

No. A-920961-C

INA SUE BAILEY AS EXECUTRIX of the §
Will of VERLON L. BAILEY, Deceased, §
and INA SUE BAILEY, individually and §
as dependent widow of VERLON L. §
BAILEY, Deceased, et al. §

IN THE DISTRICT COURT OF

ORANGE COUNTY, T E X A S

VS.

ACandS, INC., et al.

128TH JUDICIAL DISTRICT

**DEFENDANT ASARCO INCORPORATED'S ANSWERS TO PLAINTIFFS'
INTERROGATORIES AND REQUEST FOR PRODUCTION**

TO: Plaintiffs, by and through their attorney of record, Mr. Glen W. Morgan,
Reaud, Morgan & Quinn, Inc., 801 Laurel, Beaumont, Texas 77701.

Defendant ASARCO Incorporated (hereinafter "ASARCO") hereby files its objections
and responses to Plaintiffs' Interrogatories and Request for Production in accordance with
the Texas Rules of Civil Procedure.

QUALIFICATIONS

ASARCO Incorporated responds to these interrogatories only on behalf of itself and
not on behalf of any of its wholly owned subsidiaries, which are distinct and separate
corporate entities.

Additionally, ASARCO qualifies its responses with the following. ASARCO is one
of the world's leading integrated producers of non-ferrous metals, principally copper, lead,
zinc, silver and gold. ASARCO is not now, nor has it ever been, a miner, miller, seller or
distributor of raw asbestos fiber, nor has it ever been a manufacturer, seller or distributor
of asbestos containing products.

This is not to say that asbestos-related issues never arose in the ordinary course of
ASARCO's business. The smelting and refining of non-ferrous metals occurs in industrial
plants at extremely high temperatures. Consequently, asbestos containing products may have
been incorporated into ASARCO facilities. As an employer of thousands of workers,
ASARCO is obligated to provide for their health, safety and welfare and acquire a certain
level of knowledge regarding the substances to which its workers are exposed. This lawsuit
specifically alleges exposure to asbestos containing products. Accordingly, ASARCO, which
never manufactured or sold such products, should not be put to the task of performing an
unreasonably time consuming and expensive search of corporate information when such
information will have no bearing on the issues raised in this lawsuit.

GENERAL OBJECTIONS

The following objections are incorporated by reference in responses to Interrogatories to which they apply.

- I - The Interrogatory is objected to on the grounds that it is unduly broad, burdensome, vague, lacking in specificity and intended to harass this defendant.
- II - The Interrogatory is objected to on the grounds that it seeks information that is neither relevant, material, nor reasonably calculated to lead to the discovery of relevant, material or admissible evidence.
- III - The Interrogatory is objected to on the grounds that the question is unintelligible and/or is apparently inapplicable to the issues raised in this lawsuit.
- IV - The Interrogatory is objected to on the grounds that it seeks information which is not discoverable under the applicable Rules of Civil Procedure, and applicable or relevant American or Canadian statutes, including but not limited to work product of counsel, matters protected from discovery by the attorney-client privilege and/or information prepared or compiled in anticipation of litigation.
- V - To the extent that this Interrogatory is intended to or does seek additional information, it is objected to on the grounds that it is unduly broad, burdensome, vague, lacking in specificity and intended to harass this defendant.
- VI - To the extent that this Interrogatory is intended to or does seek additional information, it is objected to on the grounds that it seeks information that is neither relevant, material, nor reasonably calculated to lead to the discovery of relevant, material or admissible evidence.
- VII - To the extent that this Interrogatory is intended to or does seek additional information, it is objected to on the grounds that the question is unintelligible and/or is apparently inapplicable to the issues raised in this lawsuit.
- VIII - To the extent that this Interrogatory is intended to or does seek additional information, it is objected to on the grounds that it seeks information which is not discoverable under the applicable Rules of Civil Procedure, and applicable or relevant American or Canadian statutes, including but not limited to work product of counsel, matters protected from discovery by the attorney-client privilege and/or information prepared or compiled in anticipation of litigation.

ASARCO INCORPORATED'S RESPONSES TO PLAINTIFFS'
INTERROGATORIES

INTERROGATORY No. 1: List all asbestos containing products manufactured or sold by you. For each product state:

- a) the name of the product;
- b) describe the product and its intended use;
- c) describe the asbestos content by percentage of asbestos and asbestos fiber type;
- d) indicate the dates you sold the products.

ANSWER: ASARCO has never mined, milled, sold or distributed raw asbestos fiber nor has ASARCO ever manufactured, sold, or distributed asbestos-containing products.

INTERROGATORY No. 2: Do you contend that you placed any warning or cautionary language on any asbestos containing products sold by you? If so, set forth verbatim the language of the alleged warning or cautionary language and indicate when the language was placed on the product.

ANSWER: Not Applicable. See response to Interrogatory No. 1.

INTERROGATORY No. 3: Do you contend that you placed any warning or cautionary language on any containers of asbestos containing products sold by you? If so, please describe verbatim the language and when you contend it was placed on the container.

ANSWER: Not Applicable. See response to Interrogatory No. 1.

INTERROGATORY No. 4: Please identify all trade associations including the Industrial Hygiene Foundation, the National Safety Council, the Asbestos Information Association, and the Refractories Institute to which you are or have been a member. indicate the dates of your membership in each association.

ANSWER: General Objections I, II and III are incorporated herein by way of reference. See also response to Interrogatory No. 1. Without waiving these objections, ASARCO states the following: ASARCO was neither a member of the Refractories Institute nor the Asbestos Information Association nor any other asbestos-related trade

association. ASARCO was a member of the National Safety Council from June 1934 to the present. ASARCO was also a member of the Industrial Hygiene Foundation, now known as the Industrial Health Foundation, from 1936 to December 31, 1982.

INTERROGATORY No. 5: Please identify by name and date of subscriptions of all medical journals to which answering defendant has subscribed from 1900-1976.

ANSWER: General Objections I and II are incorporated herein by way of reference. See also response to Interrogatory No. 1.

INTERROGATORY No. 6: Please identify by name and last known address of all who functioned as medical directors or industrial hygienists for answering defendants from 1930 to present.

ANSWER: General Objections I, II and III are incorporated herein by way of reference. See also response to Interrogatory No. 1.

INTERROGATORY No. 7: Have you performed any tests to determine whether your asbestos containing products release asbestos containing dust or asbestos fibers in excess of recommended levels? If so, indicate when the studies were performed and the date of each study. Identify all documents concerning such studies.

ANSWER: Not Applicable. See response to Interrogatory No. 1.

INTERROGATORY No. 8: When did you first learn of any alleged threshold limit value or TLV for asbestos containing products?

ANSWER: ASARCO objects to this interrogatory as unduly burdensome in that it asks this defendant to perform an unreasonably time consuming search of records to accurately pinpoint a date as much as 40 or more years in the past. Without waiving this objection, ASARCO's current belief is that it first learned of threshold limit values for asbestos containing products shortly after World War II.

INTERROGATORY No. 9: When, if ever, did you first learn of studies by Drs. Fleisher and Drinker concerning the potential hazards of use of asbestos containing products in naval shipyards? Identify by date and author all documents concerning or in any way related to any decisions that you made in reliance on this study.

ANSWER: ASARCO objects to this interrogatory as unduly burdensome in that it asks this defendant to perform an unreasonably time consuming search of records to accurately pinpoint a date as much as 40 or more years in the past. Without waiving this objection, ASARCO's current belief is that it first learned of this study shortly after World War II. To the extent this interrogatory seek further information, see response to Interrogatory No. 1.

INTERROGATORY No. 10: a) Please identify by name, date of claim and alleged disease process, any claim brought against you before calendar year 1978 in which the claimant sought compensation for alleged asbestos related disease. This request includes asbestos claims of any nature, including third-party or workers' compensation b) Identify all documents concerning such claims.

ANSWER: General Objections I, II, III and IV are incorporated herein by way of reference. Furthermore, and without waiving those objections, ASARCO never manufactured or sold asbestos containing products, nor did it ever mine, mill or sell asbestos.

INTERROGATORY No. 11: Have you been investigated or cited by OSHA or any other governmental agency for any matter related to asbestos or asbestos exposure? If so, please provide the dates of the investigation, the results, and identify by name, author and date all documents concerning or in any way related to such investigation.

ANSWER: Not Applicable. See response to Interrogatory No. 1.

INTERROGATORY No. 12: Have you been investigated or cited by OSHA or any other governmental agency for any matter related to any other hazardous dust? If so, please provide the dates of the investigation, the results and identify by name, author and date all documents concerning or in any way related to such investigation.

ANSWER: General Objections I, II and III are incorporated herein by way of reference.

INTERROGATORY No. 13: Please identify all documents concerning or any way related to any decisions made by you to cease manufacturing asbestos containing products.

ANSWER: Not Applicable. See response to Interrogatory No. 1.

INTERROGATORY No. 14: Please identify by name, author and date all documents concerning or in any way related to any decisions made by you regarding if, when, or how cautionary labels should be placed on your asbestos containing products or those products containers.

ANSWER: Not Applicable. See response to Interrogatory No. 1.

INTERROGATORY No. 15: Please identify by date and author all documents dated before calendar year 1978 in your possession in which (i) the hazards or alleged hazards of asbestos or asbestos containing products are discussed; or (ii) you communicated or had communicated to you information about the health risks created by inhaling or ingesting asbestos.

ANSWER: ASARCO objects to this interrogatory as unduly broad, burdensome and inapplicable to the issues raised in this lawsuit. ASARCO has been in operation since 1899 and is currently one of the world's leading integrated producers of non-ferrous metals, principally copper, lead, zinc, silver and gold. ASARCO is not now, nor has it ever been, a miner, miller, seller or distributor of raw asbestos fiber, nor has it ever been a manufacturer, seller or distributor of asbestos containing products. Asbestos-containing products, however, may have been incorporated into ASARCO facilities. As a responsible employer ASARCO has always been concerned for the health, safety and welfare of its workers and consequently has acquired a certain level of knowledge regarding substances to which its workers are, or may be, exposed. Moreover, ASARCO, as a general business practice, has kept apprised of medical and scientific literature pertaining to industrial operations. This lawsuit alleges exposure to asbestos-containing products. ASARCO, which never manufactured or sold such products, should not be put to the unreasonably time consuming and expensive task of reviewing over 70 years of corporate information when such information will have no bearing on the issues raised in this lawsuit.

INTERROGATORY No. 16: When did you first learn that breathing asbestos dust could cause: a) asbestosis; b) lung cancer; c) mesothelioma; d) other cancers?

ANSWER: See responses to Interrogatories Nos. 1 and 15. General Objections VI and VII are incorporated herein by way of reference.

INTERROGATORY No. 17: When did you first learn of the 1964 New York Academy of Sciences conference at which the hazards of asbestos containing insulation products were discussed?

ANSWER: General Objections I, II and III are incorporated herein by way of reference. See response to Interrogatory No. 1.

INTERROGATORY No. 18: Did a representative of yours attend the 1964 New York Academy of Sciences regarding asbestos? If so, please state who attended.

ANSWER: General Objections I, II and III are incorporated herein by way of reference. See response to Interrogatory No. 1.

INTERROGATORY No. 19: a) Did you have at attendance any representative at the 1955, 1952 or 1947 Saranac Symposium? b) Did you ever contract with Saranac Laboratories to study the hazards of any dust producing product manufactured by you? If so, identify by date and author all documents concerning or any way related to such study. c) State the dates during which the Refractories Institute was a member of the IHF or Mellon Institute and describe your understanding of the relationship between the Refractories Institute, the IHF, and the Mellon Institute.

ANSWER: General Objections I, II and III are incorporated herein by way of reference. See response to Interrogatory No. 1.

INTERROGATORY No. 20: Were you a member of the Refractories Institute? If so, identify the dates of your membership and identify by date and author all documents in your possession generated by the Refractories Institute or concerning communications to or from the Refractories Institute regarding the diseases known as pneumoconiosis?

ANSWER: No. See also response to Interrogatory No. 4.

INTERROGATORY No. 21: Identify by name, date and author any brochures or other materials distributed by you concerning any of the products you manufactured or sold which contained asbestos.

ANSWER: Not Applicable. See response to Interrogatory No. 1.

INTERROGATORY No. 22: List the names of all of your expert witnesses. Please state:

- a. The subject matter of the testimony
- b. A summary of the experts and their opinions
- c. The basis for the opinion

ANSWER: General Objections I and IV are incorporated herein by way of reference. Without waiving these objections, ASARCO responds that it does not, at this time, possess any information concerning its use of expert witnesses at trial. ASARCO will supplement this response to the extent required by the Texas Rules of Civil Procedure.

INTERROGATORY No. 23: List the names, addresses and telephone numbers of your fact witnesses and describe the subject matter of each witness' testimony.

ANSWER: General Objections I and IV are incorporated herein by way of reference. ASARCO also objects to this interrogatory on the grounds that it is premature and seeks to impose obligations beyond those allowed by the Texas Rules of Civil Procedure.

INTERROGATORY No. 24: Identify by date, author and recipient, all documents you intend to offer as exhibits in this case.

ANSWER: General Objections I, III and IV are incorporated herein by way of

reference. ASARCO also objects to this interrogatory on the grounds that it is premature and seeks to impose obligations beyond those allowed by the Texas Rules of Civil Procedure.

• **INTERROGATORY No. 25:** Did you sell asbestos-containing products to the State of Alabama?

- a. If so, please identify each sale by describing the date of sale, type of product sold, volume of product sold and name of buyer.
- b. Identify all documents concerning or related to such sales.

ANSWER: Not Applicable. See response to Interrogatory No. 1.

REQUEST FOR PRODUCTION

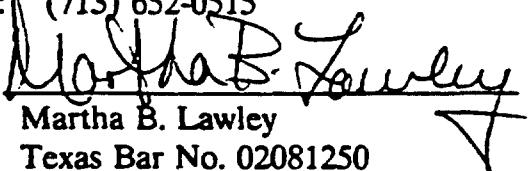
REQUEST FOR PRODUCTION No. 1:

Please produce all documents concerning or related to your answers to interrogatories.

RESPONSE: ASARCO objects to the request on the same grounds each interrogatory was objected to and incorporates its Qualifications and those objections herein. In addition, ASARCO objects to Plaintiffs' Request for Production in that it is global, unfettered, nonspecific and requires ASARCO to speculate as to what is called for by the request.

Respectfully submitted,

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By: 

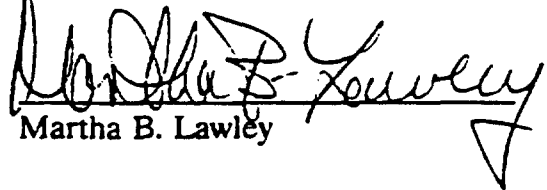
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ATTORNEYS FOR DEFENDANT
ASARCO INCORPORATED

CERTIFICATE OF SERVICE

Pursuant to Rules 21 and 21a of the Texas Rules of Civil Procedure, I hereby certify that a true and correct copy of the foregoing instrument was mailed to all counsel of record on the attached service list on this the 4th day of March, 1993.


Martha B. Lawley

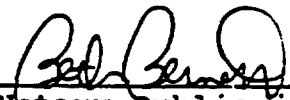
VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

BEFORE ME, the undersigned authority on this day personally appeared Carmen D. Gonzalez, Assistant Secretary of ASARCO Incorporated, who being by me duly sworn on her oath deposed and said that she is duly qualified and authorized in all respects to make this affidavit, has read the above and foregoing Answers to Interrogatories; and that every statement contained therein is true and correct to the best of her knowledge, information and belief.

Carmen D. Gonzalez
Carmen D. Gonzalez

Subscribed and Sworn to
Before Me on this 2nd
day of March, 1993.


Notary Public in and for
The State of New York

SETH BERKETT
Notary Public, State of New York
No. 51-4662218
Qualified in New York County
Commission Expires June 23, 1994