

NO. 98-3444-H

PLAINTIFF'S
EXHIBIT
ASA-335

JOSE ALFARO ANZUALDA; JAMES W. ATCHLEY; CLYDE EDWARDS; ROSENDO MARTINEZ, JR.; RAFAEL SALAZAR ORTIZ; NOE FLORES SALINAS; DOUGLAS COURTNEY SWEENEY; CHARLES FRANCIS TOTH; and IGNACIO TORRES MORENO,

Plaintiffs,

vs.

OWENS CORNING (a/k/a OWENS CORNING CORPORATION), et al.,

Defendants.

IN THE DISTRICT COURT

NUECES COUNTY, TEXAS

347TH JUDICIAL DISTRICT

**DEFENDANT. ASARCO, INCORPORATED'S RESPONSE TO PLAINTIFF,
JAMES W. ATCHLEY'S REQUEST FOR DISCLOSURE**

TO: Plaintiff, JAMES W. ATCHLEY, by and through his attorney of record, Holly Huart, Baron & Budd, 3102 Oak Lawn Avenue, Suite 1100, Dallas, Texas 75219

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 Plaintiffs' Request for Disclosure, makes and files this response pursuant to Rule 194 of the Texas Rules of Civil Procedure, respectfully showing unto this Court the following:

a. **CORRECT NAMES OF THE PARTIES:**

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

b. **IDENTITY OF 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. **LEGAL THEORIES AND CLAIMS:**

ASARCO denies any negligence towards Plaintiff and denies responsibility for the injuries alleged in the original petition and any amendments thereto. ASARCO further contends

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that Plaintiff was not exposed to any asbestos and/or asbestos-containing products at the Corpus Christi facility. Even if Plaintiff can establish that he was exposed to asbestos and/or asbestos-containing products at the Corpus Christi 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 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. Finally, with regard to the work it performed at the Corpus Christi facility, Plaintiff's employer was a knowledgeable and sophisticated contractor 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 request is expressly reserved.

d. NAMES OF PERSONS WITH KNOWLEDGE OF RELEVANT FACTS:

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 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 Corpus Christi 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 department.
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. C. B. White, 6905 Aswan, Corpus Christi, TX 78412, (361) 991-5656. Mr. White was employed by ASARCO from approximately 1946 through 1983. He held various positions, including but not limited to, Assistant Personnel and Safety Director, Personnel and Safety Director, Assistant Plant Manager and Plant Manager.
10. Robert S. Jones, 1005 Memphis, Corpus Christi, TX 78412, (361) 991-2139. Mr. Jones was employed by ASARCO from approximately 1949 through 1985. He held various positions, including but not limited to, Engineer, Power Plant Assistant Superintendent, Power Plant Superintendent, Assistant Plant Engineer, and Plant Engineer.

ASARCO reserves the right to call additional fact witnesses for the purpose of rebuttal or impeachment, if necessary, at the time of trial. ASARCO further reserves the right to supplement this designation up to the time of trial.

c. **TESTIFYING EXPERTS:**

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 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. John Pettigrove, M.D., 7121 South Padre Drive, #300, Padre Island, TX 78412. Dr. Pettigrove is a pulmonologist. He will testify generally as to his background, training and experience. He may testify, live or by deposition, regarding his opinions concerning Plaintiff's alleged medical condition based upon his review of Plaintiff's medical records and his independent medical examination of Plaintiff.

7. Patrick M. Connelly, M.D., Kelsey Sebold Clinic, 6624 Fannin, Suite 1800, Houston, TX 77030. Dr. Connelly is a B reader and will testify regarding the radiographs of Plaintiff. Dr. Connelly is a specialist in the area of respiratory disease. He will testify as to all

matters pertaining to Plaintiff's medical records; his examination of Plaintiff, if he has made such an examination; if he has personal knowledge of such, any communication with Plaintiff or Plaintiff's family; review of x-rays of Plaintiff; the diagnostic criteria used to diagnose asbestosis; his opinion as to whether Plaintiff suffers from asbestos related diseases and the basis for such opinion; and Plaintiff's current medical condition and prognosis.

8. 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 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.

9. Ernest Mastromatteo, M.D., 19 Carey Road, Toronto, Ontario, Canada M4S 1N9. Dr. Ernest 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 that 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 Chaired the Section on Occupational Health and the Committee on Public Health. He is 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 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 value 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 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 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.

10. ASARCO reserves the right to seek leave of court to call experts who are 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 of each expert's anticipated testimony is not intended to limit such testimony, but is merely an indication of the broad area in which they may offer testimony. ASARCO reserves the right to supplement this designation up to the time of trial.

f. **INDEMNITY AND INSURING AGREEMENTS:**

As soon as ASARCO learns more about Plaintiffs' alleged exposure at its Corpus Christi facility, a response can be made to this request.

g. **DISCOVERABLE WITNESS STATEMENTS:**

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

h. **MEDICAL RECORDS OBTAINED THROUGH AUTHORIZATION:**

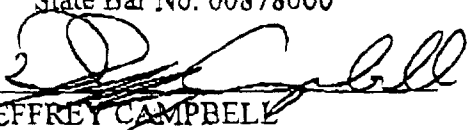
None of Plaintiffs' medical records have been obtained through authorization at this time. As ASARCO's investigation of Plaintiffs' claim is ongoing, ASARCO's right to amend and supplement this request is expressly reserved.

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Attorneys for Defendant, ASARCO Incorporated

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was sent to Plaintiff, James W. Atchley's counsel of record by facsimile and certified mail, return receipt requested on the 20 day of September, 2000, according to the Texas Rules of Civil Procedure.


ROBERT L. ADAMS

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