

CAUSE NO. 98-03869-G

GILBERTO ANTONIO BALLI, et al.,	§	IN THE DISTRICT COURT OF
	§	
Plaintiffs,	§	
	§	
VS.	§	NUECES COUNTY, TEXAS
	§	
OWENS-CORNING FIBERGLAS	§	
CORPORATION, et al.,	§	
	§	
Defendants.	§	319 TH JUDICIAL DISTRICT

**ALCOA'S RESPONSES TO FREDDIE JOE BARNEC'S
REQUEST FOR DISCLOSURE**

TO: FREDDIE JOE BARNEC, by and through his attorney of record, Russell Budd, BARON & BUDD, 3102 Oak Lawn Avenue, Suite 1100, Dallas, Texas 75219.

COMES NOW Defendant Aluminum Company of America (now known as Alcoa Inc., ("Alcoa")), and pursuant to Rules 190, 191, 192, 193, 195, 196 and 197 of the Texas Rules of Civil Procedure, serves its Responses and Objections to Plaintiff's First Set of Interrogatories and Request for Production of Documents as follows:

Alcoa has not completed its investigation of facts relating to this case, has not fully completed discovery relating to this action, and has not completed preparation for the trial thereof. All of the responses contained herein are based only upon such information and documents which are presently available to, and specifically known to, Alcoa and disclose only those contentions which presently occur to Alcoa. Moreover, the information contained herein may include hearsay and other data which is neither reliable nor admissible in evidence. It is anticipated that further discovery, independent investigation, legal research and analysis will supply additional facts, add new meaning to the known facts, as well as establish entirely new factual conclusions and legal contentions, all of which may lead to substantial additions to, changes in, and variations from, the contentions

herein set forth. The following responses are given without prejudice to Alcoa's right to produce evidence of any subsequently discovered fact or facts of which Alcoa may learn or recall. Alcoa accordingly reserves the right to change any and all responses herein as additional facts and contentions are ascertained. The responses contained herein are made in a good faith effort to supply as much factual information and as much specification of legal contention as is presently known but should in no way prejudice Alcoa in relation to further discovery, research or analysis.

Rule 194.2(a) Request. The correct names of the parties to the lawsuit.

RESPONSE: Effective January 1, 1999, the proper name for this Defendant is Alcoa Inc. Alcoa does not know the correct names of all of the other parties to this lawsuit. The other parties, including Plaintiffs, are presumably knowledgeable regarding their proper names.

Rule 194.2(b) Request. The name, address, and telephone number of any potential parties.

RESPONSE: At this time, based upon the limited information available to Alcoa regarding Plaintiffs, Alcoa is not aware of any additional potential parties. Additional parties may include the manufacturers that produced products that were purchased by Alcoa for use in its plants. Additional parties may also include general contractors and/or subcontractors who employed Plaintiffs. Finally, to the extent Alcoa subsequently learns that applicable indemnity agreements exist, Alcoa may join the parties that have agreements with Alcoa.

Rule 194.2(c) Request. The legal theories and, in general, the factual bases of the responding party's claims or defenses (the responding party need not marshal all evidence that may be offered at trial).

RESPONSE: With respect to Plaintiffs' claims of negligence, negligence per se, gross negligence and/or intentional tortious conduct, Alcoa states that it, at all relevant times, reasonably investigated the potential dangers of asbestos exposure and/or asbestos-containing products. Additionally, Alcoa reasonably provided adequate protection at its plants to prevent workers from being exposed to asbestos dust in excess of the then applicable exposure limits.

With respect to any Plaintiffs' claims of conspiracy, Alcoa denies that it in any way conspired with the manufacturers of asbestos or asbestos-containing products or other defendants to suppress information relating to the potential hazards of asbestos and/or asbestos-containing products. In fact, Alcoa relied on the warnings or lack thereof from those manufacturers, and any information that was withheld from the public at large was similarly withheld from Alcoa.

With respect to any Plaintiffs' alleged exposure to asbestos and/or asbestos-containing products, Alcoa denies that Plaintiffs' work at any of its plants or with any Alcoa product resulted in sufficient exposure to asbestos to result in any asbestos-related disease. As such, Alcoa asserts that its conduct is not a direct or proximate cause of any of Plaintiffs' alleged injuries. To the extent that Plaintiffs have suffered any injury, said injury was caused by persons not within Alcoa's control.

Additionally Alcoa asserts that the question of law and fact exists as to:

1. Whether plaintiff was exposed to asbestos during his employment.
2. Whether plaintiffs exposure to asbestos-containing products during:
 - a. 1967 and 1970 for 9-10 months while working for Fisk Electric at Alcoa, Point Comfort, Texas;
 - b. 1967 for less than one month while working for Coastal Electric Co. at Alcoa Point Comfort, Texas; and
 - c. 1971 to 1972 for less than one year while working for Fairbairn Electric, Inc. at Alcoa, Point Comfort.

was a substantial contributing cause of plaintiff's injuries.

3. Whether plaintiff's death and/or injury was the result of cigarette smoking, or whether the consumption of other tobacco products and exposure to chemicals, silica or other causes contributed, worsened, or accelerated the same.

4. Whether plaintiff was aware of the warnings on cigarette packages and continued to smoke tobacco in spite of such warnings.

5. Whether plaintiff was advised by physicians to stop smoking and continued to smoke after being so advised.

Furthermore, Plaintiffs were in a similar position as Alcoa to know about asbestos exposure because Plaintiffs knew or should have known about such exposure from information provided through their unions and/or employers.

By way of additional response, Alcoa has never engaged in the business of selling, manufacturing, producing, designing and/or otherwise placing into the stream of commerce asbestos, asbestos-containing products and/or machinery calling for the use of asbestos and/or asbestos-containing products. As such, many of the allegations contained in

Plaintiffs' Petition are inapplicable to Alcoa. Furthermore, by way of additional response, see Alcoa's Answer filed in this action.

Rule 194.2(d) Request. The amount and any method of calculating economic damages.

RESPONSE: Alcoa will calculate damages according to what is fair and reasonable by community standards and by applying mitigation theories.

Rule 194.2(e) Request. 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.

RESPONSE: The individuals listed on Alcoa's list of Experts and Other Witnesses, attached hereto as "Attachment A" may have knowledge of facts relevant to this case. Alcoa will supplement this response as additional information becomes available.

Rule 194.2(f) Request. 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;

RESPONSE: Alcoa may consult or retain any of the expert witnesses included in Attachment "A." Alcoa will supplement this Response when Alcoa identifies additional experts or obtains additional information responsive to this disclosure request. Many of the persons listed as experts have experience and training in the business of Alcoa and the production of aluminum products generally and do not have a formal resume. Their description in Attachment "A" contains a description of their experience in the field.

Rule 194.2(g) Request. Any discoverable indemnity and insuring agreements.

RESPONSE: As to insuring and indemnity agreements, coverage has not been determined and coverage information, if any, may be provided once determined.

Rule 194.2(h) Request. Any discoverable settlement agreements.

RESPONSE: At this time, Alcoa is not a party to any settlement agreements related to the current action.

Rule 194.2(i) Request. Any discoverable witness statements.

RESPONSE: Given the limited amount of information available at this time, Alcoa does not possess any discoverable witness statements related to the current action.

Rule 194.2(j) Request. 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.

RESPONSE: If Alcoa obtains such records, they will be released upon the receipt of an authorization from Plaintiffs authorizing such disclosure.

Rule 194.2(k) Request. 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.

RESPONSE: Alcoa may seek such documents with the appropriate authorizations provided by the Plaintiffs. These documents will be made available for any party's inspection and/or copying at the offices of Forman, Perry, Watkins, Krutz & Tardy, PLLC, 188 East Capitol Street, Suite 1200, Jackson, Mississippi, 39201 at a time to be mutually agreed upon by the parties or at 10:00 a.m. fourteen days after receipt of the transmittal letter from the court reporter to the requesting party.

Dated: August 28, 2000

Respectfully submitted,

By: Ronald B. Walker *with permission*
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served by hand delivery, telephonic document transfer, certified mail, return receipt requested, or regular mail to all parties on this the 28th day of August, 2000.

Ronald B. Walker with permission
RONALD B. WALKER
by John S. Lee