OCF in this case.
14. Robert A. McOmber knowingly participated in filing false answers to interrogatories on behalf of OCF in this case.
15. Robert A. McOmber knowingly signed false affidavits to the answers to interrogatories on behalf of OCF in this case.
16. William J. Cozort, Jr. knowingly participated in filing false answers to interrogatories on behalf of OCF in this case.
17. Jack Manning is knowingly involved with OCF's strategy in this case.
18. The lawyers listed above, by knowingly participating in filing false answers to interrogatories in this case have submitted themselves to the jurisdiction of this Court.
19. Owens-Corning Fiberglas Corporation knowingly filed in this Court false statements from its brief to the United States Supreme Court in November 1989 in the Clarence J. Wilson, et al case as to when this Defendant had knowledge of asbestos related worker's compensation claims.
20. Owens-Corning Fiberglas Corporation, Frank Bean, Ron Wagner, James Crosby, Kelley Johnston, William J. Cozort, Jr., Jack Manning and the law firms of Bean & Manning, and Wright, Robinson, McCammon, Osthimer and Tatum have acted in bad faith and in flagrant and callous disregard of this Court's Order of March 3, 1993 by delaying preparation of this case for trial on its merits.
21. The law firms of Bean & Manning and Wright, Robinson, McCammon, Osthimer and Tatum have willfully disobeyed this Court's March 3, 1993 Order, and by knowingly participating in filing false answers to interrogatories in this case, have submitted themselves to the jurisdiction of this Court.
22. Owens-Corning Fiberglas Corporation, Frank Bean, Ron Wagner, James Crosby, Kelley Johnston, Robert A. McOmber, William J. Cozort, Jr. and Jack Manning, along with the law firms of Bean & Manning and Wright, Robinson, McCammon, Osthimer & Tatum, have obstructed justice in this case. This conduct by OCF, these

attorneys and law firms, if not criminal, borders on criminally culpable conduct.

23. Owens-Corning Fiberglas Corporation has a history of committing acts of fraud in connection with discovery proceedings concerning its knowledge in asbestos cases; see Owens-Corning Fiberglas Corporation v. Watson, 413 S.W.2d 630, 637-639 (Va. 1992) (OCF committed an act of fraud upon a Texas court by knowingly providing false answers to interrogatories).

24. Owens-Corning Fiberglas Corporation has a national network of lawyers to obstruct justice in asbestos cases.

25. OCF is a worldwide, multibillion dollar corporation that has been involved with asbestos-related disease claims from users and consumers of asbestos products since at least the mid 1950's relating to its Kaylo asbestos-containing pipe covering and block insulation products.

26. The above conduct justifies a presumption that the Defendant should not be permitted to maintain a defense in this case.

THEREFORE, it is accordingly ORDERED, that pursuant to Rule 215(2)(b) of the Texas Rules of Civil Procedure, and pursuant to the inherent power and duty of this Court, the following sanctions are imposed:

1. Further discovery by OCF is disallowed.

2. A daily sanction of \$5000⁰⁰ is imposed upon Owens-Corning Fiberglas Corporation retroactive to March 12, 1993, to be paid to the Plaintiffs within 7 days of this Order for the past disobedience to this Court's March 2, 1993 discovery order.

3. A daily sanction of \$10,000⁰⁰ is imposed upon Owens-Corning Fiberglas Corporation from the date of this Order. It shall be paid to the Plaintiffs every 15 days from the date of this Order, and every 15 days thereafter, until Owens-Corning Fiberglas Corporation fully complies with this Court's Order of March 2, 1993, or until further orders of this Court.

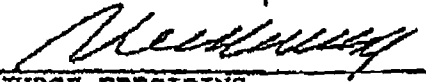
It is further ORDERED that the following named lawyers shall appear before this Court on the 1 day of July, 1993, at 12:00 a.m. to show cause why they should not be held in contempt, and fined and/or incarcerated for their conduct in disobeying this

Court's March 2, 1993 Order in these proceedings: 1. Frank Bean; 2. Ron Wagner; 3. James Crosby; 4. Kelley Johnston; 5. Robert A. McOmber; 6. William J. Cozart, Jr.; 7. Jack Manning.

It is further ORDERED that the law firms of Bean & Manning and Wright, Robinson, McCammon, Osthimer & Tatum shall appear before this Court on the 2 day of July, 1993, at 10:00 a.m. to show cause why they should not be held in contempt of court and fined for their conduct in disobeying this Court's March 2, 1993 discovery order in these proceedings.

It is further ORDERED that Owens-Corning Fiberglas Corporation shall immediately serve upon each of the attorneys and law firms listed above a certified copy of this Order, and shall provide proof to this Court and the Plaintiffs of such service on or before the 21st day of June, 1993.

Signed this 11 day of June, 1993.


JUDGE PRESIDING

THE CLERK OF THE
COURT OF INDIANA
I hereby certify that the foregoing is a true and correct copy
of the original record on file in my office. Given
under my hand and seal of the Court at my office in
Indianapolis, Indiana.
PROCTOR BARNETT, ATTORNEY GENERAL
By Proctor Barnett