

NO. 88-8-11990

ARTURO OCHOA SILVAS

S

IN THE DISTRICT COURT

S

VS.

S

CALHOUN COUNTY, TEXAS

S

ALUMINIUM COMPANY OF AMERICA

S

135TH JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, ARTURO OCHOA SILVAS, hereinafter called plaintiff, complaining of Aluminum Company of America, hereinafter called Defendant, and for cause of action would respectfully show the Court as follows:

FIRST COUNT

1.

Plaintiff is a resident and citizen of the State of Texas. Defendant is a corporation duly incorporated and existing under and by virtue of the laws of states other than the State of Texas may be served with process herein by serving the Defendant's designated registered agent for service, C.T. Corporation Systems, 1601 Elm Street, Dallas, Texas 75201. The incident made the basis of this suit occurred in Calhoun County, Texas. The amount in controversy exceeds the minimum jurisdictional requirements of this court.

2.

Plaintiff is a retired employee of Aluminum Company of America (ALCOA). Plaintiff was employed continuously at the ALCOA plant located in Pt. Comfort, Texas. Plaintiff's primary job was that of a crane operator but for many years he worked in shipping and handling, unloading raw asbestos fibers, and worked in an area where he packed asbestosis around a crucible that was being used to apparently melt aluminum. As a direct and proximate result of prolonged and sustained exposure to the asbestos, Plaintiff has developed serious and permanent lung disease, asbestosis, and cancer.

3.

has researched, designed, manufactured, advertised,

FILED	
AT 9:30	O'CLOCK <u>2</u> M
Defendant	
AUG 1 1988	
OLLIE HARRIS CUELLAR	
DISTRICT CLERK, CALHOUN COUNTY, TEXAS	
BY <u>Jan Smith</u>	DEPUTY

PLAINTIFF'S
EXHIBIT
AL-1371

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marketed, and installed in the ALCOA plant identified herein, the products listed which contained asbestos. Defendant knew these products would be used in aluminum refining or manufacturing plants without inspection for design defects and by using these products, represented the products to be free from design defects and suitable and reasonably fit for the purpose for which these products were intended to be used. Such products were not suitable and reasonably fit to be used by or around workers in aluminum refining manufacturing plants because prolonged and sustained exposure to the asbestos in these products results in lung disease, cancer and death. Accordingly, Defendant is strictly liable to Plaintiff for the damages hereinafter alleged, for using a defectly designed product; a product which is unreasonably dangerous as designe and used, taking into consideration the utility of the product and the risk involved in its use.

SECOND UNIT

4.

Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 3 of the First Count of this Petition with like effects as if herein fully repeated.

5.

Plaintiff further alleges that Defendant knew that the products identified herein would be used in aluminum refining manufacturing plants, and by advertising and marketing these products, Defendant represented the products were not defective and would not be unreasonably dangerous to the health of the aluminum refining and manufacturing plant workers. The products manufactured and marketed by the defendant were unsafe and defective, as that term is understood in law, in that prolonged and sustained exposure to the asbestos in these products results in lung disease, cancer, and death. Defendant knew, or by the application of reasonably developed knowledge within the industry, should have known, the severe consequences to workers of prolonged and sustained exposure to asbestos and asbestos-containing products and Defendant is strictly liable to Plaintiff for the damages

hereinafter alleged for marketing defective and unreasonably dangerous products; products that are dangerous to an extent beyond that which would be contemplated by the ordinary user of the product with the ordinary knowledge common to the community as to the products characteristics.

THIRD COUNT

6.

Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 3 of the First Count of this Petition with like effect as it herein fully repeated.

7.

Defendants, conduct in marketing and using the products identified herein was in conscious disregard to the lives, safety and well being of the worker exposed to these products. Since 1933, it has been well known that there was a high risk of injury or death resulting from exposure to asbestos and/or asbestos-containing products, including, but not limited to, lung cancer and asbestosis. Defendants are held to the standard of care of an expert in evaluating the hazards involved in the use of its products and the knowledge of the asbestos industry is imputed to the Defendant that manufactures products containing asbestos. With such knowledge, Defendant marketed and used asbestos-containing products without attempting to protect workers from, or warn workers of, the high risk of injury and death resulting from exposure to asbestos-containing products. In fact, Defendant intentionally and willfully failed to reveal such risks and consciously and actively concealed and suppressed the knowledge of such risks from the general public and continued to market and use asbestos-containing products. Such conduct was motivated by Defendant's financial interest and was in conscious disregard of the safety and well being of the public. As a result of such conduct, Defendant should be assessed exemplary damages in an amount to be determined by the jury as an example to others to deter such conduct in the future.

8.

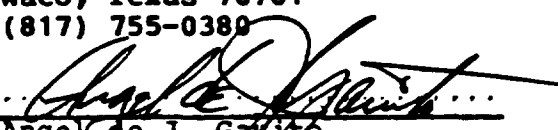
Plaintiff alleges that the damage sustained by Plaintiff will greatly exceed the minimum jurisdictional amount required by this

Court. In addition, Plaintiff is entitled to prejudgement interest on all damages found by the jury.

WHEREFORE PREMISES CONSIDERED, Plaintiff prays that Defendant be duly cited to appear and answer herein, that upon final hearing hereof, Plaintiff have judgement against all Defendants, jointly and severally, plus legal interest, plus prejudgement interest, that he recover his costs, and that they have such other and further relief, both general and special, at law or in equity, to which he may show himself justly entitled.

Respectfully submitted,

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By: 

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