

NO. 96-3062

BRUCE D. DAVIS and JAMES R. DAVIS,
Individually and as Personal Representatives
of the Heirs and Estate of FRANKIE GENE
DAVIS, Deceased, et al.

Plaintiffs,

VS.

OWENS-CORNING FIBERGLASS
CORPORATION, et al.,

Defendants.

IN THE COUNTY COURT

EL PASO COUNTY, TEXAS

**SOUTHWESTERN BELL TELEPHONE COMPANY'S
THIRD AMENDED RESPONSE TO PLAINTIFFS' REQUESTS FOR DISCLOSURE**

COMES NOW, Defendant Southwestern Bell Telephone Company ("SWBT") and pursuant to TEX. R. CIV. PRO. 193, 194, and 195, files these Third Amended Responses to Plaintiffs' Requests for Disclosure as follows:

- (a) the correct names of the parties to the lawsuit;

ANSWER: Southwestern Bell Telephone Company

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

ANSWER: Based on developing evidence in this case, Plaintiffs perhaps should have sued Mountain States Bell or AT&T.

- (c) the legal theories and, in general, the factual basis of the responding party's claims or defense;

ANSWER:

Based on discovery conducted to date, SWBT states that it may assert the following legal theories or defenses:

**SOUTHWESTERN BELL TELEPHONE COMPANY'S THIRD AMENDED RESPONSE TO
PLAINTIFFS' REQUESTS FOR DISCLOSURE - Page 1**

Dallas 3 670539 v 1, 41335.00006

- 1) Lack of medical causation. SWBT states that until it has had sufficient opportunity to examine and/or evaluate through additional physician(s) Plaintiff's Decedent's alleged asbestos-related disease, SWBT contends that Decedent's injuries were either not caused by asbestos or caused by asbestos to which he was exposed while not working for the Defendant.
- 2) Lack of exposure to asbestos while employed by SWBT. Decedent was not exposed to asbestos in sufficient quantities, if he was exposed at all, during his employment with SWBT. Decedent's position as a repair technician caused him to work on customer premises that SWBT had no right or opportunity to control and where he had little or no exposure to asbestos. SWBT's safety practices established for its employees complied with applicable OSHA regulations and any other applicable laws. SWBT acted in accordance with applicable laws, regulations, and safety practices with regard to Mr. Davis and his work for SWBT. SWBT was not grossly negligent and is not otherwise liable to the Plaintiffs.
- 3) This Defendant is not responsible for the conduct alleged against Mr. Davis' employer between 1956 and 1978.

(d) the amount and any method of calculating economic damages;

ANSWER: Not applicable to SWBT.

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

ANSWER:

1. William J. Edens
Southwestern Bell Telephone
2308 Jim Dent Rd.
El Paso, Texas 79936
915-591-4630

Mr. Edens, a retired Manager Installation & Repair, worked for SWBT and before that,

Mountain States Bell, for 35 years. He will testify regarding the nature of work performed by Frankie Davis during his career and working conditions at various residential, commercial and industrial job sites. Additionally, he will testify to work and safety practices employed by the telephone company and premises owners of various commercial and industrial job sites between 1965 and 1990. Also, he will testify regarding the layout of various commercial and industrial job sites and identify where a telephone company employee might provide telephone service. Additionally, he will testify regarding Frankie Davis' alleged exposure to and use of asbestos-containing products as a telephone company employee. Further, he may testify regarding the corporate relationship and dealings among SWBT, Mountain States Bell, AT&T and any other former Bell System entity. See his deposition taken in this case.

2. Jose A. Marquez
Southwestern Bell Telephone
821 Southwestern
El Paso, Texas 79912
915-585-5822

Mr. Marquez, Manager Installation & Repair, has worked for SWBT and before that, Mountain States Bell for 29 years. He will testify regarding the nature of work performed by Frankie Davis during his career and working conditions at various residential, commercial and industrial job sites. Additionally, he will testify to work and safety practices employed by the telephone company and premises owners of various commercial and industrial job sites between 1971 and 1990. Also, he will testify regarding the layout of various commercial and industrial job sites and identify where a telephone company employee might provide telephone service. Additionally, he will testify regarding Frankie Davis' alleged exposure to and use of asbestos-containing products as a telephone company employee. Further, he may testify regarding the corporate relationship and dealings among SWBT, Mountain States Bell, AT&T and any other former Bell System entity. He may testify regarding the corporate conduct of SWBT and any other provider of telephone services. See his deposition taken in this case.

3. David Garcia
Southwestern Bell Telephone
500 Texas Rm. 330
El Paso, Texas 79901
915-521-6640

Mr. Garcia, Area Manager Installation & Repair, has worked for SWBT and before that, Mountain States Bell for 24 years. He will testify regarding the nature of work performed by Frankie Davis during his career and working conditions at various residential, commercial and industrial job sites. Additionally, he will testify to work and safety practices employed by the telephone company and premises owners of various commercial and industrial job sites between 1976 and 1990. Also, he will testify regarding the layout of various commercial and industrial job

sites and identify where a telephone company employee might provide telephone service. Additionally, he will testify regarding Frankie Davis' alleged exposure to and use of asbestos-containing products as a telephone company employee. Further, he may testify regarding the corporate relationship and dealings among SWBT, Mountain States Bell, AT&T and any other former Bell System entity. See his deposition taken in this case.

4. Marcus Bond, M.D.
1711 Arbutus Street
Golden, Colorado 80401
303-232-7832

The witness is expected to offer opinions regarding the merits of Plaintiffs' claims and the defenses offered by SWBT, including opinions on liability, damages, and causation issues. The witness is expected to testify that any asbestos exposure of Davis allegedly occurring as an employee of SWBT was not the cause, nor did it contribute to cause Davis' alleged injuries. The witness may testify that some other exposures to asbestos, was the cause of the mesothelioma, injuries, damages and death alleged herein. The witness may testify as to the "state of the art," and medical & scientific literature availability and content. Dr. Bond has worked for both AT&T, former parent of SWBT, and Mountain States Bell, and will offer opinions on their policies, procedures and conduct. He may also offer opinions on the Davis' jobs, his alleged exposure to asbestos, phone company work, the spectrum of hazards and occupational concerns relevant to the telephone company. He may compare the developing knowledge regarding asbestos hazards, such as textile mill studies in the 1930s and shipyard studies in the mid 1960s and how the products, doses, diseases and jobs studied compare or contrast with Plaintiffs' claims in this case. He may further testify about occupational medicine, medical & scientific literature, "state of the art," disease and causation. Further, he may testify regarding the corporate relationship and dealings among SWBT, Mountain States Bell, AT&T and any other former Bell System entity. He may testify as to any other matter raised by experts called by Plaintiffs or any other matter which he may be so qualified to testify. See his deposition taken in this case.

5. Morton Corn, M.D.
The Johns Hopkins University
3208 Bennett Point Road
Queenstown, Maryland 21658-1126

The witness may testify concerning regulatory requirements for the health and safety of workers exposed to asbestos, including OSHA, EPA and other state and federal requirements pertaining to asbestos. He may be asked to testify concerning the actions of SWBT, or any other entity at issue in this case or any others similarly situated under the same or similar circumstances existing at all times material to this case. He may testify about his knowledge of the processes involved in construction and federal and state standards applicable to employers, contractors and premises owners. The witness may testify concerning the potential hazards of different types of

asbestos, when such hazards were known or knowable by different segments of trade and industry. He may testify about industrial hygiene publications and literature from the 1940s to the present. He may also testify generally about the concept of dose-response, the evolution and use of threshold limit values and the knowledge that the telephone industry, contractors and premises owners had available to them during certain time periods. He may also testify regarding relative risk and OSHA risk models. He may testify about the nature of the working environments and the control and use of substances in such locations. He may testify about his knowledge of the composition and asbestos content, if any, of the products alleged to have been used by or around telephone company employees while performing telephone repair and installation, the ability of such products to emit asbestos fibers under certain conditions and the likelihood that Davis inhaled these fibers. The witness may also testify regarding the reasonableness of the corporate response of SWBT and others similarly situated concerning the potential hazards of asbestos usage and safety of workers under the same or similar circumstances. He may testify about the size, construction, layout and working environment of facilities where Davis worked. The witness may testify about the appropriateness of any telephone company's policies, procedures or actions with respect to health and safety and the significance of asbestos to those health and safety concerns. He may testify that telephone company actions with respect to any asbestos hazards posed to their workers were appropriate, not negligent or grossly negligent. He may also testify about epidemiology of asbestos-related disease, and the general scientific and medical literature on the topic. He will testify about the cohorts structured and that, between the late 1950s and the late 1970s, there were no epidemiological studies of any cohort similar to telephone company workers that showed any increased risk of asbestos-related disease. The witness may do research, gather facts, inspect the premises in question, and review relevant scientific and medical literature. He will testify regarding toxicology, engineering and industrial hygiene generally and particularly as they relate to alleged asbestos fiber exposure under different conditions, including the facts of this case. He may respond to testimony given by Plaintiffs' experts regarding any industrial hygiene issue including product testing and levels of asbestos that may be present in any given industrial, commercial or residential environment. He may testify as to any matter raised by experts called by Plaintiffs or any other matter which he may be qualified to testify.

6. Carlton "Bud" Dailey
10035 South Marlene
Affton, Missouri 63123

Mr. Dailey, a retired General Plant Training Supervisor, worked for SWBT and before that, Mountain States Bell for over 30 years. He is knowledgeable of SWBT's practices and procedures and safety rules and regulations. He may testify as to the many safety and health concerns that confronted telephone company employees and interaction between AT&T and regional operating telephone companies. Further, he may testify regarding the corporate relationship and dealings among SWBT, Mountain States Bell, AT&T and any other former Bell System entity. He may testify regarding any other matter relevant to phone company work that arises in this case. See his deposition taken in this case.

7. Herman Dean Goolsby
5329 Temple
El Paso, Texas
915-779-5068

He may testify about work practices and procedures and the customary practices among contractors and construction trades in the El Paso area in the 1960s and 1970s. See his deposition taken in this case.

8. Patrick Anderson
1000 Worsham
El Paso, Texas 79927
915-851-3244

He may testify about work practices and procedures and safety rules and regulations among telephone company employees in the 1960s and 1970s. Further, he may testify regarding the corporate relationship and dealings among SWBT, Mountain States Bell, AT&T and any other former Bell System entity. See his deposition taken in this case.

9. James Stuckey
8612 Grover Drive
El Paso, Texas 79925
915-778-9022

He may testify about work practices and procedures and safety rules and regulations among telephone company employees in the 1960s and 1970s. Further, he may testify regarding the corporate relationship and dealings among SWBT, Mountain States Bell, AT&T and any other former Bell System entity. See his deposition taken in this case.

10. Walter Schade
9800 Album
El Paso, Texas 79925
915-598-0072

He may testify about work practices and procedures and safety rules and regulations among telephone company employees in the 1950s, 1960s and 1970s. Further, he may testify regarding the corporate relationship and dealings among SWBT, Mountain States Bell, AT&T and any other former Bell System entity. See his deposition taken in this case.

11. Albert Lopez
1008 Magoffin
El Paso, Texas 79945
915-328-5651
12. Antonio Zubia
10929 Rye Lane
El Paso, Texas 79927
915-859-1676
13. Felix Benevides
2124 Diciembre
El Paso, Texas 79935
915-592-7075

Mr. Lopez, Mr. Zubia and Mr. Benevides may testify regarding the layout of various commercial and industrial job sites, use of products at those sites, location of telephone company equipment and any other matter discussed in their deposition taken in this case.

14. Debra Schmulbach
Southwestern Bell Telephone
Dallas, Texas 75201

Mrs. Schmulbach may testify about SWBT practices, procedures including installation and repair, work practices, health and safety rules, union contracts, medical and health care and any issues raised by plaintiffs regarding the defendant in this case.

15. Roger Wolhert
10 Remington
San Antonio, Texas

Mr. Wolhert may testify regarding the corporate relationship and dealings among SWBT, Mountain States Bell, AT&T and any other former Bell System entity and any other matter raised in his deposition taken in this case.

16. Gladys Haecker
8205 Traner Hale
Converse, Texas 78109

Ms. Haecker may testify regarding the corporate relationship and dealings among SWBT, Mountain States Bell, AT&T and any other former Bell System entity and any other matter raised in her deposition taken in this case.

All witnesses identified by Plaintiffs, live or by deposition, that have knowledge of relevant facts.

All witnesses deposed in this lawsuit.

We will supplement this answer according to the Texas Rules of Civil Procedure and this Court's Scheduling Order.

(f) for any testifying expert:

- (1) the expert's name, address, and telephone number;
- (2) the subject matter on which the expert will testify;
- (3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;
- (4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:
 - (A) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and
 - (B) the expert's current resume and bibliography.

ANSWER:

1. Marcus Bond, M.D.
1711 Arbutus Street
Golden, Colorado 80401
303-232-7832

The witness is expected to offer opinions regarding the merits of Plaintiffs' claims and the defenses offered by SWBT, including opinions on liability, damages, and causation issues. The witness is expected to testify that any asbestos exposure of Davis allegedly occurring as an employee of SWBT was not the cause, nor did it contribute to cause Davis' alleged injuries. The witness may testify that some other exposures to asbestos, was the cause of the mesothelioma, injuries, damages and death alleged herein. The witness may testify as to the "state of the art," and medical & scientific literature availability and content. Dr. Bond has worked for both AT&T, former parent of SWBT, and Mountain States Bell, and will offer opinions on their policies, procedures and conduct. He may also offer opinions on the Davis' jobs, his alleged exposure to asbestos, phone company work, the spectrum of hazards and occupational concerns relevant to the telephone company. He may compare the developing knowledge regarding asbestos hazards,

such as textile mill studies in the 1930s and shipyard studies in the mid 1960s and how the products, doses, diseases and jobs studied compare or contrast with Plaintiffs claims in this case. He may further testify about occupational medicine, medical & scientific literature, "state of the art," disease, fiber type, causation and epidemiology. He may testify as to any other matter raised by experts called by Plaintiffs or any other matter which he may be so qualified to testify. Further, he may testify regarding the corporate relationship and dealings among SWBT, Mountain States Bell, AT&T and any other former Bell System entity. See his deposition taken in this case.

2. Morton Corn, M.D.
The Johns Hopkins University
3208 Bennett Point Road
Queenstown, Maryland 21658-1126

The witness may testify concerning regulatory requirements for the health and safety of workers exposed to asbestos, including OSHA, EPA and other state and federal requirements pertaining to asbestos. He may be asked to testify concerning the actions of SWBT, or any other entity at issue in this case or any others similarly situated under the same or similar circumstances existing at all times material to this case. He may testify about his knowledge of the processes involved in construction and federal and state standards applicable to employers, contractors and premises owners. The witness may testify concerning the potential hazards of different types of asbestos, when such hazards were known or knowable by different segments of trade and industry. He may testify about industrial hygiene publications and literature from the 1940s to the present. He may also testify generally about the concept of dose-response, the evolution and use of threshold limit values and the knowledge that the telephone industry, contractors and premises owners had available to them during certain time periods. He may also testify regarding relative risk and OSHA risk models. He may testify about the nature of the working environments and the control and use of substances in such locations. He may testify about his knowledge of the composition and asbestos content, if any, of the products alleged to have been used by or around telephone company employees while performing telephone repair and installation, the ability of such products to emit asbestos fibers under certain conditions and the likelihood that Davis inhaled these fibers. He may further testify about fiber type and causation. The witness may also testify regarding the reasonableness of the corporate response of SWBT and others similarly situated concerning the potential hazards of asbestos usage and safety of workers under the same or similar circumstances. He may testify about the size, construction, layout and working environment of facilities where Davis worked. The witness may testify about the appropriateness of any telephone company's policies, procedures or actions with respect to health and safety and the significance of asbestos to those health and safety concerns. He may testify that telephone company actions with respect to any asbestos hazards posed to their workers were appropriate, not negligent or grossly negligent. He may also testify about epidemiology of asbestos-related disease, and the general scientific and medical literature on the topic. He will testify about the cohorts structured and that, between the late 1950s and the late 1970s, there were no epidemiological studies of any cohort similar to telephone company workers that showed any

increased risk of asbestos-related disease. The witness may do research, gather facts, inspect the premises in question, and review relevant scientific and medical literature. He will testify regarding toxicology, engineering and industrial hygiene generally and particularly as they relate to alleged asbestos fiber exposure under different conditions, including the facts of this case. He may respond to testimony given by Plaintiffs' experts regarding any industrial hygiene issue including product testing and levels of asbestos that may be present in any given industrial, commercial or residential environment. He may testify as to any matter raised by experts called by Plaintiffs or any other matter which he may be qualified to testify.

3. Dr. Mark Robert Wick
301 Peacock Drive
Charlottesville, VA 22903-9716
804-245-9613
804-245-9643

Dr. Wick is a pathologist. He may testify, live or by deposition, concerning his review of the medical records, pathology and/or work history of Plaintiff and Plaintiff's medical condition, and the cause of Plaintiff's medical condition. His testimony may also include discussion of asbestos and its effect on human health generally and Plaintiff's specifically, and the effect that other substances have on human health generally and Plaintiff's condition specifically. Dr. Wick may also testify regarding the medical conditions of Plaintiff based on review of medical records, x-rays, Plaintiff's experts' reports and supplemental reports and his training, experience and other special expertise. Dr. Wick may also testify concerning the increased risk, if any, of cancer faced by asbestos exposed workers and the prognosis of such individuals. He may further testify that Plaintiff suffered from a variety of critical medical problems that may have caused his death.

In addition, if called to testify, either live or by deposition, Dr. Wick is expected to provide testimony regarding the areas stated below:

- (1) the anatomy and function of the respiratory and circulatory systems, including the protective systems of the body with regards to the inhalation and retention of dust, and the diagnosis and treatment of disease affecting such systems;
- (2) the nature of asbestos and asbestos-related diseases;
- (3) the symptomatology, disease process and diagnosis of asbestosis and cancer associated with the respiratory system, peritoneum and peritoneal cavity;
- (4) the nature and extent of medical and scientific knowledge regarding any association of obstructive pulmonary disease with asbestos fiber exposure;

- (5) the effect of exposure to substances other than asbestos on the development and manifestation of obstructive and restrictive conditions and diseases of the respiratory system and other causes of obstructive and restrictive disease or defects of the respiratory system;
- (6) methods of diagnosis of various diseases, especially the means of establishing the differential diagnosis of alleged asbestos-related diseases with other non-asbestos-related diseases;
- (7) incidence of lung cancer among individuals with asbestosis or asbestos exposure as compared to non-asbestotic asbestos workers, non-asbestos exposed workers and to the general population;
- (8) cigarette smoking and its effects on the lungs and other organs;
- (9) the relationship of cigarette smoking to cancer of the lung and cancers of other body parts with reference to epidemiology studies and physiologic effect;
- (10) the difference between impairment and disability;
- (11) the effect of asbestosis or other asbestos-related disease, or asbestos exposure without asbestosis or other asbestos-related disease, on disability and life expectancy;
- (12) the lack of relationship between the presence of pleural plaques and a later development of any form of cancer;
- (13) the history of evolution and knowledge of asbestos related diseases;
- (14) the import of any exhibit introduced as evidence, or any items prepared for use or used for demonstrative purposes by any witness;
- (15) cancer incidence in the general population and among asbestos workers and its potential causes;
- (16) the incidence of mesothelioma among various kinds of workers exposed to asbestos, and the relative importance of various fiber types and the cause of mesothelioma; and
- (17) to the extent not covered above, asbestos medicine in general.

4. Gail Diane Stockman, M.D., Ph.D.
701 E. Marshall, Suite 4002
Longview, Texas 75601
903-753-0787

Dr. Stockman may testify concerning the examination and diagnosis of the physical condition of Plaintiffs and concerning the overall condition and relationship of that condition, if any, to Plaintiffs' alleged exposure to asbestos. She may further testify regarding fiber type, causation and epidemiology. The witness may also testify concerning the anatomy and function of the respiratory and circulatory system, the nature of asbestos, the disease process and diagnosis of asbestos and cancer associated with the respiratory system, the nature and extent of medical and scientific knowledge regarding the association of pulmonary disease with asbestos fiber exposure, the effect of exposure to substances other than asbestos on the development or manifestation of obstructive and restrictive conditions and diseases particularly in means of establishing the differential diagnosis of alleged asbestos diseases with other government warnings, smoking and other areas of the state-of-the-art, incidents of lung cancer among individuals with asbestosis compared with non-asbestos exposed workers and with the general population, and cigarette smoking and its effects on the lungs. She may further testify that Plaintiff suffered from a variety of other critical medical problems that may have caused his death.

5. Sam H. Cade, Jr., M.D.
Radiology Department
Baylor University Medical Center
3500 Gaston Avenue
Dallas, Texas 75242
214-820-3219

Dr. Cade is a B-reader and may testify regarding the radiographs of Plaintiffs.

6. David Garcia
Southwestern Bell Telephone
500 Texas Rm. 330
El Paso, Texas 79901
915-521-6640

Mr. Garcia, Area Manager Installation & Repair, has worked for SWBT and before that, Mountain States Bell for 24 years. He will testify regarding telephone company work, operations of phone systems, locations of phone systems, installation and repair of phone systems at places where plaintiff worked and SWBT procedures. He is both a fact witness and an expert on phone company procedures, worksite layout and the location, installation, usage and repair of phone company equipment. Further, he may testify regarding the corporate relationship and dealings among SWBT, Mountain States Bell, AT&T and any other former Bell System entity. See his

deposition taken in this case.

7. William J. Edens
Southwestern Bell Telephone
2308 Jim Dent Rd.
El Paso, Texas 79936
915-591-4630

Mr. Edens, a retired Manager Installation & Repair, worked for SWBT and before that, Mountain States Bell for 35 years. He will testify regarding telephone company work, operations of phone systems, locations of phone systems, installation and repair of phone systems at places where plaintiff worked and telephone company procedures. He is an expert on these matters and may also testify as a fact witness. Further, he may testify regarding the corporate relationship and dealings among SWBT, Mountain States Bell, AT&T and any other former Bell System entity. See his deposition taken in this case.

8. Jose A. Marquez
Southwestern Bell Telephone
821 Southwestern
El Paso, Texas 79912
915-585-5822

Mr. Marquez, Manager Installation & Repair, has worked for SWBT and before that, Mountain States Bell for 29 years. He will testify regarding telephone company work, operations of phone systems, locations of phone systems, installation and repair of phone systems at places where plaintiff worked and telephone company procedures. He is both a fact witness and an expert on phone company procedures, worksite layout and the location, installation, usage and repair of phone company equipment. Further, he may testify regarding the corporate relationship and dealings among SWBT, Mountain States Bell, AT&T and any other former Bell System entity. See his deposition taken in this case.

We will supplement this answer according to the Texas Rules of Civil Procedure and this Court's Scheduling Order.

- (g) any discoverable indemnity and insuring agreements;

ANSWER:

SWBT states that it is self-insured and has sufficient excess insurance to respond to a judgment in this action if found liable.

- (h) any discoverable settlement agreements;

ANSWER: None.

- (i) any discoverable witness statements;

ANSWER: None.

- (j) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills;

ANSWER:

Not applicable to SWBT.

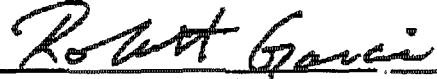
- (k) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party.

ANSWER:

These materials will be made available to Plaintiffs upon reasonable notice at the offices of Jenkins & Gilchrist, 1445 Ross Avenue, Suite 3200, Dallas, Texas 75202. Plaintiff has identified physicians and hospitals that treated Decedent and SWBT is currently obtaining same. SWBT will make these records available to Plaintiffs to the extent that Plaintiffs do not already have such records.

Respectfully submitted,

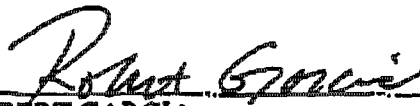
JENKENS & GILCHRIST,
a Professional Corporation
1445 Ross Avenue, Suite 3200
Dallas, Texas 75202
Telephone: (214)855-4500
Facsimile: (214)855-4300

By: 
ROBERT E. THACKSTON
State Bar No. 0078587
R. ROBERT GARCIA
State Bar No. 00796602

ATTORNEYS FOR SOUTHWESTERN BELL
TELEPHONE COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been forwarded to Plaintiffs' attorneys, Holly Huart and Stephanie Finch, Baron & Budd, 3102 Oak Lawn Ave., Suite 1100, Dallas, Texas 75219 via facsimile on this the 8th day of March, 2001.


R. ROBERT GARCIA

RAY, McCHRISTIAN & JEANS
Attorneys and Counselors at Law
A Professional Corporation

5822 Crown
El Paso, Texas 79912
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James A. Morris, III
Lethia Nunez
Jeff Ray**
Stacy Zavala

* Board Certified
Personal Injury-Tort Law
Texas Board of Legal Specialization

** Also Licensed in New Mexico
-- Also Licensed in Colorado

March 8, 2001

Ms. Nicole Brown Kennedy
BARON & BUDD, P.C.
The Centrum, Suite 1100
3102 Oak Lawn Avenue
Dallas, Texas 75219

RE: Martinez v. ASARCO Cause No. 2000-2591

Dear Ms. Kennedy:

Enclosed please find ASARCO Incorporated's Designation of Expert Witnesses which has been filed today.

Sincerely,

Robin Collins/SC
Robin Collins

RC/sc

RECEIVED EL/PR

3-9-01
DATE

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INITIALS

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SK- LC
AS
Ogumthoos
Leth
lsh*

NO. 2000-2591

EDIE
DIST. CT. **COPY**JOSE ROSENDO MARTINEZ, SR. and ELENA
LOPEZ MARTINEZ,

Plaintiffs,

vs.

GAF CORPORATION (successor to RUBEROID
CORPORATION), et al.,

Defendants.

01 MAR -8 PM 2:41
IN THE COUNTY COURT
EL PASO COUNTY, TEXASBY _____
DEPUTY

AT LAW NO. THREE

EL PASO COUNTY, TEXAS

ASARCO INCORPORATED'S DESIGNATION OF EXPERT WITNESSES

COMES NOW ASARCO INCORPORATED and hereby designates the following expert witnesses on whom it may rely at the trial of this matter. ASARCO reserves its right to designate further expert and fact witnesses as further discovery is conducted in this action.

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

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

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

4. All physicians who have prior to trial examined Plaintiff and/or Plaintiff's medical records, hospital records, laboratory test results, x-ray or other diagnostic imaging films and/or any other information of whatever kind relating to the health of Plaintiff, on behalf of any party, without

regard to that party's presence at the time of trial, who will testify as to the Plaintiff's clinical course and causation of any illness either live or by deposition testimony.

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

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

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

6. Jeremiah Lynch, C.I.H., 25 Waterman Avenue, Rumson, New Jersey. Mr. Lynch is a Certified Industrial Hygienist. Mr. Lynch will testify generally as to his background, training and experience. Mr. Lynch will testify as to the methods and procedures involved in industrial hygiene,

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

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

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

From 1949 to 1952 Dr. Mastromatteo served as the Medical Director of the Virden Local Health Unit, Virden, Manitoba. In 1952 Dr. Mastromatteo commenced employment as a physician and consultant with the Ontario Ministry of Health. In 1968 he became the Director of the Division of Occupational and Environmental Health of the Ontario Ministry of Health. He remained in that position until 1974. From 1966 to 1974, Dr. Mastromatteo also served as a Consultant in Occupational Diseases to the Ontario Workers' Compensation Board. From 1968 to 1974 Dr. Mastromatteo was a part-time professor at the University of Toronto and from 1972 to 1974 he was Professor and the Head of the Department of Occupational and Environmental Health of the University of Toronto.

In 1974, Dr. Mastromatteo became Chief of the Occupational Health and Safety Branch of the International Labour Office ("ILO") in Geneva, Switzerland. He remained in that position until 1976. From 1976 to 1985 Dr. Mastromatteo was employed as Director of Occupational Health for Inco Limited, Toronto, Canada. From 1985 to 1994 Dr. Mastromatteo was employed as the Program Director, Occupational and Environmental Health, of ORC Canada Inc., Toronto Canada. During that period, from 1985 to 1990, Dr. Mastromatteo also served as a consultant to the Occupational Health Policy Branch

of the Ontario Workers' Compensation Board. From 1976 to the present, Dr. Mastromatteo has served as an Honorary Consultant to the Occupational Health Clinic of St. Michael's Hospital, Toronto, Canada.

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

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

a change. Dr. Mastromatteo will testify as to the threshold limit value at different points in time and the medical knowledge that was available to the ACGIH concerning the health effects of asbestos.

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

8. Howard E. Ayer, C.I.H., 2812 Linwood Avenue, Cincinnati, Ohio. Mr. Ayer is a Certified Industrial Hygienist and a Certified Safety Professional. He is Emeritus Professor of Environmental Health, Division of Environmental Hygiene and Safety, University of Cincinnati. Mr. Ayer received his Bachelors in Chemical Engineering in 1948 from the University of Minnesota. He received a Masters of Science in Industrial Hygiene Engineering from Harvard University in 1955.

Mr. Ayer was employed by the United States Public Health Service (USPHS) from 1948 to 1972. During that time period he served with the National Institute for Occupational Safety and Health, and its predecessor organizations (Division of Occupational Health, Occupational Health Program and Bureau of Occupational Safety and Health), assigned by the USPHS to the Kansas State Board of Health, the Occupational Health Field Station in Salt Lake City, Utah, and the Occupational Health Field Headquarters in Cincinnati, Ohio. Mr. Ayer was Assistant Chief of the Engineering Section from 1961 to 1964, Chief from 1964 to 1967, and Assistant Director of the Division of Field Studies from 1967 to 1972. Mr. Ayer has been with the University of Cincinnati, Institute of Environmental Health (Kettering Laboratory) as a Professor and Emeritus Professor since 1972. From 1982 to 1983, Mr. Ayer took a sabbatical year in safety engineering at Texas A&M.

Mr. Ayer has served on numerous committees in the field of industrial hygiene. As a member of the ACGIH, Mr. Ayer served on the Air Sampling Instruments Committee, the Energy Committee, the Ventilation Committee, and the Committee on Environmental Factors in the Pneumoconioses (which he chaired for three years). Mr. Ayer also chaired the ad hoc joint AIHA-ACGIH Committee on Uniform Methods in Impinger Counting. Mr. Ayer has authored over 40 published papers on matters of industrial hygiene.

Mr. Ayer's testimony will be based on his knowledge, training and experience in the field of industrial hygiene as it relates to asbestos and asbestos-containing products. Mr. Ayer will also testify as to the state of industrial hygiene at various points in time.

Mr. Ayer may also testify as to the asbestos exposures which Plaintiff would have had at various times during his employment history. Defendant ASARCO reserves the right to supplement this information based on documents or testimony concerning exposure levels which to date have not been discovered.

9. Arthur M. Langer, Ph.D., Director, Environmental Sciences Laboratory of the Institute of Applied Sciences, Brooklyn College of the City University of New York, Brooklyn, New York 11210. Dr. Langer received his Bachelor of Arts degree in Geology from Hunter College, City University of New York in 1956. In 1962, Dr. Langer received his Master of Arts in Petrology (geology) from Columbia University. Dr. Langer received his Ph.D. in Mineralogy from Columbia in 1965.

Dr. Langer may testify as to his background, training, experience, fellowships, memberships and other professional activities, honors and awards, editorial board service, appointments, publications in peer reviewed journals, abstracts and symposia proceedings, contributions to books, monographs and reports, national, international and regional committees and consultations, national and international invited seminars, lectures, meetings and conferences, and his participation in post-graduate education

courses as fully set forth on his C.V. Dr. Langer may further testify as to his extensive study and experimentation with regard to the family of minerals commonly referred to as asbestos.

10. Robert Murray, M.D., South Hill, Church Road, Newton Green, Sudbury, Suffolk, C010 0QP, United Kingdom. Dr. Murray was an occupational health consultant. He qualified in medicine in 1939 at Glasgow University. From 1941 to 1946 he served in the R.A.M.C. in West Africa, India and Burma and was mentioned in despatches. Dr. Murray received his Diploma in Public Health in January, 1947. In April 1947 he became one of only 12 of Her Majesty's Medical Inspectors of Factories and was assigned to the East Lancashire Division based in Manchester where he remained until 1956. While there, his Chief was E.R.A. Merewether. Dr. Murray regularly visited the asbestos factories within his jurisdiction including Turner Brother's Asbestos, British Belting and Asbestos, and Cape Asbestos.

As a Medical Inspector, Dr. Murray's duties included assisting the District Inspector in the implementation of those parts of the Acts and Regulations dealing with occupational health. This included the Asbestos Industry Regulations of 1931.

In 1949 he received the Diploma in Industrial Health of the Society of Apothecaries and lectured in Professor Lane's Department of Occupational Health in Manchester.

Dr. Murray joined the International Labour Office (ILO) in Geneva in 1956 and remained there until 1961. Dr. Murray then became Medical Advisor to the TUC in London, a post which he held until 1974. During the 1960's and 1970's he assisted the TUC in its actions against asbestos which lead to the Asbestos Regulations of 1969. In 1974, Dr. Murray began independently consulting in occupational health. He consulted with a number of firms and organizations including the Asbestos Information Association. He served as the Convenor of the Medical Advisory Panel and Scientific Advisory Panel until 1992. In 1975 he became Secretary-Treasurer of the Permanent

Commission on Occupational Health, now known as the International Commission on Occupational Health, and from 1981 to 1987 he was its President.

Dr. Murray's other qualifications include Membership (1963) and later Fellowship (1970) of the Royal College of Physicians of Glasgow, honorary Doctor of Technology of the University of Bradford, honorary Fellowship of the Institution of Occupational Safety and Health, Fellowship of the Faculty of Occupational Medicine of the Royal College of Physicians of Ireland, Fellowship of the corresponding Faculty of the Royal College of Physicians of London, honorary Fellowship of the Royal Society of Medicine, honorary Fellowship of the Institute of Occupational Hygienists and honorary Doctor of Science of the University of Glasgow.

Dr. Murray kept in close touch with the increasing amount of literature concerning asbestos. He assisted the Asbestos Institute in Montreal in its efforts to ensure the safe use of asbestos. He participated in the ILO discussions in 1985 and 1986 which resulted in the Convention and Recommendation on the Safe Use of Asbestos and participated in seminars in Turkey, Malaysia, Thailand and Taiwan.

On the basis of Dr. Murray's personal knowledge and experience concerning issues regarding the health hazards of asbestos, and the historical developments relating to the development of knowledge concerning asbestos-related diseases and his knowledge of the medical literature, Dr. Murray will testify by deposition or videotape as to the state of knowledge concerning what an employer could have and should have known during particular time periods with regard to both the dangers of asbestos use and methods of minimizing those dangers via proper hygiene measures.

11. Robert Brown, 1169 Pointeview Road, Chapin, South Carolina. Mr. Brown received his B.S in chemical engineering from the University of South Carolina in 1935. In or about 1948

or 1949, he obtained a Master of Public Health Degree from Johns Hopkins University School of Hygiene and Public Health.

Mr. Brown began his career in 1936 as a chemical engineer with the Division of Industrial Hygiene of the South Carolina State Board of Health where he worked with an industrial hygiene physician. Mr. Brown was responsible for performing a complete survey on a large sampling basis, including dust studies, of South Carolina industries and to develop information of any existing or suspected industrial hygiene problems.

In January, 1942, Mr. Brown was employed as the Chief of Industrial Hygiene Services for the Health Division of the City of St. Louis, Missouri. In 1949, he accepted a position on the faculty of the School of Public Health at Yale University where he taught public and occupational health. In 1951, Mr. Brown joined the Maryland State Department of Health to facilitate the development of the Maryland Bureau of Industrial Hygiene. Mr. Brown accepted a position with the National Sanitation Foundation in Ann Arbor, Michigan in 1965. In 1967 he became the president of the National Sanitation Foundation and remained in that capacity until his retirement in 1980.

Mr. Brown was a charter member and organizer of the National Conference of Governmental and Industrial Hygienists (NCGIH), established in or around 1938. This organization later changed its name to the American Conference of Governmental and Industrial Hygienists (ACGIH). Mr. Brown served as a member of this organization's Executive Committee, Constitutional Review Committee and Industrial Hygiene Codes Committee. The latter committee was responsible for establishing maximum allowable concentrations (MAC) and threshold limit values (TLV). In 1946 the Subcommittee on Threshold Limits of the ACGIH recommended a MAC for asbestos of 6 million particles per cubic foot of air.

Mr. Brown was also a member of the American Industrial Hygiene Association (AIHA). This organization also proposed TLV's and MAC's which were published as Hygiene Standards in the April, 1958 issue American Industrial Hygiene Association Journal and recommended maximum atmospheric concentrations for asbestos over 8 hours of 5 million particles per cubic foot of air. This publication also listed potential hazards of asbestos which noted that in addition to asbestosis there had been reports of an increased risk of lung cancer.

On the basis of Mr. Brown's personal knowledge of the facts surrounding the adoption of asbestos exposure standards, his training and experience in the areas of industrial hygiene and his review of the literature, Mr. Brown will testify by videotape or deposition, with regard to the composition of the membership of the ACGIH and its predecessor, the NCGIH and the AIHA. Mr. Brown will also testify by videotape or deposition, with regard to the facts and circumstances surrounding the proposal and adoption of the asbestos standards and his involvement in these processes. In addition, Mr. Brown may testify by videotape or deposition, with regard to the state of industrial hygiene knowledge during the 1930's, 1940's and 1950's.

12. Leonard J. Bristol, M.D. Dr. Bristol received his M.D. in 1944 from the Long Island College of Medicine. From 1944 to 1945 he had a general rotating internship at St. Catherine's Hospital in Brooklyn, New York and from July, 1945, to April, 1946, was a resident in radiology at the Long Island College Hospital. From 1946 to 1948, Dr. Bristol was a radiologist at the United States Naval Hospital, National Naval Medical Center in Bethesda Maryland. During that period of time he also served as a full-time fellow in the Department of Radiology at the Johns-Hopkins University Medical School. He was certified by the American College of Radiologists in 1949. In 1949, he assumed a full-time position as a radiologist at the Trudeau Sanatorium and the Saranac Lake Laboratory where he remained through the end of 1978. Dr. Bristol has been engaged in the

practice of radiology at the General Hospital in Saranac Lake, the Placid Memorial Hospital, in Lake Placid, the Alice Hyde Hospital in Malone, New York and was a member of the Department of Radiology at the Edward L. Trudeau Foundation through 1978.

Since 1949 approximately 50 percent of Dr. Bristol's practice involved chest diseases and 25 to 30 percent of his overall practice involved occupational lung disease. He has reviewed several hundred thousand films of workers with occupational lung disease. Dr. Bristol was instrumental in the development of the ILO/UICC classifications for asbestos related diseases.

On the basis of Dr. Bristol's knowledge, training and experience as a radiologist and his personal knowledge of the research and experiments conducted by the Trudeau Foundation and Saranac Laboratories, Dr. Bristol may testify by deposition or videotape as to the general radiological characteristics and diagnosis of asbestos-related diseases.

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

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

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

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

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

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

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

Respectfully submitted,

RAY, McCHRISTIAN & JEANS, P.C.

A Professional Corporation

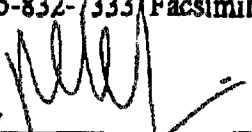
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Date: March 8, 2001

By 

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Attorneys for Defendant

ASARCO Incorporated, formerly known as

American Smelting and Refining Company

CERTIFICATE OF SERVICE

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

See Attached Service List

Delivered Via:

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

By 

Of Counsel

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NO. 2000-2591

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JOSE ROSENDO MARTINEZ, SR. and ELENA
LOPEZ MARTINEZ,

IN THE COUNTY COURT
EL PASO COUNTY, TEXAS

Plaintiffs,

vs.

GAF CORPORATION (successor to RUBEROID
CORPORATION), et al.,

Defendants.

AT LAW NO. THREE

DEPUTY

EL PASO COUNTY, TEXAS

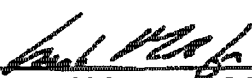
CERTIFICATE OF WRITTEN DISCOVERY

Defendant hereby certifies to the Court that the following discovery requests, in the
above-referenced cause, has been properly served upon Plaintiff.

1. Defendant ASARCO Incorporated's Designation of Expert Witnesses.

Respectfully Submitted,

RAY, MCCHRISTIAN & JEANS, P.C.

By: 

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Attorneys for Defendant,
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as American Smelting and Refining Co.

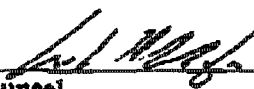
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By 
Of Counsel