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August 25, 1988

Mr. Lawrence Madeksho
8320 Gulf Freeway
Suite 218
Houston, TX 77087

RE: Tommie L. Heathman, et ux v. Owens-Corning
Fiberglas Corp., et al.; C. A. No. 87-C-1934

Dear Mr. Madeksho:

Enclosed is Defendant Owens-Illinois, Inc.'s Answers
to Interrogatories to the first set of interrogatories.

Very truly yours,

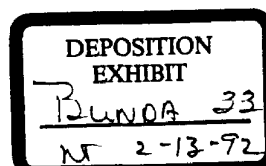
George Shipley, Jr.
George T. Shipley

GTS:197
Enclosures

cc: Mr. Robert E. Ballard
Mr. Jeff McClure
Mr. Jack Manning



047CJMCN/056B01



NO. 87-C-1934

TOMMIE L. HEATHMAN, ET UX	\$	IN THE DISTRICT COURT OF
	\$	
v.	\$	BRAZORIA COUNTY, TEXAS
	\$	
OWENS-CORNING FIBERGLAS	\$	
CORPORATION, et al.	\$	23RD JUDICIAL DISTRICT

OWENS-ILLINOIS, INC.'S ANSWERS
TO PLAINTIFFS' INTERROGATORIES

TO: Tommie L. Heathman, Plaintiff, by and through his attorneys of record, Lawrence Madeksho, 8320 Gulf Freeway, Suite 218, Houston, Texas 77017, and Robert E. Ballard, Abraham, Watkins, Nichols, Ballard, Onstad & Friend, 800 Commerce Street, Houston, Texas 77002.

Owens-Illinois, Inc. (hereinafter "Owens-Illinois"), one of the defendants in the above-entitled and numbered cause, files the attached answers to the interrogatories served on it by plaintiffs.

Respectfully submitted,

BAKER & BOTTS

By



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Attorneys for Defendant
Owens-Illinois, Inc.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document was sent by hand-delivery or certified mail, return receipt requested, to all counsel of record on this 25th day of August, 1988.


George T. Shipley

PRELIMINARY STATEMENT

Some of the events which may be relevant to the matters inquired about by plaintiff's interrogatories apparently occurred more than thirty-five years ago. In addition, effective April 30, 1958, Owens-Illinois disposed of the business involved in this action by way of sale of that business to Owens-Corning Fiberglas Corporation. Since that time, Owens-Illinois has not engaged in any such business. It does not now and it has not since that sale manufactured, distributed or sold any asbestos-containing products. As a result of the foregoing factors, many of the individuals who might have had personal knowledge of the matters to which plaintiff's interrogatories relate are deceased, or are otherwise unavailable to Owens-Illinois, and investigations to date indicate that at least some documents which relate to matters inquired about by these interrogatories may have been transferred to Owens-Corning Fiberglas Corporation with the transfer of the business in question in 1958. Owens-Illinois is engaged in a continuing investigation in an attempt to locate, confirm the transfer of, or confirm the absence of, such documents and is also engaged in a continuing investigation into the matters inquired about in these interrogatories. Unless otherwise stated in an answer to a specific interrogatory, the answers set out hereinafter are limited to the period during which Owens-Illinois manufactured asbestos-containing insulation products and to the facilities related

to that business. The following is a part of and is incorporated by reference in every answer provided hereinafter:

This answer is accurate as of the date made. However, Owens-Illinois' investigation is continuing, and Owens-Illinois cannot exclude the possibility that it may be able to obtain more complete information or even information which indicates that the answer being supplied is incorrect. Owens-Illinois objects to answering this interrogatory in regard to any period of time other than the period during which it engaged in the business involved in this case which ended in mid-1958 or concerning any facility not related to that business, on the basis that any such answer would be irrelevant to the subject matter of the pending litigation, would not be reasonably calculated to lead to the discovery of admissible evidence, and would be burdensome and oppressive.

Furthermore, Owens-Illinois objects to the instructions and definitions supplied by plaintiff with regard to these interrogatories, on the basis that the definitions are overbroad, vague, and often inconsistent with the normal usage and meaning of such words, and the instructions are overbroad, burdensome and constitute an unreasonable expansion of the interrogatories themselves. Owens-Illinois therefore gives notice that it does not consider itself bound by the instructions and definitions propounded by plaintiff, and instead shall answer the interrogatories in a manner consistent with a normal understanding of the language used in the answer and to the extent necessary to fairly and fully answer the interrogatory.

ANSWERS TO INTERROGATORIES

1. State the name, address and position of each individual providing any information in the answers to this set of interrogatories.

ANSWER: Arthur H. Smith, Assistant Secretary of Owens-Illinois, Inc., One SeaGate, Toledo, Ohio 43666.

2. Has Defendant been sued in its correct name? If not, please state this defendant's correct name.

ANSWER: Yes.

3. State the names of any insurance companies that will have to pay any portion of the verdict against this defendant in this case.

ANSWER: Aetna Casualty & Surety Co. Defendant is presently engaged in litigation with other insurance carriers over possible insurance coverage. This dispute has not been resolved as yet.

4. How many punitive damage awards has this defendant actually paid in asbestos-related disease bodily injury cases? If so, please list the cases and the name of the plaintiff's attorney.

ANSWER: Owens-Illinois objects to this interrogatory as being vague, ambiguous, irrelevant, overly broad, burdensome and oppressive, not reasonably calculated to lead to the discovery of admissible evidence and not limited to any issue which is the subject of this case.

5. Please state the dates and types of asbestos-containing products and materials this defendant has at any time manufactured, sold or distributed from the years 1900 to 1988.

ANSWER: Owens-Illinois Glass Company began limited pilot plant operations involving the production of "Kaylo" asbestos-containing products in 1943. It began the manufacture of commercial quantities of "Kaylo" asbestos-containing products in about 1948 and continued such manufacture until about April 30, 1958. This defendant's asbestos-containing products were hydrous calcium silicate materials. They were manufactured in two forms, block and pipe covering. It was a pre-molded, rigid product which was not intended or required to be molded or mixed in application. It was manufactured in standard premolded shapes and sizes intended to minimize cutting of pieces in application. It appears that the product was applied by methods including gluing, tying, strapping, or wiring it to pipe. It appears that a limited amount of its product was cut during application. Roof deck was intended to be laid on or fastened to building frame members and water-proofed and was manufactured from 1948-53. Fire door core materials and laminated panels were manufactured from 1948-53.

6. Has this defendant ever filed suit against any insurance companies for coverage concerning asbestos-related disease bodily injury claims filed against this defendant? If so, please state the style of the cases, where the cases are filed and when the cases were filed.

ANSWER: Defendant objects to this interrogatory as irrelevant, immaterial, and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections, see Owens-Illinois, Inc. v. Aetna Casualty and Surety Company, 597 F. Supp. 1515 (D.D.C. 1984); and Owens-Illinois, Inc. v. United Ins. Co. and Owens Ins. Ltd., in the Superior Court of New Jersey, Law Division, No. C-5045-84.

The litigation between Owens-Illinois and Aetna Casualty and Surety Co. has been settled. The terms and conditions of the settlement agreement are confidential, and as a consequence, the parties are precluded from disclosing the terms or contents of the agreement.

7. If this defendant has answered interrogatory no. 6 in the affirmative, please state the basis of this defendant's claims that the insurance carriers owe coverage for the various years and policies purchased concerning insurance for general liability coverage and bodily injury claims resulting from asbestos exposure.

ANSWER: See the answer to interrogatory no. 6. Owens-Illinois also objects to this interrogatory as vague, greatly overbroad and unduly burdensome. Legal positions on insurance coverage are based on different considerations and are not material in this action. Without waiving these objections, Owens-Illinois states that in general, its claims were based on the language of insurance policies, the drafting history of those policies, applicable principles of insurance law, and insurance coverage decisions.

8. Does this defendant admit that asbestos-related disease bodily injury begins upon inhalation of asbestos fibers and continues through to a point in time until the disease and injury manifests itself by becoming clinically detectable? If not, please state this defendant's position as to when asbestos-related disease bodily injury begins.

ANSWER: This defendant objects to this interrogatory on the basis that it is an improper form of discovery. This interrogatory would more appropriately be a request for admission. This question calls for a medical opinion which defendant is not equipped to render. Defendant further objects because this interrogatory is not capable of a generalized answer. The presence or absence and nature of asbestos-related

disease in an individual must be determined on a case-by-case basis.

9. Does this defendant admit that asbestos-related disease bodily injury begins upon inhalation of asbestos fibers and continues through to the time of death of human beings exposed to asbestos? If not, please state this defendant's position as to when asbestos-related disease bodily injury stops.

ANSWER: See answer to interrogatory no. 8.

10. Did this defendant ever spend one cent to test its asbestos-containing products before the year 1964 to determine if they exposed users and consumers of these products to risks of adverse health consequences? If so, what did this defendant tell the users and consumers about the results and conclusions of such tests?

ANSWER: Owens-Illinois objects to this interrogatory on the grounds that it is argumentative, overly broad, vague, and seeks information which is not relevant to any issue in this case and not calculated to lead to the discovery of admissible evidence. Without waiving these objections, this defendant ceased the manufacture, sale and distribution of asbestos-containing products in 1958 and does not have any records from which it can obtain information sufficient to answer this interrogatory.

During May 1979, various papers and reports were produced by an employee of the Trudeau Institute, Mr. Allan Logie, regarding animal experiments conducted at laboratories at Saranac Lake involving dust collected during the Kaylo manufacturing process. These papers and reports may contain information relating to the substance of this interrogatory. This defendant has not been able to find these papers and reports in its business records or correspondence although it has searched for and continues to search for them.

This defendant's counsel obtained copies of some of the papers and reports produced by Mr. Logie. However, these copies constitute only a portion of a larger volume of papers and reports which this defendant has not copied. They are available through Winne, Banta, Rizzi, Hetherington & Basralian, 25 E. Salem Street, Hackensack, New Jersey. This defendant also has reason to believe that plaintiff's counsel has copies of the documents produced by Mr. Logie. Other documents possibly relating to this interrogatory may have been produced by Owens-Corning Fiberglas Corporation in the asbestos litigation.

These documents found at Saranac Lake and at Owens-Corning Fiberglas Corporation and elsewhere, indicate that during the period of time when Owens-Illinois was in the business of manufacturing asbestos-containing products, the state of government, industrial hygiene and medical community knowledge was that there was a recognized safe exposure level for asbestos dust and that persons installing insulation were not exposed to excessive or hazardous levels of asbestos dust. The foregoing documents also indicate that Kaylo plant employees were x-rayed periodically and displayed no asbestos-related chest disease; that this defendant made appropriate efforts to provide ventilation and to control the emissions of all dust emitted during the manufacturing process within recognized safe levels of exposure, including the use of respirators in some instances, dust collection equipment and other devices as necessary; and that therefore during the period in which this defendant was in the business of manufacturing Kaylo it had no reason to believe that the foreseeable use of Kaylo would create a hazard to users.

The documents produced by Owens-Corning Fiberglas Corporation indicate that the September 1955 publication in the A.M.A. Archives of Industrial Health was a publication of inhalation experiments.

To the extent that this interrogatory seeks the production of documents, such documents, as outlined in this response, have not been found as part of this defendant's records and, to the extent that this defendant is in possession of copies of documents, it possesses copies only of documents collected in preparation for litigation. This defendant objects to producing the same. The documents are available from their proper source.

11. Did this defendant ever tell the hourly workers in this defendant's plants and factories that handled or processed asbestos, that asbestos could cause cancer? If so, when and how were these hourly workers told?

ANSWER: Defendant objects to this interrogatory because it contains an implicit assumption of matters not otherwise established, which renders the interrogatory argumentative, incapable of fair and correct answer, and without foundation. This interrogatory seeks information that is irrelevant because there is no allegation in this suit that the plaintiff, who alleges injury as a result of using finished products, was a factory worker. Defendant objects to this interrogatory as it fails to delineate specific time periods, rendering the question overbroad. Without waiving these objections, this defendant ceased the manufacture, sale and distribution of asbestos-containing

products in 1958. This defendant has not found information in its records sufficient to enable it to answer this interrogatory. However, defendant is informed and believes that at no time prior to the time it ceased was there reason to believe that the medical and scientific community accepted that there was a causal connection established between exposure to asbestos and a risk of contracting cancer.

12. Did this defendant ever tell the hourly workers in this defendant's plants and factories that handled or processed asbestos, that taking asbestos home on their work clothes could cause cancer in their wives and children. If so, when and how were these hourly workers told.

ANSWER: See response to Interrogatory 11.

13. Did this defendant ever tell the hourly workers in this defendant's plants and factories that handled or processed asbestos, that asbestos could cause mesothelioma? If so, when and how were these hourly workers told?

ANSWER: Defendant objects to this interrogatory because it contains an implicit assumption of matters not otherwise established, which renders the interrogatory argumentative, incapable of fair and correct answer, and without foundation. This interrogatory seeks information that is irrelevant because there is no allegation in this suit that the plaintiff, who alleges injury as a result of using finished products, was a factory worker. Defendant objects to this interrogatory as it fails to delineate specific time periods, rendering the question overbroad. Without waiving these objections, defendant is informed and believes that at no time prior to 1958, when Owens-Illinois ceased manufacturing or selling asbestos-containing insulation products, was there reason to believe that the medical and scientific community accepted that there was a causal connection established between exposure to asbestos and a risk of contracting mesothelioma.

14. Did this defendant ever tell the hourly workers in this defendant's plants and factories that handled or processed asbestos, that taking asbestos home on their work clothes could cause mesothelioma in their wives and children? If so, when and how were these hourly workers told?

ANSWER: See response to Interrogatory 13.

15. Does this defendant admit that the dangers of asbestos exposure to plant and factory workers that handled or processed asbestos was known by at least the year 1900?

ANSWER: Defendant objects to this interrogatory on the basis that it is an improper form of discovery. This interrogatory would more appropriately be a request for admission. Defendant objects to this interrogatory on the grounds that it is irrelevant and not calculated to lead to the discovery of admissible evidence; this case does not involve a factory worker, but rather an individual alleging exposure to finished products. The interrogatory is misleading, vague and ambiguous insofar as it inquires generally into the "dangers of asbestos exposure" without adequate specificity to enable defendant to respond. Subject to these objections, see defendant's answers to interrogatories nos. 11-14.

16. Please state the names, addresses and substance of the testimony of all witnesses that this defendant will call to testify at the trial of this case.

ANSWER: This interrogatory is beyond the scope of discovery permitted by Tex. R. Civ. P. 166b and defendant objects to it. See Employers Mutual Liability Ins. Co. of Wisconsin v. Butler, 511 S.W.2d 323 (Tex. Civ. App. -- Texarkana 1974, writ ref'd n.r.e.). Defendant will comply with any scheduling orders entered by the Court directing the parties to identify witnesses and exhibits.

17. Please list all exhibits that this defendant will use during the trial of this case.

ANSWER: See answer to interrogatory no. 16.

18. Please state the names and addresses of all expert medical witnesses and medical consultants this defendant has used or retained in litigation against this defendant's insurance carriers for coverage regarding asbestos-related bodily injury and property damage claims filed against this defendant.

ANSWER: Defendant objects to revealing the name of any expert whom it has consulted, except as to employment for testimony at trial on the grounds of: (a) the work product privilege; (b) attorney-client privilege; (c) the interrogatory seeks information which is irrelevant and not calculated to lead to the discovery of admissible evidence.

19. Does this defendant have any medical directors, medical consultants, industrial hygienists or environmental consultants on its payroll? If so, please state their name, address, and date they went on this defendant's payroll.

ANSWER: Defendant objects to this interrogatory on the basis that it seeks information which is not relevant

to the subject matter of this litigation and is not reasonably calculated to lead to the discovery of admissible evidence, except as it relates to the period of time pertinent to this litigation. This defendant has not manufactured or sold insulation products that contain asbestos since 1958.

AFFIDAVIT

STATE OF OHIO)

)SS:

COUNTY OF LUCAS)

A. H. SMITH, being duly sworn according to law, deposes and says that he is an Assistant Secretary of Owens-Illinois, Inc., a defendant herein; that as such he is authorized to make an Affidavit on its behalf; and that the facts set forth in the foregoing DEFENDANT, OWENS-ILLINOIS, INC.'S ANSWERS TO INTERROGATORIES, are true and correct to the best of his knowledge, information and belief.

A. H. Smith

A. H. SMITH

SWORN TO and subscribed
before me this 8th day
of August, 1988.

Beverly A. McNear

Notary Public

My Commission Expires:

BEVERLY A. McNEAR
Notary Public — State of Ohio
My Commission Expires Jan. 29, 1990