

NO. 2000-2113

PLAINTIFF'S EXHIBIT

MON-362

PABLO AGUILERA, TOMAS TORRES,
PEDRO PAZ BAEZA, ROBERT BAEZA and
MANUEL MACIAS,

Plaintiffs,

vs.

GAF CORPORATION et al.,

Defendants.

IN THE COUNTY COURT

AT LAW NO. THREE

CAUSE NO. 2000-2113

EL PASO COUNTY, TEXAS

**DEFENDANT ASARCO INCORPORATED'S RESPONSE TO PLAINTIFF'S REQUEST
FOR DISCLOSURE**

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now ASARCO INCORPORATED formerly known as American Smelting and Refining Company, a corporation of the State of New Jersey, with a principal place of business in the State of New York (hereinafter referred to as "ASARCO"), named Defendant herein, and in answer to Plaintiff, Robert Baeza's (hereinafter "Plaintiff") request for disclosure, makes and files this response pursuant to Rule 194 of the Texas Rules of Civil Procedure, respectfully showing unto the Court the following:

(a) Correct names of the parties to the lawsuit:

ASARCO Incorporated, formerly known as American Smelting and Refining Company.

(b) the name, address and telephone number of any potential parties:

No other potential parties are known at this point in time. As ASARCO's investigation of Plaintiff's claim is ongoing, ASARCO's right to amend and/or supplement this response is expressly reserved.

(c) the legal theories and, in general, the factual bases of the responding party's claims or defenses:

ASARCO denies any negligence towards Plaintiff and denies responsibility for the injuries alleged in the original petition and any amendments thereto. ASARCO further contends that Plaintiff was not exposed to any asbestos and/or asbestos-containing products at the El Paso facility. Even if Plaintiff can establish that he was exposed to asbestos and/or asbestos-containing products at the El Paso facility, ASARCO contends that such exposure was not the cause of Plaintiff's alleged injuries. ASARCO further contends that even if ASARCO is found to be negligent, Plaintiff's alleged injuries are not proximately related to or caused by ASARCO's conduct. ASARCO further contends that Plaintiff is not suffering from any asbestos-related disease. ASARCO further contends that, even if Plaintiff does have an asbestos-related disease, he has failed to assert a claim for such injuries within the applicable limitations period. ASARCO further contends that Plaintiff was himself negligent or assumed the risk of injury by failing, on occasions, to avail himself of or use safety equipment, respirators, and other protective devices that could lessen his exposure to industrial dusts and/or chemicals. If Plaintiff was a cigarette smoker, ASARCO further contends that Plaintiff was negligent and otherwise caused or contributed to his alleged injuries by continuing to smoke cigarettes in the face of knowledge and/or warnings that cigarette smoking was hazardous to health. Finally, with regard to the work it performed at the El Paso facility, Plaintiff's employer was a knowledgeable and sophisticated contractor which had a duty to safeguard and protect its employees from actual and potential workplace hazards, and, therefore, ASARCO had no direct duty to Plaintiff to ensure that Plaintiff's employment was free from hazards encountered under the direction of his employer.

As ASARCO's investigation of Plaintiff's claim is ongoing, ASARCO's right to amend and/or supplement this response is expressly reserved.

(e) the name, address and telephone number of persons having knowledge of relevant facts and a brief statement of each identified person's connection with the case:

1. All individuals named or to be named as medical witnesses, lay, expert, product identification, liability, and other non-medical witnesses by Plaintiff in this action.

2. All individuals named or to be named as medical witnesses, lay, expert, product identification, liability, and other non-medical witnesses by any other defendant in this action.

3. All individuals named or to be named in any party's answers to interrogatories.

4. Any individual heretofore named as an expert witness by ASARCO.

5. Individuals who were employed as plant managers, industrial hygienists, and/or safety personnel at the El Paso facility during the relevant time period.

6. Michael O. Varner, 4 Wilshire Run, Scotch Plains, NJ 07076, telephone number unlisted. Mr. Varner was employed by ASARCO from 1971 through

approximately 1999 and he held various positions in the Environmental Sciences, Technical Services and Environmental Operations departments.

7. John B. Richardson, 2144 East Streamview Drive, Sandy UT 84093, (801) 942-2621. Mr. Richardson has been employed by ASARCO since approximately 1973, and he has held various positions in the Environmental Sciences and Technical Services departments.

8. James P. Sieverson, 15451 W. Lacey Road, Pocatello, Idaho (208) 237-1029. Mr. Sieverson was employed by ASARCO from approximately 1972 through 1990 in various positions in the Environmental Sciences department.

9. Donald A. Robbins, ASARCO Incorporated, 3422 South West, Salt Lake City, Utah (801) 263-5220. Mr. Robbins is currently employed by ASARCO as the Director of Environmental Services.

ASARCO reserves the right to call additional fact witnesses for the purpose of rebuttal or impeachment, if necessary, at the time of trial. As discovery in this case is ongoing, ASARCO further reserves the right to amend and/or supplement this response up to the time of trial.

(f) for any testifying expert:

(1) the expert's name, address and telephone number:

(2) the subject matter on which the expert will testify:

(3) The general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information:

(4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:

(A) All documents, tangible things, reports, models or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and

(B) the expert's current resume and bibliography.

1. All individuals designated or to be designated as expert witnesses by Plaintiff, whether live or by deposition testimony.

2. All individuals designated or to be designated as expert witnesses by any other party to this action, whether live or by deposition testimony, and without regard to that party's presence at the time of trial.

3. All physicians or other health care practitioners who have treated Plaintiff at any time and for any condition and whose names, addresses, and qualifications are already known to Plaintiff, may be called to testify, whether live or by deposition testimony.

4. All physicians who have prior to trial examined Plaintiff and/or Plaintiff's medical records, hospital records, laboratory test results, x-ray or other diagnostic imaging films and/or any other information of whatever kind relating to the health of Plaintiff, on behalf of any party, without regard to that party's presence at the time of trial, who will testify as to the Plaintiff's clinical course and causation of any illness, either live or by deposition testimony.

5. John E. Craighead, M.D., 1845 Four Winds Road, Ferrisburgh, VT 05456. Dr. Craighead is a clinical and anatomical pathologist specializing in pulmonary pathology. Dr. Craighead will testify generally as to his background, training and experience. Dr. Craighead will testify as to his knowledge of pathology and asbestos-related diseases. He will further testify as to the general medical issues concerning the development, cause, and diagnosis of asbestos-related disease and/or other diseases that may mimic asbestos-related diseases.

Dr. Craighead will testify generally as to the dangers posed by the inhalation of asbestos fibers and the relative risks associated with exposure to low levels of airborne asbestos. Dr. Craighead may also address thresholds of exposure below which there is no measurable increased risk of contracting an asbestos-related disease and the latency periods required for the development of the various asbestos-related diseases.

Dr. Craighead may review the pathological evidence in this case, if any, and testify concerning whether it is diagnostic of asbestos-related disease.

Dr. Craighead may also testify concerning asbestos fiber counts in the lung tissue of different populations and their significance with regard to dose-response relationships and causation. Dr. Craighead may offer such other opinions as may become necessary to rebut the opinions of Plaintiff's experts.

Dr. Craighead may base his testimony on the available medical and scientific literature, his own training and experience, the opinions and reports of other experts named or to be named by any other party, whether presented live or by deposition, the testimony of all other witnesses named or to be named by any other party, whether live or by deposition, and any documents introduced into evidence or otherwise used by any party at the time of trial.

6. Allen R. Gibbs, M.D., Department of Pathology, Llandough Hospital, South Glamorgan, Penarth CF, 61XX, United Kingdom, is a pulmonary pathologist who received his medical degree from Newcastle Upon Tyne. He is a Fellow of the Royal College of Pathologists. He is a consultant pathologist to South Glamorgan Health Authority and is an honorary clinical teacher to the University of Wales College of Medicine. Dr. Gibbs is also an honorary consultant to the MRC external staff team on occupational lung diseases at Llandough Hospital. He was a senior lecturer in pathology at the University of Wales College of Medicine. He has special expertise in the diagnosis of asbestos-related diseases and the pathogenicity of the various forms of asbestos for pulmonary and pleural diseases and has reviewed over 1,000 lung samples involving asbestos-related changes. Additionally, Dr. Gibbs has authored or co-authored over 45 articles, papers and chapters in the field of pathology, many of which relate to asbestos-related disease.

Dr. Gibbs may review the pathological evidence in this case and testify concerning whether it is diagnostic of asbestos-related disease, including mesothelioma.

On the basis of Dr. Gibbs' personal research into issues concerning asbestos-related disease, his knowledge of the medical literature and his knowledge of the facts of this case as they are known to date, Dr. Gibbs may testify generally as to the dangers posed by the inhalation of asbestos fibers, the relative risks associated with exposure to low levels of airborne asbestos dust in the general environment, and the risks posed to Plaintiff from his alleged exposure to airborne asbestos dust.

7. Jeremiah Lynch, C.I.H., 25 Waterman Avenue, Rumson, New Jersey. Mr. Lynch is a Certified Industrial Hygienist. Mr. Lynch will testify generally as to his background, training and experience. Mr. Lynch will testify as to the methods and procedures involved in industrial hygiene, the methods and procedures utilized in the collection of airborne asbestos samples, including fiber measurement and counting techniques, and the use of industrial hygiene methods to control worker exposure to airborne asbestos dust. Mr. Lynch will further testify concerning threshold limit values, the various threshold limit values for asbestos exposure, the basis for the original threshold limit value and its subsequent changes. Mr. Lynch will further testify concerning the setting and implementation of asbestos exposure limits by OSHA, and the subsequent changes to those limits, and OSHA regulations pertaining to Plaintiff's workplace at various times. Mr. Lynch may also testify concerning the industrial hygiene programs implemented at Plaintiff's workplaces at various times, and how those programs compared to the industrial hygiene standards at various times. Mr. Lynch will further testify with regard to the effectiveness of the industrial hygiene program at Plaintiff's workplaces as compared to the various standards applicable at different times. Mr. Lynch may also testify as to the asbestos exposures which Plaintiff would have had at various times during his employment history. Mr. Lynch will also testify with regard to environmental exposures to airborne asbestos experienced by millions of Americans for which there is no epidemiological evidence of disease. Mr. Lynch may offer such other opinions as may become necessary to rebut the opinions of Plaintiff's experts.

Mr. Lynch will base his testimony on the available medical and scientific literature, applicable statutes and regulations, his own training and experience, the opinions and reports of other experts named or to be named by any other party, whether presented live or by deposition, the testimony of all other witnesses named or to be named by any other party, whether live or by deposition, and any documents introduced into evidence or otherwise used by any party at the time of trial.

8. Ernest Mastromatteo, M.D., 19 Carsey Road, Toronto, Ontario, Canada M4S 1N9. Dr. Ernest Mastromatteo will testify generally as to his background, training and experience. Dr. Mastromatteo is a medical doctor specializing in occupational and environmental health. He is currently Professor Emeritus, Occupational and Environmental Health, University of Toronto and self-employed as a consultant in Occupational and Environmental Health. Dr. Mastromatteo received his Doctor of Medicine degree from the University of Toronto in 1947. He received a Diploma in Public Health from the University of Toronto in 1950 and a Diploma in Industrial Health from the University of Toronto in 1958. In 1958, Dr. Mastromatteo was certified in Occupational Medicine by the American Board of Preventive Medicine. In 1981, Dr. Mastromatteo was certified in Occupational Medicine by the Canadian Board of Occupational Medicine.

From 1949 to 1952, Dr. Mastromatteo served as the Medical Director of the Virden Local Health Unit, Virden, Manitoba. In 1952, Dr. Mastromatteo commenced employment as a physician and consultant with the Ontario Ministry of Health. In 1968, he became the Director of the Division of Occupational and Environmental Health of the Ontario Ministry of Health. He remained in that position until 1974. From 1966 to 1974, Dr. Mastromatteo also served as a Consultant in Occupational Diseases to the Ontario Workers' Compensation Board. From 1968 to 1974, Dr. Mastromatteo was a part-time professor at the University of

Toronto, and from 1972 to 1974, he was Professor and the Head of the Department of Occupational and Environmental Health of the University of Toronto.

In 1974, Dr. Mastromatteo became Chief of the Occupational Health and Safety Branch of the International Labour Office ("ILO") in Geneva, Switzerland. He remained in that position until 1976. From 1976 to 1985, Dr. Mastromatteo was employed as Director of Occupational Health for Inco Limited, Toronto, Canada. From 1985 to 1994, Dr. Mastromatteo was employed as the Program Director, Occupational and Environmental Health, of ORC Canada Inc., Toronto, Canada. During part of this period, from 1985 to 1990, Dr. Mastromatteo also served as a consultant to the Occupational Health Policy Branch of the Ontario Workers' Compensation Board. From 1976 to the present, Dr. Mastromatteo has served as an Honorary Consultant to the Occupational Health Clinic of St. Michael's Hospital, Toronto, Canada.

Dr. Mastromatteo is a member of the Ontario Medical Association, and he has chaired its Section on Occupational Health and its Committee on Public Health. He is also a member of the Canadian Medical Association. Dr. Mastromatteo was elected to the Ramazzini Medical Society in 1968 and has been a member of the International Commission on Occupational Health since 1968. Dr. Mastromatteo is an Honorary Lifetime Member of the American Conference of Governmental Industrial Hygienists ("ACGIH"). Dr. Mastromatteo has served as a member of the ACGIH Threshold Limit Value ("TLV") Committee since 1964. He was Chair of the TLV Committee from 1985 to 1990 and President of the ACGIH for the 1969-1970 term. Dr. Mastromatteo has received numerous honors and awards in the field of occupational medicine. Among his other awards, in 1981 he received the Stokinger Award for Scientific Contributions to Occupational Toxicology in the United States. In 1986, he received the Yant Award for Scientific Contributions to Industrial Hygiene in the United States. In 1987, Dr. Mastromatteo received the Knudsen Award for his contributions to Occupational Medicine in the United States. In 1987, he was also inducted into the Safety and Health Hall of Fame International.

Dr. Mastromatteo will further testify that as a long-standing member of the American Conference of Governmental Industrial Hygienists Threshold Limit Value Committee, he is familiar with that organization's criteria for establishing threshold limit values. In setting those thresholds, the ACGIH examines all of the available evidence and bases its decision on the weight of evidence. As such, the ACGIH examines the relevant studies and evaluates those studies based on their methodology and scientific reasoning. Based on its review of the best medical evidence, the ACGIH set its first threshold limit value for asbestos in 1946 and has changed it from time to time where the medical evidence has warranted such a change. Dr. Mastromatteo will testify as to the threshold limit values at different points in time and the medical knowledge that was available to the ACGIH concerning the health effects of asbestos.

Dr. Mastromatteo will further testify that the Occupational Safety and Health Administration (OSHA) does not rely on the weight of evidence, but sets its Permissible Exposure Limit (PEL) based on a different control strategy. OSHA determines a safe level then sets the permissible exposure limit (PEL) by adding factors of between ten (10) and one hundred (100) times. OSHA has most recently set the PEL for all types of asbestos at 0.1 f/cc. That level of exposure is many times below the level of exposure which one would expect to cause disease in the average worker.

9. ASARCO reserves the right to seek leave of court to call experts who may have to be substituted for experts on this list who become unavailable. ASARCO further reserves the right to call additional expert witnesses for the purpose of rebuttal or impeachment, if necessary at the time of trial.

The general description of the area of expertise for each expert's anticipated testimony is not intended to limit such testimony, but is merely an indication of the broad areas in which they may offer testimony. ASARCO reserves the right to supplement these designations up to the time of trial.

(g) any discoverable indemnity and insuring agreements:

Until ASARCO learns more about Plaintiff's alleged exposure at its El Paso facility, a meaningful response cannot be made to this request. Once such exposure information is received, ASARCO will investigate further, and responsive information, if any, will be supplied if, and when, it is obtained.

As ASARCO's investigation of Plaintiff's claim is ongoing, ASARCO's right to amend and/or supplement its response to this request is expressly reserved.

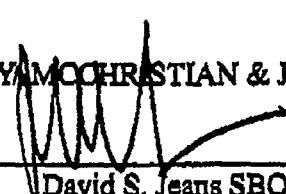
(i) any discoverable witness statements:

None are known at this time. As ASARCO's investigation of Plaintiff's claim is ongoing, ASARCO's right to amend and supplement its response to this request is expressly reserved.

(k) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party:

None at this time. As ASARCO's investigation of Plaintiff's claim is ongoing, ASARCO's right to amend and supplement its response to this request is expressly reserved.

RAY/MOCHRISTIAN & JEANS, P.C.

By: 

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Attorneys for Defendant,
ASARCO Incorporated, formerly known
as American Smelting and Refining
Company

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 21, T.R.C.P., a true and correct copy of the foregoing instrument has been served upon Plaintiffs' counsel of record on this 5 day of March, 2000.

By: _____


Robin Collins

RAY, McCHRISTIAN & JEANS

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March 15, 2001

FACSIMILE and Certified Mail/RRR

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RE: *Aguilera v. ASARCO; Cause No. 2000-2113*
390.24

Counselors:

Attached is Certificate of Written Discovery and Defendant ASARCO Incorporated's Response to Plaintiff's Request for Disclosure.

If you have any questions, please do not hesitate to contact me.

Sincerely,


David S. Jeans

DJ:gc
Enclosure
cc: by facsimile to all attorneys on attached service list

IN THE COUNTY COURT AT LAW NUMBER THREE
EL PASO COUNTY, TEXAS

PABLO AGUILERA, ET AL.

Plaintiffs,

v

GAF CORPORATION, ET AL.,

Defendants.

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CAUSE NO. 2000-2113

CERTIFICATE OF WRITTEN DISCOVERY

Defendant hereby certifies to the Court that Defendant ASARCO Incorporated's
Response to Plaintiff's Request for Disclosure, in the above-referenced cause, has been properly
served upon Plaintiff.

Respectfully Submitted,

RAY, MCCHRISTIAN & JEANS, P.C.

By: 

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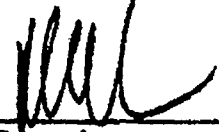
CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 21, T.R.C.P., on the above date a true and correct copy of the foregoing instrument was delivered as follows:

See Attached Service List

Delivered Via:

- ☒ Facsimile
- ☐ Certified Mail
- ☐ Regular Mail
- ☐ Hand Delivery
- ☐ Overnight Mail

By  _____
Of Counsel