

FILE NAME: Lone Star Industries (LS)

DATE: 2018 Jul 16

DOC#: LS011

DOCUMENT DESCRIPTION: Legal - Plaintiff's First Request for Admissions to Lone Star and Responses Thereto

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

JUDD M. METZGER,

Plaintiff,

v.

AIR & LIQUID SYSTEMS CORPORATION,
et al.,

Defendants.

NO. 17-2-01942-9

**PLAINTIFF'S FIRST REQUEST FOR
ADMISSIONS TO LONE STAR
INDUSTRIES, INC. AND RESPONSES
THERE TO**

Defendant Lone Star Industries, Inc., individually and as successor-in-interest to the Pioneer Sand & Gravel, Inc. (collectively "Lone Star" or "Defendant"), responds to Plaintiffs' First Request For Admissions ("Requests") as follows:

REQUEST FOR ADMISSION

REQUEST NO. 1:

Admit that in 1958 Lone Star knew or should have known of the hazards of asbestos (See Attachment 1).

RESPONSE:

Lone Star admits that there has been testimony provided by one of its corporate

1 representatives that because Pioneer Sand & Gravel, Inc. had operations in Washington State in
2 1958, Pioneer Sand & Gravel would have been aware of the provisions of the Safety Standards for
3 Protection against Occupationally Acquired Diseases issued by the Washington Department of
4 Labor and Industries in September, 1958 and any provisions of those standards that applied to
5 asbestos and would have complied with that law, as reflected in the testimony attached as
6 Attachment A to these responses and incorporated by reference into this response.

7 **REQUEST NO. 2:**

8 Admit that when Lone Star Industries purchased Pioneer Sand and Gravel in 1959, Lone
9 Star was aware that Pioneer Sand and Gravel was involved in the sale and distribution of asbestos-
10 containing products. (See Attachment 2).

11 **RESPONSE:**

12 Lone Star admits that when Lone Star Industries purchased Pioneer Sand and Gravel in
13 1959 it was aware by virtue of various references in the Vault Document that at times prior to 1959
14 Pioneer Sand & Gravel was involved in the sale of asbestos-containing products.

15 **REQUEST NO. 3:**

16 Admit that during the period of time Pioneer Sand & Gravel/Lone Star Industries operated
17 as a distributor and distributed asbestos-containing products, you did not warn your customers of
18 the hazards of asbestos. (See Attachment 3)

19 **RESPONSE:**

20 Lone Star admits that as a distributor of asbestos-containing products it would have relied
21 on the manufacturers of those products to provide warnings of those products and would have
22 passed any warnings on to the purchaser of the products and further admits that it is unaware of any
23 warning provided to it by any manufacturer of an asbestos-containing product, as reflected in the
24 testimony attached as Attachment B to these responses and incorporated by reference into this
25 response.

RESPONSES to the foregoing REQUESTS FOR ADMISSION submitted this 28th day of March, 2018.

FOLEY & MANSFIELD, P.L.L.P.

BY:

Howard (Terry) Hall
 WSBA #10905
 Zackary A. Paal, WSBA #45077
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 Lone Star Industries, Inc.

CERTIFICATE OF SERVICE

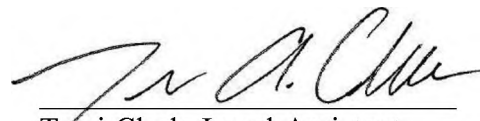
I, Traci Clark, declare that I am employed by the law firm of Foley & Mansfield, PLLP, 999 Third Avenue, Suite 3760, Seattle, King County, Washington; that I am over 18 years of age and not a party to this action.

[X] **(By E-mail)** I caused the foregoing document(s) to be delivered via e-mail to firms and persons whose email addresses are listed next to the name of the party represented as listed below:

<u>Counsel for Plaintiffs</u> Glenn S. Draper Brian F. Ladenburg BERGMAN DRAPER OSLUND 821 2 nd Avenue, Suite 2100 Seattle, WA 98104 service@bergmanlegal.com	<u>Counsel for Asbestos Corporation Limited</u> Mark B. Tuvim Kevin J. Craig GORDON & REES, LLP 701 Fifth Avenue, Suite 2100 Seattle, WA 98104 SEAAbestos@gordonrees.com
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed on the 28th day of March, 2018 at Seattle, Washington.


Traci Clark, Legal Assistant

ATTACHMENT A

IN AND FOR THE COUNTY OF KING

VERBATIM TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

DATE: 2-22-18

REPORTED BY: KEVIN MOLL, RMR, CRR, CCP

1 regulation --

2 MR. SIMS: May I approach, your Honor?

3 THE COURT: You may.

4 BY MR. SIMS:

5 Q. Dr. Brodtkin talked to us yesterday about a regulation
6 dealing with asbestos and the permissible exposure
7 limits in the State of Washington that was enacted in
8 1958.

9 Can you please tell us everything that Lone Star did
10 to ensure compliance with the 1958 asbestos regulation
11 within Washington state?

12 A. Well, I don't know the detail, or any details, to be
13 specific, but Lone Star and its subsidiaries, general
14 here -- I shouldn't say generally. They always
15 complied with any state regulations that might be out
16 there, so wherever we were located, we were responsible
17 for complying with all state, federal, locations -- I'm
18 sorry, regulations.

19 Q. So you would agree that if there were, in fact, a
20 regulation in place, dealing with asbestos hazards and
21 asbestos dust in the State of Washington in 1958, that
22 in 1959 Lone Star would have been aware of such
23 regulation?

24 A. By operating in the state, they should have been aware
25 of all regulations that the State of Washington had.

ATTACHMENT B

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF KING

3 -----

4 KATHLEEN McCARTHY-BROOKE,)

5 Individually and as Personal)

6 Representative of the Estate of JAMES) No. 16-2-21021-0 SEA

7 M. BROOKE,) **AFTERNOON SESSION**

8 Plaintiff,)

9 vs.)

10 LONE STAR INDUSTRIES,)

11 Defendant.)

12 -----

13 VERBATIM TRANSCRIPT OF PROCEEDINGS

14 -----

15 Heard before the Honorable Judge Timothy A. Bradshaw, at King

16 County Courthouse, 516 Third Avenue, Room E-746, Seattle,

17 Washington

18

19 APPEARANCES:

20 CRAIG SIMS and CHANDLER UDO, representing the Plaintiff;

21 HOWARD (TERRY) HALL, MELISSA K. ROEDER, and BRIAN SMITH,

22 representing the Defendant.

23

24 DATE: February 22, 2018

25 REPORTED BY: Joanne Leatiota, RMR, CRR, CCP

1 Q. You mentioned, I believe, in your testimony in response
2 to some questions from Mr. Sims, that you recalled some
3 material from Quigley that described Insulag as
4 non-injurious. Do you recall that?

5 A. Yes, sir.

6 Q. I'm showing you what has been marked as Exhibit 224.
7 Is that what you were referring to?

8 A. Yes. I had seen that document before.

9 Q. Is this the type of information that a company like
10 Pioneer Sand & Gravel or Lone Star would receive from a
11 manufacturer where the company was a distributor and
12 then going to resell it?

13 MR. SIMS: Objection as to speculation, lack of
14 foundation.

15 THE COURT: You may answer if you know.

16 A. Well, it appears to be a description sheet of what the
17 product was and what it contained, and it would have --
18 if it was provided to the people buying it, then they
19 would have had -- they would have had that information.

20 BY MR. HALL:

21 Q. You talked in response to Mr. Sims questions about --
22 about how, as a distributor for products that you did
23 not manufacture, you would rely on the manufacturer,
24 correct?

25 A. That's correct. Yes, we would.

1 Q. In terms of knowing what was in the product?

2 A. Yes.

3 Q. Knowing what the hazards would be?

4 A. Yes.

5 Q. And whatever was received from the manufacturer would
6 be passed on to whoever the product was sold to,
7 correct?

8 A. That is the general way business works. If you receive
9 a document or papers or -- in today's climate, it's the
10 MSDS report that goes with most everything that goes
11 out with your shipments as to what's in the product,
12 what hazards may or may not occur.

13 Q. Mr. Sims, I think, talked about and he might have
14 pointed out about various regulations for various
15 states. Do you recall that?

16 A. Yes.

17 Q. And he mentioned Washington as being one of those
18 states?

19 A. I believe he did, yes.

20 Q. I would like to show you the safety standards from
21 September of 1958. I think I'm going to need a new
22 number for this.

23 THE CLERK: This would be Defendant's Exhibit
24 Number 1321.

25 MR. HALL: Your Honor, at this point, for