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To all to whom these presents shall come. Greeting:

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SIGNATURE: Robert Svenningsen

NAME: ROBERT SVENNINGSEN

DATE: 5/24/90

TITLE: Director

NAME AND ADDRESS OF DEPOSITORY: RECORDS ADMINISTRATION
FEDERAL RECORDS CENTER
BLDG. # 48, DENVER FEDERAL CENTER
P. O. BOX 25307
DENVER, COLORADO 80225

NA FORM 13040 (10-88)

PLAINTIFF'S EXHIBIT 4663.5

PLAINTIFF'S EXHIBIT WV-01241

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for causing dust containing asbestos fibers to be emitted into the air around the worker using such product? If your answer is "Yes", state when you acquire the information that such is the case. If your answer is "Yes", state whether you expected insulation workers to inhale microscopic asbestos fibers in the course of their use of said product, and if so, since when have you expected them to do so?

ANSWER: The propensity or property of the products for causing dust depends upon the manner in which they are used and handled by the insulation worker.

This defendant has no control over the method its products are handled and used after sale.

This defendant has never expected insulation workers to inhale microscopic asbestos fibers in the course of use of its products.

The implications of Interrogatory No. 9 as to this defendant's insulating material being of a dangerous nature is specifically denied. Each of this defendant's products was suitable and reasonably fit for the purpose for which it was manufactured and sold.

Inasmuch as this defendant has no control, or right of control, over insulation workers with respect to their working conditions, it has assumed that such workers have been furnished with a safe place in which to work.

10. As to each product, and in its intended use, as described in your answer to Question No. 9, did such product have a propensity or property for causing physical harm to insulation workers by reason of their inhalation of asbestos dust or fibers from said product or otherwise? If your answer is "Yes", state when you acquired the information that such is the case.

ANSWER: No.

11. Are you aware of any breathing apparatus, device, or safeguard

which would eliminate or materially reduce any danger to insulation workers in the use or handling of any of the products? If so, please give the exact tradename and manufacturer of the device, or otherwise describe it in such a way that one can be located for examination and inspection. Do you have any in your possession?

ANSWER: The implication of Interrogatory No. 11 as to Eagle-Picher Industries, Inc.'s insulation products being of a dangerous nature is specifically denied. Each of this defendant's products were suitable and reasonably fit for the purpose for which the products were manufactured and sold.

Inasmuch as this defendant has no control, or right of control over insulation workers with respect to their working conditions, it has assumed that said workers have been furnished with a safe place in which to work.

Any breathing apparatus, device, or safeguard approved by the U. S. Bureau of Mines or Asbestos Workers Union should reduce any inhalation danger which may be found to exist.

12. Have you ever tested or examined any breathing apparatus, device or safeguard which was claimed to be able to eliminate or materially reduce any danger to insulation workers in the use or handling of any of the products? If so, give details as to where and when, and by whom such test or examination was conducted, and furnish a copy of the written report regarding such test or examination, and the conclusions therefrom. If you are aware of such tests made by others, please furnish the same information relating thereto.

ANSWER: This defendant has not tested any breathing apparatus but is aware that respirators have been approved by the U. S. Bureau of Mines.

13. Do you have anyone from your company whose duty it is to make dust samplings, or dust level counts, in any of the places where your employees work? If so, explain the technique, state when such action was first initiated how many persons are so engaged, how often such tests are made, what the purpose of such tests is, and what action, if any, has been taken following the finding of such tests.

ANSWER: No.

14. Do you have anyone from your company whose duty it is to go to areas where your asbestos products are being used to make a dust level count? If so, state when you started such procedure, the purpose of it,and what action if any, has been taken following your findings.

ANSWER: No.

15. Have you conducted any studies or experiments concerning the effects of inhalation of asbestos dust or fibers by your employees who manufacture or handle the products? If so, state the name, address, and title of those conducting such studies and experiments, when they were made, to whom the reports thereon were made, and when, and attach copies of such reports and studies. If so, state what action, if any, you took following such reports and studies.

ANSWER: No.

16. Have you conducted any studies or experiments concerning the effects of inhalation of asbestos dust or fibers by persons other than your employees, who use or handle the products, such as insulation workers? If so, state the name, address, and title of those conducting such studies and experiments, when they were made, to whom the reports thereon were made, and when, and attach copies of such reports and studies. If so, state what action, if any, you took following such reports and studies.

ANSWER: No.

17. Have you conducted any studies or experiments designed to eliminate or minimize the inhalation of asbestos dust and fibers by your own employees who manufacture or handle the products? If so, state the name,

address and title of those conducting such studies or experiments, when they were made, to whom the reports thereon were made, and when, and attach copies of such reports and studies. If so, state what action, if any, you took following such reports and studies?

ANSWER: No.

18. Have you conducted any studies or experiments designed to eliminate or minimize the inhalation of asbestos dust and fibers by persons other than your own employees who use or handle such products, such as insulation workers? If so, state the name, address and title of those conducting such studies or experiments, when they were made, to whom the reports thereon were made, and when, and attach copies of such reports and studies. If so, state what action, if any, you took following such reports and studies.

ANSWER: No.

19. Do you have any statistics showing the number of your employees who are exposed to asbestos dust and fibers, and who have worked for you for twenty years or longer, who have lung disease? If so, please give such figures in detail.

ANSWER: No.

20. Please state whether you have any knowledge of any deaths or serious lung disease among your employees which have been alleged to have resulted from inhalation of asbestos dust or fibers? If so, please give the numbers; and as to each, the name, where known, and address of such persons, the name and address of the treating doctor,and the date you were made aware of such allegation.

ANSWER: No.

21. Do you agree with the contention that asbestos dust and fibers cause or contribute to the disease mesothelioma? Do you agree with the contention that asbestos dust and fibers cause or contribute to the disease cor pulmonale? Do you agree with the contention that asbestos dust and fibers cause or contribute to the disease cancer? If so, and as to each, state when you arrived at such opinion or conclusion.

ANSWER: This defendant objects and excepts to Interrogatory No. 21 for the following reasons:

(a) The same is vague and indefinite; this defendant does not understand what is meant by and included in the term "with the contention" as used therein;

(b) the same does not inquire as to any matter of fact authorized by the Federal Rules of Procedure;

(c) the same inquires as to a medical opinion which is not required to be answered under the Federal Rules of Procedure;

(d) the same inquires as to an ultimate issue in the case at bar, which is to be determined by the fact finder;

(e) the same is argumentative and prejudicial because it attempts to inject mesothelioma into this case to inflame the jury when there is no evidence of any mesothelioma on the part of Finis A. Bassham.

22. Do you agree with the contention that asbestos fibers are of such a nature that once they are inhaled into the human lung they never dissipate or go away, but remain in the lung virtually indestructible, to infinity? If so, when did you arrive at that conclusion or opinion?

ANSWER: Eagle-Picher Industries, Inc., objects and excepts to Interrogatory No. 22 for the following reasons:

(a) The same is vague and indefinite;

(b) the same does not inquire as to any matter of fact authorized by the Federal Rules of Procedure;

(c) the same inquires as to a medical and/or scientific opinion which is not required to be answered under the Federal Rules of Procedure.

Subject to the above and foregoing objections and exceptions Eagle-Picher Industries, Inc., says that it understands that asbestos fiber is inorganic.

23. Do you agree with the contention that asbestos fibers have a tensile strength equal to that of piano wire? If so, when did you come to that opinion or conclusion?

ANSWER: According to recent articles, in their unrefined state Chrysotile Fibers have a tensile strength equal to that of piano wire, Crocidolite Fibers have 1-1/2 times the strength, and Amosite Fibers have about 1/2 the strength. However, the asbestos used in our products has been refined and processed prior to being received by us and put in our cements to the point that to speak of tensil strength is meaningless.

24. Do you agree that there are approximately a million individual fibrils lying side by side in a linear inch of chrysotile asbestos? If so, when did you come to that opinion or conclusion?

ANSWER: According to detailed texts on mineral fibers, an unrefined and unprocessed linear inch strand of Chrysotile Fiber contains approximately 1,000,000 fibrils. At this point we are uncertain as to when we first learned of this finding.

25. As to each product, state whether it is possible for persons other than trained technicians or scientists to distinguish said product from similar products on the market. If your answer is "Yes", describe how such products can be distinguished.

ANSWER: Yes. They can be distinguished by the wrappers, containers and labels in which the products are packaged.

26. Do you agree with the contention that the inhalation of asbestos dust and fibers can result in asbestosis? If so, when did you arrive at that conclusion or opinion? If so, following your arrival at that opinion or conclusion, what action, if any, did you take to change your methods of manufacture, sale or distributing of any of the products? When did you take such

action? Explain in detail, with particular reference to any warnings or instructions you may have issued regarding the use or handling of such products

ANSWER: This defendant objects and excepts to Interrogatory No. 26 for the following reasons:

(a) The same is vague and indefinite and this defendant does not understand what is meant and referred to by the term "the contention" as used in the interrogatory.

(b) The same inquires as to a medical opinion which is not required to be answered under the Federal Rules of Procedure.

(c) The same inquires as to an ultimate issue, which is solely to be determined by the fact finder on the trial hereof.

Subject to the above and foregoing objections and exceptions this defendant says that "it does not know." If the interrogatory refers to the usual, customary and expected use of this defendant's product, the answer is "No." This defendant knows of no case in which any period of use, commercial residential or other, of its insulating materials has caused asbestosis or any other disease.

27. Do you agree with the contention that insulation workers who use or handle the products over a period of several years, do thereby endanger their health? If so, in what way do they endanger their health? State all of the diseases they are likely to contract. If so, when did you arrive at that conclusion or opinion? If so, following your arrival at that conclusion or opinion, what action, if any, did you take to change your methods of manufactur sale or distribution of the products? When did you take such action? Explain in detail, with particular reference to any warnings or instructions you may have issued regarding the use or handling of such products.

ANSWER: See objections and answer to Interrogatory No. 26.

There is no danger to the health of insulation workers

when they properly use and handle this defendant's products. All of this defendant's products are suitable and reasonably fit for the purpose for which the products were manufactured

28. As to each product, state whether you furnished instructions to the purchaser or ultimate user or consumer regarding the manner in which the products should be used. If so, furnish a copy of the text of such instruction and state when and in what manner they were given, and to whom.

ANSWER: Eagle-Picher Industries, Inc. furnishes literature to its customers describing the uses of its products. See answer to Interrogatory No. 31, below.

29. As to each product, state whether you ever gave any warning to the purchaser or ultimate user or consumer, of any dangerous or harmful nature of the product? If so, state of what the warning consisted, when it was given, in what manner it was given, and to whom it was given. This question relates to any and all warnings, of whatever nature, in connection with the product.

ANSWER: The implications of Interrogatory No. 29 as to this defendant's insulating material being of a dangerous nature is specifically denied. Each of this defendant's products was suitable and reasonably fit for the purpose for which it was manufactured and sold.

This defendant has no control over the method its products are handled and used after sale.

Inasmuch as this defendant has no control, or right of control, over insulation workers with respect to their working conditions, it has assumed that such workers have been furnished with a safe place in which to work.

In May or June, 1964, the following caveat was placed on bags containing Super 66 Insulating Cement, bags containing "43" Finishing Cement, and bags containing One-Coat Cement:

"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 dust."

30. As to each product, state whether you gave the purchaser or ultimate user or consumer any advice regarding what wearing apparel or protective equipment or appliances could be used to avoid any danger from the asbestos dust and fibers contained in said product. If so, furnish a copy of the text of such advice, and state when and in what manner it was given, and to whom.

ANSWER: See answer to Interrogatory No. 29.

31. As to each product, state whether you ever published any sales literature concerning the product. If so, please attach a copy of said literature to your answer, and state when said literature was published, to whom it was distributed, and over what period of time.

ANSWER: Yes. Attached hereto as Exhibit "A" is a copy of said literature. It was distributed to customers and potential customers consisting of application contractors and distributors of insulation products.

32. What steps, if any, have you taken to protect your own employees from any danger from the inhalation of asbestos dust and fibers in the manufacture, sale or distribution of any of the products? State when you took such action, what action you took, the purpose for such action; and how much it cost you to take such action. In your answer please cover, among all other things, any architectural or design changes made in your manufacturing plant, the modification of any existing structures, the installation of any ventilation systems, and so forth.

ANSWER: In 1955 a dust collecting system consisting of a hooded suction exhaust apparatus was installed to remove dust from the mixing station and collect it outside the plant.

Additionally, safety goggles and U. S. Bureau of Mines respirators are provided for employees.

33. Please give the net worth of your company as of the end of your annual accounting period for each year since 1949.

ANSWER: This defendant objects to Interrogatory No. 33 for the following reasons:

(a) The same inquires into information not discoverable for the reason that it is not relevant or material to any of the issues herein, including the prayer of punitive damages.

(b) The same inquires into matters which would result in a comparison of the financial resources of Eagle-Picher Industries, Inc., with those of the plaintiff, which is prejudicial to this defendant.

34. Please state the net profit made by your company for each year since 1949.

ANSWER: This defendant objects to Interrogatory No. 34 for the following reasons:

(a) The same inquires into information not discoverable for the reason that it is not relevant or material to any of the issues herein, including the prayer of punitive damages.

(b) The same inquires into matters which would result in a comparison of the financial resources of Eagle-Picher Industries, Inc., with those of the plaintiff, which is prejudicial to this defendant.

35. Please give the total volume of sales by your company for each year since 1949, specifying what portion of such sales were of the products in question.

ANSWER: This defendant objects to Interrogatory No. 35 for the following reasons:

(a) The same inquires into information not discoverable for the reason that it is not relevant or material to any of the issues herein, including the prayer of punitive damages.

(b) The same inquires into matters which would result in a comparison of the financial resources of Eagle-Picher Industries, Inc., with those of the plaintiff, which

is prejudicial to this defendant.

36. State what amount of money you have expended for studies, experiments, tests, and safety measures of whatever nature, for the purpose of ascertaining whether asbestos products are dangerous to persons manufacturing, using or handling such products. Itemize such sums by year and amount for each year during the period in question.

ANSWER: None.

37. Have you contributed any funds to anyone outside your company to conduct research concerning asbestos and its relation to lung disease or other disease? If so, state when, to whom, their addresses, and attach copies of any and all reports you received from those to whom you so contributed.

ANSWER: No.

38. State which of the products was sold to purchasers in New Mexico, the sales volume per year to said purchaser during the period in question, and the name and address of such purchaser. Also, state whether such products were shipped directly to such purchaser and were received (as far as you know or have heard) by the purchaser in substantially the same condition as that in which the product was manufactured?

ANSWER:

Year	Product and Volume	Purchaser
1965	100 bags of Super 66 Insulating Cement (OC-660 Cement); 400 bags of One-Cote Cement (OC-110 Cement)	Owens Corning Fiberglass Corporation, Santa Clara, California and shipped to All-Fiel Insulation Company, Inc Albuquerque, New Mexico
1965	250 bags of Super 66 Insulating Cement (OC-660 Cement); 1,000 bags of One-Cote Cement (OC-110 Cement)	Owens Corning Fiberglass Corporation, Santa Clara, California and shipped to Fiberglas Engineering & Supply Co 1011 Sawmill Road, N.W. Albuquerque, New Mexico
1968	250 bags of One-Cote Cement (SC-30 Cement)	Owens Corning Fiberglas Corporation, Supply and Contracting Division, 1011 Sawmill Road, N.W. Albuquerque, New Mexico

Year	Product and Volume	Purchaser
1968	600 bags of Super 66 Insulating Cement (SC-40 Cement); 600 bags of One-Core Cement (SC-30 Cement)	Owens Corning Fiberglas Corporation, Los Angele California, and shipped to Dechtel Corporation, Four-Corners Steam Electric Generating Plant, Fruitland, New Mexico.

39. As to each product, state whether you ever tested the product to ascertain whether it was harmful or dangerous to the health of insulation workers using it. If so, state when, where and by whom said test was made and give the details of any of all such tests, and attach copies of the reports and conclusions of such tests.

ANSWER: The implications of Interrogatory No. 39 as to Eagle-Picher Industries, Inc.'s insulating material being of a dangerous nature is specifically denied.

This defendant knows through its experience with its products that they are not harmful or dangerous to the health of insulation workers who properly handle and use them in accord with the normal practices in the trade, and who have been furnished a safe place in which to work by their employers.

40. As to each product, state whether you ever conducted any tests or experiments to devise a safe method of use or application of the product, to the end that insulation workers using the product would not be harmed by dust or fibers emitted from the product. If so, state when, where and by whom said test was made, and give the details of any and all such tests, and attach copie of the reports and conclusions of such tests.

ANSWER: See answer to Interrogatory No. 39.

41. Do you have a medical or scientific department? If so, state when it was commenced, the name, address and title of the persons in charge of it since its inception, indicating the tenure of each, and state what were the functions and duties of said department.

ANSWER: No.

42. Do you have any engineering, scientific, and research data concerning the products, their suggested use and adaptability, the method of application thereof, and suggested safety practices or controls in the use thereof?

ANSWER: See answer to Interrogatory No. 31 and sales literature attached hereto as Exhibit "A".

43. Have you consulted with Dr. Irving J. Selikoff, of New York, concerning asbestosis, and if so, state when, where and under what circumstance and what information, if any, was furnished to him by you, or to you by him, and the dates such information was furnished, and the names, titles and address of your personnel so involved.

ANSWER: No.

44. Are you familiar with the work of H. Montague Murray, a physician in London's Charing Cross Hospital, relating to asbestos and lung disease? If so, when did you become familiar with this work?

ANSWER: No.

45. Do you agree that at least since 1930 there have been medical studies published in which it was alleged that the inhalation of asbestos dust and fibers can cause the disease asbestosis? If so, when did you first become aware of such studies wherein such allegations were made? If not, state when the first medical studies were published in which such allegations were made, and state when you first became aware of such studies.

ANSWER: This defendant is aware that articles and studies have been published identifying the disease or sickness of "asbestosis" and stating that the disease is apparently caused by the inhalation of asbestos fibers at an excessive level during an extended number of years.

This defendant has no direct knowledge of these medical studies and has no record of published articles.

46. Are you familiar with the first century reports of Strabo and Pliny The Elder in which there was mentioned a sickness of the lungs in slaves

whose occupation was to weave asbestos into cloth? If so, when did you first become familiar with such reports?

ANSWER: No.

47. Are you familiar with the work of Peter A. Theodos, M.D., of Philadelphia, Pennsylvania, and the paper titled "Lung Biopsy in the Diagnosis of Pneumoconiosis", which was presented at the Ninth International Congress on Diseases of the Chest, Copenhagen, Denmark, August 25, 1965, which paper was published in Diseases of the Chest, the official publication of the American College of Chest Physicians? If so, when did you become familiar with his work and paper?

ANSWER: No.

48. Are you familiar with the article by Paul Brodeur, titled "The Magic Mineral", published in The New Yorker, October 12, 1968? If so, when did you become familiar with such article?

ANSWER: Yes. October, 1968.

49. Are you familiar with the article by Selikoff, Churg and Hammond, published in the Journal of The American Medical Association in the Spring of 1964? If so, when did you become familiar with such article?

ANSWER: No.

50. Are you familiar with the article by Selikoff, Churg and Hammond titled "The Occurrence of Asbestosis Among Insulation Workers in the United States", published in December, 1965, in the Annals of the New York Academy of Sciences? If so, when did you become familiar with such article? Please refer to the list of 59 references at the end of said article and state with which ones, by number, you are familiar, and as to each, the date you became familiar with it.

ANSWER: No.

51. Are you familiar with the so-called Frye Report, made to the Surgeon General in 1965? If so, when did you become familiar with it?

ANSWER: No.

52. Did you have an agent or employee at the International Conference on the Biological Effects of Asbestos, at the Waldorf-Astoria in New York, sponsored by the New York Academy of Sciences in 1964? If so, what is the name, address and title of such person or persons? If not, did you later become familiar with the reports of the discussions held in such conference, and state when you became familiar with them.

ANSWER: No.

53. Have you ever received any communication from Dr. Irving J. Selikoff, head of the Division of Environmental Medicine at New York City University's Mount Sinai School of Medicine, in which Dr. Selikoff requested information regarding the health experiences of workers in any of your plants? If so, when did you receive such communication, what was the content thereof, and what was your response?

ANSWER: No.

54. In your scientific and research department, do you have a library of books, articles and reports concerning asbestos and its affect upon the health of those who work with and around it? If so, who maintains the library, and what is his title? If so, please attach a bibliography to your answer herein, listing all of such books, articles, reports and writings of every nature on such subject, and as to each, state when it was that you first became familiar with it, if the date is different from the date of publication.

ANSWER: No.

EAGLE-PICHER INDUSTRIES, INC.

By Walter A. Suhre

Walter A. Suhre, Jr.
Assistant Secretary

STATE OF OHIO)
)ss.
COUNTY OF HAMILTON)

Before me, the undersigned authority, on this day personally appeared Walter A. Suhre, Jr., Assistant Secretary of Eagle-Picher Industries, Inc., a corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and who, being by me first duly sworn, acknowledged to me that he executed the same for the purposes and consideration therein expressed,

..in the capacity therein stated, as the act and deed of said corporation, and that the foregoing Answers to Interrogatories are true and correct to the best of his knowledge, information and belief.

SWORN TO AND SUBSCRIBED before me this 15th day of September, 1970.

Audrey M. Rinner
Notary Public

My Commission expires:

AUDREY M. RINNER
Notary Public, Hamilton County, Ohio
My Commission Expires Dec. 7, 1970

RODEY, DICKASON, SLOAN, AKIN & ROBB

By Peter L. Priner
Attorneys for Defendant Eagle-Picher Industries, Inc.
P. O. Box 1888
Albuquerque, New Mexico 87103

We hereby certify that a true copy of the foregoing Answers to Interrogatories was mailed to opposing counsel of record on this 23rd day of September, 1970.

RODEY, DICKASON, SLOAN, AKIN & ROBB

By Peter L. Priner

FILED
AT ALBUQUERQUE
FEB 17 1971
E. E. GREESON
CLERK

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF NEW MEXICO

FINISH A. BASSHAM, Plaintiff	)	
vs.	)	CIVIL ACTION
OWENS-CORNING FIBERGLAS CORPORATION, et al., Defendants	)	NO. 8431

ADDITIONAL ANSWERS OF DEFENDANT OWENS-CORNING FIBERGLAS CORPORATION TO INTERROGATORIES PROPOUNDED BY PLAINTIFF

Comes now defendant, Owens-Corning Fiberglas Corporation, by it's attorney, Steven M. Mayer, pursuant to Order of the Court entered December 24, 1970, overruling it's objection to certain interrogatories numbered 17, 20, 31, 33, 34, 35 and 38 and files it's answers to these interrogatories as required.

17.

Have you conducted any studies or experiments designed to eliminate or minimize the inhalation of asbestos dust and fibers by your own employees who manufacture or handle the products? If so, state the name, address and title of those conducting such studies or experiments, when they were made, to whom the reports thereon were made, and when, and attach copies of such reports and studies. If so, state what action, if any, you took following such reports and studies.

Answer: Copies of studies made for the years 1961, 1963, 1965, 1967 and 1969 by the Aetna Casualty & Surety Company at the Owens-Corning plant producing Kaylo 10 & 20 are attached.

20.

Please state whether you have any knowledge of any deaths or serious lung disease among your employees which have been alleged to have resulted from inhalation of asbestos dust or fibers? If so, please give the numbers; and as to each, the name, where known, and address of such persons, the name and address of the treating doctor, and the date you were made aware of such allegation.

Answer: The following employees have lung disease alleged to be occupationally related:

Barry A. Copeland 402 Blaine Avenue, Apt. 2 West Berlin, New Jersey	Chester Morrison 93 West Atco Avenue Atco, New Jersey

Owens-Corning became aware of the allegation as to Mr. Copeland on August 13, 1969 and as to Mr. Morrison on November 21, 1970. The treating physician for both employees is E. Spencer Paisley, M.D., 501 White Horse Pike, Haddon Heights, New Jersey.

31.

As to each product, state whether you ever published any sales literature concerning the product. If so, please attach a copy of said literature to your answer, and state when said literature was published, to whom it was distributed, and over what period of time.

Answer: A copy of Owens-Corning's current published sales literature for Kaylo 10 & 20 is attached to the answers to these interrogatories.

33.

Please give the net worth of your company as of the end of your annual accounting period for each year since 1949.

Answer:

Net Worth

1969 - $242,700,000
1968 - $223,042,913

34.

Please state the net profit made by your company for each year since 1949.

Net Profit

1969 - $24.716,000
1968 - $19.420.765

35.

Please give the total volume of sales by your company for each year since 1949, specifying what portion of such sales were of the products in question.

Answer:

	Total Net Sales	Sales of Kaylo 10 & 20
1969 -	$487,399,000	$7,811,000
1968 -	$429,497,521	$8,243,000

38.

State which of the products was sold to purchasers in New Mexico, the sales volume per year to said purchasers during the period in question, and the name and address of such purchasers. Also, state whether such products were shipped directly to such purchaser and were received (as far as you know or have heard) by the purchasers in substantially the same condition as that in which the product was manufactured?

Answer:

Purchasers in New Mexico

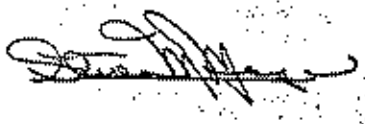
		Sales
Allfield Insulation Company Albuquerque, New Mexico	1969 - 1968 -	$7,472.00 281.00
General Electric Albuquerque, New Mexico	1968 -	$89.00
Kermac Potash Oklahoma City, Oklahoma	1969 - 1968 -	$94.00 256.00
Mountain States Insulation Albuquerque, New Mexico	1969 -	$516.00
Public Service Company Albuquerque, New Mexico	1969 - 1968 -	$9.00 51.00
Tri State Insulation Albuquerque, New Mexico	1969 - 1968 -	$320.00 667.00
University of Albuquerque Albuquerque, New Mexico	1968 -	$64.00
Zia Company Los Alamos, New Mexico	1968 -	$120.00
Sandia Corporation Albuquerque, New Mexico	1969 -	$35.00

To Owens-Corning's knowledge, the products were received in substantially the same condition as manufactured. Owens-Corning has no information as to which of these products were shipped directly to the purchasers nor does it have information concerning sales of the products to purchasers in New Mexico prior to the year 1968.

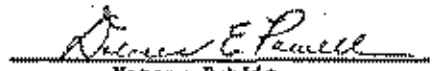
Steven M. Mayer

STATE OF OHIO)
) SS:
LUCAS COUNTY)

Before me, the undersigned authority, appeared Steven M. Mayer, attorney for Owens-Corning Fiberglas Corporation, a Delaware corporation, who is known to me, and who, being by me first duly sworn, deposes and says that Owens-Corning Fiberglas Corporation is a defendant in the above styled cause, and that the foregoing answers to interrogatories are true and correct to the best of his knowledge, information and belief.



SWORN TO and subscribed before me this 21st day of January, 1971.



Notary Public

DOLORES E. POWELL
Notary Public, Lucas County, Ohio
My Commission Expires Feb. 9, 1973

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

FINIS A. BASSHAM,

Plaintiff,

-vs-

No. 8431 Civil

OWENS-CORNING FIBER GLASS CORPORATION; et al.,

Defendants.

FILED
AT ALBUQUERQUE
JUL 13 1971
E. R. GRIGGSON
CLERK

ANSWERS TO FIRST SET OF INTERROGATORIES

Defendant Johns-Manville Products Corporation answers the first set of interrogatories propounded by plaintiff as follows:

Interrogatory Number 1: Please give the name and address of the president of your company, and of the Chairman of the Board of Directors.

Answer: Dr. W. Richard Goodwin
22 E. 40th Street
New York, N. Y. 10016
President and Chief
Executive Officer

This defendant does not presently have a Chairman of the Board of Directors.

Interrogatory Number 2: Are you engaged in the manufacture and sale of insulation products containing asbestos? If so, state during what portion of the period in question you were so engaged.

Answer: This defendant is engaged in the manufacture and sale of industrial insulation products containing asbestos and was so engaged during the entire period in question.

Interrogatory Number 3: What insulation products containing asbestos did you manufacture and sell during the period in question? List the product by trade name, if any, and by the

advertised name, and by the nickname or name commonly used in th insulation industry, and also list the product by description, e.g. asbestos type covering, or asbestos sheating; and state the date that said product went on the market.

Answer:

Blocks, Sheets, Blankets	Date Manufactured Commercially	Date Discontinued
ASBESTOCEL	1930 or before	1965
Asbestos Blankets	"	1960
ASBESTOS FIRE-FELT	"	1962
ASBESTO-SPONGE Felted	"	1961
ASBESTOS FIRE-FELT - Roll	"	
CEILINITE	"	
85% Magnesia	"	1970
PAN-O-CEL	"	1959
SUPEREX M	"	
Super FIRE FELT	"	1949
THERMO FIRE FELT	"	1949
VITRIBESTOS	"	1959
Vitro FIRE BELT	"	1949
Pipe Insulation		
ANTI-SWEAT	1930 or before	1965
ASBESTOCEL	"	1965
ASBESTOS FIRE-FELT	"	1962
Asbestos Pipe Blanket	"	1960
ASBESTO SPONGE Felted	"	1961
Engineers' Insulating Tape	"	1956
85% Magnesia	"	1970
SUPEREX M	"	1970
Cements, Fillers and Finishes		
AERTITE Boiler Wall Coating	1930 or before	
Fibrous Adhexive	"	
FIL-INSUL	"	1969
No. 300	"	1970
No. 302	"	1970
No. 319	"	1969
No. 450	"	
No. 352	"	
INSULKOTE	"	
No. 500	1933 or before	
No. 304	1931 or before	1969
No. 340	"	1969
No. 0352	"	1969
No. 400	"	1969
85% Magnesia	"	1970
SUPEREX	"	
Flat Transite Sheets	1930 or before	
Expansion Joint Material		
Asbestos Jelly Rolls	1930 or before	1968
No. 4200 Asbestos Rope	"	

Weatherproof Pipe Insulation Jackets	Date Commercially Manufactured	Date Discontinue
Double Coated FLEXSTONE	1931 or before	
Asbestos FIRETARD	"	
No. 50 Asbestos Weatherproofing	"	
ASBESTOCITE (FLEXBOARD) Finish for Tank Insulation	1940	
No. 301 Cement	"	1971
No. 500 Cement	"	
No. 678 Cement	"	1969
FIBROFIL	"	1969
THERMOBESTOS Pipe Insulation and Blocks	1953	
SUPERES 1900° Blocks	1934	
THERMOBESTOS L. D. Elbows	1969	
SUPEREX S G	1969	
White Surface Asbestos Jacketing	1931	1968
Asbestos Weatherproofing Felts	1931	
CELLAMITE Sheets and Blocks	1943	1959
No. 364 Cement	1930	1955
ASBESTILE	"	1958
ASBESTOMENTS	"	
Asbestos Paper	"	
Asbestos Millboard	"	

To the extent that defendant is aware the commonly used names in the insulation industry of the above products would be a combination of their description and their trade name, e. g. 85% Magnesium Block.

Interrogatory Number 4: As to each product state the asbestos (by whatever name known) content.

Answer: Defendant objects to this interrogatory on the ground that it calls for information which is a trade secret. Defendant further objects to this interrogatory on the ground that the interrogatory would require defendant to collect and list information about products which were manufactured and utilized long before plaintiff ever became involved with asbestos products, if he ever was, and because it would require such information for products with which he never had any contact of any kind.

Interrogatory Number 5: As to each product state to what use you intended the product to be put, whether you intended it to

be used by insulation workers, and the manner in which you intended said product to be used by insulation workers during the period in question.

Go into detail as to how you intended each product to be handled by those using the same in the insulation industry with particular reference to how you intended the insulation users to unpackage the product, to cut, saw, break, shape, mix and apply said product, and whether or not you intended that the product be cut, shaped, mixed, prepared or applied at the job site.

Commence with the date that said product first went on the market, and if there has been any change in intended use, specify when the change occurred, what the intended use was before and after the change and what notice, if any, you gave to the intended user relating to such change.

Answer: The intended use for each product is as described in accompanying relevant literature. The manner in which products were handled by insulation workers was never "intended" by Johns-Manville Products Corporation but grew out of experience. This experience was more or less governed by early written application specifications for different products (see Johns-Manville Architectural and Engineering Insulation Specifications, December, 1953, and Johns-Manville Insulation Specifications IN-128A, March, 1959, as later examples of established application specifications. In other words, specific instructions may have covered mixing of cement by ratio of water to cement but not how to unpackage, break or shape the product. The nature of most products was such that a knife would obviously cut some and a carpenter's saw would obviously cut other products. If there were any such

instructions set down in writing, they were contained in the Code of Workmanship of the International Association of Heat and Frost Insulators and Asbestos Workers, adopted September, 1930, revised September, 1967.

Interrogatory Number 6: As to each product, did such product reach the user or consumer without substantial change in the condition in which said product was manufactured and sold during the period in question? If not, state what the change in condition was, and how it came about.

Was it your intention that said product would reach the user or consumer without substantial change in the condition in which said product was manufactured or sold? If not, state what change you intended to occur in said product and how you intended such change to come about.

Answer: As this defendant did not have control over the products after defendant sold them, this defendant cannot state in what condition each of said products reached the user or consumer. Based on the understanding that the words "user" or "consumer" in the second paragraph mean industrial insulation contractors and their employees, it was this defendant's intention that each of said products would reach such persons without substantial change in condition.

Interrogatory Number 7: As to each product, were the manufacture, sale and distribution of said product under your exclusive control, or that of your agents, servants, and employees during the period in question? If not, state who had and exercised any control over the manufacture, sale or distribution of said product other than yourself, and state what that control was.

Answer: The manufacture of each product was under the exclusive control of defendant and its employees. The

products were sold to Johns-Manville Sales Corporation and thereafter Johns-Manville Sales Corporation had control over each product until each product was sold by it. Johns-Manville Sales Corporation had no further control over the sale or distribution of each product after such sale by it. Some of each product was retained by Johns-Manville Sales Corporation for installation by it.

Interrogatory Number 8: As to each product, and its intended use, as described in your answer to Question #5, state whether you intended or expected that such use by insulation workers would result in the exposure of such workers to, and contact by said workers with, asbestos dust and fibers contained in said products, during the period in question.

Answer: No.

Interrogatory Number 9: As to each product, and in its intended use, as described in your answer to Question #5, did such product have a propensity or property for causing dust containing asbestos fibers to be emitted into the air around the worker using said product? If your answer is "Yes", state when you acquired the information that such is the case. If your answer is "Yes", state whether you expected insulation workers to inhale microscopic asbestos fibers in the course of their use of said product and if so, since when have you expected them to do so?

Answer: No.

Interrogatory Number 10: As to each product, and in its intended use, as described in your answer to Question #5, did such product have a propensity or property for causing physical harm to insulation workers by reason of their inhalation of asbestos dust or fibers from said product or otherwise? If your answer is "Yes", state when you acquired the information that such is the case.

40. As to each product, state whether you ever conducted any tests or experiments to devise a safe method of use or application of the product, to the end that insulation workers using the product would not be harmed by dust or fibers emitted from the product. If so, state when, where and by whom said test was made, and give the details of any and all such tests, and attach copies of the reports and conclusions of such tests.

ANSWER: See answer to Interrogatory No. 39.

41. Do you have a medical or scientific department? If so, state when it was commenced, the name, address and title of the persons in charge of it since its inception, indicating the tenure of each, and state what were the functions and duties of said department.

ANSWER: Philip Carey Corporation has never had a medical department. In 1931 it organized a "scientific department," which is called the Research and Development Department. The names, addresses and titles of the persons in charge of the Department since its inception, and the tenure of each, are as follows:

H. W. Greider 65 Jewett Drive Cincinnati, Ohio 45215	Manager of Quality Control 1931 -1950
G. Arthur Fasold Deceased	Director of Research 1950 - 1959
E. C. Meisner Address unknown (I believe he works for National Cash Register Company, Dayton, Ohio)	Vice President - Engineering and Research 1959 - 1962
E. D. Ermene 555 Abilene Trail Cincinnati, Ohio 45215	Director Research 1962 - 1968
Herbert H. Anderson 320 S. Wayne Avenue Cincinnati, Ohio 45215	Vice President - Engineering and Research 1968 to date

The functions and duties of the department are research for and development of new products, testing and improvement of existing products, and selection of raw materials.

42. Do you have any engineering, scientific, and research data concerning the products, their suggested use and adaptability, the method of application thereof, and suggested safety practices or controls in the use thereof?

ANSWER: See answer to Interrogatory No. 31 and sales literature attached hereto as Exhibit "C".

43. Have you consulted with Dr. Irving J. Selikoff, of New York, concerning asbestosis, and if so, state when, where and under what circumstances, and what information, if any, was furnished to him by you, or to you by him, and the dates such information was furnished, and the names, titles and addresses of your personnel so involved.

ANSWER: No.

44. Are you familiar with the work of H. Montague Murray, a physician in London's Charing Cross Hospital, relating to asbestos and lung disease? If so, when did you become familiar with this work?

ANSWER: No.

45. Do you agree that at least since 1930 there have been medical studies published in which it was alleged that the inhalation of asbestos dust and fibers can cause the disease asbestosis? If so, when did you first become aware of such studies wherein such allegations were made? If not, state when the first medical studies were published in which such allegations were made, and state when you first became aware of such studies.

ANSWER: Philip Carey Corporation is aware that articles and studies have been published identifying the disease or sickness of "asbestosis" and stating that the disease is apparently caused by the inhalation of asbestos fibers at an excessive level during an extended number of years.

Philip Carey Corporation has not kept a record of these articles.

46. Are you familiar with the first century reports of Strabo and

Answer: No.

Interrogatory Number 11: Are you aware of any breathing apparatus, device or safeguard which would eliminate or materially reduce any danger to insulation workers in the use or handling of any of the products? If so, please give the exact trade name and manufacturer of the device, or otherwise describe it in such a way that one can be located for examinatio and inspection. Do you have any in your possession?

Answer: Yes, the respirators approved by the U. S. Bureau of Mines for pneumoconiosis-producing dusts.

Specifically, these respirators include:

Mine Safety Appliances Co. 201 North Braddock Ave. Pittsburgh, Penn.	- Dustfoe 77 Dustfoe 66 Custom COM w/s Filter
American Optical Corp. Safety Products Division Southbridge, Mass.	- R2000 w/25, 90 Filter R3000 w/30 Filter R5000 w/90 Filter
Willson Products Division ESB Inc. P. O. Box 622 Reading, Penn.	- Mono Mask 600 A Single Cartridge #460 Double Cartridge #860C

Defendant has some of these respirators in its possession.

Interrogatory Number 12: Have you ever tested or examined any breathing apparatus, device or safeguard which was claimed to be able to eliminate or materially reduce any danger to insulation workers in the use or handling of any of the products? If so, give details as to where and when, and by whom such test or examination was conducted, and furnish a copy of the written report regarding such test or examination, and the conclusions therefrom. If you are aware of such tests made by others, please furnish the same information relating thereto.

Answer: Yes, in 1969-1970 at defendant's Research and Engineering Center at Manville, N. J. The tests were conducted by Thomas J. Weeks and Allen F. Burns.

A copy of the report on such tests entitled "Performance of Dust Respirators Against A Fibrous Dust" by Messrs. Weeks and Burns is marked Exhibit 12-1 and is available for inspection and copying in the office of our attorneys.

Defendant is aware that the U. S. Bureau of Mines made various tests over the years in connection with its approval of various respirators for pneumoconiosis-producing dusts. Defendant respectfully refers the plaintiff to the U. S. Bureau of Mines for particulars of its tests underlying its approval of certain respirators for pneumoconiosis-producing dusts.

Interrogatory Number 13: Do you have anyone from your company whose duty it is to make dust samplings, or dust level counts, in any of the places where your employees work? If so, explain the technique, state when such action was first initiated, how many persons are so engaged, how often such tests are made, what the purpose of such tests is, and what action, if any, has been taken following the findings of such tests.

Answer: Yes. Historically, the technique used has always been that then currently recommended by the U. S. Public Health Service. The present technique used by the U. S. Public Health Service and this defendant is the Millipore Filter Sampling Method. This method is described in Exhibits 13-3, 13-4 and 13-5 which are available for inspection and copying in the office of our attorneys. This technique was adopted in 1968 but the sampling or dust level counting was first initiated by this defendant in 1934. Twenty persons are engaged in such sampling or counting. Such sampling or counting is being continuously conducted. The purpose is to evaluate the dust levels at various

locations or operations. The findings have been and are reported to top operating management and where necessary appropriate corrective action has been and is taken.

Interrogatory Number 14: Do you have anyone from your company whose duty it is to go to areas where your asbestos products are being used to make a dust level count? If so, state when you started such procedure, the purpose of it, and what action, if any, has been taken following your findings.

Answer: Yes. Such procedure was started in September, 1968. Its purpose is to evaluate the occupational environment. The results have been reported to the Industrial Insulation Health Research Program (under the direction of Dr. Irving J. Selikoff). Recommendations for corrective action have been made by the Industrial Insulation Health Research Program on the basis of these studies. Such action is set forth in Exhibits 14-7 through 14-13 entitled "Insulation Hygiene Progress Reports from the Insulation Industry Hygiene Research Program" which are available for inspection and copying in the office of our attorneys.

Interrogatory Number 15: Have you conducted any studies or experiments concerning the effects of inhalation of asbestos dust or fibers by your employees who manufacture or handle the products? If so, state the name, address, and title of those conducting such studies and experiments, when they were made, to whom the reports thereon were made and when, and attach copies of such reports and studies. If so, state what action, if any, you took following such reports and studies.

Answer: Yes, defendant has directly and/or indirectly sponsored co-sponsored or participated in numerous such studies or experiments. Defendant is, and since its creation

has been, a wholly-owned subsidiary of Johns-Manville Corporation. Defendant and/or Johns-Manville Corporation contributed funds to sponsor animal research on the effects of asbestosis at the Saranac Laboratory of the Trudeau Foundation in upstate New York commencing in 1928. The funds were contributed by defendant and/or Johns-Manville Corporation in the form of premium payments and assessments to the Metropolitan Life Insurance Company, which was the immediate sponsor. The amount of such contributions is not known to, nor determinable by, defendant.

In early 1931 two reports on these animal experiments were published by Dr. Leroy U. Gardner (the original director of this project) in Vol. 13 No. 2 (February, 1931, issue) and Vol. 13 No. 3 (March, 1931, issue) of the Journal of Industrial Hygiene. These reports were entitled "Studies on Experimental Pneumonokoniosis and "Inhalation of Asbestos Dust: Its Effect Upon Primary Tuberculous Infection". A copy of each such report is marked as Exhibit 15-14 and Exhibit 15-15 respectively and is available for inspection and copying in the office of our attorneys.

In 1929, shortly after the launching of the Saranac studies, the parent of defendant and/or defendant and other companies in the asbestos industry asked the Metropolitan Life Insurance Company to determine whether asbestos dust was an occupational hazard and, if so, the nature of the hazard and what could be done to control it. The amounts of defendant's and/or its parent's contributions in the form of increased premiums and assessments is not known to, nor determinable by, defendant. The Industrial Hygiene

Division of the Department of Public Health of the McGill University Medical School in Montreal assisted Metropolitan Life in this research. The results were published in 1935 in the Public Health Reports, Vol. 50 No. 1, issued by the U. S. Public Health Service in an article entitled "Effects of the Inhalation of Asbestos Dust on the Lungs of Asbestos Workers". The cost of publication was paid for by general tax funds. A copy of this report is marked Exhibit 15-16 and is available for inspection and copying in the office of our attorneys.

As a result of the aforesaid Metropolitan Life study additional health research on the effects of prolonged and excessive inhalation of asbestos fiber on human beings was undertaken at the Saranac Laboratory. The Quebec Asbestos Mining Association ("QAMA"), of which a sister corporation of defendant was and is a principal member, contributed to this new research. The amounts of such contributions are not known to, nor determinable by, defendant but defendant's sister corporation, as a principal member of QAMA, furnished a significant portion of the total amount. A report on this research was delivered at the Seventh Saranac Lakes Symposium in 1952, and was entitled "Pulmonary Function Studies in Men Exposed for Ten or More Years to Inhalation of Asbestos Fibers". It was co-authored by Dr. Fernand Gregoire, presently Director of the Clinique Laboisier, Montreal, and Dr. George W. Wright presently Director of Medical Research, St. Luke's Hospital, Cleveland. A copy of such report is marked Exhibit 15-17 and is available for inspection and copying in the office of our attorneys.

Another report arising out of the industry-sponsored studies at Saranac Laboratory was entitled "Experimental Studies of Asbestosis". It was written by Dr. Vorwald Thomas M. Durkin and Dr. Philip C. Pratt, and appeared in the A.M.A. Archives of Industrial Hygiene and Occupational Medicine in January, 1951, at Vol. 3 Page 1. A copy of this paper is marked Exhibit 15-18 and is available for inspection and copying in the office of our attorneys.

In the early 1950's an animal research project to investigate the reported association between asbestos exposure and lung cancer was begun at Saranac Lake and funded by QAMA. The amount of the funding is not known to, nor determinable by, defendant but a sister corporation of defendant furnished a significant portion of such funding. A report entitled "Asbestosis and Pulmonary Cancer" was released in 1952 and a copy thereof is marked Exhibit 15-36 and is available for inspection and copying at the office of our attorneys.

A second such project was an epidemiological study of lung cancer among asbestos miners in the Province of Quebec in Canada. This study was also sponsored by QAMA and, again, a sister corporation of defendant furnished a significant portion of the funding. The amount of the funding is not known to, nor determinable by, defendant. The study was conducted by Dr. Daniel C. Braun and T. David Truan for the Industrial Hygiene Foundation of America, Pittsburgh, Pa. The study was completed in 1957 and published in the June, 1958, Vol. 17 issue of the A.M.A. Archives of Industrial Health at Page 634 and was entitled "An Epidemiological Study of Lung Cancer in Asbestos

Miners". A copy of this study is marked Exhibit 15-19 and is available for inspection and copying at the office of our attorneys.

Inter-tracheal injection experiments on test animals were conducted by the Industrial Hygiene Foundation (and completed in July, 1968) using asbestos fiber taken from a mine of a sister corporation of defendant Johns-Manville Corporation contributed $1,250 to this study. This study is entitled " The Pulmonary Respons to Coalinga Asbestos Dust". A copy of this study is marked Exhibit 15-20 and is available for inspection and copying at the office of our attorneys.

Johns-Manville Corporation is presently contributing to the "Insulation Industry Hygiene Research Program (IIHRP): Mount Sinai School of Medicine, City University of New York", which program is undertaking a health reserach program for industrial workers. Its purpose is to:

1. develop improved methods for minimizing exposure of insulation workers to dusts and fumes encountered in their work;
2. disseminate knowledge of these improved methods of dust control whereever they may be applied advantageously; and
3. offer cooperation, advice and assistance toward their universal adoption.

Johns-Manville Corporation is contributing $262,500 to this program. No final reports have yet been issue with respect to this program but progress reports have been issued and copies thereof are marked Exhibits 14-7 through 14-13 and are available for inspection and copying at the office of our attorneys.

Defendant has contributed the time of its personnel and data to a seven to ten year environmental clinical and epidemiological study of workers exposed to asbestos which is now being conducted by the Division of Occupational Health of the United States Public Health Service and is entitled "Asbestos Industry Study: U. S. Public Health Service". The following reports relate to and/or are based on such study:

"Measurement of Asbestos Exposure" by Jeremiah R. Lynch and Howard E. Ayer published in the Journal of Occupational Medicine (January, 1968), a copy of which is marked Exhibit 15-21 and is available for inspection and copying in the office of our attorneys.

"Research on Health Effects of Asbestos" by Dr. Clark Cooper, et al., and published in the Journal of Occupational Medicine (January, 1968), a copy of which is marked Exhibit 15-22 and is available for inspection and copying in the office of our attorneys.

"The Role of Trace Metals in Chemical Carcinogenesis-Asbestos Cancers" by J. R. Dixon, et al., unpublished, but presented at the International Congress of Occupational Health, Tokyo, Japan, (September, 1969), a copy of which is marked Exhibit 15-42 and is available for inspection and copying in the office of our attorneys.

"Identification and Control of Asbestos Exposures" by Lewis J. Cralley, unpublished but presented at the International Congress on Occupational Health, Tokyo, Japan (September, 1969), a copy of which is marked Exhibit 15-41 and is available for inspection and copying in the office of our attorneys.

"Techniques for the Detection, Identification and Analysis of Fibers" by Robert C. Keenan and Jeremiah R. Lynch, a copy of which is presumably available to plaintiff's counsel through the Consumer Protection and Environmental Health Service of the Public Health Service of the U. S. Department of Health, Education and Welfare.

"Fibrous and Mineral Content of Cosmetic Talcum Products" by Lewis J. Cralley, et al., published in the American Industrial Hygiene Association Journal (July, August, 1968), a copy of which is marked Exhibit 15-40 and is available for inspection and copying in the office of our attorneys.

Epidemiological studies of the Canadian general population designed to examine the relationship, if any, between asbestos exposure and disease among various population groups in Canada, including the Quebec asbestos miners, is presently being conducted. Again, this study is being funded by CAMA and a sister corporation of defendant is furnishing a significant portion (over half) of such funding. The total amount of such funding is $704,700 for 1966 - 1974.

Johns-Manville Corporation is funding a study being conducted by the Mt. Sinai School of Medicine, City University of New York, entitled "Biological Effects of Modified Inorganic Fibrous Microparticles". The amount of such funding is $142,000. There are no reports available as yet. The purpose of the study is to explore the development of new biological test systems for fibrous materials and to determine the effect on biological activity of asbestos fiber which has been coated with a variety of physical and/or chemical substances.

A related study which was funded by Johns-Manville Corporation to the extent of $25,000 produced a report entitled "Asbestos Hemolysis" by R. J. Schnitzer and F. L. Pundsack (an employee of defendant), which was reported in March, 1969, and a copy thereof is marked Exhibit 15-29 and is available for inspection and copying in the office of our attorneys.

Johns-Manville Corporation has contributed $70,000 to the Industrial Hygiene Foundation of America's "Fibrous Dust Study". The purpose of this program is to investigate factors involved in the pathogenicity of major varieties of asbestos fiber to determine the true nature of ferruginous bodies. Reports related to and/or based on this study include the following:

"Proceedings Fibrous Dust Seminar" of the Industrial Hygiene Foundation of America (November 22, 1968), a copy of which is marked Exhibit 15-25 and is available for inspection and copying in the office of our attorneys.

"Experimental Asbestosis" by Dr. Paul Gross, et al., published in the Archives of Environmental Health, Vol. 16 (April, 1968), a copy of which is marked Exhibit 15-23 and is available for inspection and copying in the office of our attorneys.

"The Pulmonary Response to Fibrous Dusts of Diverse Compositions" by Dr. Paul Gross, et al., published in the American Industrial Hygiene Association Journal, Vol. 31, (March, April, 1970), a copy of which is marked Exhibit 15-26 and is available for inspection and copying in the office of our attorneys.

"'Ferruginous Bodies' in Guinea Pigs" by John M. G. Davis, et al., published in the Archives of Pathology, Vol. 89, (April, 1970), a copy of which is marked Exhibit 15-27 and is available for inspection and copying in the office of our attorneys.

"Pulmonary Ferruginous Bodies" by Dr. Paul Gross, et al., published in the Archives of Pathology, Vol. 85 (May, 1968), a copy of which is marked Exhibit 15-34 and is available for inspection and copying in the office of our attorneys.

"Pulmonary Ferruginous Bodies in City Dwellers" by Dr. Paul Gross, et al., published in the Archives of Environmental Health, Vol. 19 (August, 1969), a copy of which is marked Exhibit 15-33 and is available for inspection and copying in the office of our attorneys.

"Perruginous Bodies in Human Lungs" by Michael D. Utidjian, et al., published in the Archives of Environmental Health, Vol. 17 (September, 1968), a copy of which is marked Exhibit 15-24 and is available for inspection and copying in the office of our attorneys.

"Asbestos Bioeffects Research for Industry" by the Industrial Hygiene Foundation of America, Inc., published in its Medical Series, Bulletin No. 11 (1966), a copy of which is marked Exhibit 15-35 and is available for inspection and copying in the office of our attorneys.

QAMA is sponsoring a study of the health effects of asbestos, if any, on workers in the asbestos cement manufacturing industry in the New Orleans area. The total funding of this study is $200,000 and defendant's sister corporation is furnishing approximately $142,000 of the sum through QAMA. In addition, Johns-Manville Corporation is contributing time of its personnel at a total cost to it of $14,500. This study began in 1969 and is concentrating on the health status of present and past employees in the plants of defendant and National Gypsum Company in and around New Orleans. No reports have been published yet.

The Institute of Occupational and Environmental Health of QAMA is conducting a study to relate the health status of the asbestos exposed population to a non-exposed population in Canada. This study is under the direction of Dr. J. C. McDonald of McGill University, Montreal, Canada. This study is funded at $474,700 for the years 1970 through 1974. A sister corporation of defendant is contributing approximately one-half of this sum.

The following reports have been generated by this study:

"Qualitative Aspects of Dust Exposure in the Quebec Asbestos Mining and Milling Industry" by G. W. Gibbs, presented at the Third International Symposium on Inhaled Particles, British Occupational Hygiene Society, London, (September, 1970), a copy of which is marked Exhibit 15-30 and is available for inspection and copying in the office of our attorneys.

"Epidemiology of Primary Malignant Mesothelial Tumors in Canada" by A. D. McDonald, et al., printed in "CANCER" Vol. 25, No. 4 (October, 1970), a copy of which is marked Exhibit 15-31 and is available for inspection and copying in the office of our attorneys.

"Mortality from Lung Cancer and other Causes in the Chrysotile Asbestos Mines and Mills of Quebec" by Dr. J. Corbett McDonald, et al., (undated), a copy of which is marked Exhibit 15-31A and is available for inspection and copying in the office of our attorneys.

"Recent Developments in Asbestosis" by Dr. Premysl V. Pelnar, published in Studia Laboris et Salutis (1970), a copy of which is marked Exhibit 15-32 and is available for inspection and copying in the office of our attorneys.

Johns-Manville Corporation also paid for certain studies by Dr. Kenneth W. Smith who was then a full time employee of said corporation. Reports of Dr. Smith's studies are as follows:

"Asbestosis" printed in The Pneumoconioses, (undated), a copy of which is marked Exhibit 15-38 and is available for inspection and copying in the office of our attorneys.

"Pulmonary Disability in Asbestos Workers" printed in the Archives of Industrial Health, Vol. 12 (August, 1955), a copy of which is marked Exhibit 15-37 and is available for inspection and copying in the office of our attorneys.

"Trends in the Health of the Asbestos Worker" published in the Annals of the New York Academy of Sciences, Vol. 132, Art. 1 (December 31, 1965), a copy of which is marked Exhibit 15-39 and is available for inspection and copying in the office of our attorneys.

Interrogatory Number 16: Have you conducted any studies or experiments concerning the effects of inhalation of asbestos dust or fibers by persons other than your employees, who use or handle the products, such as insulation workers? If so, state the name, address and title of those conducting such studies and experiments, when they were made, to whom the reports thereon were made, and when, and attach copies of such reports and studies. If so, state what action, if any, you took following such reports and studies.

Answer: Yes. Defendant through its membership in the National Insulation Manufacturers Association has funded in part the studies conducted by Dr. Clark Cooper, et al., at the University of California at Berkeley. Copies of two articles of J. Leroy Balzer entitled "Industrial Hygiene for Insulation Workers" and "Environmental Exposures in the Insulation Trade" are marked Exhibits 16-33 and 16-34 respectively and are available for inspection and copying in the office of our attorneys. Dr. Cooper's address is: University of California, Berkeley, California. The work underlying these studies was commenced around 1966. Defendant is a wholly owned subsidiary of Johns-Manville Corporation. "Johns-Manville" (i. e. defendant and/or its parent and/or other wholly owned subsidiaries of Johns-Manville Corporation) has funded in part (approximately half) the studies of Dr. J. C. McDonald, et al., at McGill University, Canada, through the Quebec Asbestos Miners Association These studies commenced in late 1968 or early 1969 and are continuing. The studies have generated the following reports:

"Qualitative Aspects of Dust Exposure in the Quebec Asbestos Mining and Milling Industry" by G. W. Gibbs, presented at the Third International Symposium on Inhaled Particles, British Occupational Hygiene Society, London, (September, 1970), a copy of which is marked Exhibit 15-30 and is available for inspection and copying at the office of our attorneys.

"Epidemiology of Primary Malignant Mesothelial Tumors in Canada" by A. D. McDonald, et al., printed in "CANCER" Vol. 25, No. 4 (October, 1970), a copy of which is marked Exhibit 15-31 and is available for inspection and copying in the office of our attorneys.

"Mortality from Lung Cancer and Other Causes in the Chrysotile Asbestos Mines and Mills of Quebec" by Dr. J. Corbett McDonald, et al., (undated), a copy of which is marked Exhibit 15-31A and is available for inspection and copying in the office of our attorneys.

"Recent Developments in Asbestosis" by Dr. Premysl V. Pelnar, published in Studia Laboris et Salutis (1970), a copy of which is marked Exhibit 15-32 and is available for inspection and copying in the office of our attorneys.

Dr. McDonald's address is: McGill University, Montreal, Canada.

Interrogatory Number 17: Have you conducted any studies or experiments designed to eliminate or minimize the inhalation of asbestos dust and fibers by your own employees who manufacture or handle the products? If so, state the name, address and title of those conducting such studies or experiments, when they were made, to whom the reports thereon were made, and when and attach copies of such reports and studies. If so, state what action, if any, you took following such reports and studies.

Answer: Yes. See Exhibits 15-32A through 15-32D which are available for inspection and copying in the office of our attorneys for reports on studies and experiments made. Additionally, commencing in 1969 defendant did experimental work and studies on a new respirator. Also see defendant's answer to Interrogatory Number 12.

Interrogatory Number 18: Have you conducted any studies or experiments designed to eliminate or minimize the inhalation of asbestos dust and fibers by persons other than your own employee who use or handle such products, such as insulation workers? If so, state the name, address and title of those conducting such studies or experiments, when they were made, to whom the reports thereon were made, and when, and attach copies of such reports and studies. If so, state what action, if any, you took following such reports and studies.

Answer: Yes; see the studies of Messrs. Weeks and Burns described in Exhibit 12-1. The work of these employees of defendant was conducted for the Insulation Industry Hygiene Research Program. Further, see the studies headed by Dr. Clark Cooper referred to in response to Interrogatory Number 16, supra.

The first of the studies under the direction of Dr. Cooper, mentioned above, was published in the Journal of Occupational Medicine (January, 1968) and reported to numerous persons and entities, including The Eleventh Annual Western Industrial Health Conference. The second study directed by Dr. Cooper, referred to above, was published in the National Insulation Contractors Association's magazine "Outlook" during or about 1970. Additionally, defendant through its membership in the Asbestos Textile Institute and the Asbestos Cement Products Association has participated in the development, publication and dissemination to members of those respective associations and others (including the National Insulation Manufacturers Association and the National Insulation Contractors Association) various recommended practices including the following:

"Recommended Health Safety Practices for Handling and Fabricating Asbestos Textile Products" (1971-Proposed). A copy is set forth as Exhibit 18-34 and is available for inspection and copying in the office of our attorneys.

"Recommended Practices for Fabricating, Handling and Applying Asbestos-Cement Products in the Building and Construction Industries" (1970). A copy is marked Exhibit 18-35 and is available for inspection and copying in the office of our attorneys.

"Recommended Safety Practices for Handling Asbestos Fiber" (1969). A copy is marked Exhibit 18-36 and is available for inspection and copying in the office of our attorneys.

"Recommended Health Safety Practices for Handling and Applying Thermal Insulation Products Containing Asbestos" (1968). A copy is marked Exhibit 18-37 and is available for inspection and copying in the office of our attorneys.

"Presentation by C. L. Sheckler, Chairman of the National Insulation Manufacturers Association Health and Safety Committee to the National Insulation Contractors Association General Meeting in Dallas, Texas" (1970). A copy is marked Exhibit 18-38 and is available for inspection and copying in the office of our attorneys.

Additionally, an epidemiological study on the biological effects of asbestos dust among the Port of Genoa and LaSpezia Arsenal 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. A sister corporation of defendant is the principal contributor to 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. To defendant's knowledge there are no written reports of such study yet available.

Interrogatory Number 19: Do you have any statistics showing the number of your employees who are exposed to asbestos dust and fibers, and who have worked for you for twenty years or longer, who have lung disease? If so, please give such figures in detail.

Answer: No.

Interrogatory Number 20: Please state whether you have any knowledge of any deaths or serious lung disease among your employees which have been alleged to have resulted from inhalation of asbestos dust or fibers? If so, please give the numbers, and as to each, the name, where known, and address of such persons, the name and address of the treating doctor, and the date you were made aware of such allegations.

Answer: Defendant objects to this interrogatory on the ground that it is entirely too broad, irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory Number 21: Do you agree with the contention that asbestos dust and fibers cause or contribute to the disease mesothelioma? Do you agree with the contention that asbestos dust and fibers cause or contribute to the disease cor pulmonals? Do you agree with the contention that asbestos dust and fibers cause or contribute to the disease cancer? If so, and as to each, state when you arrived at such opinion or conclusion.

Answer: Defendant objects to each of the questions contained in this interrogatory on the grounds that each of them is irrelevant and immaterial and not reasonably calculated to lead to the discovery of admissible evidence because plaintiff has not alleged that he has contracted any of the diseases inquired about.

Interrogatory Number 22: Do you agree with the contention that asbestos fibers are of such a nature that once they are inhaled

into the human lung they never dissipate or go away, but remain in the lung virtually indestributible, to infinity? If so, when did you arrive at that conclusion or opinion?

Answer: No.

Interrogatory Number 23: Do you agree with the contention that asbestos fibers have a tensile strength equal to that of piano wire? If so, when did you come to that opinion or conclusion?

Answer: Defendant objects to this interrogatory on the grounds that it is irrelevant and immaterial and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects on the ground that the interrogatory is too vague to be answered and that defendant does not know what the phrase "tensile strength equal to that of piano wire" means. In addition, it should be kept in mind that there are infinite varieties of piano wire and conditions of use of the same.

Interrogatory Number 24: Do you agree that there are approximately a million individual fibrils lying side by side in a linear inch of chrysotile asbestos? If so, when did you come to that opinion or conclusion?

Answer: Defendant objects to this interrogatory on the grounds that it is irrelevant and immaterial and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory Number 25: As to each product, state whether it is possible for persons other than trained technicians or scientists to distinguish said product from similar products on the market. If your answer is "Yes", describe how such products can be distinguished.

Answer: Insofar as each product bears a trademark, name, container, label or other designation of origin it is

possible for persons other than trained technicians or scientists to distinguish said product from similar products on the market. While defendant cannot unequivocally speculate as to the abilities of all persons other than trained technicians or scientists to distinguish each product from similar products, defendant doubts that it is possible that persons other than trained technicians or scientists can distinguish each said product from similar products on the market once the trademark, name, container, label or other designation of origin has been removed from the product.

Interrogatory Number 26: Do you agree with the contention that the inhalation of asbestos dust and fibers can result in asbestosis? If so, when did you arrive at that conclusion or opinion? If so, following your arrival at that opinion or conclusion, what action, if any, did you take to change your methods of manufacture, sale or distribution of any of the products? When did you take such action? Explain in detail with particular reference to any warnings or instructions you may have issued regarding the use or handling of such products.

Answer: Defendant has recognized since 1930 or thereabout that the inhalation and retention in the lungs of excessive quantities of asbestos dust and fibers in the continuous course of employment over a long period of time under certain conditions may cause physical harm to some individuals. Since the 1930's defendant has changed its method of manufacture to minimize the potential for inhalation of asbestos dust and fibers by those employees. These changes have included installation of ventilation controls and equipment, the adoption of sound housekeeping practices, the use of personal protective equipment such as respirators and changes

in the formulas of certain industrial insulation products. This action has been a continuous process since the early 1930's. Defendant does not understand this interrogatory as it relates to the sale or distribution of industrial insulation products which contain asbestos because no dust or fibers can be inhaled in the sale or distribution of such products. It was not until about 1963 that the scientific-medical world first discovered that sufficient quantities of asbestos dust and fibers could be released from finished industrial insulation products as a result of the handling and processing thereof by insulation workers in the course of the installation of such products that a risk of pneumoconiosis might exist with respect to some of such insulation workers. Shortly thereafter beginning in 1964 this defendant began to put specific caution labels on its products. The dates that such warning labels were first affixed to said products and the text of such caution labelling is set forth in defendant's answer to Interrogatory Number 29. In addition, defendant has for many years since the 1940's directly or indirectly advised industrial insulation contractors to minimize dust and fibers through the use of ventilation control equipment, good housekeeping procedures and personal protective equipment such as respirators.

Interrogatory Number 27: Do you agree with the contention that insulation workers who use or handle the products over a period of several years, do thereby endanger their health? If so, in what way do they endanger their health? State all of the diseases they are likely to contract. If so, when did you arrive at that conclusion or opinion? If so, following your

arrival at that conclusion or opinion, what action, if any, did you take to change your methods of manufacture, sale or distribution of the products? When did you take such action? Explain in detail, with particular reference to any warnings or instructions you may have issued regarding the use or handling of such products.

Answer: No.

Interrogatory Number 28: As to each product, state whether you furnished instructions to the purchaser or ultimate user or consumer regarding the manner in which the products should be used. If so, furnish a copy of the text of such instructions, and state when and in what manner they were given, and to whom.

Answer: Defendant has since 1940 directly or indirectly orally advised industrial insulation contractors to utilize ventilation control equipment, good housekeeping procedures and personal protective equipment such as respirators at the sites where industrial insulation products were being worked with and applied. Beginning in 1964, defendant has placed a warning label on its industrial insulation products which label contains directions as follows:

> "If adequate ventilation control is not possible, wear respirators approved by the U. S. Bureau of Mines for pneumoconiosis producing dusts."

The full text of said caution label together with specific dates for each product as to which such action was felt to be advisable are listed in defendant's answer to Interrogatory Number 29. These caution notices were clearly affixed on each of the products there listed to be read by all persons coming in contact with said products thereafter. In addition beginning in 1966 a representative of defendant has

attended regional meetings of the National Insulation Contractors Association and instructed the contractors concerning methods of dust and fiber control. A copy of the booklet distributed to such contractors in the course of such programs is marked Exhibit 18-37 and is available for inspection and copying in the office of our attorneys. See further the other exhibits described in defendant's answer to Interrogatory Number 18.

Interrogatory Number 29: As to each product, state whether you ever gave any warning to the purchaser or ultimate user or consumer, of any dangerous or harmful nature of the product? If so, state of what the warning consisted, when it was given, in what manner it was given, and to whom it was given. This question relates to any and all warnings, of whatever nature, in connection with the product.

Answer: Defendant states that its products are not dangerous or harmful. The ultimate user or consumer of each product is not an industrial insulation worker but rather the owner of the property where the industrial insulation product is installed. Defendant gave warnings to purchasers and persons taking or receiving the product through purchasers by affixing a warning label, the text of the warning was 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.

This warning was affixed to each product on the container thereof where considered advisable as follows:

Spec. #	Product Description	Effective Date
II-9028-7	#319 and 678 Cement	11/4/65
II-9025-7	#500 Cement	11/4/65
II-9026-7	#450 Cement	11/4/65
II-9027-8	Insulating Cements	8/23/65
II-9205-6	Cartons of THERMOBESTOS Blocks	9/10/64
II-9064-5	Paper Bag for Magnesia Cement	8/23/65
II-9066-3	Paper Bag for SUPEREX Cement	11/4/65
II-9074-6	Cartons for Magnesia & SUPEREX Pipe Insulation	3/12/65
II-9075-16	Cartons for THERMOBESTOS Pipe Insulation	5/25/66
II-9204-8	Cartons for Magnesia & SUPEREX Blocks	11/14/66

Interrogatory Number 30: As to each product, state whether you gave the purchaser or ultimate user or consumer any advice regarding what wearing apparel or protective equipment or appliances could be used to avoid any danger from the asbestos dust and fibers contained in said product. If so, furnish a copy of the text of such advice, and state when and in what manner it was given, and to whom.

Answer: Since the 1940's defendant has directly or indirectly orally advised industrial insulation contractors with regard to how to eliminate or minimize any dust generated from the handling and application of each product. This advice concerned the use of ventilation control equipment, good housekeeping procedures, such as vacuuming up of dust, wetting down of floors, etc.,

and protective equipment such as respirators. There is no danger to the ultimate user or consumer once the products have been installed. Further, and more specifically, defendant gave the contractors advice at meetings of the National Insulation Contractors Association as more fully set forth in defendant's answer to Interrogatory Number 28. Further, defendant gave the advice set forth on the caution label as more fully set forth with respect to each product set forth in defendant's answer to Interrogatory Number 29. The text of such advice was available to the purchaser and all persons reading it.

Interrogatory Number 31: As to each product, state whether you ever published any sales literature concerning the product. If so, please attach a copy of said literature to your answer, and state when said literature was published, to whom it was distributed, and over what period of time.

Answer: Copies of literature are in the possession of our attorneys and are available for inspection and copying at said counsel's office. This material is too voluminous to attach to these answers to interrogatories.

Interrogatory Number 32: What steps, if any, have you taken to protect your own employees from any danger from the inhalation of asbestos dust and fibers in the manufacture, sale or distribution of any of the products? State when you took such action, what action you took, the purpose of such action; and how much it cost you to take such action. In your answer please cover, among all other things, any architectural or design changes made in your manufacturing.

Answer: Defendant says that there is no inhalation of asbestos dust in the course of the sale or distributio

of its industrial insulation products. With respect to their manufacture, defendant has already stated the steps that it took in the course of its manufacturing in response to Interrogatory Numbers 13 and 26. The architectural or design changes made in its manufacturing plant, the modification of existing structures and the installation of any ventilation systems are described in defendant's response to Interrogatory Number 17.

Interrogatory Number 33: Please give the net worth of your company as of the end of your annual accounting period for each year since 1949.

Answer: Defendant objects to this interrogatory on the grounds that it is irrelevant and immaterial and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory Number 34: Please state the net profit made by your company for each year since 1949.

Answer: Defendant objects to this interrogatory on the grounds that it is irrelevant and immaterial and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory Number 35: Please give the total volume of sales by your company for each year since 1949, specifying what portion of such sales were of the products in question.

Answer: Defendant objects to this interrogatory on the grounds that it is irrelevant and immaterial and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory Number 36: State what amount of money you have expended for studies, experiments, tests, and safety measures of whatever nature, for the purpose of ascertaining whether

asbestos products are dangerous to persons manufacturing, using or handling such products. Itemize such sums by year and amount for each year during the period in question.

Answer: See defendant's answers to Interrogatory Numbers 15, 17 and 32.

Interrogatory Number 37: Have you contributed any funds to anyone outside your company to conduct research concerning asbestos and its relation to lung disease or other diseases? If so, state when, to whom, their addresses, and attach copies of any and all reports you received from those to whom you so contributed.

Answer: See defendant's answers to Interrogatory Numbers 15, 17, 32 and 36. Copies of the reports (insofar as they exist to defendant's knowledge) are designated as exhibits to the enumerated respective interrogatories and are available for inspection and copying in the office of our attorneys.

Interrogatory Number 38: State which of the products was sold to purchasers in New Mexico, the sales volume per year to said purchaser during the period in question, and the name and address of such purchaser. Also, state whether such products were shipped directly to such purchaser and were received (as far as you know or have heard) by the purchaser in substantially the same condition as that in which the product was manufactured?

Answer: Defendant only has information with respect to the years 1964 through 1969. That information is as follows:

Year 1964

High Temperature
(SUPEREX, 85% Magnesia, THERMOBESTOS)

Pipe Insulation	$16,070.00
Block	$ 4,271.00

Insulating and Finishing Cement

$ 700.00

Year 1965

High Temperature
(SUPEREX, 85% Magnesia, THERMOBESTOS)

Pipe Insulation	$12,638.00
Block	$ 788.00

Insulating and Finishing Cement

$ 3.00

Year 1966

High Temperature
(SUPEREX, 85% Magnesia, THERMOBESTOS)

Pipe Insulation	$ 3,938.00
Block	

Insulating and Finishing Cement

$ 10.00

Year 1967

High Temperature
(SUPEREX, 85% Magnesia, THERMOBESTOS)

Pipe Insulation	$ 4,545.00
Block	$ 1,379.00

Insulating and Finishing Cement

$ 168.00

Year 1968

High Temperature
(SUPEREX, 85% Magnesia, THERMOBESTOS)

Pipe Insulation	$ 2,472.00
Block	$ 207.00

Insulating and Finishing Cement

Year 1969

High Temperature
(SUPEREX, 85% Magnesia, THERMOBESTOS)

Pipe Insulation	$ 8,677.00
Block	$ 551.00

Insulating and Finishing Cement

$ 668.00

Defendant does not know whether such products were shipped directly to such purchasers but as far as defendant knows, or has heard, the products were received in substantially the same condition as that in which they were manufactured.

Interrogatory Number 39: As to each product, state whether you ever tested the product to ascertain whether it was harmful or dangerous to the health of insulation workers using it. If so, state when, where, and by whom said test was made and give the details of any or all of such tests, and attach copies of the reports and conclusions of such tests.

Answer: The tests which defendant has made or paid for directly or indirectly are not directed towards particular products but towards industrial insulation products containing asbestos in general. The details of such tests are set forth in defendant's answer to Interrogatory Number 16. Copies of the reports of such tests are designated as exhibits in defendant's answer to that interrogatory and are available for inspection and copying in the office of our attorneys.

Interrogatory Number 40: As to each product, state whether you ever conducted any tests or experiments to devise a safe method of use or application of the product, to the end that insulation workers using the product would not be harmed by dust or fibers emitted from the product. If so, state when, where and by whom said test was made, and give the details of any and all such tests, and attach copies of the reports and conclusions of such tests.

Answer: Defendant has not conducted or paid for tests of individual products as such but rather has approached groups of products of a similar generic nature to

devise better methods of application of that kind of product. With respect to cements defendant has worked on the mixing thereof in plastic bags. Such tests have been made by defendant at its Manville, New Jersey, Research and Engineering Center under the direction of J. O. Collins and in the field. See Exhibits 14-9 and 14-11 which are available for inspection and copying in the office of our attorneys.

Interrogatory Number 41: Do you have a medical or scientific department? If so, state when it was commenced, the name, address and title of the persons in charge of it since its inception, indicating the tenure of each, and state what were the functions and duties of said department.

Answer: Defendant had a medical function beginning in the middle 1930's. At that time this function was administered by John P. Syme, Director of Industrial Relations. Mr. Syme is deceased.

In 1947 a formal health and medical program was initiated for the benefit of employees of defendant, among others, within defendant's "parent" Johns-Manville Corporation, under the administration of H. M. Jackson, Safety Director.

Beginning in 1952 the health and medical program was administered by H. M. Jackson, Manager, Industrial Health and Dr. K. W. Smith, Medical Director.

Beginning in 1960 the health and medical program was administered by C. L. Sheckler, Manager, Industrial Health and Dr. K. W. Smith, Medical Director.

Beginning in 1966 the health and medical program was administered by H. M. Jackson, Director of Industrial Relations.

Beginning in 1968 the health and medical program was administered by C. L. Sheckler, Manager, Accident Prevention and Health Administration. Beginning in 1970 to date the health and medical program has been and is administered by C. L. Sheckler Manager, Accident Prevention and Health Association, and Dr. T. H. Davison, Corporate Medical Director. The purpose of the health function or medical department has been to supervise and deal with all medical problems of defendant's employees, among others.

Interrogatory Number 42: Do you have any engineering, scientific and research data concerning the products, their suggested use and adaptability, the method of application thereof, and suggested safety practices or controls in the use thereof?

Answer: Defendant objects to this interrogatory in part on the grounds that its engineering and research data "concerning the products, their suggested use and adaptability" is a trade secret and disclosure thereof would irreparably harm defendant. Defendant states that it has answered the question as to suggested use and adaptability in its response to Interrogatory Number 5. Further defendant states that it has answered the interrogatory as to "the method of application thereof, and suggested safety practices or controls in the use thereof" in its answers to Interrogatory Numbers 28 and 18 respectively.

Interrogatory Number 43: Have you consulted with Dr. Irving J. Selikoff, of New York, concerning asbestosis, and if so, state when, where and under what circumstances, and what information, if any, was furnished to him by you, or to you by him, and the

dates such information was furnished, and the names, titles and addresses of your personnel so involved.

Answer: Defendant does not understand the question in that it does not know what plaintiff means by the phrase "consulted with Dr. Irving J. Selikoff, of New York, concerning asbestosis". On many occasions representatives of defendant have discussed pulmonary disease manifestations with Dr. Selikoff. However, Dr. Selikoff is not engaged as a consultant of defendant other than through defendant's relationship with the Insulation Industry Hygiene Research Program of Mt. Sinai Environmental Sciences Laboratory. This defendant has also dealt with Dr. Selikoff in conjunction with funding of the studies described in answer to Interrogatory Number 15.

Interrogatory Number 44: Are you familiar with the work of H. Montague Murray, a physician in London's Charing Cross Hospital, relating to asbestos and lung disease? If so, when did you become familiar with this work?

Answer: Defendant objects to this interrogatory on the grounds that it is irrelevant and immaterial and not reasonably calculated to lead to the discovery of admissible evidence and on the further grounds that no proper predicate has been laid and on the further grounds that the work of H. Montague Murray would constitute hearsay and on the further grounds that the question is too vague and ambiguous because defendant does not know the meaning of the words "familiar with" in this context. Further, it is impossible for defendant to canvass each and every employee of defendant, past and present, to determine if he or she has ever heard of such work.

Interrogatory Number 45: Do you agree that at least since 1930 there have been medical studies published in which it was alleged that the inhalation of asbestos dust and fibers can cause the disease asbestosis? If so, when did you first become aware of such studies wherein such allegations were made? If not, state when the first medical studies were published in which such allegations were made, and state when you first became aware of such studies.

Answer: Defendant agrees that since 1930 there have been medical studies published in which it was alleged that the inhalation of asbestos dust and fibers and the retention thereof in the lungs in the continuous course of employment over an extended period of time can, under certain conditions, cause the disease of asbestosis in some people. Defendant became aware of such studies at or about the time of publication thereof as defendant directly or indirectly participate in or funded many such studies as more fully set forth in defendant's answer to Interrogatory Number 15. Defendant states that none of such medical studies prior to 1963 recognized any risk to persons working with manufactured products such as industrial insulation applicators.

Interrogatory Number 46: Are you familiar with the first century reports of Strabo and Pliny The Elder in which there was mentioned a sickness of the lungs in slaves whose occupation was to weave asbestos into cloth? If so, when did you first become familiar with such reports?

Answer: Defendant objects to this interrogatory on the grounds that it is irrelevant and immaterial and not reasonably designed to lead to the discovery of admissible evidence and on the further grounds that

no predicate has been laid to this interrogatory and on the further grounds that the reports inquired of would constitute hearsay.

Interrogatory Number 47: Are you familiar with the work of Peter A. Theodos, M.D., of Philadelphia, Pennsylvania, and the paper entitled "Lung Biopsy in the Diagnosis of Pneumoconiosis", which was presented at the Ninth International Congress on Diseases of the Chest, Copenhagen, Denmark, August 25, 1965, which paper was published in Diseases of the Chest, the official publication of the American College of Chest Physicians? If so, when did you become familiar with his work and paper?

Answer: Defendant objects to this interrogatory on the grounds that it is too vague and ambiguous because defendant does not know what the words "familiar with" mean in this context and on the further grounds that no predicate has been laid for this interrogatory and that the paper would constitute hearsay.

Interrogatory Number 48: Are you familiar with the article by Paul Brodeur, titled "The Magic Mineral", published in The New Yorker, October 12, 1968? If so, when did you become familiar with such article?

Answer: Defendant objects to this interrogatory on the grounds that it is too vague and ambiguous because defendant does not know what the words "familiar with" mean in this context and on the further grounds that no predicate has been laid for this interrogatory and that the article would constitute hearsay.

Interrogatory Number 49: Are you familiar with the article by Selikoff, Churg and Hammond published in the Journal of The American Medical Association in the spring of 1964? If so, when did you become familiar with such article?

Answer: Defendant objects to this interrogatory on the grounds that it is too vague and ambiguous because defendant does not know what the words "familiar with" mean in this context and on the further grounds that no predicate has been laid for this interrogatory and that the article would constitute hearsay.

Interrogatory Number 50: Are you familiar with the article by Selikoff, Churg and Hammond titled "The Occurrence of Asbestosis Among Insulation Workers in the United States", published in December, 1965, in the Annals of the New York Academy of Sciences? If so, when did you become familiar with such article? Please refer to the list of 59 references at the end of said article and state with which ones, by number, you are familiar with, and as to each, the date you became familiar with it.

Answer: Defendant objects to this interrogatory on the grounds that it is too vague and ambiguous because defendant does not know what the words "familiar with" mean in this context and on further grounds that no predicate has been laid for this interrogatory, and that the article would constitute hearsay. Defendant objects to the inquiry contained as to each of the 59 references on the same grounds but also objects on the grounds that this inquiry is unreasonable and unduly broad and burdensome because of the definition of "you" as set forth in the beginning of the interrogatories. To answer this part of the interrogatory defendant would have to poll each of thousands of employees with respect to each article listed.

Interrogatory Number 51: Are you familiar with the so-called

Frye report, made to the Surgeon General, in 1965? If so, when did you become familiar with it?

Answer: Defendant objects to this interrogatory on the grounds that it is too vague and ambiguous because defendant does not know what the words "familiar with" mean in this context and on the further grounds that no predicate has been laid for this interrogatory and that the report would constitute hearsay.

Interrogatory Number 52: Did you have an agent or employee at the International Conference on the Biological Effects of Asbestos, at the Waldorf-Astoria in New York, sponsored by the New York Academy of Sciences in 1964? If so, what is the name, address and title of such persons or person? If not, did you later become familiar with the reports of the discussions held in such conference, and state when you became familiar with them.

Answer: Defendant objects to this interrogatory on the grounds that it is irrelevant and immaterial and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory Number 53: Have you ever received any communication from Dr. Irving J. Selikoff, head of the Division of Environmental Medicine at New York City University's Mount Sinai School of Medicine, in which Dr. Selikoff requested information regarding the health experiences of workers in any of your plants? If so, when did you receive such communcation, what was the content thereof, and what was your response.

Answer: Defendant objects to this interrogatory on the grounds that it is irrelevant and immaterial and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects on the grounds that it is unduly broad and burdensome

because of the definition of the word "you" as set forth in the beginning of the interrogatories. Defendant would have to poll thousands of employees in order to answer this question.

Interrogatory Number 54: In your scientific and research department, do you have a library of books, articles and reports concerning asbestos and its affect upon the health of those who work with and around it? If so, who maintains the library, and what is his title? If so, please attach a bibliography to your answer herein, listing all of such books, articles, reports and writings of every nature on such subject, and as to each, state when it was that you first became familiar with it, if the date is different from the date of publication.

Answer: Defendant objects to the wording of this interrogatory on the grounds that the statement "its affect upon the health of those who work with and around it" is argumentative and assumes a fact in issue in this litigation. Defendant further objects on the grounds that the phrase "work with and around it" is unduly vague and ambiguous and defendant does not understand precisely what persons are meant by that verbiage. Defendant further objects on the ground that a request by plaintiff for defendant to compile a bibliography is unreasonable as it is requiring defendant to prepare plaintiff's case for him. Defendant states that its library is available for inspection by counsel for plaintiff and that counsel for plaintiff is welcome to compile his own bibliography. Defendant further objects to this interrogatory on the grounds that it constitutes harassment, oppression and vexation of defendant because to answer the same would require defendant to conduct research and to compile

information which would involve the expenditure of unreasonable time and expense by employees of defendant.

Herbert Morton Ball

RODEY, DICKASON, SLOAN, AKIN & ROBB

By Charles L. Barnes
Attorneys for Defendant Johns-Manville Products Corporation
P. O. Box 1888
Albuquerque, New Mexico

VERIFICATION

STATE OF NEW YORK
County of New York ... ss

HERBERT MORTON BALL, of lawful age, being first duly sworn upon oath, deposes and states that he is secretary for defendant Johns-Manville Products Corporation; that as such he has caused to be prepared the above and foregoing answers to interrogatories; that he has read the same, knows the contents thereof and that the matters and things therein set forth are true of his own knowledge, save where the same are or must of necessity be set forth upon information and belief, and as to those allegations, he verily believes the same to be true.

Herbert Morton Ball

SUBSCRIBED AND SWORN TO before me this 21st day of June, 1971.

Dorothy A. Stack
Notary Public

DOROTHY A. STACK
Notary Public - State of New York
No. 41-6300085 Queens County
Cert. Filed in New York County
Term Expires March 30, 1972

My commission expires:
March 30 1972

We hereby certify that we have mailed a copy of the foregoing pleading to opposing counsel of record this 12th day of July, 1971.

RODEY, DICKASON, SLOAN, AKIN & ROBB

By Charles B. Laney

34.

Please state the net profit made by your company for each year since 1949.

Answer: Owens-Corning objects to Interrogatory No. 34 for the following reasons:

(a) The same inquire as to matters of fact which are of public record and are equally available to the plaintiff as to Owens-Corning.

(b) The same inquire as to matters of a highly prejudicial nature which would result in a comparison of the relative financial resources of Owens-Corning with those of plaintiff.

35.

Please give the total volume of sales by your company for each year since 1949, specifying what portion of such sales were of the products in question.

Answer: Owens-Corning objects to Interrogatory No. 35 for the following reasons:

(a) The same inquire as to matters of fact which are of public record and are equally available to the plaintiff as to Owens-Corning.

(b) The same inquire as to matters of a highly prejudicial nature which would result in a comparison of the relative financial resources of Owens-Corning with those of plaintiff.

36.

State what amount of money you have expended for studies, experiments, tests, and safety measures of whatever nature, for the purpose of ascertaining whether asbestos products are dangerous to persons manufacturing, using or handling such products. Itemize such sums by years and amount for each year during the period in questions.

Answer: Owens-Corning has no records to determine the amount of money spent annually on such projects.

37.

Have you contributed any funds to anyone outside your company to conduct research concerning asbestos and its relation to lung disease or other disease? If so, state when, to whom, their addresses, and attach copies of any and all reports you received from those to whom you so contributed.

Answer: No.

38.

State which of the products was sold to purchasers in New Mexico, the sales volume per year to said purchaser during the period in question, and the name and address of such purchaser. Also, state whether such products were shipped directly to such purchaser and were received (as far as you know or have heard) by the purchaser in substantially the same condition as that in which the product was manufactured?

Answer: Owens-Corning objects to Interrogatory No. 38 for the reason that plaintiff seeks information which is not relevant or material to the issues of this case.

39.

As to each product, state whether you ever tested the product to ascertain whether it was harmful or dangerous to the health of insulation workers using it. If so, state when, where, and by whom said test was made and give details of any of all such tests, and attach copies of the reports and conclusions of such tests.

Answer: See answer to Nos. 26 and 27.

40.

As to each product, state whether you ever conducted any tests or experiments to devise a safe method of use or application of the product, to the end that insulation workers using the product would not be harmed by dust or fibers emitted from the product. If so, state when, where and by whom said test was made, and give the details of any and all such tests, and attach copies of the reports and conclusions of such tests.

Answer: See answer to Nos. 26 and 27.

41.

Do you have a medical or scientific department? If so, state when it was commenced, the name, address and title of the persons in charge of it since its inception, indicating the tenure of each, and state what were the functions and duties of said department.

Answer: The Owens-Corning Medical Department was organized on or about January 15, 1968. Previous to this time each plant had its own medical service which was organized locally. The function of the Medical Department is to provide medical and healthcare advice and services to the Company and its employees. Dr. Jon L. Konsen, Fiberglas Tower, Toledo, Ohio has been Owens-Corning's Medical Director since the department was established in 1968.

42.

Do you have any engineering, scientific, and research data concerning the products, their suggested use and adaptability, the method of application thereof, and suggested safety practices or controls in the use thereof?

Answer: Yes.

43.

Have you consulted with Dr. Irving J. Selikoff, of New York, concerning asbestosis, and if so, state when, where and under what circumstances, and what information, if any, was furnished to him by you, or to you by him, and the dates such information was furnished, and the names, titles and addresses of your personnel so involved.

Answer: No.

44.

Are you familiar withthe work of H. Montague Murray, a physician in London's Charing Cross Hospital, relating to asbestos and lung disease? If so, when did you become familiar with this work.

Answer: No.

45.

Do you agree that at least since 1930 there have been medical studies published in which it was alleged that the inhalation of asbestos dust and fibers can cause the disease asbestosis? If so, when did you first become aware of such studies wherein such allegations were made? If not, state when the first medical studies were published in which such allegations were made, and state when you first became aware of such studies.

Answer: See answer to No. 26.

46.

Are you familiar with the first century reports of Strabo and Pliny The Elder in which there was mentioned a sickness of the lungs in slaves whose occupation was to weave asbestos into cloth? If so, when did you first become familiar with such reports?

Answer: No.

47.

Are you familiar with the work of Peter A. Theodos, M.D., of Philadelphia, Pennsylvania, and the paper entitled "Lung Biopsy in the Diagnosis of Pneumoconiosis", which was presented at the Ninth International Congress on Diseases of the Chest, Copenhagen, Denmark, August 25, 1965, which paper was published in Diseases of the Chest, the official publication of the American College of Chest Physicians? If so, when did you become familiar with his work and paper?

Answer: Dr. Konzen became aware of this paper in 1968.

48.

Are you familiar with the article by Paul Brodeur, titled "The Magic Mineral", published in The New Yorker, October 12, 1968? If so, when did you become familiar with such article?

Answer: Dr. Konzen became aware of the article noted shortly after publication.

49.

Are you familiar with the article by Selikoff, Churg and Hammond published in the Journal of The American Medical Association in the spring of 1964? If so, when did you become familiar with such article?

Answer: Dr. Konzen became aware of the article noted at the time of its publication but he was not then an employee of or associated with Owens-Corning.

50.

Are you familiar withthe article by Selikoff, Churg and Hammond titled "The Occurrence of Asbestosis Among Insulation Workers in the United States", published in December, 1965, in the Annals of the New York Academy of Sciences? If so, when did you become familiar with such article? Please refer to the list of 59 references at the end of said article and state with which ones, by number, you are familiar, and as to each, the date you became familiar with it.

Answer: Dr. Konzen became aware of the article noted at the time of its publication. Dr. Konzen is familiar with reference Nos. 3, 4, 6, 13, 22, 35, 37, 38, 39 and 46. At the time Dr. Konzen became aware of this article and the noted references he was not then an employee of or associated with Owens-Corning.

51.

Are you familiar with the so-called Frye Report, made to the Surgeon General in 1965? If so, when did you become familiar with it?

Answer: Dr. Konzen became aware of the Report at the time of its publication, but he was not then an employee of or associated with Owens-Corning.

52.

Did you have an agent or employee at the International Conference on the Biological Effects of Asbestos, at the Waldorf-Astoria in New York, sponsored by the New York Academy of Sciences in 1964? If so, what is the name, address and title of such person or persons? If not, did you later become familiar with the reports of the discussions held in such conference, and state when you become familiar with them.

Answer: No.

53.

Have you ever received any communication from Dr. Irving J. Selikoff, head of the Division of Environmental Medicine at New York City University's Mount Sinai School of Medicine, in which Dr. Selikoff requested information regarding the health experiences of workers in any of your plants? If so, when did you receive such communication, what was the content thereof, and what was your response?

Answer: No.

54.

In your scientific and research department, do you have a library of books, articles and reports concerning asbestos and its affect upon the health of those who work with and around it? If so, who maintains the library, and what is his title? If so, please attach a bibliography to your answer herein, listing all of such books, articles, reports and writings of every nature on such subject, and as to each, state when it was that you first became familiar with it, if the date is different from the date of publication.

Answer: No.

Robert L. Logan, Jr.

STATE OF OHIO)
LUCAS COUNTY)

Before me, the undersigned authority, appeared Robert L. Logan, Jr., agent for Owens-Corning Fiberglas Corporation, a Delaware corporation, who is known to me, and who, being by me first duly sworn, deposes and says that Owens-Corning Fiberglas Corporation is a defendant in the above styled cause, and that the foregoing answers to interrogatories are true and correct to the best of his knowledge, information and belief.

SWORN TO and subscribed before me this 18th day of August, 1970.

Notary Public

DOLORES E. POWELL
Notary Public, Lucas County, Ohio
My Commission Expires Feb. 9, 1973

I hereby certify that I mailed a copy of the foregoing pleading to appearing counsel of record this 17th day of August 1970.
IRVING MOORE

36. State what amount of money you have expended for studies, experiments, tests, and safety measures of whatever nature, for the purpose of ascertaining whether asbestos products are dangerous to persons manufacturing, using or handling such products. Itemize such sums by year and amount for each year during the period in question.

ANSWER: See answer to Interrogatory No. 13.

37. Have you contributed any funds to anyone outside your company to conduct research concerning asbestos and its relation to lung disease or other disease? If so, state when, to whom, their addresses, and attach copies of any and all reports you received from those to whom you so contributed.

ANSWER: No.

38. State which of the products was sold to purchasers in New Mexico, the sales volume per year to said purchaser during the period in question, and the name and address of such purchaser. Also, state whether such products were shipped directly to such purchaser and were received (as far as you know or have heard) by the purchaser in substantially the same condition as that in which the product was manufactured?

ANSWER: As your defendant is not a manufacturer, this question is not applicable.

39. As to each product, state whether you ever tested the product to ascertain whether it was harmful or dangerous to the health of insulation workers using it. If so, state when, where, and by whom said test was made and give the details of any of all such tests, and attach copies of the reports and conclusions of such tests.

ANSWER: Not applicable.

40. As to each product, state whether you ever conducted any tests or experiments to devise a safe method of use or application of the product, to the end that insulation workers using the product would not be harmed by dust or fibers emitted from the product. If so, state when, where and by whom said test was made, and give the details of any and all such tests, and attach copies of the reports and conclusions of such tests.

ANSWER: Not applicable.

41. Do you have a medical or scientific department? If so, state when it was commenced, the name, address and title of the persons in charge of it since its inception, indicating the tenure of each, and state what were the functions and duties of said department.

ANSWER: No.

42. Do you have any engineering, scientific, and research data concerning the products, their suggested use and adaptability, the method of application thereof, and suggested safety practices or controls in the use thereof?

ANSWER: Not applicable.

43. Have you consulted with Dr. Irving J. Selikoff, of New York, concerning asbestosis, and if so, state when, where and under what circumstances, and what circumstances, and what information, if any, was furnished to him by you, or to you by him, and the dates such information was furnished, and the names, titles and addresses of your personnel so involved.

ANSWER: No.

44. Are you familiar with the work of H. Montague Murray, a physician in London's Charing Cross Hospital, relating to asbestos and lung disease? If so, when did you become familiar with this work?

ANSWER: Our corporate records do not disclose recognition or nonrecognition.

45. Do you agree that at least since 1930 there have been medical studies published in which it was alleged that the inhalation of asbestos dust and fibers can cause the disease asbestosis? If so, when did you first become aware of such studies wherein such allegations were made. If not, state when the first medical studies were published in which such allegations were made, and state when you first became aware of such studies.

ANSWER: Our corporate records do not disclose recognition or nonrecognition.

46. Are you familiar with the first century reports of Strabo and Pliny the Elder in which there was mentioned a sickness of the lungs in slaves whose occupation was to weave asbestos into cloth? If so, when did you first become familiar with such reports?

ANSWER: Our corporate records do not disclose recognition or nonrecognition.

47. Are you familiar with the work of Peter A. Theodos, M.D., of Philadelphia, Pennsylvania, and the paper titled "Lung Biopsy in the Diagnosis of Pneumoconiosis", which was presented at the Ninth International Congress on Diseases of the Chest, Copenhagen, Denmark, August 25, 1965, which paper was published in Diseases of the Chest, the official publication of the American College of Chest Physicians? If so, when did you become familiar with his work and paper?

ANSWER: Our corporate records do not disclose recognition or nonrecognition.

48. Are you familiar with the article by Paul Brodeur, titled "The Magic Mineral", published in The New Yorker, October 12, 1968? If so, when did you become familiar with such article?

ANSWER: Our corporate records do not disclose recognition or nonrecognition.

49. Are you familiar with the article by Selikoff, Churg and Hammond published in the Journal of the American Medical Association in the Spring of 1964? If so, when did you become familiar with such article?

ANSWER: Our corporate records do not disclose recognition or nonrecognition.

50. Are you familiar with the article by Selikoff, Churg and Hammond titled "The Occurrence of Asbestosis Among Insulation Workers in the United States", published in December, 1965, in the Annals of the New York Academy of Sciences? If so, when did you become familiar with such article? Please refer to the list of 59 references at the end of said article and state with which ones, by number, you are familiar, and as to each, the date you became familiar with it.

ANSWER: Our corporate records do not disclose recognition or nonrecognition.

51. Are you familiar with the so-called Frye Report, made to the Surgeon General in 1965? If so, when did you become familiar with it?

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ANSWER: Our corporate records do not disclose recognition or nonrecognition.

52. Did you have an agent or employee at the International Conference on the Biological Effects of Asbestos, at the Waldorf-Astoria in New York, sponsored by the New York Academy of Sciences in 1964? If so, what is the name, address and title of such person or persons? If not, did you later become familiar with the reports of the discussions held in such conferences, and state when you became familiar with them.

ANSWER: No.

53. Have you ever received any communication from Dr. Irving J. Selikoff, head of the Division of Environmental Medicine at New York City University's Mount Sinai School of Medicine, in which Dr. Selikoff requested information regarding the health experiences of workers in any of your plants? If so, when did you receive such communication, what was the content thereof, and what was your response?

ANSWER: No.

54. In your scientific and research department, do you have a library of books, articles and reports concerning asbestos and its affect upon the health of those who work with and around it? If so, who maintains the library, and what is his title? If so, please attach a bibliography to your answer herein, listing all of such books, articles, reports and writings of every nature on such subjects, and as to each, state when it was that you first became familiar with it, if the date is different from the date of publication.

ANSWER: Not applicable.

TOULOUSE, MOORE & WALTERS

By Murray E. Moore
Attorneys for Defendant
6001 Marble, NE
Albuquerque, New Mexico 87110

I hereby certify that a true copy of the foregoing pleading was mailed to opposing counsel of record this 7 day of July, 1970.

Murray E. Moore

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF NEW MEXICO

FILED
AT ALBUQUERQUE
AUG 19 1970
E. E. GREESON
CLERK

FRIS A. BASSHAM, Plaintiff	
vs.	CIVIL ACTION
OWENS-CORNING FIBERGLAS CORPORATION, et al., Defendants	NO. 8431

ANSWERS OF DEFENDANT, OWENS-CORNING FIBERGLAS CORPORATION, TO INTERROGATORIES PROPOUNDED BY PLAINTIFF

Comes now defendant, Owens-Corning Fiberglas Corporation, by its agent Robert L. Logan, Jr., and for answer to interrogatores heretofore propounded to it by plaintiff states as follows:

1.

Please give the name and address of the president of your company, and of the chairman of the Board of Directors.

Answer: John H. Thomas, President, Fiberglas Tower, Toledo, Ohio, Lauris Norstad, Chairman of the Board of Directors, Fiberglas Tower, Toledo, Ohio.

2.

Are you engaged in the manufacture and sale of insulation products containing asbestos? If so, state during what portion of the period in question you were so engaged.

Answer: Yes. Owens-Corning commenced manufacturing such products in or about May, 1958 and continues to do so to date.

3.

What insulation product containing asbestos did you manufacture and sell during the period in question? List the product by trade name, if any, and by the advertised name, and by the nickname or name commonly used in the insulation industry, and also list the product by description, e.g. asbestos type covering, or asbestos sheeting; and state the date that said product went on the market.

Answer: Yes.

7.

As to each product, were the manufacture, sale and distribution of said product under your exclusive control, or that of your agents, servants and employees during the period in question? If not, state who had and exercised any control over the manufacture, sale, or distribution of said product other than yourself, and state what that control was.

Answer: Owens-Corning manufactures Kaylo 10 and Kaylo 20 and sells these products to a variety of purchasers. After sale Owens-Corning exercises no control over further use of its products.

8.

As to each product, and its intended use, as described in your answer to Question #5, state whether you intended or expected that such use by insulation workers would result in the exposure of such workers to, and contact by said workers with, asbestos dust and fibers contained in said products, during the period in question.

Answer: The fact of, nature and extent of exposure to asbestos dust and fibers from Owens-Corning's products depends upon the manner in which such products are used.

9.

As to each product, and in its intended use, as described in your answer to Question #5, did such product have a propensity or property for causing dust containing asbestos fibers to be emitted into the air around the worker using said product? If your answer is "Yes", state when you acquired the information that such is the case. If your answer is "Yes", state whether you expected insulation workers to inhale microscopic asbestos fibers in the course of their use of said product, and if so, since when have you expected them to do so?

Answer: No.

10.

As to each product, and in its intended use, as described in your answer to Question #5, did such product have a propensity or property for causing physical harm to insulation workers by reason of their inhalation of asbestos dust or fibers from said product or otherwise? If your answer is "Yes", state when you acquired the information that such is the case.

Answer: Owens-Corning has manufactured and sold a pipe covering insulation material identified under the trade names Kaylo 10 and Kaylo 20 and prepared in block and segmented form since May, 1958.

4.

As to each product state the asbestos (by whatever name known) content.

Answer: Approximately fifteen percent.

5.

As to each product, state to what use you intended the product to be put, whether you intended it to be used by insulation workers, and the manner in which you intended said product to be used by insulation workers during the period in question.

Go into detail as to how you intended each product to be handled by those using the same in the insulation industry, with particular reference to how you intended the insulation users to unpackage the product, to cut, saw, break, shape, mix and apply said product, and whether or not you intended that the product be cut, shaped, mixed, prepared or applied at the job site.

Commence with the date that said product first went on the market, and if there has been any change in intended use, specify when the change occurred, what the intended use was before and after the change, and what notice, if any you gave to the intended user relating to such change.

Answer: Kaylo 10 and Kaylo 20 are intended to be used in the form in which they are manufactured as insulating materials for high temperature areas. Owens-Corning has no control as to the method of handling the product after sale.

6.

As to each product, did such product reach the user or consumer without substantial change in the condition in which said product was manufactured and sold during the period in question? If not, state what the change in condition was, and how it came about.

Was it your intention that said product would reach the user or consumer without substantial change in the condition in which said product was manufactured or sold? If not, state what change you intended to occur in said product and how you intended such change to come about.

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Answer: No.

11.

Are you aware of any breathing apparatus, device, or safeguard which would eliminate or materially reduce any danger to insulation workers in the use or handling of any of the products? If so, please give the exact tradename and manufacturer of the device, or otherwise describe it in such a way that one can be located for examination and inspection. Do you have any in your possession?

Answer: Any respirator approved by the U. S. Bureau of Mines should reduce any danger which may be present. One type of such respirator is sold by the Mine Safety Appliance Company, Pittsburgh, Pennsylvania. Owens-Corning has a type of such respirator in its possession.

12.

Have you ever tested or examined any breathing apparatus, device or safeguard which was claimed to be able to eliminate or materially reduce any danger to insulation workers in the use or handling of any of the products? If so, give details as to where and when, and by whom such test or examination was conducted, and furnish a copy of the written report regarding such test or examination, and the conclusions therefrom. If you are aware of such tests made by others, please furnish the same information relating thereto.

Answer: No.

13.

Do you have anyone from your company whose duty it is to make dust samplings, or dust level counts, in any of the places where your employees work? If so, explain the technique, state when such action was first initiated, how many persons are so engaged, how often such tests are made, what thepurpose of such tests is, and what action, if any, has been taken following the findings of such tests.

Answer: Dust samplings are made periodically by Aetna Casualty & Surety Company at the plant where Kaylo 10 and Kaylo 20 are manufactured. Such samplings have been made since 1958 and, where required, ventilation of areas has been provided.

14.

Do you have anyone from your company whose duty it is to go to areas where your asbestos products are being used to make a dust level count? If so, state when you started such procedure, the purpose of it, and what action, if any, has been taken following your findings.

Answer: No.

15.

Have you conducted any studies or experiments concerning the effects of inhalation of asbestos dust or fibers by your employees who manufacture or handle the product? If so, state the name, address, and title of those conducting such studies and experiments, when they were made, to whom the reports thereon were made, and when, and attach copies of such reports and studies. If so, state what action, if any, you took following such reports and studies.

Answer: No.

16.

Have you conducted any studies or experiments concerning the effects of inhalation of asbestos dust or fibers by persons other than your employees, who use or handle the products, such as insulation workers? If so, state the name, address, and title of those conducting such studies and experiments, when they were made, to whom the reports thereon were made, and when, and attach copies of such reports and studies. If so, state what action, if any, you took following such reports and studies.

Answer: No.

17.

Have you conducted any studies or experiments designed to eliminate or minimize the inhalation of asbestos dust and fibers by your own employees who manufacture or handle the products? If so, state the name, address and title of those conducting such studies or experiments, when they were made, to whom the reports thereon were made, and when, and attach copies of such reports and studies. If so, state what action, if any, you took following such reports and studies.

Answer: Yes. See answer to No. 13. Owens-Corning objects to that portion of this interrogatory requesting that certain reports be attached to the answer thereto for the reason that Federal Rule 33 does not authorize or require the same.

18.

Have you conducted any studies or experiments designed to eliminate or minimize the inhalation of asbestos dust and fibers by persons other than your own employees who use or handle such products, such as insulation workers? If so, state the name, address and title of those conducting such studies or experiments, when they were made, to whom the reports thereon were made, and when, and attach copies of such reports and studies. If so, state what action, if any, you took following such reports and studies.

Answer: No.

19.

Do you have any statistics showing the number of your employees who are exposed to asbestos dust and fibers, and who have worked for you for twenty years or longer, who have lung disease? If so, please give such figures in detail.

Answer: Owens-Corning has been manufacturing insulation products containing asbestos fibers only since 1958.

20.

Please state whether you have any knowledge of any deaths or serious lung disease among your employees which have been alleged to have resulted from inhalation of asbestos dust or fibers? If so, please give the numbers; and as to each, the name, where known, and address of such persons, the name and address of the treating doctor, and the date you were made aware of such allegation.

Answer: Owens-Corning objects to Interrogatory No. 20 for the following reasons:

(a) The same does not inquire as to any matter of fact as authorized under Federal Rule 33;

(b) The same inquires as to a matter of medical opinion not required to be answered under Federal Rule 33.

21.

Do you agree with the contention that asbestos dust and fibers cause or contribute to the disease mesothelioma? Do you agree with the contention that asbestos dust and fibers cause or contribute to the disease cor pulmonale? Do you agree with the contention that asbestos dust and fibers cause or contribute to the disease cancer? If so, and as to each, state when you arrived at such opinion or conclusion.

Answer: J. L. Konzen, M.D., Medical Director of Owens-Corning Fiberglas Corporation agrees that there is some medical basis to support such statements. His belief is based upon examination of medical literature during his formal training at medical school and during his residency. At that time Dr. Konzen was not an employee of or associated with Owens-Corning Fiberglas Corporation. However, to cause or contribute to such diseases requires an exposure at an excessive level over an extensive period of years.

22.

Do you agree with the contention that asbestos fibers are of such a nature that once they are inhaled into the human lung they never dissipate or go away, but remain in the lung virtually indestructible, to infinity? If so, when did you arrive at that conclusion or opinion?

Answer: No. The human body exercises some cleansing action which varies from person to person.

23.

Do you agree with the contention that asbestos fibers have a tensile strength equal to that of piano wire? If so, when did you come to that opinion or conclusion?

Answer: Owens-Corning has no information concerning the tensile strength of piano wire.

24.

Do you agree that there are approximately a million individual fibrils lying side by side in a linear inch of chrysotile asbestos? If so, when did you come to that opinion or conclusion?

Answer: Owens-Corning has no information on which to base an answer to this interrogatory.

25.

As to each product, state whether it is possible for persons other than trained technicians or scientists to distinguish said product from similar products on the market. If your answer is "Yes", describe how such products can be distinguished.

Answer: Yes. Owens-Corning products can be distinguished from other products by color, texture and labels on the product containers.

26.

Do you agree with the contention that the inhalation of asbestos dust and fibers can result in asbestosis? If so, when did you arrive at that conclusion or opinion? If so, following your arrival at that opinion or conclusion, what action, if any, did you take to change your methods of manufacture, sale or distributing of any of the products? When did you take such action? Explain in detail, with particular reference to any warnings or instructions you may have issued regarding the use or handling of such products.

Answer: Development of the disease of asbestosis requires exposure to asbestos fibers at an excessive level over an extensive period of years. Since 1967 Owens-Corning has placed the following label on each carton of the product shipped.

> This Product Contains Asbestos Fiber
> If dust is created when this product is handled avoid breathing the dust. If adequate ventilation control is not possible wear respirator approved by the U. S. Bureau of Mines.

27.

Do you agree with the contention that insulation workers who use or handle the products over a period of several years, do thereby endanger their health? If so, in what way do they endanger their health? State all of the diseases they are likely to contract. If so, when did you arrive at that conclusion or opinion? If so, following your arrival at that conclusion or opinion, what action, if any, did you take to change your methods of manufacture, sale or distribution of the products? When did you take such action? Explain in detail, with particular reference to any warnings or instructions you may have issued regarding the use or handling of suchproducts.

Answer: Owens-Corning does not consider use of any of its industrial insulation products will endanger the health of insulation workers. The warning label set out in the answer to No. 26 is placed on every container in which such product containing asbestos fibers are shipped.

28.

As to each product, state whether you furnished instructions to the purchaser or ultimate user or consumer regarding the manner in which the products should be used. If so, furnish copy of the text of such instructions, and state when and in what manner they were given, and to whom.

Answer: Owens-Corning furnishes literature to its customers describing the uses of its products. Owens-Corning objects to that portion of No. 28 requesting that a copy of texts of instructions to be included with the answers hereto for the reason that Federal Rule 33 does not authorize or require the same.

29.

As to each product, state whether you ever gave any warning to the purchaser or ultimate user or consumer, of any dangerous or harmful nature of the product? If so, state of what the warning consisted, when it was given, in what manner it was given, and to whom it was given. This question relates to any and all warnings, of whatever nature, in connection with the product.

Answer: See answer to No. 26.

30.

As to each product, state whether you gave the purchaser or ultimate user or consumer any advice regarding what wearing apparel or protective equipment or appliances could be used to avoid any danger from the asbestos dust and fibers contained in said product. If so, furnish a copy of the text of such advice, and state when and in what manner it was given, and to whom.

Answer: See answer to No. 26.

31.

As to each product, state whether you ever published any sales literature concerning the product. If so, please attach a copy of said literature to your answer, and state when said literature was published, to whom it was distributed, and over what period of time.

Answer: Yes. Owens-Corning objects to that portion of No. 31 requesting that certain literature be attached to the answer thereto for the reason that Federal Rule 33 does not authorize or require the same.

32.

What steps, if any, have you taken to protect your own employees from any danger from the inhalation of asbestos dust and fibers in the manufacture, sale or distribution of any of the products? State when you took such action, what action you took, the purpose of such action; and how much it cost you to take such action. In your answer please cover, among all other things, any architectural or design changes made in your manufacturing plant, the modification of any existing structures, the installation of any ventilation systems, and so forth.

Answer: Industrial hygiene surveys have been carried out periodically by Aetna Casualty & Surety Company. Various types of ventilation equipment have been installed where necessary. Chest X-rays have been taken on a periodic basis of employees working at the plant where Kaylo 10 and Kaylo 20 are manufactured. Owens-Corning has no records which show the cost of the above.

33.

Please give the net worth of your company as of the end of your annual accounting period for each year since 1949.

Answer: Owens-Corning objects to Interrogatory No. 33 for the following reasons:

(a) The same inquire as to matters of fact which are of public record and are equally available to the plaintiff as to Owens-Corning.

(b) The same inquire as to matters of highly prejudicial nature which would result in a comparison of the relative financial resources of Owens-Corning with those of plaintiff.

deed of said corporation, and that the foregoing Answers to Interrogatories are true and correct to the best of his knowledge, information and belief.

SWORN TO AND SUBSCRIBED before me this 1st day of September, 1970.

Albert Brockmeyer
Notary Public

My Commission expires:
ALBERT BROCKMEYER, Notary Public
My Commission Expires Sept. 1, 1972

RODEY, DICKASON, SLOAN, AKIN & ROBB

By Peter A. Rinaca
Attorneys for Defendant Philip Carey Corporation
P. O. Box 1888
Albuquerque, New Mexico 87103

We hereby certify that a true copy of the foregoing Answers to Interrogatories was mailed to opposing counsel of record on this 4th day of September, 1970.

RODEY, DICKASON, SLOAN, AKIN & ROBB

By Peter A. Rinaca

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

FINIS A. BASSHAM,

Plaintiff,

-vs-

No. 8431 Civil

EAGLE-PICHER INDUSTRIES, INC., et al,

Defendants.

FILED
AT ALBUQUERQUE
SEP 24 1970
E. E. GREESON
CLERK

ANSWERS TO INTERROGATORIES

Pursuant to the Federal Rules of Civil Procedure, defendant Eagle-Picher Industries, Inc., answers the interrogatories propounded to it by the plaintiff as follows:

1. Please give the name and address of the president of your company and of the chairman of the Board of Directors.

ANSWER: William D. Atteberry, President
Eagle-Picher Industries, Inc.
American Building
Cincinnati, Ohio 45202

There is no Chairman of the Board.

2. Are you engaged in the manufacture and sale of insulation products containing asbestos? If so, state during what portion of the period in question you were so engaged.

ANSWER: Yes. During the entire period.

3. What insulation product containing asbestos did you manufacture and sell during the period in question? List the product by trade name, if any, and by the advertised name, and by the nickname or name commonly used in the insulation industry, and also list the product by description, e.g. asbestos type covering, or asbestos sheeting; and state the date that said product went on the market.

ANSWER:

Name, Trade Name, Advertised Name	Description	Date of Manufacture
1. Super 66 Insulating Cement	Dry, bulk insulating cement	Pre-1948

Name, Trade Name, Advertised Name	Description	Date of Manufacture
2. "43" Finishing Cement	Dry, hard, white finishing cement	Pre-1948
3. One-Cote Cement	Dry, bulk insulating and finishing cement	1951
4. 106 Finishing Cement	Dry, bulk fire protection finishing cement	Pre-1948[1/]
5. Fireproofing Cement	Dry, bulk, high temperature insulating cement	1947[2/]
6. Hylo Cement	Dry, bulk finishing cement	1963
7. Hi-Stick Cement	Dry, adhesive insulating cement	1964[3/]
8. Insulseal	Wet, weather-protective, asphalt emulsion coating	Pre-1948
9. Insuletick	Adhesive, insulating cement	Pre-1948

1/ Discontinued in the 1950's
2/ Discontinued in 1964
3/ Discontinued in 1968

4. As to each product state the asbestos (by whatever name known) content.

ANSWER:

	Asbestos Content (%)
1.	3.4
2.	75.00
3.	2.72
4.	28
5.	2.78
6.	5.25
7.	5.35
8.	6.0
9.	8.0

5. As to each product, state to what use you intended the product to be put, whether you intended it to be used by insulation workers, and the manner in which you intended said product to be used by insulation workers during the period in question.

Go into detail as to how you intended each product to be handled by those using the same in the insulation industry, with particular reference to how you intended the insulation users to unpackage the product, to cut, saw, break, shape, mix and apply said product, and whether or not you intended that

the product be cut, shaped, mixed, prepared or applied at the job site.

Commence with the date that said product first went on the market, and if there has been any change in intended use, specify when the change occurred, what the intended use was before and after the change, and what notic if any, you gave to the intended user relating to such change.

ANSWER: Each of the products listed in answer to Interrogatory No. 3, above, was intended to be applied by insulating workers in the field as an insulating cement, a finishing cement, and an adhesive cement, or a weather-protective coating, as the case may be. The products were intended to be used and handled by the insulation workers in the manner which was standard in their trade. Cements were intended to be troweled or "palmed"; asphalt emulsion coatings were intended to be troweled or sprayed. Products packaged in dry form were intended to be mixed with water in the field before application; products packaged in wet form were ready-to-use.

Eagle-Picher Industries, Inc., has no control over the method its products are handled after sale.

As to the last paragraph of Interrogatory No. 5, there have been no changes in the standard use of any product.

6. As to each product, did such product reach the user or consumer without substantial change in the condition in which said product was manufactured and sold during the period in question? If not, state what the change in condition was, and how it came about.

Was it your intention that said product would reach the user or consumer without substantial change in the condition in which said product was manufactured or sold? If not, state what change you intended to occur in said product and how you intended such change to come about.

ANSWER: This defendant sold its products to contractors for use and to distributors for resale. So far as this defendant knows,

each of its products reached the ultimate user without substantial change in the condition in which said product was manufactured and sold. In any event, this defendant did not intend any change to occur prior to actual mixing and application of each product.

7. As to each product, were the manufacture, sale and distribution of said product under your exclusive control, or that of your agents, servants and employees during the period in question? If not, state who had and exercise any control over the manufacture, sale, or distribution of said product other than yourself, and state what that control was.

ANSWER: The manufacture of each of the products listed in answer to Interrogatory No. 3, above, was under this defendant's exclusive control. The products were sold to contractors for use and to distributors for resale. This defendant's control terminated upon such a sale. No control was retained over either the resale of its products or the ultimate use of its products.

8. As to each product, and its intended use, as described in your answer to Question No. 5, state whether you intended or expected that such use by insulation workers would result in the exposure of such workers to, and contact by said workers with, asbestos dust and fibers contained in said products, during the period in question.

ANSWER: The fact of, nature and extent of exposure to and/or contact with asbestos dust and fibers by insulation workers is determined by the manner in which they handle and use insulation products

This defendant does not intend or expect that insulation workers will be exposed to or be in contact with asbestos dust and fibers.

9. As to each product, and in its intended use, as described in your answer to Question No. 5, did such product have a propensity or property

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF NEW MEXICO

FINIS A. BASSHAM,

Plaintiff,

-vs-

No. 0431
Civil

OWENS-CORNING FIBER GLASS CORPORATION; JOHNS-MANVILLE PRODUCTS CORPORATION; EAGLE-PICHER INDUSTRIES, INC.; RYDER INDUSTRIES, INC.; PHILIP CAREY CORPORATION; STANDARD ASBESTOS MANUFACTURING AND INSULATING COMPANY; and ACANDS, INC., formerly ARMSTRONG CONTRACTING AND SUPPLY CORPORATION; all corporations,

Defendants.

FILED
AT ALBUQUERQUE
MAR 16 1970
E. E. GREESON
CLERK

C O M P L A I N T

Plaintiff states:

1. That the ground upon which jurisdiction of this Court depends is diversity of citizenship of the parties hereto.

2. That the amount in controversy herein exceeds the sum of Ten-thousand Dollars, exclusive of interest and costs.

3. That the Plaintiff is a resident of the State of New Mexico, and resides in Albuquerque, Bernalillo County, New Mexico.

4. That the Defendant, Owens-Corning Fiber Glass Corporation is a corporation organized, created and existing under and by virtue of the laws of the State of Delaware, and its agent for the service of process in New Mexico is The Corporation Company, Lincoln Building, Santa Fe, New Mexico.

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5. That the Defendant, Johns-Manville Products Corporation, is a corporation organized, created and existing under and by virtue of the laws of the State of Delaware, and its agent for the service of process in New Mexico is Prentice-Hall Corporation System, Sena Plaza, Santa Fe, New Mexico.

6. That the Defendant, Eagle-Picher Industries, Inc., is a corporation organized, created and existing under and by virtue of the laws of the State of Ohio, and its agent for the service of process in New Mexico is The Corporation Company, Lincoln Building, Santa Fe, New Mexico.

7. That the Defendant, Ryder Industries, Inc., is a corporation organized, created and existing under and by virtue of the laws of the State of Texas.

8. That the Defendant, Philip Carey Corporation, is a corporation organized, created and existing under and by virtue of the laws of the State of Ohio.

9. That the Defendant, Standard Asbestos Manufacturing and Insulating Company, is a corporation organized, created and existing under and by virtue of the laws of the State of Missouri, and its agent for the service of process in New Mexico is The Corporation Company, Lincoln Building, Santa Fe, New Mexico.

10. That the Defendant, Acands, Inc., formerly Armstrong Contracting and Supply Corporation, is a corporation organized, created and existing under and by virtue of the laws of the State of Delaware, and its agent for the service of process in New Mexico is The Corporation Company, Lincoln Building, Santa Fe, New Mexico.

11. That at all times material hereto, the Defendants were engaged in the manufacture and sale of insulation products containing

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asbestos; that at all times material hereto, the Defendants placed said products on the market to be purchased and used by the public.

12. That during the years 1948 to 1969, both inclusive, the Plaintiff worked as an insulator; that in the performance of his work, he worked with and worked around large quantities of said products so manufactured and sold by the Defendants; that said products lawfully came into the hands of the Plaintiff and those working around him; that by reason of his work with and around said products, the Plaintiff was exposed to and came into contact with, the asbestos dust and fibers contained in said products.

13. That the use to which said products was put by the Plaintiff and those working around him, was the use intended by the Defendants in their manufacture and sale thereof.

14. That the manner in which said products were used by the Plaintiff and those working around him, was the manner intended by the Defendants in their manufacture and sale thereof.

15. That the Plaintiff, and those so working around him with said products, were in the class of persons which the Defendants intended to use said products.

16. That at all times material hereto, the Defendants knew that persons of the class of the Plaintiff and those working with him, would use the products manufactured and sold by the Defendants, and knew that in such use, such persons would be exposed to, and come into contact with, asbestos dust and fibers contained in said products.

17. That as a direct and proximate result of working with and around said insulation products so manufactured and sold by the Defendants, the Plaintiff has been exposed to and has come into

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contact with, the chemical compounds thereof, and the asbestos dust and fibers therein and thereon, and other deleterious substances and matter therein and thereon; that said exposure and contact caused severe, permanent and disabling injuries to the Plaintiff, in this respect, to-wit: said insulation products were highly dangerous, deleterious, poisonous, and harmful to the Plaintiff's body, lungs, respiratory system, skin and general health, and have caused the Plaintiff to suffer from the disease asbestosis; that as a direct and proximate result of said exposure and contact, the Plaintiff suffers from fatigue, coughing, aches and pains in the neck, chest and back of shoulders, and other results of asbestosis; he suffers a forced reduction and limitation in family, social, and recreational activities, his future outlook is very dim, he has sought the services of physicians in an effort to cure or arrest the condition from which he is suffering, but to no avail, he has lost his good health, and his condition is progressively deteriorating; all of which is permanently disabling to him, and causes him pain, suffering, mental anguish, and anxiety.

18. That the injuries and damages to Plaintiff as alleged in this Complaint were all directly and proximately caused by the acts of the Defendants, as follows:

(a) That the Defendants knew, or in the exercise of reasonable care should have known, that the insulation products they so manufactured and sold were deleterious, poisonous, highly dangerous in kind, and, highly harmful to Plaintiff's body, lungs, respiratory system, skin and health; and the Defendants knew, or in the exercise of reasonable care should have known, that the Plaintiff would be exposed to and contact the deleterious, poisonous and highly

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harmful compound substances and other harmful material contained in said products; and the Defendants knew, or in the exercise of reasonable care should have known, that the Plaintiff would not know of the dangerous, deleterious, poisonous, and harmful nature of said products.

(b) Notwithstanding the foregoing, the Defendants negligently failed to take any reasonable precautions or exercise reasonable care to warn the Plaintiff of the danger and harm to which he was exposed while he was using and working around said products.

(c) Notwithstanding the foregoing, the Defendants failed and omitted to provide the Plaintiff with the knowledge as to what would be reasonably safe and sufficient wearing apparel and proper protective equipment and appliances, if in truth there was any, to protect him from being injured and disabled as he was by using and working around said products.

(d) Notwithstanding the foregoing, the Defendants negligently and carelessly packaged said products so that in the ordinary handling and use thereof, the Plaintiff would breathe into his lungs and otherwise come into contact with, such harmful substances contained in and on said products.

(e) Notwithstanding the foregoing, the Defendants negligently failed to take any reasonable precautions or exercise reasonable care to prevent said injuries by placing warnings on their containers of said products, to warn users and handlers thereof of the dangers to health in coming into contact with or breathing the harmful substances contained in and on said products.

(f) Notwithstanding the foregoing, the Defendants negligently failed to take reasonable precautions or exercise reasonable care

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to warn the Plaintiff of said dangers and to instruct the Plaintiff in the methods, if any, by which such products could be safely handled and used; and the Defendants negligently failed to take any reasonable precautions or exercise any reasonable care to protect the Plaintiff from harm, and the Defendants negligently failed to adopt and enforce a reasonably safe plan and method of handling and using said products.

(g) Notwithstanding the foregoing, the Defendants negligently failed to test their products, especially those containing asbestos, to ascertain the safe or dangerous nature of such products before offering them for sale, or in the alternative, the Defendants should have removed such products from the market upon ascertaining that such products were dangerous to persons as aforesaid.

(h) Notwithstanding the foregoing, the Defendants negligently failed to test their products and devise a method of use and application of their products, especially those containing asbestos, that would have kept the users thereof from contracting asbestosis, and to advise the Plaintiff of that method by adequate warnings and instructions.

19. That the injuries and damages to Plaintiff as alleged in this Complaint, were all directly and proximately caused by the acts of the Defendants, as follows:

(a) That the Defendants expressly or impliedly warranted the aforesaid products to be merchantable, when in truth they were not, and thus the Defendants breached their warranties of merchantability.

(b) That the Defendants expressly or impliedly warranted the aforesaid products to be suitable and safe for their intended use in the manner in which they were in fact used by the Plaintiff and those around whom he worked, when in truth they were not so

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suitable and safe, and thus said Defendants breached their warranties of suitability and safety for the use and purposes for which intended.

(c) That the Defendants expressly or impliedly warranted the aforesaid products to be safe for their intended use in the manner in which they were in fact used by the Plaintiff and those around whom he worked, and the Defendants should have tested their products, especially those containing asbestos, to ascertain the safe or dangerous nature of such materials and products before offering them for sale, or in the alternative, the Defendants should have removed such products from the market upon ascertaining that such products would cause asbestosis; and thus the Defendants breached their warranties of suitability and safety for the use and purposes for which intended.

(d) That the Defendants expressly or impliedly warranted the aforesaid products to be safe for their intended use in the manner in which they were in fact used by the Plaintiff and those around whom he worked, and the Defendants should have devised a method of application of their products, especially those containing asbestos, that would have kept those using such products from contracting asbestosis, if the Defendants would not remove such products from sale to the public; and thus the Defendants breached their warranties of suitability and safety for the use and purposes for which intended.

20. That at all times material hereto the Defendants were engaged in the business of selling said products; that said products were by the Defendants expected to, and said products in fact did, reach the user or consumer without substantial change in the

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condition in which said products were manufactured and sold; that the Defendants sold said products in a defective condition unreasonably dangerous to the user, in that said products had a propensity or property for causing physical harm beyond that which would be contemplated by the ordinary user or consumer who purchased or used them, or worked around them, with the ordinary knowledge common to the foreseeable class of users, of their dangerous nature.

21. That all of the acts of the Defendants aforesaid constitute a violation and breach of the Uniform Commercial Code, and the Defendants are guilty thereof; and the injuries and damages of the Plaintiff, as alleged in this Complaint, were directly and proximately caused by said violation and breach.

22. That at all times material hereto, the manufacture, sale and distribution of the aforesaid products to which the Plaintiff was exposed, and with which he came into contact, were under the exclusive control of the Defendants, their agents, servants and employees, and that had the Defendants herein not been guilty of negligence as set forth in this Complaint, then the Plaintiff would not have sustained the injuries and damages alleged herein; and said injuries and damages were the direct and proximate result of said negligence, and therefore, the Plaintiff is entitled to recover from the Defendants under the doctrine of res ipsa loquitur.

23. That as a direct and proximate result of the aforesaid acts of the Defendants, and the injuries resulting therefrom, the Plaintiff has been unable to continue in his employment as an insulator, and his earning capacity has been greatly and permanently diminished and impaired, and therefore, the Plaintiff has suffered

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and will continue to suffer loss of wages and earnings.

24. That in an effort to treat, relieve and heal himself of said injuries and to regain his health, the Plaintiff has incurred and will incur in the future an expense amounting to a considerable sum of money for medical and hospitalization care, expenses for medicines, supplies, and so forth, the amount of which the Plaintiff is unable to state with certainty at this time.

25. That by reason of the facts hereinabove alleged, the Plaintiff has suffered and sustained at the hands of the Defendants, and each of them, general and special damages in the sum of FIVE HUNDRED THOUSAND DOLLARS ($500,000.00).

26. That the aforesaid injuries and damages suffered by the Plaintiff were directly and proximately caused by the Defendants' gross negligence and heedless and reckless disregard for the health, safety and welfare of the Plaintiff; that the Plaintiff is entitled to recover punitive, or exemplary damages, by reason of the foregoing; that a reasonable sum to be awarded as such punitive, or exemplary damages herein if FIVE HUNDRED THOUSAND DOLLARS ($500,000.)

WHEREFORE, Plaintiff prays for Judgment against the Defendants, and all of them, jointly and severally, as follows:

1. For the sum of FIVE HUNDRED THOUSAND DOLLARS ($500,000.00), general and special damages; and,

2. For the sum of FIVE HUNDRED THOUSAND DOLLARS ($500,000.00), punitive, or exemplary, damages; and,

3. For interest on said Judgment as provided by law; and,

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4. For costs; and,

5. For such other and further relief as to the Court may seem proper.

JACK LOVE
PHILLIP D. BAIAMONTE

By _____
Attorneys for Plaintiff
509 Roma Avenue, N.W.
Albuquerque, New Mexico 87101

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

FINIS A. BASSHAM,

Plaintiff,

vs. No. 8431 Civil

OWENS-CORNING FIBERGLASS CORPORATION; JOHNS-MANVILLE PRODUCTS CORPORATION; EAGLE-PICHER INDUSTRIES, INC.; RYDER INDUSTRIES, INC.; PHILIP CAREY CORPORATION; STANDARD ASBESTOS MANUFACTURING AND INSULATING COMPANY; and ACANDS, INC., formerly ARMSTRONG CONTRACTING AND SUPPLY CORPORATION; all corporations,

Defendants.

FILED
AT ALBUQUERQUE
APR 13 1970
A. E. GREESON
CLERK

ANSWER

Defendant Owens-Corning Fiberglass Corporation for its answer states:

1. That the said complaint does not state a claim upon which relief may be relied upon as against this defendant.

2. That the defendant admits paragraph three of the complaint but denies each and every other allegation in the complaint as if each were particularly set forth and particularly denied.

3. That the said plaintiff was contributory negligent in the premises.

4. That the said plaintiff assumed the risk of any and all incidents complained about in the complaint.

5. That the said incidents, and each of them complained of, were a result of an unavoidable accident and/or exposure to the alleged incidents complained of.

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6. That the plaintiff's remedy, if at all, is pursuant to sections 59-10-1 et seq. and/or section 59-11-1 et seq., entitled Occupational Disease Disablement Law.

7. That the said claims against this defendant are barred by the statute of limitations.

WHEREFORE, having answered fully defendant Owens-Corning Fiberglass Corporation prays that the complaint be dismissed with prejudice and they be allowed to go with their costs.

TOULOUSE, MOORE & WALTERS, P.A.
Attorneys for Defendant Owens-
Corning Fiberglass Corporatinn
6001 Marble, N.E.
Albuquerque, New Mexico 87110

By _____
Irving E. Moore

This will certify that a copy of the foregoing pleading was mailed to opposing counsel of record this 9th day of April, 1970.

_____
Irving E. Moore

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

FILED
AT ALBUQUERQUE
APR 13 1970
E. E. GREESON
CLERK

FINIS A. BASSHAM,

Plaintiff,

vs. No. 8431 Civil

OWENS-CORNING FIBERGLASS CORPORATION, et al.,

Defendants.

REQUESTS FOR ADMISSION OF FACT

Defendant Owens-Corning Fiberglass Corporation, pursuant to rule 36, Rules of Civil Procedure for the United States District Courts, requests the following admission of fact from the plaintiff:

1. That the attached defendant Owens-Corning Fiberglass Corporation's exhibit one is a true and correct itemization from the company's timecards covering each and every weekly period of time that the said plaintiff was employed by defendant Owens-Corning Fiberglass Corporation.

2. That in fact that these weekly pay periods shown on the list are the true and correct weekly periods plaintiff actually worked.

3. That the last day plaintiff ever worked for said defendant Owens-Corning Fiberglass Corporation was on June 25, 1966.

TOULOUSE, MOORE & WALTERS, P.A.
Attorneys for Defendant Owens-Corning Fiberglass Corporation
6001 Marble, N.E.
Albuquerque, New Mexico 87110

I hereby certify that I mailed a copy of the foregoing pleading to opposing counsel of record this 9th day of April, A.D. 1970

WYNG MOORE

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Finis A. Bassham
Time Cards for Years 1959, 1960, 1961, 1965 and 1966

Week Ending	Hours
9-13-60	40
9-27-59	48
10-4-59	12
10-11-59	12
10-11-59	22-1/2
3-20-60	45
3-27-60	18
3-27-60	18
3-27-60	8
4-3-60	36
4-3-60	9
4-10-60	30
4-10-60	18
4-17-60	40-1/2
4-17-60	4-1/2
4-24-60	36
4-24-60	9
5-1-60	24
5-1-60	9
5-8-60	8
5-15-60	32
5-22-60	9
5-29-60	21
5-29-60	6
6-5-60	36
6-12-60	32
6-19-60	27
6-26-60	45
7-3-60	19
7-3-60	31
7-10-60	16
7-10-60	12
7-24-60	25
7-24-60	13
7-24-60	3
7-31-60	9
8-7-60	14
8-7-60	7
8-7-60	14-1/2
8-7-60	2-1/2
8-14-60	8
8-14-60	9
8-14-60	14

EXHIBIT ONE

Week Ending	Hours
8-21-60	15
8-21-60	21
8-21-60	8
8-28-60	18
8-28-60	17
9-4-60	16
9-4-60	3
9-4-60	15
9-11-60	36
9-18-60	36
9-25-60	45
10-2-60	9
10-2-60	35
10-9-60	16
10-9-60	18
10-16-60	40
10-22-60	40
10-30-60	24
10-30-60	8
11-6-60	32
11-13-60	16
11-13-60	24
12-4-60	9
12-4-60	5
12-4-60	19
12-4-60	8
12-11-60	8
12-11-60	13
12-11-60	18
12-18-60	45
12-26-60	45
1-1-61	42
1-8-61	42
1-15-61	45
1-22-61	45
1-29-61	45
2-5-61	45
2-12-61	36
2-19-61	9
3-5-61	21
3-12-61	34
3-19-61	30-1/2

Week Ending	Hours
4-2-61	30
4-9-61	40
4-16-61	40
4-23-61	40
4-30-61	43
5-7-61	40
5-14-61	20
6-18-61	40
6-25-61	40
7-2-61	41
8-20-61	45
8-27-61	44
9-4-61	45
9-10-61	25
9-10-61	11
9-17-61	27
10-1-61	16
10-8-61	28
10-8-61	9
~~10-8-61~~	~~[illegible]~~
7-18-65	24
7-25-65	29
8-1-65	16
8-1-65	17
8-8-65	8
8-8-65	18
8-8-65	14
8-15-65	36
8-22-65	24
8-22-65	8
8-22-65	8
6-25-66	16

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

FINIS A. BASSHAM,

Plaintiff,

vs. No. 8431 Civil

OWENS-CORNING FIBER GLASS CORPORATION; JOHNS-MANVILLE PRODUCTS CORPORATION; EAGLE-PICHER INDUSTRIES, INC.; RYDER INDUSTRIES, INC.; PHILLIP CAREY CORPORATION; STANDARD ASBESTOS MANUFACTURING AND INSULATING COMPANY; and ACANDS, INC., formerly ARMSTRONG CONTRACTING AND SUPPLY CORPORATION, all corporations,

Defendants.

FILED
AT ALBUQUERQUE
APR 15 1970
E. E. GREESON
CLERK

ANSWER

Defendant Eagle-Picher Industries, Inc., for answer to the plaintiff's complaint, states:

FIRST DEFENSE

The complaint fails to state a claim against this defendant upon which relief can be granted.

SECOND DEFENSE

I

Defendant admits the allegations of paragraphs 1, 2, 3 and 6 of the plaintiff's complaint.

II

Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraphs 4, 5, 7, 8, 9, 10 and 11 of the plaintiff's complaint and, therefore, denies the same.

III

Defendant denies the allegations of paragraphs 12 through 26, both inclusive, of plaintiff's complaint.

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THIRD DEFENSE

In the event there was any negligence on the part of this defendant, which is expressly denied, the plaintiff was guilty of contributory negligence, which was a proximate contributing cause to any injury he suffered and bars any recovery by him against this defendant.

FOURTH DEFENSE

The plaintiff, by his conduct and actions, assumed the risk of any injuries, by reason whereof he is barred from any recovery herein against this defendant.

FIFTH DEFENSE

Defendant fully and effectively excluded all warranties, both express and implied.

SIXTH DEFENSE

Any action for breach of express or implied warranty is barred by the plaintiff's failure to give defendant notice of the alleged breach within a reasonable time after it was discovered or should have been discovered.

SEVENTH DEFENSE

The injuries alleged did not proximately result from the alleged breach of warranty.

EIGHTH DEFENSE

All alleged warranties were excluded by plaintiff's examination, approval and acceptance of this defendant's product.

NINTH DEFENSE

The sole and proximate cause of plaintiff's alleged injuries was his misuse of this defendant's product, in that either the product was not used in a manner intended by or foreseeable to this defendant, or that the product was over-used

or worn out, by reason whereof plaintiff is barred from any recovery herein against this defendant.

TENTH DEFENSE

The plaintiff was not an intended or reasonably foreseeable user of this defendant's product, by reason whereof plaintiff is barred from any recovery herein against this defendant.

ELEVENTH DEFENSE

If this defendant's product was defective, which is expressly denied, the defect was generic and inherent in the product and could not have been corrected, by reason whereof plaintiff is barred from any recovery herein against this defendant.

TWELFTH DEFENSE

The doctrine of res ipsa loquitur has no application under the allegations set forth in plaintiff's complaint.

THIRTEENTH DEFENSE

The sole proximate cause of the injuries sustained by the plaintiff was the negligence of a third party or parties other than this defendant.

FOURTEENTH DEFENSE

The plaintiff is barred from any recovery herein against this defendant by the statutes of limitation of the State of New Mexico.

FIFTEENTH DEFENSE

The plaintiff is barred from any recovery herein by §59-11-7, N.M.S.A. (1953 Comp.) of the New Mexico Occupational Disease Disablement Law.

WHEREFORE, defendant Eagle-Picher Industries, Inc. prays that the plaintiff's complaint be dismissed with prejudice and that it recover its costs herein.

RODEY, DICKASON, SLOAN, AKIN & ROBB

By Peter A. Prina

Attorneys for Defendant,
Eagle-Picher Industries, Inc.
P. O. Box 1888
Albuquerque, New Mexico 87103

We hereby certify that we have mailed a copy of the foregoing pleading to opposing counsel of record this 15th day of April, 1970.

RODEY, DICKASON, SLOAN, AKIN & ROBB

By Peter A. Prina

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

FINIS A. BASSHAM,

Plaintiff,

-vs-

No. 8431 Civil

OWENS-CORNING FIBER GLASS CORPORATION;
JOHNS-MANVILLE PRODUCTS CORPORATION;
EAGLE-PICHER INDUSTRIES, INC.;
RYDER INDUSTRIES, INC.;
PHILLIP CAREY CORPORATION;
STANDARD ASBESTOS MANUFACTURING AND
INSULATING COMPANY; and
ACANDS, INC., formerly ARMSTRONG
CONTRACTING AND SUPPLY CORPORATION,
all corporations,

Defendants.

FILED
AT ALBUQUERQUE
APR 30 1970
E. E. GREESON
CLERK

ANSWER

Defendant Phillip Carey Corporation, for answer to the plaintiff's Complaint, states:

FIRST DEFENSE

The Complaint fails to state a claim against this defendant upon which relief can be granted.

SECOND DEFENSE

I

Defendant admits the allegations of Paragraphs 1, 2, 3, and 8 of the plaintiff's Complaint.

II

Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 4, 5, 6, 7, 9, 10, and 11 of the plaintiff's Complaint and, therefore, denies the same.

III

Defendant denies the allegations of Paragraphs 12 through 26, both inclusive, of plaintiff's Complaint.

41

THIRD DEFENSE

In the event there was any negligence on the part of this defendant which is expressly denied, the plaintiff was guilty of contributory negligence which was a proximate contributing cause to any injury he suffered and bars any recovery by him against this defendant.

FOURTH DEFENSE

The plaintiff, by his conduct and actions, assumed the risk of any injuries, by reason whereof he is barred from any recovery herein against this defendant.

FIFTH DEFENSE

Defendant fully and effectively excluded all warranties, both express and implied.

SIXTH DEFENSE

Any action for breach of express or implied warranty is barred by the plaintiff's failure to give defendant notice of the alleged breach within a reasonable time after it was discovered or should have been discovered.

SEVENTH DEFENSE

The injuries alleged did not proximately result from the alleged breach of warranty.

EIGHTH DEFENSE

All alleged warranties were excluded by plaintiff's examination, approval and acceptance of this defendant's product.

NINTH DEFENSE

The sole and proximate cause of plaintiff's alleged injuries was his misuse of this defendant's product, in that either the product was not used in a manner intended by or foreseeable to this defendant, or that the product was over-used or worn out, by reason whereof plaintiff is barred from any recovery herein against this defendant.

TENTH DEFENSE

The plaintiff was not an intended or reasonably foreseeable user of this defendant's product, by reason whereof plaintiff is barred from any recovery herein against this defendant.

42

ELEVENTH DEFENSE

If this defendant's product was defective, which is expressly denied, the defect was generic and inherent in the product and could not have been corrected, by reason whereof plaintiff is barred from any recovery herein against this defendant.

TWELFTH DEFENSE

The doctrine of res ipsa loquitur has no application under the allegations set forth in plaintiff's Complaint.

THIRTEENTH DEFENSE

The sole proximate cause of the injuries sustained by the plaintiff was the negligence of a third party or parties other than this defendant.

FOURTEENTH DEFENSE

The plaintiff is barred from any recovery herein against this defendant by the statutes of limitation of the State of New Mexico.

FIFTEENTH DEFENSE

The plaintiff is barred from any recovery herein by §59-11-7, N.M.S.A. (1953 Comp.) of the New Mexico Occupational Disease Disablement Law.

WHEREFORE, defendant Phillip Carey Corporation prays that the plaintiff's Complaint be dismissed with prejudice and that it recover its costs herein.

RODEY, DICKASON, SLOAN, AKIN & ROBB

By Peter A. Pirnie

Attorneys for Defendant Phillip Carey Corporation
P. O. Box 1888
Albuquerque, New Mexico 87103

SHAFFER, BUTT & BASS

By

Attorneys for Defendant Phillip Carey Corporation
1024 Simms Building
Albuquerque, New Mexico 87101

We hereby certify that we have mailed a copy of the foregoing pleading to opposing counsel of record this 30th day of April, 1970.

RODEY, DICKASON, SLOAN, AKIN & ROBB

By Peter A. Pirnie

43

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF NEW MEXICO

FILED
AT ALBUQUERQUE
JUN 12 1970
E. E. GREESON
CLERK

FINIS A. BASSHAM,

Plaintiff,

-vs-

No. 8431
Civil

OWENS-CORNING FIBER GLASS CORPORATION; JOHNS-MANVILLE PRODUCTS CORPORATION; EAGLE-PICHER INDUSTRIES, INC.; RYDER INDUSTRIES, INC.; PHILIP CAREY CORPORATION; STANDARD ASBESTOS MANUFACTURING AND INSULATING COMPANY; and ACANDS, INC., formerly ARMSTRONG CONTRACTING AND SUPPLY CORPORATION; all corporations,

Defendants.

FIRST SET OF INTERROGATORIES TO DEFENDANTS

TO: OWENS-CORNING FIBER GLASS CORPORATION
JOHNS-MANVILLE PRODUCTS CORPORATION
EAGLE-PICHER INDUSTRIES, INC.
RYDER INDUSTRIES, INC.
PHILIP CAREY CORPORATION
STANDARD ASBESTOS MANUFACTURING & INSULATING COMPANY
ACANDS, INC., formerly ARMSTRONG CONTRACTING & SUPPLY CORPORATION, Defendants.

FINIS A. BASSHAM, Plaintiff, pursuant to Rule 33 of the Federal Rules of Civil Procedure, hereby serves upon the above named Defendants the following written interrogatories, to be answered in writing, under oath, and a copy of such answers served upon Plaintiff's attorney within fifteen (15) days after service herein, all in accordance with said Rule.

HERBERT D. RAMMONES
ATTORNEY AT LAW
[illegible] ROMA AVE., N.W.
ALBUQUERQUE, N. M.
87101

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In the following questions, the word "product", whether singular or plural, will mean product manufactured by you containing asbestos (by whatever name known); the words "period in question" will mean the period from January 1, 1948 to December 31, 1969; and the word "you" will mean your company and any and all of its officers, agents, and employees, and will include the officers, agents and employees of your company during the period from January 1, 1948 to December 31, 1969.

1.

Please give the name and address of the president of your company, and of the chairman of the Board of Directors.

2.

Are you engaged in the manufacture and sale of insulation products containing asbestos? If so, state during what portion of the period in question you were so engaged.

3.

What insulation product containing asbestos did you manufacture and sell during the period in question? List the product by trade name, if any, and by the advertised name, and by the nickname or name commonly used in the insulation industry, and also list the product by description, e.g. asbestos type covering, or asbestos sheeting; and state the date that said product went on the market.

4.

As to each product state the asbestos (by whatever name known) content.

WILLIP D. BAIAMONTE
ATTORNEY AT LAW
F ROMA AVE., N.W.
PERQUERQUE, N. M.
[illegible]

5.

As to each product, state to what use you intended the product to be put, whether you intended it to be used by insulation workers, and the manner in which you intended said product to be used by insulation workers during the period in question.

Go into detail as to how you intended each product to be handled by those using the same in the insulation industry, with particular reference to how you intended the insulation users to unpackage the product, to cut, saw, break, shape, mix and apply said product, and whether or not you intended that the product be cut, shaped, mixed, prepared or applied at the job site.

Commence with the date that said product first went on the market, and if there has been any change in intended use, specify when the change occurred, what the intended use was before and after the change, and what notice, if any, you gave to the intended user relating to such change.

6.

As to each product, did such product reach the user or consumer without substantial change in the condition in which said product was manufactured and sold during the period in question? If not, state what the change in condition was, and how it came about.

Was it your intention that said product would reach the user or consumer without substantial change in the condition in which said product was manufactured or sold? If not, state what change you intended to occur in said product and how you intended such change to come about.

...ILLIP D. BAIAMONTE
...TTORNEY AT LAW
...7 BOMA AVE., N.W.
...LBUQUERQUE, N. M.
87105

7.

As to each product, were the manufacture, sale and distribution of said product under your exclusive control, or that of your agents, servants and employees during the period in question? If not, state who had and exercised any control over the manufacture, sale, or distribution of said product other than yourself, and state what that control was.

8.

As to each product, and its intended use, as described in your answer to Question #5, state whether you intended or expected that such use by insulation workers would result in the exposure of such workers to, and contact by said workers with, asbestos dust and fibers contained in said products, during the period in question.

9.

As to each product, and in its intended use, as described in your answer to Question #8, did such product have a propensity or property for causing dust containing asbestos fibers to be emitted into the air around the worker using said product? If your answer is "Yes", state when you acquired the information that such is the case. If your answer is "Yes", state whether you expected insulation workers to inhale microscopic asbestos fibers in the course of their use of said product, and if so, since when have you expected them to do so?

10.

As to each product, and in its intended use, as described in your answer to Question #9, did such product have a propensity or property for causing physical harm to insulation workers

PHILIP D. BARAMONTE
ATTORNEY AT LAW
[illegible] ROMA AVE., N.W.
ALBUQUERQUE, N. M.
87102

by reason of their inhalation of asbestos dust or fibers from said product or otherwise? If your answer is "yes", state when you acquired the information that such is the case.

11.

Are you aware of any breathing apparatus, device, or safeguard which would eliminate or materially reduce any danger to insulation workers in the use or handling of any of the products? If so, please give the exact tradename and manufacturer of the device, or otherwise describe it in such a way that one can be located for examination and inspection. Do you have any in your possession?

12.

Have you ever tested or examined any breathing apparatus, device or safeguard which was claimed to be able to eliminate or materially reduce any danger to insulation workers in the use or handling of any of the products? If so, give details as to where and when, and by whom such test or examination was conducted, and furnish a copy of the written report regarding such test or examination, and the conclusions therefrom. If you are aware of such tests made by others, please furnish the same information relating thereto.

13.

Do you have anyone from your company whose duty it is to make dust samplings, or dust level counts, in any of the places where your employees work? If so, explain the technique, state when such action was first initiated, how many persons are so engaged, how often such tests are made, what the purpose of such tests is, and what action, if any, has been taken following the findings of such tests.

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ATTORNEY AT LAW
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ALBUQUERQUE, N. M.
[illegible]

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14.

Do you have anyone from your company whose duty it is to go to areas where your asbestos products are being used to make a dust level count? If so, state when you started such procedure, the purpose of it, and what action, if any, has been taken following your findings.

15.

Have you conducted any studies or experiments concerning the effects of inhalation of asbestos dust or fibers by your employees who manufacture or handle the products? If so, state the name, address, and title of those conducting such studies and experiments, when they were made, to whom the reports thereon were made, and when, and attach copies of such reports and studies. If so, state what action, if any, you took following such reports and studies.

16.

Have you conducted any studies or experiments concerning the effects of inhalation of asbestos dust or fibers by persons other than your employees, who use or handle the products, such as insulation workers? If so, state the name, address, and title of those conducting such studies and experiments, when they were made, to whom the reports thereon were made, and when, and attach copies of such reports and studies. If so, state what action, if any, you took following such reports and studies.

17.

Have you conducted any studies or experiments designed to eliminate or minimize the inhalation of asbestos dust and fibers by your own employees who manufacture or handle the products?

PHILIP D. BATAINEH
ATTORNEY AT LAW
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ALBUQUERQUE, N. M.
87102

If so, state the name, address and title of those conducting such studies or experiments, when they were made, to whom the reports thereon were made, and when, and attach copies of such reports and studies. If so, state what action, if any, you took following such reports and studies?

18.

Have you conducted any studies or experiments designed to eliminate or minimize the inhalation of asbestos dust and fibers by persons other than your own employees who use or handle such products, such as insulation workers? If so, state the name, address and title of those conducting such studies or experiments when they were made, to whom the reports thereon were made, and when, and attach copies of such reports and studies. If so, state what action, if any, you took following such reports and studies.

19.

Do you have any statistics showing the number of your employees who are exposed to asbestos dust and fibers, and who have worked for you for twenty years or longer, who have lung disease? If so, please give such figures in detail.

20.

Please state whether you have any knowledge of any deaths or serious lung disease among your employees which have been alleged to have resulted from inhalation of asbestos dust or fibers? If so, please give the numbers; and as to each, the name, where known, and address of such persons, the name and address of the treating doctor, and the date you were made aware of such allegation.

...LLIE D. BAIAMONTE
...TORNEY AT LAW
...T ROMA AVE., N.W.
...LBUQUERQUE, N. M.
...

21.

Do you agree with the contention that asbestos dust and fibers cause or contribute to the disease mesothelioma? Do you agree with the contention that asbestos dust and fibers cause or contribute to the disease cor pulmonale? Do you agree with the contention that asbestos dust and fibers cause or contribute to the disease cancer? If so, and as to each, state when you arrived at such opinion or conclusion.

22.

Do you agree with the contention that asbestos fibers are of such a nature that once they are inhaled into the human lung they never dissipate or go away, but remain in the lung virtually indestructible, to infinity? If so, when did you arrive at that conclusion or opinion?

23.

Do you agree with the contention that asbestos fibers have a tensile strength equal to that of piano wire? If so, when did you come to that opinion or conclusion?

24.

Do you agree that there are approximately a million individual fibrils lying side by side in a linear inch of chrysotile asbestos? If so, when did you come to that opinion or conclusion?

25.

As to each product, state whether it is possible for persons other than trained technicians or scientists to distinguish said product from similar products on the market. If your answer is "Yes", describe how such products can be distinguished.

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ATTORNEY AT LAW
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ALBUQUERQUE, N. M.
87102

CO

26.

Do you agree with the contention that the inhalation of asbestos dust and fibers can result in asbestosis? If so, when did you arrive at that conclusion or opinion? If so, following your arrival at that opinion or conclusion, what action, if any, did you take to change your methods of manufacture, sale or distributing of any of the products? When did you take such action? Explain in detail, with particular reference to any warnings or instructions you may have issued regarding the use or handling of such products.

27.

Do you agree with the contention that insulation workers who use or handle the products over a period of several years, do thereby endanger their health? If so, in what way do they endanger their health? State all of the diseases they are likely to contract. If so, when did you arrive at that conclusion or opinion? If so, following your arrival at that conclusion or opinion, what action, if any, did you take to change your methods of manufacture, sale or distribution of the products? When did you take such action? Explain in detail, with particular reference to any warnings or instructions you may have issued regarding the use or handling of such products.

28.

As to each product, state whether you furnished instructions to the purchaser or ultimate user or consumer regarding the manner in which the products should be used. If so, furnish a copy of the text of such instructions, and state when and in what manner they were given, and to whom.

PHILLIP D. BASAMONTE
ATTORNEY AT LAW
[illegible] ROMA AVE., N.W.
[illegible]BUQUERQUE, N. M.
[illegible]

29.

As to each product, state whether you ever gave any warning to the purchaser or ultimate user or consumer, of any dangerous or harmful nature of the product? If so, state of what the warning consisted, when it was given, in what manner it was given, and to whom it was given. This question relates to any and all warnings, of whatever nature, in connection with the product.

30.

As to each product, state whether you gave the purchaser or ultimate user or consumer any advice regarding what wearing apparel or protective equipment or appliances could be used to avoid any danger from the asbestos dust and fibers contained in said product. If so, furnish a copy of the text of such advice, and state when and in what manner it was given, and to whom.

31.

As to each product, state whether you ever published any sales literature concerning the product. If so, please attach a copy of said literature to your answer, and state when said literature was published, to whom it was distributed, and over what period of time.

32.

What steps, if any, have you taken to protect your own employees from any danger from the inhalation of asbestos dust and fibers in the manufacture, sale or distribution of any of the products? State when you took such action, what action you took, the purpose for such action; and how much it cost you to take such action. In your answer please cover, among all other things any architectural or design changes made in your manufacturing

PHILIP D. BATAMONTE
ATTORNEY AT LAW
[illegible]

plant, the modification of any existing structures, the installation of any ventilation systems, and so forth.

33.

Please give the net worth of your company as of the end of your annual accounting period for each year since 1949.

34.

Please state the net profit made by your company for each year since 1949.

35.

Please give the total volume of sales by your company for each year since 1949, specifying what portion of such sales were of the products in question.

36.

State what amount of money you have expended for studies, experiments, tests, and safety measures of whatever nature, for the purpose of ascertaining whether asbestos products are dangerous to persons manufacturing, using or handling such products. Itemize such sums by year and amount for each year during the period in question.

37.

Have you contributed any funds to anyone outside your company to conduct research concerning asbestos and its relation to lung disease or other disease? If so, state when, to whom, their addresses, and attach copies of any and all reports you received from those to whom you so contributed.

38.

State which of the products was sold to purchasers in New Mexico, the sales volume per year to said purchaser during the period in question, and the name and address of such purchaser.

PHILIP D. BARAMONTE
ATTORNEY AT LAW
01 ROMA AVE., N.W.
ALBUQUERQUE, N. M.
87101

Also, state whether such products were shipped directly to such purchaser and were received (as far as you know or have heard) by the purchaser in substantially the same condition as that in which the product was manufactured?

39.

As to each product, state whether you ever tested the product to ascertain whether it was harmful or dangerous to the health of insulation workers using it. If so, state when, where, and by whom said test was made and give the details of any of all such tests, and attach copies of the reports and conclusions of such tests.

40.

As to each product, state whether you ever conducted any tests or experiments to devise a safe method of use or application of the product, to the end that insulation workers using the product would not be harmed by dust or fibers emitted from the product. If so, state when, where and by whom said test was made, and give the details of any and all such tests, and attach copies of the reports and conclusions of such tests.

41.

Do you have a medical or scientifit department? If so, state when it was commenced, the name, address and title of the persons in charge of it since its inception, indicating the tenure of each, and state what were the functions and duties of said department.

42.

Do you have any engineering, scientific, and research data concerning the products, their suggested use and adaptability,

JOSEPH D. BASAMONTE
ATTORNEY AT LAW
[illegible] ROMA AVE., N.W.
ALBUQUERQUE, N. M.
[illegible]

the method of application thereof, and suggested safety practices or controls in the use thereof?

43.

Have you consulted with Dr. Irving J. Selikoff, of New York, concerning asbestosis, and if so, state when, where and under what circumstances, and what information, if any, was furnished to him by you, or to you by him, and the dates such information was furnished, and the names, titles and addresses of your personnel so involved.

44.

Are you familiar with the work of H. Montague Murray, a physician in London's Charing Cross Hospital, relating to asbestos and lung disease? If so, when did you become familiar with this work?

45.

Do you agree that at least since 1930 there have been medical studies published in which it was alleged that the inhalation of asbestos dust and fibers can cause the disease asbestosis? If so, when did you first become aware of such studies wherein such allegations were made? If not, state when the first medical studies were published in which such allegations were made, and state when you first became aware of such studies.

46.

Are you familiar with the first century reports of Strabo and Pliny The Elder in which there was mentioned a sickness of the lungs in slaves whose occupation was to weave asbestos into cloth? If so, when did you first become familiar with such reports?

PHILIP D. BAIAMONTE
ATTORNEY AT LAW
20 ROMA AVE., N.W.
ALBUQUERQUE, N. M.
87102

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

FILED
AT ALBUQUERQUE
AUG 28 1970
E. E. GREESON
CLERK

FINIS A. BASSHAM,

Plaintiff,

vs. No. 8431, Civil

OWENS-CORNING FIBERGLAS CORPORATION, et al.,

Defendants.

OBJECTIONS TO INTERROGATORIES

Comes now the Defendant Owens-Corning Fiberglas Corporation, and objects to Plaintiff's Interrogatories No. 33, 34 and 35 on the grounds that same are matters of public record equally available to Plaintiff as this defendant; that any answer would be prejudicial to this defendant as comparing financial resources of this defendant with other defendants; that the only purpose of the interrogatories is to establish a basis for punitive damages which cannot be recovered against multiple defendants; that said interrogatories are irrelevant to any issue in this suit.

Said defendant further objects to Interrogatory No. 38 as being wholly irrelevant to any issue in this case.

Said defendant further objects to Interrogatory No. 20 as not being a discoverable fact under Federal Rule 33

and calls for a medical opinion which defendant is not required to answer under Federal Rule 33.

Said defendant further objects to Interrogatory No. 17 and 31 as to that part requiring production of documents which is properly a function of Federal Rule 34.

Irving E. Moore

Irving E. Moore
Attorney for Defendant
Owens-Corning Fiberglas Corp.
6001 Marble, N.E.
Albuquerque, New Mexico 87110

This will certify that a copy of the foregoing pleading was mailed to opposing counsel of record this 26th day of August, 1970.

Irving E. Moore

Irving E. Moore

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

FINIS A. BASSHAM,

Plaintiff,

-vs-

No. 8431 Civil

PHILIP CAREY CORPORATION, et al,

Defendants.

FILED
AT ALBUQUERQUE
SEP 9 1970
E. E. GREESON
CLERK

ANSWERS TO INTERROGATORIES

Pursuant to the Federal Rules of Civil Procedure, defendant Philip Carey Corporation answers the interrogatories propounded to it by the plaintiff as follows:

1. Please give the name and address of the president of your company, and of the chairman of the Board of Directors.

ANSWER: Charles E. Tennesson, Jr.
7285 Post and Rail Lane
Cincinnati, Ohio 45243

Paul A. Johnston
51 Oakwood Drive
Box 1034
Chapel Hill, North Carolina

2. Are you engaged in the manufacture and sale of insulation products containing asbestos? If so, state during what portion of the period in question you were so engaged.

ANSWER: Yes, during the entire period.

3. What insulation product containing asbestos did you manufacture and sell during the period in question? List the product by trade name, if any, and by the advertised name, and by the nickname or name commonly used in the insulation industry, and also list the product by description, e.g. asbestos type covering, or asbestos sheeting; and state the date that said product went on the market.

ANSWER:

Name, Trade Name, Advertised Name, and Description	Date of Manufacture (First year represents date each product went on the market)
Plymouth Meeting, Pennsylvania	
(1) 85% Magnesia Pipe Covering and Block	1906-1961
(2) No. 19 Hitemp Pipe Covering and Block	1906-1961
(3) Temp-Chek Pipe Covering and Block	1940-1954
(4) Alltemp Pipe Covering and Block	1954-1958
(5) Careytemp Pipe Covering and Block	1958-1962
Lockland, Ohio	
(1) Careytemp Pipe Covering and Block	1958-Sept. 1969
(2) New Careytemp 1500 Pipe Covering and Block	Sept. 23, 1969 to present
(3) Aircell Pipe Covering and Board	1906-1960
(4) Excel Pipe Covering and Board	1906-1960
(5) Careycel Pipe Covering and Board	1906-1960
(6) Asbestos Rope and Wick	1906-1954
(7) MW 50 Cement	1940-1967
(8) MW 1 Cement	1950-1967
(9) Asbestos Finishing Cements No. 100 No. 303 No. 707 No. LP20 No. 7M90	1940-1967
(10) No. 19 Vitricel Cement	1940-1967
Linden, New Jersey	
(1) Asbestos Paper Pipe Covering (4, 6 and 8 ply Aircell Coverings)	Feb. 18, 1969 to present

4. As to each product state the asbestos (by whatever name known) content.

ANSWER:

Contents	Percentage of Asbestos by Weight
Plymouth Meeting, Pennsylvania	
(1) Basic magnesium Carbonate and asbestos fiber	11 - 15%
(2) Diatomaceous earth and asbestos fiber	15 - 20
(3) Diatomaceous earth, basic magnesium carbonate and asbestos fiber	15 - 20
(4) Expanded Perlite, Bentonite clay and asbestos fiber	12 - 15
(5) Expanded Perlite Bentonite clay, chopped glass roving and asbestos fiber	5.6
Lockland, Ohio	
(1) Expanded Perlite, Bentonite clay, chopped glass roving and asbestos	5.6%
(2) Expanded Perlite, Bentonite clay and chopped glass roving	0
(3) Asbestos paper (asbestos fiber and starch) and sodium silicate	75 - 80
(4) Asbestos paper and sodium silicate	75 - 80
(5) Asbestos paper and sodium silicate	75 - 80
(6) Asbestos Fiber and cotton fiber	80
(7) Mineral Wool fiber, asbestos fiber and Bentonite clay	70
(8) Mineral wool fiber, Portland cement and Bentonite clay	0
(9) Asbestos fiber, ground gypsum and Bentonite clay	No. 100 49% No. 303 55% No. 707 44% No. LF20 70% No. 7K90 100%
(10) Asbestos fiber, and mica	15%
Linden, New Jersey	
(1) Asbestos paper and sodium silicate	70 - 80%

5. As to each product, state to what use you intended the product to be put, whether you intended it to be used by insulation workers, and the manner in which you intended said product to be used by insulation workers during the period in question.

Go into detail as to how you intended each product to be handled by those using the same in the insulation industry, with particular reference to how you intended the insulation users to unpackage the product, to cut, saw, break, shape, mix and apply said product, and whether or not you intended that the product be cut, shaped, mixed, prepared or applied at the job site.

Commence with the date that said product first went on the market, and if there has been any change in intended use, specify when the change occurred, what the intended use was before and after the change, and what notice, if any, you gave to the intended user relating to such change.

ANSWER: Philip Carey Corporation intended that these products be applied to boilers, breechings, steam pipes, and hot, cold or chilled water lines by insulation workers in the manner which was standard in their trade. After the workmen opened the cardboard cartons of pipe and block insulation products, and paper bags of cement, these products would be applied to the systems mentioned above. Workers would form some of the insulation materials to make them usable as tees, ells, tube turns and pipe hangers.

Philip Carey Corporation has no control over the method its products are handled after sale.

As to the last paragraph of Interrogatory No. 5, there has been no change in intended use.

6. As to each product, did such product reach the user or consumer without substantial change in the condition in which said product was manufactured and sold during the period in question? If not, state what the change in condition was, and how it came about.

Was it your intention that said product would reach the user or

consumer without substantial change in the condition in which said product was manufactured or sold? If not, state what change you intended to occur in said product and how you intended such change to come about.

ANSWER: Yes, unless the product was broken in transit as a result of rough handling.

The answer to the second paragraph of Interrogatory No. 6 is Yes.

7. As to each product, were the manufacture, sale and distribution of said product under your exclusive control, or that of your agents, servants and employees during the period in question? If not, state who had and exercised any control over the manufacture, sale, or distribution of said product other than yourself, and state what that control was.

ANSWER: Yes, with two exceptions:

(a) Approximately 9% of insulation products sold by Philip Carey Corporation were purchased from other manufacturers for resale.

(b) Some of the products were sold by Philip Carey Corporation to distributors for resale. Others were sold directly to insulating contractors for their use. Our control terminated upon such a sale.

8. As to each product, and its intended use, as described in your answer to Question No. 5, state whether you intended or expected that such use by insulation workers would result in the exposure of such workers to, and contact by said workers with, asbestos dust and fibers contained in said products, during the period in question.

ANSWER: The fact of, nature and extent of exposure to and/or contact with asbestos dust and fibers by insulation workers is determined by the manner in which they handle and use insulation products.

Philip Carey Corporation does not intend or expect that insulation workers will be exposed to or be in contact

with asbestos dust and fibers.

9. As to each product, and in its intended use, as described in your answer to Question No. 5, did such product have a propensity or property for causing dust containing asbestos fibers to be emitted into the air around the worker using said product? If your answer is "Yes", state when you acquired the information that such is the case. If your answer is "Yes", state whether you expected insulation workers to inhale microscopic asbestos fibers in the course of their use of said product, and if so, since when have you expected them to do so?

ANSWER: The propensity or property of the products for causing dust depends on the manner in which they are used and handled by the insulation worker.

Philip Carey Corporation has no control of the method its products are handled after sale.

Philip Carey Corporation has never expected insulation workers to inhale microscopic asbestos fibers in the course of their use of its products.

The implications of Interrogatory No. 9 as to Philip Carey Corporation's insulating material being of a "dangerous nature" is specifically denied. Philip Carey Corporation does not believe that any of its industrial insulating material is of a "dangerous nature". Inasmuch as it has no control, or right of control, over employees of insulating contractors, or other contractors or owners with respect to the working conditions of any non-Philip Carey Corporation employees, it has assumed that the employees of such insulating workers have been furnished with a safe place in which to work.

10. As to each product, and in its intended use, as described in your answer to Question No. 5, did such product have a propensity or property for causing physical harm to insulation workers by reason of their inhalation

of asbestos dust or fibers from said product or otherwise? If your answer is "Yes", state when you acquired the information that such is the case.

ANSWER: No.

11. Are you aware of any breathing apparatus, device, or safeguard which would eliminate or materially reduce any danger to insulation workers in the use or handling of any of the products? If so, please give the exact tradename and manufacturer of the device, or otherwise describe it in such a way that one can be located for examination and inspection. Do you have any in your possession?

ANSWER: The implications of Interrogatory No. 11 as to Philip Carey Corporation's insulating material being of a "dangerous nature" is specifically denied. Philip Carey Corporation does not believe that any of its industrial insulating material is of a "dangerous nature". Inasmuch as Philip Carey Corporation has no control, or right of control, over employees of insulating contractors, or other contractors or owners with respect to the working conditions of any non-Philip Carey Corporation employees, it is assumed that the employees of such insulating workers have been furnished with a safe place in which to work.

Any breathing apparatus, device, or safeguard approved by the U. S. Bureau of Mines or the Asbestos Workers Union should reduce any inhalation danger which may be found to exist.

12. Have you ever tested or examined any breathing apparatus, device or safeguard which was claimed to be able to eliminate or materially reduce any danger to insulation workers in the use or handling of any of the products? If so, give details as to where and when, and by whom such test or examination was conducted, and furnish a copy of the written report regarding such test or examination, and the conclusions therefrom. If you are aware of such tests

made by others, please furnish the same information relating thereto.

ANSWER: Philip Carey Corporation has not tested any breathing apparatus but is aware that respirators have been approved by the U. S. Bureau of Mines and the Asbestos Workers Union. It understands these respirators have been designed through tests conducted by or for these organizations.

13. Do you have anyone from your company whose duty it is to make dust samplings, or dust level counts, in any of the places where your employees work? If so, explain the technique, state when such action was first initiated, how many persons are so engaged, how often such tests are made, what the purpose of such tests is, and what action, if any, has been taken following the findings of such tests.

ANSWER: No. Since the 1930's dust samplings at Philip Carey Corporation's Lockland, Ohio, plant have been taken by the Division of Safety and Hygiene, Industrial Commission of Ohio. The Division employs either an electrostatic precipitator owned by it or a "midget impinger" produced by Mine Safety Appliances Company. Philip Carey Corporation believes these devices charge dust particles either negatively or positively and impinge them on a plate oppositely charged. The samples thus collected are applied against screens in order to measure the size and number of dust particles and determine if the area sampled is within the safe standards prescribed by the Division. Dust collectors are in constant operation to maintain safe levels. An authority of the Commonwealth of Pennsylvania followed similar procedures at our Plymouth Meeting, Pennsylvania, insulation plant prior to its close in 1962. At the present time we are participating with a number of other companies in a program conducted by the U. S. Department of Health to determine safe dust limits in areas in which products compose

in part of asbestos, talc, mica or stone dust are produced.

14. Do you have anyone from your company whose duty it is to go to areas where your asbestos products are being used to make a dust level count? If so, state when you started such procedure, the purpose of it, and what action if any, has been taken following your findings.

ANSWER: No.

15. Have you conducted any studies or experiments concerning the effects of inhalation of asbestos dust or fibers by your employees who manufacture or handle the products? If so, state the name, address, and title of those conducting such studies and experiments, when they were made, to whom the reports thereon were made, and when, and attach copies of such reports and studies. If so, state what action, if any, you took following such reports and studies.

ANSWER: No. However, in 1963, Philip Carey Corporation employed for 12 months Dr. Thomas F. Mancuso, now Research Professor, Occupational Health, University of Pittsburgh, as a consultant to study dust control at our Lockland plant. His recommendations for additional dust control in the plant were implemented. He did not make a study to determine the effect of our products on the lungs of our employees who manufacture and handle the products or of insulators and asbestos workers in the construction field.

See also answer to Interrogatory No. 13.

16. Have you conducted any studies or experiments concerning the effects of inhalation or asbestos dust or fibers by persons other than your employees, who use or handle the products, such as insulation workers? If so, state the name, address, and title of those conducting such studies and experiments, when they were made, to whom the reports thereon were made, and when, and attach copies of such reports and studies. If so, state what action, if any, you took following such reports and studies.

ANSWER: No.

17. Have you conducted any studies or experiments designed to eliminate or minimize the inhalation of asbestos dust and fibers by your own employees who manufacture or handle the products? If so, state the name, address and title of those conducting such studies or experiments, when they were made, to whom the reports thereon were made, and when, and attach copies of such reports and studies. If so, state what action, if any, you took following such reports and studies?

ANSWER: No. See answers to Interrogatories Nos. 13 and 15.

18. Have you conducted any studies or experiments designed to eliminate or minimize the inhalation of asbestos dust and fibers by persons other than your own employees who use or handle such products, such as insulation workers? If so, state the name, address and title of those conducting such studies or experiments, when they were made, to whom the reports thereon were made, and when, and attach copies of such reports and studies. If so, state what action, if any, you took following such reports and studies.

ANSWER: No.

19. Do you have any statistics showing the number of your employees who are exposed to asbestos dust and fibers, and who have worked for you for twenty years or longer, who have lung disease? If so, please give such figures in detail.

ANSWER: No.

20. Please state whether you have any knowledge of any deaths or serious lung disease among your employees which have been alleged to have resulted from inhalation of asbestos dust or fibers? If so, please give the numbers; and as to each, the name, where known, and address of such persons, the name and address of the treating doctor, and the date you were made aware of such allegation.

ANSWER: Philip Carey Corporation objects to Interrogatory No. 20 for the following reasons:

(a) The same does not inquire as to any matter of fact authorized by the applicable Federal Rules of Procedure;

(b) the same inquires as to a matter of medical opinion which is not required to be answered under Federal Rule 33;

(c) the same is immaterial and irrelevant to any issue in this action.

21. Do you agree with the contention that asbestos dust and fibers cause or contribute to the disease mesothelioma? Do you agree with the contention that asbestos dust and fibers cause or contribute to the disease cor pulmonale? Do you agree with the contention that asbestos dust and fibers cause or contribute to the disease cancer? If so, and as to each, state when you arrived at such opinion or conclusion.

ANSWER: Philip Carey Corporation objects and excepts to Interrogatory No. 21 for the following reasons:

(a) The same is vague and indefinite; this defendant does not understand what is meant by and included in the term "with the contention" as used therein;

(b) the same does not inquire as to any matter of fact authorized by the Federal Rules of Procedure;

(c) the same inquires as to a medical opinion which is not required to be answered under the Federal Rules of Procedure;

(d) the same inquires as to an ultimate issue in the case at bar, which is to be determined by the fact finder.

22. Do you agree with the contention that asbestos fibers are of such a nature that once they are inhaled into the human lung they never dissipate or go away, but remain in the lung virtually indestructible, to infinity? If so, when did you arrive at that conclusion or opinion?

ANSWER: Philip Carey Corporation objects and excepts to Interrogatory No. 22 for the following reasons:

(a) The same is vague and indefinite;

(b) the same does not inquire as to any matter of fact authorized by the Federal Rules of Procedure;

(c) the same inquires as to a medical and/or scientific opinion which is not required to be answered under the Federal Rules of Procedure.

Subject to the above and foregoing objections and exceptions Philip Carey Corporation says that it understands that asbestos fiber is inorganic.

23. Do you agree with the contention that asbestos fibers have a tensile strength equal to that of piano wire? If so, when did you come to that opinion or conclusion?

ANSWER: Chrysotile Fibers have a tensile strength equal to that of piano wire. Crocidolite Fibers have 1-1/2 times the strength. Amosite Fiber has about 1/2 the strength. We do not know when we came to these opinions or conclusions, but it is common knowledge to anyone knowledgeable in the use and application of such fibers.

24. Do you agree that there are approximately a million individual fibrils lying side by side in a linear inch of chrysotile asbestos? If so, when did you come to that opinion or conclusion?

ANSWER: A lineal inch strand of Chrysotile Fiber contains approximately 1,000,000 fibrils compared to approximately 4,000 fibrils for the same diameter filament of mineral glass. We are not sure when we came to the opinion or conclusion but it was probably shortly after the true detailed knowledge of the structure of asbestos fibers was disclosed by the use of the electron microscope, when magnifications of 100,000 times became possible. Further, this information is disclosed in any detailed text on mineral fibers.

25. As to each product, state whether it is possible for persons

other than trained technicians or scientists to distinguish said product from similar products on the market. If your answer is "Yes", describe how such products can be distinguished.

ANSWER: Philip Carey Corporation's products cannot readily be distinguished from similar products on the market by their appearance, including color and texture. However, they can be distinguished by the wrappers, containers and labels in which the products are packaged.

"Careytemp" may be distinguished from insulation products manufactured by others through its formulation protected by patents in the United States and certain other countries.

Phillip Carey Corporation discontinued the manufacture of 85% magnesia approximately 10 years ago. The cartons in which the 85% magnesia products were shipped would distinguish them from similar products on the market. Without cartons, 85% magnesia products manufactured by Philip Carey Corporation would be difficult to distinguish from like products manufactured at that time by Fiberboard Paper Products Corporation, Johns Manaville Products Corporation, The Ruberoid Company, Baldwin-Ehret-Hill, Inc., and Mundet Cork Corporation. Philip Carey Corporation believes that today 85% magnesia products are manufactured by only a few companies, all of which are outside the United States.

The manufacture of asbestos paper insulation products was discontinued by Philip Carey Corporation approximately eight years ago. The cartons in which these products were shipped would distinguish them from like products of others. Without cartons, these products manufactured by Philip Carey Corporation would be difficult to distinguish from like products manufactured at that time by Ace Asbestos Company, Empire-Ace Asbestos Company, Badham Insulation Company,

Norristown Insulation Company, Standard Asbestos Manufacturin & Insulating Company, Johns-Manaville Products Corporation, Baldwin-Ehret-Hill, Inc., and Smith and Kanzler Corporation. Today,such products are apparently manufactured only by Empire Asbestos Company.

26. Do you agree with the contention that the inhalation of asbestos dust and fibers can result in asbestosis? If so, when did you arrive at that conclusion or opinion? If so, following your arrival at that opinion or conclusion, what action, if any, did you take to change your methods of manufacture sale or distributing of any of the products? When did you take such action? Explain in detail, with particular reference to any warnings or instructions you may have issued regarding the use or handling of such products.

ANSWER: Philip Carey Corporation objects and excepts to Interrogatory No. 26 for the following reasons:

(a) The same is vague and indefinite and this defendant does not understand what is meant and referred to by the term "the contention" as used in the interrogatory.

(b) The same inquires as to a medical opinion which is not required to be answered under the Federal Rules of Procedure.

(c) The same inquires as to an ultimate issue, which is solely to be determined by the fact finder on the trial hereof.

Subject to the above and foregoing objections and exceptions, Philip Carey Corporation says that "it does not know." If the interrogatory refers to the usual, customary and expected use of Philip Carey Corporation's product, the answer is "No." Philip Carey Corporation knows of no case in which any period of use, commercial, residential or other, of its insulating materials has caused asbestosis or any other disease.

27. Do you agree with the contention that insulation workers who use or handle the products over a period of several years, do thereby endanger their health? If so, in what way do they endanger their health? State all of the diseases they are likely to contract. If so, when did you arrive at that conclusion or opinion? If so, following your arrival at that conclusion or opinion, what action, if any, did you take to change your methods of manufacture, sale or distribution of the products? When did you take such action? Explain in detail, with particular reference to any warnings or instructions you may have issued regarding the use or handling of such products.

ANSWER: See objections and answer to Interrogatory No. 26.

There is no danger to the health of insulation workers when they properly use and handle Philip Carey Corporation's products. All of Philip Carey Corporation's products are suitable and reasonably fit for the purpose for which the products were manufactured.

28. As to each product, state whether you furnished instructions to the purchaser or ultimate user or consumer regarding the manner in which the products should be used. If so, furnish a copy of the text of such instructions, and state when and in what manner they were given, and to whom.

ANSWER: No, except with respect to MW-50 and MW-One Cements. Attached hereto as Exhibits "A" and "B" are copies of the text of instructions for MW-50 Cement and MW-One Cement taken from bags thereof.

29. As to each product, state whether you ever gave any warning to the purchaser or ultimate user or consumer, of any dangerous or harmful nature of the product? If so, state of what the warning consisted, when it was given, in what manner it was given, and to whom it was given. This question relates to any and all warnings, of whatever nature, in connection with the product.

ANSWER: The implications of Interrogatory No. 29 as to Philip Carey Corporation's insulating material being of a dangerous nature is specifically denied. It is not believed that any of its industrial insulating material is of a dangerous nature. Inasmuch as it has no control, or right of control

over employees of insulating contractors, or other contractors or owners with respect to the working conditions of any non-Philip Carey Corporation employees, it has assumed that the employees of such insulating workers have been furnished with a safe place in which to work.

30. As to each product, state whether you gave the purchaser or ultimate user or consumer any advice regarding what wearing apparel or protective equipment or appliances could be used to avoid any danger from the asbestos dust and fibers contained in said product. If so, furnish a copy of the text of such advice, and state when and in what manner it was given, and to whom.

ANSWER: No. See answer to Interrogatory No. 29.

31. As to each product, state whether you ever published any sales literature concerning the product. If so, please attach a copy of said literature to your answer, and state when said literature was published, to whom it was distributed, and over what period of time.

ANSWER: Yes. Attached hereto as Exhibit "C" is a copy of said literature. It was distributed to customers and potential customers consisting of application contractors, distributors of insulation products and to Philip Carey Corporation's own insulation application contract departments.

32. What steps, if any, have you taken to protect your own employees from any danger from the inhalation of asbestos dust and fibers in the manufacture, sale or distribution of any of the products? State when you took such action, what action you took, the purpose for such action; and how much it cost you to take such action. In your answer please cover, among all other things, any architectural or design changes made in your manufacturing plant, the modification of any existing structures, the installation of any ventilation systems, and so forth.

ANSWER: Over a period of 10 or 12 years we have installed modern

dust collectors and control equipment at our Lockland plant to reduce dust particulate in the air in working areas. Our purpose was to control both asbestos and fibers and stone dust, mica, Portland cement and other fines. It is impossible to state the cost of such equipment insofar as control of asbestos and fibers alone is concerned. There were no architectural or design changes in the manufacturing plant or any modification of the existing structures, except as required for the installation of the dust collectors.

33. Please give the net worth of your company as of the end of your annual accounting period for each year since 1949.

ANSWER: Philip Carey Corporation objects to Interrogatory No. 33 for the following reasons:

(a) The same inquires into information not discoverable for the reason that it is not relevant or material to any of the issues herein, including the prayer of punitive damages.

(b) The same inquires into matters which would result in a comparison of the financial resources of Philip Carey Corporation with those of the plaintiff, which is prejudicial to this defendant.

34. Please state the net profit made by your company for each year since 1949.

ANSWER: Philip Carey Corporation objects to Interrogatory No. 34 for the following reasons:

(a) The same inquires into information not discoverable for the reason that it is not relevant or material to any of the issues herein, including the prayer of punitive damages.

(b) The same inquires into matters which would result in a comparison of the financial resources of Philip

Carey Corporation with those of the plaintiff, which is prejudicial to this defendant.

35. Please give the total volume of sales by your company for each year since 1949, specifying what portion of such sales were of the products in question.

ANSWER: Philip Carey Corporation objects to Interrogatory No. 35 for the following reasons:

(a) The same inquires into information not discoverable for the reason that it is not relevant or material to any of the issues herein, including the prayer of punitive damages.

(b) The same inquires into matters which would result in a comparison of the financial resources of Philip Carey Corporation with those of the plaintiff, which is prejudicial to this defendant.

36. State what amount of money you have expended for studies, experiments, tests, and safety measures of whatever nature, for the purpose of ascertaining whether asbestos products are dangerous to persons manufacturing, using or handling such products. Itemize such sums by year and amount for each year during the period in question.

ANSWER: None, but see answer to Interrogatory No. 15. Philip Carey Corporation paid Dr. Mancuso $12,000 for his services.

37. Have you contributed any funds to anyone outside your company to conduct research concerning asbestos and its relation to lung disease or other disease? If so, state when, to whom, their addresses, and attach copies of any and all reports you received from those to whom you so contributed.

ANSWER: No, except that Philip Carey Corporation understands that one of its subsidiaries, which is a member of a Quebec mining association, made some contribution, the amount of which is unknown, and Philip Carey Corporation has not received any report from such association or research organization.

38. State which of the products was sold to purchasers in New Mexico, the sales volume per year to said purchaser during the period in question, and the name and address of such purchaser. Also state whether such products were shipped directly to such purchaser and were received (as far as you know or have heard) by the purchaser in substantially the same condition as that in which the product was manufactured?

ANSWER: The only insulation products sold by Philip Carey Corporation in New Mexico were purchased directly by Mountain States Insulation Company, Albuquerque, New Mexico. The shipments were made direct to Mountain States Insulation Company and the products were received in substantially the same condition as that in which the products were manufactured.

In terms of years and dollars, the sales were as follows:

1964	$ 647.37
1965	10,453.35
1966	13,892.78
1967	10,234.00
1968	5,518.00
1969	64.00

39. As to each product, state whether you ever tested the product to ascertain whether it was harmful or dangerous to the health of insulation workers using it. If so, state when, where, and by whom said test was made and give the details of any of all such tests, and attach copies of the reports and conclusions of such tests.

ANSWER: The implications of Interrogatory No. 39 as to Philip Carey Corporation's insulating material being of a dangerous nature is specifically denied.

Philip Carey Corporation knows through its experience with its products that they are not harmful or dangerous to the health of installation workers who properly handle and use them in accord with the normal practices in the trade, and who have been furnished a safe place in which to work by their employers.

47.

Are you familiar with the work of Peter A. Theodos, M.D., of Philadelphia, Pennsylvania, and the paper titled "Lung Biopsy in the Diagnosis of Pneumoconiosis", which was presented at the Ninth International Congress on Diseases of the Chest, Copenhagen, Denmark, August 25, 1965, which paper was published in Diseases of the Chest, the official publication of the American College of Chest Physicians? If so, when did you become familiar with his work and paper?

48.

Are you familiar with the article by Paul Brodeur, titled "The Magic Mineral", published in The New Yorker, October 12, 1968? If so, when did you become familiar with such article?

49.

Are you familiar with the article by Selikoff, Churg and Hammond published in the Journal of The American Medical Association in the Spring of 1964? If so, when did you become familiar with such article?

50.

Are you familiar with the article by Selikoff, Churg and Hammond titled "The Occurrence of Asbestosis Among Insulation Workers in the United States", published in December, 1965, in the Annals of the New York Academy of Sciences? If so, when did you become familiar with such article? Please refer to the list of 59 references at the end of said article and state with which ones, by number, you are familiar, and as to each, the date you became familiar with it.

PHILIP R. RAIMONDI
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ALBUQUERQUE, N.M.
87102

51.

Are you familiar with the so-called Frye Report, made to the Surgeon General in 1965? If so, when did you become familiar with it?

52.

Did you have an agent or employee at the International Conference on the Biological Effects of Asbestos, at the Waldorf-Astoria in New York, sponsored by the New York Academy of Sciences in1964? If so, what is the name, address and title of such person or persons? If not, did you later become familiar with the reports of the discussions held in such conference, and state when you became familiar with them.

53.

Have you ever received any communication from Dr. Irving J. Selikoff, head of the Division of Environmental Medicine at New York City University's Mount Sinai School of Medicine, in which Dr. Selikoff requested information regarding the health experiences of workers in any of your plants? If so, when did you receive such communication, what was the content thereof, and what was your response?

54.

In your scientific and research department, do you have a library of books, articles and reports concerning asbestos and its affect upon the health of those who work with and around it? If so, who maintains the library, and what is his title? If so, please attach a bibliography to your answer herein, listing all of such books, articles, reports and writings of

ATTORNEY AT LAW
ALBUQUERQUE, N. M.

every nature on such subject, and as to each, state when it was that you first became familiar with it, if the date is different from the date of publication.

PHILLIP D. BAIAMONTE
JACK LOVE

By _____
Attorneys for Plaintiff
509 Roma Ave., N.W.
Albuquerque, New Mexico 87101

I hereby certify that a true copy of the foregoing pleading was mailed to opposing counsel of record this 9 day of June, 1970.

_____

PHILLIP D. BAIAMONTE
ATTORNEY AT LAW
509 ROMA AVE., N.W.
ALBUQUERQUE, N. M.
87101

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

FILED
AT ALBUQUERQUE
JUN 12 1970
E. E. GREESON
CLERK

FINIS A. BASSHAM,

Plaintiff,

vs. No. 8431 - Civil

OWENS-CORNING FIBERGLAS CORPORATION, ET AL.,

Defendants.

A N S W E R

Comes now the defendant Acands, Inc., formerly Armstrong Contracting and Supply Corporation, and answering the complaint herein states:

I.

Admits the allegations of paragraphs 1, 2, 3 and 4.

II.

That it is without sufficient knowledge to either admit or deny the allegations of paragraphs 5, 6, 7, 8 and 9, and therefore denies same.

III.

Admits the allegations of paragraphs 10 and 11.

IV.

Denies the allegations of paragraphs 12 through 26, inclusive.

FIRST DEFENSE

If defendant Acands, Inc. was negligent, and this is specifically denied, then the plaintiff was contributorily negligent and his negligence was the sole and proximate cause of any injuries herein.

C9

SECOND DEFENSE

Plaintiff assumed the risks.

THIRD DEFENSE

Defendant Acands, Inc. fully excluded all warranties, both express and implied, and plaintiff's failure to give this defendant notice of any breach within a reasonable time after it was discovered bars him from recovery.

FOURTH DEFENSE

Plaintiff had every opportunity to inspect and examine defendant's product, and his use thereof constitutes acceptance thereof so as to bar his recovery.

FIFTH DEFENSE

Plaintiff did not use the defendant's product in a reasonable and proper manner.

SIXTH DEFENSE

Plaintiff's remedy herein is by suit under the New Mexico Occupational Disease Disablement Law, Section 59-11-1, et seq. N.M.S.A.

SEVENTH DEFENSE

All claims as against this defendant are barred by the Statute of Limitations.

WHEREFORE, having fully answered the complaint the defendant Acands, Inc. moves that same be dismissed with prejudice and that said defendant have its costs.

TOULOUSE, MOORE & WALTERS, P.A.

By _____
Irving E. Moore
Attorneys for Defendant Acands, Inc.
6001 Marble, N.E.
Albuquerque, New Mexico 87110

I hereby certify that I mailed a copy of the foregoing pleading to opposing counsel of record this 16th day of June, 1977

IRVING MOORE

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

FINIS A. BASSHAM,

Plaintiff,

vs. No. 8431 Civil

OWENS-CORNING FIBER GLASS CORPORATION, et al.,

Defendants.

FILED
AT ALBUQUERQUE
JUL 8 1970
G. E. GREESON
CLERK

ANSWER

Defendant Johns-Manville Products Corporation, by its attorneys Rodey, Dickason, Sloan, Akin & Robb, answers the complaint of plaintiff as follows:

FIRST DEFENSE

The complaint of plaintiff fails to state a claim against this defendant upon which relief can be granted and in particular the complaint fails to specifically allege the special damages incurred by plaintiff in violation of the rules of this Court.

SECOND DEFENSE

1. Defendant admits the allegations of paragraphs 1, 2 and 3 of the complaint.

2. Defendant neither admits nor denies the allegations of paragraphs 4, 6, 7, 8, 9 and 10 of the complaint because said paragraphs do not pertain to this defendant.

3. Defendant admits the allegations of paragraph 5 of the complaint except that it denies that Prentice-Hall Corporation System is the agent for this defendant for service of process in New Mexico.

4. Defendant admits that it has and does manufacture insulation products as alleged in paragraph 11 of the complaint

but defendant denies the remaining allegations of said paragraph.

5. Defendant denies the allegations of paragraphs 12 through 25, inclusive, of plaintiff's complaint.

THIRD DEFENSE

If this defendant were negligent as alleged which is denies then the plaintiff Finis A. Bassham was contributorily negligent in the premises.

FOURTH DEFENSE

The plaintiff Finis A. Bassham assumed the risk of his alleged injury and disability, if any exists.

FIFTH DEFENSE

The complaint of plaintiff and all claims and causes of action stated therein are barred by the applicable statutes of limitations set forth in the New Mexico Statutes Annotated and in the statutes and codes of any other state pursuant to whose laws plaintiff is asserting a cause of action.

SIXTH DEFENSE

The plaintiff is guilty of laches by reason of his failure to file his action within a reasonable time after the discovery of his alleged injury.

SEVENTH DEFENSE

The accident and alleged injury were unavoidable and inevitable under the facts and circumstances existing in this case.

EIGHTH DEFENSE

This defendant denies that the plaintiff sustained any injury or disability as a result of contact with or use of any product manufactured by this defendant.

NINTH DEFENSE

The products which this defendant manufactured and sold were at all times reasonably fit and suitable for the purpose for which they were manufactured and sold and this defendant denies that the same were in any way defective for uses for which they were manufactured.

TENTH DEFENSE

If plaintiff did sustain any injury as a result of the use of any product manufactured by this defendant, which is denied, then such injury was sustained as a result of the occupation of the plaintiff in that he has been engaged as an insulator or worker in the insulation field for a number of years, and at all times knew or should have known that he was working in dust laden air which contained dust particles of all kinds, part of which were created by his own work and the work of other insulators and co-employees, and by the failure of plaintiff, his employer or the owner of the premises on which he was working to provide proper and adequate facilities for the elimination or reduction of dust-filled air any such injury as plaintiff may have sustained constitutes an occupational injury and disease resulting from long continued employment as an insulator and not as a result of any isolated incident or contact with any product manufactured by this defendant. As a result, this defendant says that it is not legally liable or responsible for any occupation disease which was suffered or sustained by plaintiff in the course of his employments over a number of years.

ELEVENTH DEFENSE

The sole proximate cause of the injury and disability allegedly sustained by the plaintiff was the negligence of third parties or persons other than this defendant.

TWELFTH DEFENSE

Defendant denies the existence of any warranty made on the part of this defendant and denies any fault or breach of warranty on the part of this defendant and further alleges that plaintiff was not within that class of persons to whom any warranty runs under the laws of the State of New Mexico.

THIRTEENTH DEFENSE

The alleged injury and disability were brought about or caused by transitory conditions arising in the course of plaintiff's work and plaintiff and his employers used their own manner, method and means of performing such work and this defendant owed no duty with respect to such work, nor was there any relationship between plaintiff and this defendant which created any duty on the part of this defendant regarding the manner or method in which the work was done or the conditions under which the plaintiff performed such work.

FOURTEENTH DEFENSE

Defendant fully and effectively excluded all warranties both express and implied.

FIFTEENTH DEFENSE

Any action for breach of express or implied warranty is barred by the plaintiff's failure to give defendant notice of the alleged breach within a reasonable time after it was discovered or reasonably should have been discovered.

SIXTEENTH DEFENSE

The injury alleged in this action did not proximately result from any alleged breach of warranty.

SEVENTEENTH DEFENSE

The plaintiff failed to mitigate his injury and the extent of his disability by use of reasonable care after the

discovery of such injury and disability, if any exists.

WHEREFORE, defendant Johns-Manville Products Corporation prays that the complaint of plaintiff be dismissed with prejudice and costs.

RODEY, DICKASON, SLOAN, AKIN & ROBB

By _____
Attorneys for Defendant
Johns-Manville Products
Corporation
P. O. Box 1888
Albuquerque, New Mexico

We hereby certify that we have mailed a copy of the foregoing pleading to opposing counsel of record this 7th day of July, 1970.

RODEY, DICKASON, SLOAN, AKIN & ROBB

By _____

Pliny The Elder in which there was mentioned a sickness of the lungs in slaves whose occupation was to weave asbestos into cloth? If so, when did you first become familiar with such reports?

ANSWER: No.

47. Are you familiar with the work of Peter A. Theodos, M.D., of Philadelphia, Pennsylvania, and the paper titled "Lung Biopsy in the Diagnosis of Pneumoconiosis", which was presented at the Ninth International Congress on Disease of the Chest, Copenhagen, Denmark, August 25, 1965, which paper was published in Diseases of the Chest, the official publication of the American College of Chest Physicians? If so, when did you become familiar with his work and paper?

ANSWER: No.

48. Are you familiar with the article by Paul Brodeur, titled "The Magic Mineral", published in The New Yorker, October 12, 1968? If so, when did you become familiar with such article?

ANSWER: Yes. Philip Carey Corporation became familiar with the article shortly after its publication.

49. Are you familiar with the article by Selikoff, Churg and Hammond published in the Journal of The American Medical Association in the Spring of 1964? If so, when did you become familiar with such article?

ANSWER: No.

50. Are you familiar with the article by Selikoff, Churg and Hammond titled "The Occurrence of Asbestosis Among Insulation Workers in the United States", published in December, 1965, in the Annals of the New York Academy of Sciences? If so, when did you become familiar with such article? Please refer to the list of 59 references at the end of said article and state with which ones, by number, you are familiar, and as to each, the date you became familiar with it.

ANSWER: No.

51. Are you familiar with the so-called Frye Report, made to the Surgeon General in 1965? If so, when did you become familiar with it?

ANSWER: No.

52. Did you have an agent or employee at the International Conference

on the Biological Effects of Asbestos, at the Waldorf-Astoria in New York, sponsored by the New York Academy of Sciences in 1964? If so, what is the name, address and title of such person or persons? If not, did you later become familiar with the reports of the discussions held in such conference, and state when you became familiar with them.

ANSWER: No.

53. Have you ever received any communication from Dr. Irving J. Selikoff, head of the Division of Environmental Medicine at New York City University's Mount Sinai School of Medicine, in which Dr. Selikoff requested information regarding the health experiences of workers in any of your plants? If so, when did you receive such communication, what was the content thereof, and what was your response?

ANSWER: No.

54. In your scientific and research department, do you have a library of books, articles and reports concerning asbestos and its affect upon the health of those who work with and around it? If so, who maintains the library, and what is his title? If so, please attach a bibliography to your answer herein, listing all of such books, articles, reports and writings of every nature on such subject, and as to each, state when it was that you first became familiar with it, if the date is different from the date of publication.

ANSWER: No.

PHILIP CAREY CORPORATION (Now Panacon Corporation)

By L. A. Pechstein, Jr.
L. A. Pechstein, Jr.
Secretary and General Counsel

STATE OF OHIO)
)ss.
COUNTY OF HAMILTON)

Before me, the undersigned authority, on this day personally appeared L. A. Pechstein, Jr., Secretary and General Counsel of Philip Carey Corporation (now Panacon Corporation), a corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and who, being by me first duly sworn, acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, as the act and

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF NEW MEXICO

FINIS A. BASSHAM,

Plaintiff,

-vs-

No. 8431 Civil

OWENS-CORNING FIBER GLASS CORPORATION; JOHNS-MANVILLE PRODUCTS CORPORATION; EAGLE-PICHER INDUSTRIES, INC.; RYDER INDUSTRIES, INC.; PHILIP CAREY CORPORATION; STANDARD ASBESTOS MANUFACTURING AND INSULATING COMPANY; and ACANDS, INC., formerly ARMSTRONG CONTRACTING AND SUPPLY CORPORATION; all corporations,

FILED
AT ALBUQUERQUE
JUL 8 1970
E. E. GREESON
CLERK

Defendants.

ANSWERS OF DEFENDANT ACANDS, INC.,
TO FIRST SET OF INTERROGATORIES OF THE PLAINTIFF

Comes the defendant Acands, Inc., and answer the first set of Interrogatories of the plaintiff as follows;

1. Please give the name and address of the president of your company, and of the chairman of the Board of Directors.

   ANSWER: J. W. Liddell, President and Acting Chairman of the Board; 1703 Marietta Avenue; Lancaster, Pennsylvania.

2. Are you engaged in the manufacture and sale of insulation products containing asbestos? If so, state during what portion of the period in question you were so engaged.

   ANSWER: Your defendant is not a manufacturer of insulation products.

3. What insulation product containing asbestos did you manufacture and sell during the period in question? List the product by trade name, if any, and by the advertised name, and by the nickname or name commonly used in the insulation.

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industry, and also list the product by description, e.g. asbestos type covering, or asbestos sheeting; and state the date that said product went on the market.

ANSWER: Your defendant is not a manufacturer of insulation products.

4. As to each product state the asbestos (by whatever name known) content.

ANSWER: Not applicable.

5. As to each product, state to what use you intended the product to be put, whether you intended it to be used by insulation workers, and the manner in which you intended said product to be used by insulation workers during the period in question.

Go into detail as to how you intended each product to be handled by those using the same in the insulation industry, with particular reference to how you intended the insulation users to unpackage the product, to cut, saw, break, shape, mix and apply said product, and whether or not you intended that the product be cut, shaped, mixed, prepared or applied at the job site.

Commence with the date that said product first went on the market, and if there has been any change in intended use, specify when the change occurred, what the intended use was before and after the change, and what notice, if any, you gave to the intended user relating to such change.

ANSWER: Not applicable.

6. As to each product, did such product reach the user or consumer without substantial change in the condition in which said product was manufactured and sold during the period in question? If not, state what the change in condition was, and how it came about.

Was it your intention that said product would reach the user or consumer without substantial change in the condition in which said product was manufactured or sold? If not, state what change you intended to occur in said product and how you intended such change to come about.

ANSWER: Not applicable.

7. As to each product, were the manufacturer, sale and distribution of said product under your exclusive control, or that of your agents, servants and employees during the period in question? If not, state who had and exercised any control over the manufacture, sale, or distribution of said product other than yourself, and state what that control was.

ANSWER: Not applicable.

8. As to each product, and its intended use, as described in your answer to Question #5, state whether you intended or expected that such use by insulation workers would result in the exposure of such workers to, and contact by said workers with, asbestos dust and fibers contained in said products, during the period in question.

ANSWER: Not applicable.

9. As to each product, and in its intended use, as described in your answer to Question #5, did such product have a propensity or property for causing dust containing asbestos fibers to be emitted into the air around the workers using said product? If your answer is "Yes", state whether you expected insulation workers to inhale microscopic asbestos fibers in the course of their use of said product, and if so, since when have you expected them to do so?

ANSWER: Not applicable.

10. As to each product, and in its intended use, as described in your answer to Question #5, did such product have a propensity or property for causing physical harm to insulation workers by reason of their inhalation of asbestos dust or fibers from said product or otherwise? If your answer is "Yes", state when you acquired the information that such is the case.

ANSWER: Not applicable.

11. Are you aware of any breathing apparatus, device, or safeguard which would eliminate or materially reduce any danger to insulation workers in the use or handling of any of the products? If so, please give the exact tradename and manufacturer of the device, or otherwise describe it in such a way that one can be located for examination and inspection. Do you have any in your possession?

ANSWER: Your defendant is in the contracting field, and when it handles insulating products as a contractor, and not as a manufacturer, your defendant uses, or instructs

it employees to use, approved respirators recommended by the U.S. Bureau of Mines.

12. Have you ever tested or examined any breathing apparatus, device or safeguard which was claimed to be able to eliminate or materially reduce any danger to insulation workers in the use or handling of any of the products? If so, give details as to where and when, and by whom such test or examination was conducted, and furnish a copy of the written report regarding such test or examination, and the conclusions therefrom. If you are aware of such tests made by others, please furnish the same information relating thereto.

ANSWER: See No. 11 above.

13. Do you have anyone from your company whose duty it is to make dust samplings, or dust level counts, in any of the places where your employees work? If so, explain the technique, state when such action was first initiated, how many persons are so engaged, how often such tests are made, what the purpose of such tests is, and what action, if any, has been taken following the findings of such tests.

ANSWER: Inasmuch as your defendant is not a manufacturer of insulating products, it has not made any samplings or tests. With respect to its employees, however, your defendant employs health and safety experts through its own individual insurance program, and follows their recommended procedure to reduce all health and safeth hazards at job sites.

14. Do you have anyone from your company whose duty it is to go to areas where your asbestos products are being used to make a dust level count? If so, state when you started such procedure, the purpose of it, and what action, if any, has been taken following your findings.

ANSWER: See No. 13 above.

15. Have you conducted any studies or experiments concerning the effects of inhalation of asbestos dust or fibers by your employees who manufacture or handle the products? If so, state the name, address, and title of those conducting such studies and experiments, when they were made, to whom the reports thereon were made, and when, and attach copies of such reports and studies. If so, state what action, if any, you took following such reports and studies.

ANSWER: See No. 13 above.

16. Have you conducted any studies or experiments concerning the effects of inhalation of asbestos dust or fibers by persons other than your employees, who use or handle the products, such as insulation workers? If so, state the name, address, and title of those conducting such studies and experiments, when they were made, to whom the reports thereon were made, and when, and attach copies of such reports and studies. If so, state what action, if any, you took following such reports and studies.

ANSWER: See No. 13 above.

17. Have you conducted any studies or experiments designed to eliminate or minimize the inhalation of asbestos dust and fibers by your own employees who manufacture or handle the products? If so, state the name, address and title of those conducting such studies or experiments, when they were made, to whom the reports thereon were made, and when, and attach copies of such reports and studies. If so, state what action, if any, you took following such reports and studies?

ANSWER: See No. 13 above.

18. Have you conducted any studies or experiments designed to eliminate or minimize the inhalation of asbestos dust and fibers by persons other than your own employees who use or handle such products, such as insulation workers? If so, state the name, address and title of those conducting such studies or experiments, when they were made, to whom the reports thereon were made, and when, and attach copies of such reports and studies. If so, state what action, if any, you took following such reports and studies.

ANSWER: See No. 13 above.

19. Do you have any statistics showing the number of your employees who are exposed to asbestos dust and fibers, and who have worked for you for twenty years or longer, who have lung disease? If so, please give such figures in detail.

ANSWER: Your defendant does not have such statistical data available.

20. Please state whether you have any knowledge of any deaths or serious lung disease among your employees which have been alleged to have resulted from inhalation of asbestos dust or fibers? If so, please give the numbers; and as to each, the name, where known, and address of such persons, the name and address of the treating doctor, and the date you were made aware of such allegation.

ANSWER: Your defendant has no knowledge of any deaths or serious lung disease among persons employed in its contracting capacity which have been medically attributed to the inhalation of asbestos dust or fibers.

21. Do you agree with the contention that asbestos dust and fibers cause or contribute to the disease mesothelioma? Do you agree with the contention that asbestos dust and fibers cause or contribute to the disease cor pulmonale? Do you agree with the contention that asbestos dust and fibers cause or contribute to the disease cancer? If so, and as to each, state when you arrived at such opinion or conclusion.

ANSWER: Your defendant has no knowledge or information, one way or the other, with respect to the matters inquired about in the 21st interrogatory.

22. Do you agree with the contention that asbestos fibers are of such a nature that once they are inhaled into the human lung they never dissipate or go away, but remain in the lung virtually indestructible, to infinity? If so, when did you arrive at that conclusion or opinion?

ANSWER: Your defendant has no knowledge or information, one way or the other, with respect to the matters inquired about in the 22nd interrogatory.

23. Do you agree with the contention that asbestos fibers have a tensile strength equal to that of piano wire? If so, when did you come to that opinion or conclusion?

ANSWER: Your defendant has no knowledge or information, one way or the other, with respect to the matters inquired about in the 23rd interrogatory.

24. Do you agree that there are approximately a million individual fibrils lying sideby side in a linear inch of chrysotile asbestos? If so, when did you come to that opinion of conclusion?

ANSWER: Your defendant has no knowledge or information, one way or the other, with respect to the matters inquired about in the 24th interrogatory.

25. As to each product, state whether it is possible for persons other than trained technicians or scientists to distinguish said product from similar products on the market. If your answer is "Yes", describe how such products can be distinguished.

ANSWER: Not applicable.

26. Do you agree with the contention that the inhalation of asbestos dust and fibers can result in asbestosis? If so, when did you arrive at that conclusion or opinion? If so, following your arrival at that opinion or conclusion, what action, if any, did you take to change your methods of manufacture, sale or distributing of any of the products? When did you take such action? Explain in detail, with particular reference to any warnings or instructions you may have issued regarding the use or handling of such products.

ANSWER: Your defendant has no knowledge or information, one way or the other, with respect to the matters inquired about in the 26th interrogatory.

27. Do you agree with the contention that insulation workers who use or handle the products over a period of several years, do thereby endanger their health? If so, in what way do they endanger their health? State all of the diseases they are likely to contract. If so, when did you arrive at that conclusion or opinion. If so, following your arrival at that conclusion or opinion, what action, if any, did you take to change your methods of manufacture, sale or distribution of the products? When did you take such action? Explain in detail, with particular reference to any warnings or instructions you may have issued regarding the use or handling of such products.

ANSWER: Your defendant has no knowledge or information, one way or the other, with respect to the matters inquired about in the 27th interrogatory.

28. As to each product, state whether you furnished instructions to the purchaser or ultimate user or consumer regarding the manner in which the products should be used. If so, furnish a copy of the text of such instructions, and state when and in what manner they were given, and to whom.

ANSWER: Not applicable.

29. As to each product, state whether you ever gave any warning to the purchaser or ultimate user or consumer, of any dangerous or harmful nature of the product? If so, state of what the warning consisted, when it was given, in what manner it was given, and to whom it was given. This question relates to any and all warnings of whatever nature, in connection with the product.

ANSWER: Not applicable.

30. As to each product, state whether you gave the purchaser or ultimate user or consumer any advice regarding what wearing apparel or protective equipment or appliances could be used to avoid any danger from the asbestos dust and fibers contained in said product. If so, furnish a copy of the text of such advice, and state when and what manner it was given, and to whom.

ANSWER: Not applicable.

31. As to each product, state whether you ever published any sales literature concerning the product. If so, please attach a copy of said literature to your answer, and state when said literature was published, to whom it was distributed, and over what period of time.

ANSWER: Not applicable.

32. What steps, if any, have you taken to protect your own employees from any danger from the inhalation of asbestos dust and fibers in the manufacture, sale or distribution of any of the products? State when you took such action, what action you took, the purpose for such action, and how much it cost you to take such action. In your answer please cover, among all other things, any architectural or design changes made in your manufacturing plant, the modification of any existing structures, the installation of any ventilation systems, and so forth.

ANSWER: Not applicable.

33. Please give the net worth of your company as of the end of your annual accounting period for each year since 1949.

ANSWER: I am unable to supply this information. The information may be obtained from J. W. Liddell, President.

34. Please state the net profit made by your company for each year since 1949.

ANSWER: I am unable to supply this information. The information may be obtained from J. W. Liddell, President.

35. Please give the total volume of sales by your company for each year since 1949, specifying what portion of such sales were of the products in question.

ANSWER: I am unable to supply this information. The information may be obtained from J. W. Liddell, President.