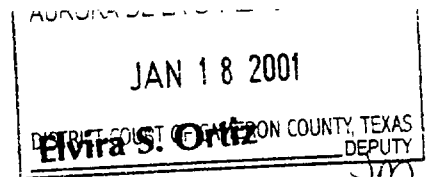


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CAUSE NO. 2000-05-1962-C



ROBERT HENRY VILLARREAL,
Individually and as Personal Representative
of the Heirs and Estate of JOHN HENRY
VILLARREAL

Plaintiffs,

vs.

GAF CORPORATION
HOLDINGS, INC.), ET AL.

Defendants.

§ IN THE DISTRICT COURT OF

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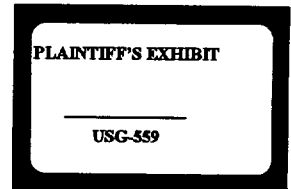
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CAMERON COUNTY, TEXAS

197TH JUDICIAL DISTRICT



MOTION IN LIMINE
OF DEFENDANT UNITED STATES GYPSUM COMPANY TO EXCLUDE
ARGUMENT AND EVIDENCE RELATING TO THE SARANAC EXPERIMENTS

Defendant United States Gypsum Company ("U.S. Gypsum") hereby moves *in limine* to exclude argument and evidence relating to animal asbestosis experiments conducted at the Saranac Laboratory in New York in the late 1930s and early 1940s.

1. Plaintiff may seek to introduce evidence and argue that the Saranac experiments established that asbestos causes cancer in humans, and that U.S. Gypsum participated in improperly concealing that finding.

2. The argument is not supported by the evidence. Courts that have examined the documents has concluded that (i) there was no concealment, (ii) the observations allegedly concealed had no scientific validity in any event, and (iii) the alleged concealment, even if it occurred, could not have caused any harm to plaintiff. Moreover, U.S. Gypsum neither sent nor received the majority of the Saranac documents.

3. If the Saranac documents that plaintiff selects are admitted, and plaintiff is permitted to assert that the documents show improper suppression of valid scientific evidence, U.S. Gypsum will be irreparably prejudiced.

4. The Saranac documents are inadmissible because they are irrelevant and their admission would create a substantial danger of unfair prejudice and jury confusion.^{1/} See *Perlmutter v. United States Gypsum Co.*, No. 87 M 510, Tr. at 595-99 (D. Colo. May 6, 1991); *J.H. Snyder Co. v. Carey Canada, Inc.*, No. C 728 816, Order (Cal. Super., L.A. Cty. Apr. 18, 1994).

5. Courts that have examined the evidence have concluded that there was no concealment:

- The Saranac documents do not contain "any evidence . . . linking U.S. Gypsum to efforts to conceal the results or to pressure Dr. Gardner or his successors to limit publication of their findings."

Sealover v. Carey Canada, 793 F. Supp. 569, 577 (M.D. Pa. 1992).

- No "evil motive can be imputed to USG for following Dr. Gardner's advice" to omit the observations of the eleven mice from the final report.

Pigozzi v. United States Gypsum Co., No. 98 L 04457, slip op. at 3 (Ill. Cir., Cook Cty. Aug. 15, 1999).

- "What I saw was minimal evidence with respect to Gypsum connecting them to the study . . . in that they struck a provision relating to cancer, for perhaps good reasons and maybe perhaps for bad reasons, but that it was done in a fair exchange of ideas at the time."

Davis v. Armstrong World Indus., 86-CIV-763 (W. Va. Cir., Monongalia Cty. June 30, 1988).

- "[T]here certainly couldn't be any proximate cause from it because the information was disseminated, there wasn't any secret kept about it."

^{1/} The documents also are inadmissible hearsay, and the evidence lacks authentication, foundation and/or identification. U.S. Gypsum reserves these objections, but does not present them fully herein.

Board of Educ. of City of Detroit, Tr. at 19 (Mich. Cir., Wayne Cty. Sept. 4, 1992).

6. Courts that have examined the evidence have concluded that the Saranac experiments did not establish an asbestos-cancer link:

- “[J]ust a simple analysis of relevance based upon the scientific -- really I don’t mean to be unkind about the plaintiff’s position here, but the scientific worthlessness of the minuscule information that U.S. Gypsum had or at least that plaintiffs can establish that U.S. Gypsum had. . . .”

Lammers v. OwensCorning Fiberglas Corp., No. 97CV005649, Tr. at 56-57 (Wis. Cir., Milwaukee Cty. Jan. 29, 1999).

- The Saranac experiments reveal “a lack of sound research.”

Pigozzi, slip op. at 2.

- “Dr. Gardner found only a possible relationship between exposure to massive amounts of asbestos and malignant tumors in white mice. He himself stated that the implications were unclear. . . .”

Sealover, 793 F. Supp. at 575.

- “When you look at Dr. Gardner’s report there is no credibility attached to that issue. He says there isn’t. He says it is suspect. There just isn’t anything there.”

Board of Educ. of City of Detroit v. Celotex Corp., No. 84-429-634-NP, Tr. at 23-24 (Mich. Cir., Wayne Cty. Oct. 20, 1989).

- “I am satisfied that there was no scientific validity or no scientific basis then based upon Gardner’s studies for the conclusion that there was a tie in with cancer.”

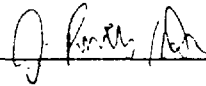
Board of Educ. of City of Detroit, Tr. at 18-19 (Mich. Cir., Wayne Cty. Sept. 4, 1992).

For the foregoing reasons, U.S. Gypsum respectfully requests that this Court enter an order *in limine* precluding plaintiff from introducing any argument or evidence concerning animal

experiments conducted by Dr. LeRoy Gardner at the Saranac Laboratory in the late 1930s and early 1940s.

Respectfully submitted,

POWERS & FROST, L.L.P.



James H. Powers
Texas State Bar No. 16217400
Sharla J. Frost
Texas State Bar No. 07491100
Gwendolyn S. Frost
Texas State Bar No. 07488750
2600 Two Houston Center
909 Fannin
Houston, Texas 77010
Telephone: (713) 767-1555
Facsimile: (713) 767-1799

**ATTORNEYS FOR DEFENDANT UNITED
STATES GYPSUM COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct of Defendant United States Gypsum Company's Motion in Limine to Exclude Argument and Evidence Relating to the Saranac Experiments has been forwarded to Plaintiffs' counsel of record either by first class mail, return receipt requested, delivery or facsimile on this the 12th day of January, 2001.

