

CAUSE NO. 90G2055

WELDON R. MOAKE, et al.	§	IN THE DISTRICT COURT OF
	§	
Plaintiffs,	§	
	§	
VS.	§	BRAZORIA COUNTY, TEXAS
	§	
OWENS-CORNING FIBERGLAS CORPORATION, et al.	§	
	§	
Defendants.	§	239th JUDICIAL DISTRICT

**SOUTHWESTERN REFINING COMPANY'S INC.'S
FIRST AMENDED ANSWERS TO
PLAINTIFF'S INTERROGATORIES**

TO: PLAINTIFF, WELDON R. MOAKE, by and through his attorneys of record, Scott L. Frost and David T. Ritter, Baron & Budd, P.C., 3102 Oak Lawn Avenue, Suite 1100, Dallas, Texas 75219-4281.

NOW COMES Southwestern Refining Company, Inc., Defendant, in the above styled and referenced cause of action, and files the attached First Amended Answers to Plaintiff's Interrogatories.

Respectfully submitted,

BROWN SIMS, P.C.

By: *Robin A. Howard*
 G. Byron Sims
 Texas Bar No. 18419000
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 ATTORNEYS FOR DEFENDANT,
 SOUTHWESTERN REFINING COMPANY,
 INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served on all counsel in accordance with Rules 21 and 21a of the Texas Rules of Civil Procedure, on this 16th day of **November 2001**.

Robin A. Howard
Robin A. Howard

GENERAL OBJECTIONS

Defendant makes the following General Objections to Definitions and Instructions ("General Objections") to **Plaintiff's** discovery requests. The General Objections apply to all, or to so many of **Plaintiff's** discovery requests that, for convenience, they are set forth immediately below and are not necessarily repeated after each request to which the objection applies. The assertion of the same, similar, or additional objections in the individual objections to **Plaintiff's** discovery requests, or the failure to assert any additional objection to a specific request, does not waive any of the **Defendant Southwestern Refining Company, Inc.'s** General Objections, which are as follows:

1. **Defendant** objects to each discovery request to the extent it is vague, ambiguous, overly broad, unduly burdensome, speculative, harassing, oppressive, compound, cumulative, duplicative and without reasonable limitation in scope as to render it impossible to respond in any intelligible manner or in any amount of time, seeks information or documents accessible to **Plaintiff**, seeks information or documents not within **Defendant's** possession or control and/or is not calculated to lead to the discovery of admissible evidence. To the extent that such discovery is vague, ambiguous, speculative, and overly broad, it requires **Defendant** to speculate as to the information sought.

2. **Defendant** further objects to the discovery requests to the extent the information requested cannot be accurately reduced to the form requested because it derives from the aggregate recollections of **Defendant's** (former and current) employees, agents or representatives, and/or the recollections of others over an extended period of time.

3. **Defendant** objects to the discovery requests to the extent they seek information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

4. **Defendant** objects to the discovery requests to the extent they are unlimited in time or not limited to the time relevant to this litigation; i.e., for a reasonable period prior to the Incident and prior to the filing of the instant action; as such, each discovery request is overly broad, burdensome, irrelevant, and not likely to lead to the discovery of admissible evidence.

5. **Defendant** objects to the discovery requests to the extent they seek information protected from disclosure by the attorney-client, attorney work product doctrine, investigative, and party communication privileges.

6. Nothing herein should be construed as an admission by **Defendant** respecting the

admissibility or relevance of any fact or document, or the truth or accuracy of any characterization or statement of any kind contained in Plaintiff's discovery requests.

7. **Defendant** objects to **Plaintiff's** discovery requests as they seek to vex, annoy, or harass, and are beyond the scope of discovery permitted under the Texas Rules of Civil Procedure.

8. **Defendant** objects to any attempt by Plaintiff to dictate any obligation upon **Defendant** beyond those imposed by the Texas Rules of Civil Procedure.

9. Pursuant to the Texas Rules of Civil Procedure where a response to discovery request may be derived or ascertained from the business records of **Defendant**, and the burden of deriving or ascertaining the answer is substantially the same for the requesting party, **Defendant** will provide copies to the requesting party or afford to them an opportunity to examine such records and to make copies.

10. **Defendant** objects to **Plaintiff's** definitions of: "identify", "document", and "person", as being overly broad, non-specific, unduly burdensome, unlimited in time, and outside the scope of discovery as permissible under the Texas Rules of Civil Procedure.

11. Subject to these objections, **Defendant** attaches the following objections and responses to **Plaintiff's** request for production.

ANSWERS TO INTERROGATORIES

INTERROGATORY NO. 1:

For each person who has supplied any information used in answering these interrogatories or who assisted in identifying, locating or retrieving documents responsive to Plaintiff's Request for Production, identify such person and include the length of time employed by Defendant or other employer, and a year-by-year list of all other positions, titles, or jobs held.

ANSWER: **Ronald H. Norris**
2010 Paul Jones
Corpus Christi, Texas 78412
Length of time employed: 21 years
Position: 1971-1978 Maintenance Mechanic
1978-1980 Planning Supervisor
1980-1996 Manager, Industrial Relations

INTERROGATORY NO. 2:

As to each of the following, please state the first year you first became aware, what you learned, and how Defendant learned that humans who inhale asbestos fibers can contract

- a. asbestosis
- b. lung cancer
- c. mesothelioma

ANSWER: At this stage of discovery, Defendant is not aware of specifically how or when it learned of potential asbestos hazards. Further, Defendant refers Plaintiffs to the depositions of Ron Norris and Roger Clark.

INTERROGATORY NO. 3:

Please list all trade organizations, trade associations and any other industry-wide groups to which you belong(ed) (specifically including but not limited to the following groups: American Hygiene Foundation, Chemical Manufacturer's Association, American Chemical Council, American Petroleum Institute, Texas Chemical Council, Ohio Safety Congress, National Safety Council, Asbestos Information Association, Industrial Medical Association) in which information or documents relating to asbestos was discussed, disseminated, or published (including, but not limited to, the effects of exposure to asbestos, industrial hygiene measures relating to asbestos dust, and medical information or research relating to asbestos or its effects on animals or humans, populations at risk). As to each such group, please state:

- a. the inclusive dates of your membership, and
- b. identify Defendant's employees or former employees or representatives who attended any of the meetings held by each organization, and
- c. the meetings they attended, and
- d. if any individuals employed by Defendant were members of committees or subcommittees of any such organizations (such as, e.g., a medical advisory committee or legal committee), identify the committee or subcommittee on which such individual served and the position occupied on the committee, if applicable.

ANSWER: Defendant objects to this interrogatory on the following grounds:

- a. it is overly broad, vague and non-specific;
- b. it seeks the discovery of information that is neither relevant to the suit nor reasonably calculated to lead to the discovery of admissible evidence; and
- c. it is unduly burdensome and unnecessarily expensive.

Subject to and without waiving said objection: Defendant refers Plaintiffs to the deposition of Roger Clark.

INTERROGATORY NO. 4:

Please identify Defendant's employees or former employees or representatives who attended

any proceeding, symposia, or conferences of a scientific or medical or technical nature at which information or documents relating to asbestos was discussed, disseminated, or published, (including, by way of medical information or research relating to asbestos or its effects on animals or humans, populations at risk) and specifically including but not limited to the Seventh Saranac Symposium, 1952, and/or New York Academy of Sciences, October 1964, and for each such individual, state the proceedings, symposia, or conferences attended and to whom within your corporate organization information concerning attendance at such proceedings, symposia, or conferences were reported, either verbally or in documentary form.

ANSWER: Defendant objects to this interrogatory on the following grounds:

- a. it is overly broad, vague and non-specific;
- b. it seeks the discovery of information that is neither relevant to the suit nor reasonably calculated to lead to the discovery of admissible evidence; and
- c. it is unduly burdensome and unnecessarily expensive.

Subject to and without waiving said objection: Defendant refers Plaintiffs to the deposition of Roger Clark. Further, to the extent which they exist and can be located, records from which the answer to this interrogatory may be derived or ascertained will be produced at a mutually agreeable time and place.

INTERROGATORY NO. 5:

Please identify each company from which you acquired asbestos-containing products used at Defendant's Premises At Issue during the years Plaintiff has indicated he worked at Defendant's Premises At Issue and include in your response

- a. a description of each asbestos-containing product acquired and
- b. the dates each asbestos-containing was acquired.

ANSWER: Defendant objects to this interrogatory on the following grounds:

- a. it is overly broad, vague and non-specific;
- b. it seeks discovery of attorney work product which is exempt; and
- c. it seeks discovery of information equally available to Plaintiff's attorneys through their own legal research.

Defendant has objected to this interrogatory. However, without waiving said objections, Defendant acquired the facility in 1974 and thereafter asbestos was removed or abated. Defendant does not know from which company, if any, asbestos products were obtained. To the extent which they exist and can be located, records from which the answer to this interrogatory may be derived or ascertained will be produced at a mutually agreeable date, time, and place.

INTERROGATORY NO. 6:

If any asbestos-containing materials located or formerly located at Defendant's Premises At Issue have been removed, encapsulated, or otherwise abated at any time,

- a. Identify each person or company that performed such abatement services;
- b. State the dates and locations within Defendant's Premises At Issue of each abatement procedure; and
- c. Describe what asbestos-containing materials were abated
- d. State how such asbestos-containing waste was stored at Defendant's Premises At Issue prior to disposal and how it was disposed of.

ANSWER: Yes, asbestos was removed or abated after Defendant acquired the facility in 1974. To the extent which they exist and can be located, records from which the answer to this interrogatory may be derived or ascertained will be produced at a mutually agreeable date, time, and place.

INTERROGATORY NO. 7:

Please identify and state the experience and qualifications, if applicable, of every person known to you, your agents, or contractors as having knowledge of facts relevant to this case concerning Defendant's Premises At Issue during the Time period At Issue, including but not limited to the identification or location in your premises of asbestos-containing products to which Plaintiff was exposed or facts disputing the identification or location of such product or type of products.

ANSWER: Defendant objects to this interrogatory on the following grounds:

- a. it is overly broad, vague and non-specific;
- b. it seeks discovery of attorney work product which is exempt; and
- c. it seeks discovery of information equally available to Plaintiff's attorneys through their own legal research.

Subject to and without waiving said objection: Defendant refers Plaintiffs to the depositions of Roger Clark and Ron Norris and Defendant's Responses to Request for Disclosure.

INTERROGATORY NO. 8:

With respect to Defendant's Premises At Issue during the Time Period At Issue, please identify and state the experience and qualifications, if applicable, of every person known to you, your agents, or contractors as being employed by you or having been employed by you whose duties and/or responsibilities included interface or liaison with Plaintiff's employer or other contractors who installed, removed, maintained, repaired, or replaced asbestos-containing products (including foremen or supervisors or (sic) Plaintiff) on Defendant's Premises At Issue (regardless of job title,

including but not limited to “plant engineers”, “project engineers”, “company engineers”, “project superintendents”, “purchasing agents” or job descriptions of a similar nature) and specifically include those whose duties and responsibilities included the following:

- a. entering into contracts or purchase orders (including specifications) with such contractors
- b. allowing such contractors access to Defendant’s Premises At Issue,
- c. overseeing or supervising or observing or monitoring such contractor activities or addressing any contractor questions or concerns relating to the work being performed
- d. providing or approving asbestos-containing materials to be used by such contractors
- e. inspecting or approving work done by such contractors or authorizing payment for work done by such contractors

ANSWER: Defendant objects to this interrogatory on the following grounds:

- a. it is overly broad, vague and unqualified as to time.

Subject to and without waiving said objection: Defendant refers Plaintiffs to the depositions of Roger Clark and Ron Norris and Defendant’s Responses to Request for Disclosure.

INTERROGATORY NO. 9:

If you have or have had an industrial hygiene or safety or medical department, please

- a. state the year such department was established, and whether it was established on the corporate level or Defendant’s Premises At Issue or both and
- b. with respect to Defendant’s Premises At Issue during the Time Period At Issue, please identify and state the experience and qualifications, if applicable, of every persons known to you, your agents, or contractors as being or having acted in a medical, safety, or industrial hygiene advisory capacity (regardless of job title) specifically including, but not limited to, physicians, medical directors, medical personnel, nurses, safety engineers or managers and industrial hygienists. (You should include in your answer those persons on a corporate level, regardless of whether they worked directly on Defendants’ (sic) Premises if they had such responsibilities of workers on Defendant’s Premises At Issue, and identify such individuals as affiliated with the corporate headquarters of Defendant.)

ANSWER: Defendant objects to this interrogatory on the following grounds:

- a. it is overly broad vague, and non-specific;
- b. it seeks the discovery of information that is neither relevant to the suit nor reasonably calculated to lead to the discovery of admissible evidence;
- c. it seeks discovery of attorney work product which is exempt; and
- d. it seeks discovery of information protected by attorney-client privilege.

Defendant has objected to this interrogatory. However, without waving said objections, Defendant had an industrial hygiene program and medical department at the facility. At this stage of the case, Defendant cannot say with specificity when such was established except that such is believed to have been done in the 1970s and 1980s forward. To the extent which they exist and can be located, non-exempt and non-privileged records from which the answer to this interrogatory may be derived or ascertained will be produced at a mutually agreeable date, time, and place. Further, Defendant refers Plaintiffs to the deposition of Roger Clark.

INTERROGATORY NO. 10:

Please identify all warnings given by Defendant, if any, to anyone at Defendant's Premises At Issue (including the Plaintiff) regarding the hazards of asbestos and the dangers inherent in the inhalation of asbestos fibers, and please include in your response:

- a. to whom these warning were given (and specifically state if Plaintiff was among them),
- b. when they were given, if ever, and
- c. in what manner they were given (e.g. written pamphlets, signs, posted, oral/group meeting, individual discussions, etc.) and
- d. state whether you have published, written, edited, or distributed any other printed materials, including brochures, pamphlets, catalogs, packaging, advertising, signs, statements, or other materials containing any warning of the possibility of injury from the use or exposure to asbestos or asbestos-containing products, and
- e. state whether any of the foregoing warnings were in Spanish or any other language besides English.

ANSWER: Defendant objects to this interrogatory on the following grounds:

- a. it requires the marshaling of evidence.

Defendant has objected to this interrogatory. However, without waiving said objection, after Defendant acquired its interest in the facility in 1974, asbestos was removed and abated. When asbestos removal activities were conducted at the facility, signs were posted at our near where the activities were being conducted. If the signs or similar signs are located (Defendant sold its interest in the facility in 1995), Defendant will produce them for inspection at a mutually agreeable date, time, and place.

INTERROGATORY NO. 11:

If Defendant has or had or maintained in its possession any books, pamphlets, memoranda,

or written materials or any kind or character that would indicate that asbestos fibers, when inhaled, can be hazardous to the health of human beings, please identify

- a. the individuals who received, maintained, reviewed, and disseminated the information contained in such written materials,
- b. identify the written materials received, and
- c. state how and why these materials came into Defendant's possession.

ANSWER: Defendant objects to this request on the following grounds:

- a. to respond would be unduly burdensome and unnecessarily expensive.

Defendant has objected to this interrogatory. However, without waiving said objection, non-exempt and non-privileged records from which the answer to this interrogatory may be derived or ascertained will be produced at a mutually agreeable date, time, and place.

INTERROGATORY NO. 12:

Please describe in detail your manufacturing or industrial use of any asbestos or asbestos-containing products at Defendant's Premises At Issue. Please include in your response

- a. the type of asbestos fiber used
- b. from whom you purchased the asbestos fiber used
- c. a description of the process in which the asbestos was used.

ANSWER: Defendant objects to this interrogatory on the following grounds:

- a. it is overly broad, vague and non-specific;
- b. it seeks discovery of attorney work product which is exempt; and
- c. it seeks discovery of information equally available to Plaintiff's attorneys through their own legal research.

Defendant has objected to this interrogatory. However, without waiving said objections, asbestos was removed or abated after Defendant acquired the facility in 1974. Further, Defendant divested itself of its interest in the facility in 1995. To the extent which they exist and can be located, records from which the answer to this interrogatory may be derived or ascertained will be produced at a mutually agreeable date, time, and place.

INTERROGATORY NO. 13:

Identify by name and locations each plant, facility, location, or premises owned, operated,

or controlled by you in which asbestos-containing products were assembled, stored, used, prepared for use, installed, or fabricated during the Time Period At Issue. For each plant, facility, location, or premises listed as responsive to the above request, specify

- a. the functional dates for each plant, facility, location, or premises and
- b. the period during which asbestos-containing materials were stored, used, prepared for use, installed or fabricated.

ANSWER: Defendant objects to this interrogatory on the following grounds:

- a. it is overly broad vague, and unqualified as to time; and
- b. it seeks the discovery of information that is neither relevant to the suit nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 14:

For any of Defendant's Premises At Issue, during the Time Period At Issue, if you, your affiliates, subsidiaries, or predecessor(s), arranged for any of your employees, labor inspectors, insurance company inspectors, industrial hygienists, or any other party, whether directly employed by you or otherwise, to count or measure quantity, quality or threshold limit values or concentrations of asbestos dust or particles or other dust at any of your plants, facilities, locations, or premises where asbestos or asbestos-containing products were used, assembled, installed, or removed, please describe such tests and indicate

- a. the results obtained,
- b. by whom such tests were performed and
- c. identify and state the experience and qualifications, if applicable, of every person known to you, your agents, or contractors as the person most knowledgeable concerning such tests and their results.

ANSWER: Defendant objects to this interrogatory on the following grounds:

- a. it is overly broad, vague and unqualified as to time; and
- b. it requires the marshaling of evidence.

Defendant has objected to this request. However, without waiving said objection, non-exempt and non-privileged records from which the answer to this interrogatory may be derived or ascertained will be produced at a mutually agreeable date, time, and place.

INTERROGATORY NO. 15:

For the Time Period At Issue, if you provided or caused to be provided any safety equipment

or medical program (including, but not limited to, masks, respirators, other breathing devices, protective clothing, protective gloves, area air filtration systems, and area exhaust systems or barriers or enclosures or medical monitoring program, medical examination program, or other medical or safety program) to employees, contractors, or invitees at any of your plants, facilities, locations, or premises where asbestos and asbestos-containing products were manufactured, used, assembled, installed, or removed, please indicate

- a. when such was first provided to your employees, contractors, and/or invitees and to whom,
- b. under what circumstances such were provided, and
- c. state whether you conducted safety meetings discussing the hazards of asbestos with employees, contractors, or invitees at any of Defendant's Premises At Issue during the Time Period At Issue, and if so, when and what was discussed, and
- d. identify and state the experience and qualifications, if applicable, of every person known to you, your agents, or contractors as the person most knowledgeable concerning such equipment and programs and their provisions.

ANSWER: Defendant objects to this interrogatory on the following grounds:

- a. it is overly broad, vague and non-specific;
- b. it requires the marshaling of evidence.

Defendant has objected to this interrogatory. However, without waiving said objections, protective equipment was provided to Defendant's employees working at the facility in dusty conditions and when removing or handling asbestos. At this stage of the case, Defendant cannot say when such was furnished except that such is believed to have been done in the 1970s and 1980s forward. However, such equipment was not provided to contractors working at the facility. The contractors had their own equipment. This Defendant does not know who the "most knowledgeable" persons concerning Defendant's "safety equipment" policies are.

INTERROGATORY NO. 16:

Please state for each of Defendant's Premises At Issues, all relevant State and Federal regulations, laws, statutes, mandates, or other authority pertaining to industrial hygiene, safety, and health of which you were aware during the Time Period At Issue that governed, controlled, or applied to exposure to asbestos or asbestos-containing products, abatement or removal of asbestos-containing products, and transportation of asbestos containing waste from such removal or abatement activities.

ANSWER: Defendant objects to this interrogatory on the following grounds:

- a. it is overly broad vague, and non-specific; and

- b. it seeks the discovery of information equally available to Plaintiff's attorneys through their own legal research.

INTERROGATORY NO. 17:

For any of Defendant's Premises At Issue, detail every occasion during the Time period At Issue when any State, Federal, or local regulatory agency, commission, or other examiner inspected or visited any of your plants, facilities, locations, or premises where asbestos and asbestos-containing products were used, manufactured, assembled, installed, or removed to ascertain whether you were in compliance with relevant State, Federal, or local health and safety regulations.

ANSWER: Defendant objects to this request on the following grounds:

- a. it is overly broad, vague and non-specific;
- b. it seeks discovery information equally available to Plaintiff's attorneys through their own legal research; and
- c. to respond would be unduly burdensome and unnecessarily expensive.

Defendant has objected to this interrogatory. However, without waiving said objection, at this stage of discovery, Defendant has not identified any such inspections.

INTERROGATORY NO. 18:

If, before 1980, you had received notice that any individual or individuals had claimed for alleged injury against you resulting from exposure to asbestos, state for each:

- a. The name and address of the claimant
- b. A description of the claim
- c. The name and address of the attorney representing such claimant.

ANSWER: Defendant objects to this interrogatory on the following grounds:

- a. it is overly broad vague, and non-specific;
- b. it seeks the discovery of information that is neither relevant to the suit nor reasonably calculated to lead to the discovery of admissible evidence;
- c. it seeks discovery of attorney work product which is exempt; and
- d. it seeks discovery of information protected by attorney-client privilege.

INTERROGATORY NO. 19:

If you contend that you did not own or operate or control the Defendant's Premises during

the Time Period At Issue, or if you contend you are not liable in the capacity alleged in the most recent petition, describe in detail the facts supporting your contention and include a detailed corporate history of Defendant and its ownership, sale, acquisition, or divestiture or any of Defendant's Premises At Issue and any relevant mergers, acquisitions, consolidation, or other events of similar nature that you believe bear on the issue of ownership, control, or assumption of liabilities for acts occurring on Defendant's Premises At Issue during the Time Period At Issue and identify and state the experience and qualifications, if applicable, of every person known to you, your agents, or contractors as having knowledge of facts relevant to this issue.

ANSWER: Defendant objects to this interrogatory on the following grounds:

- a. it is overly broad vague, and unqualified at to time;
- b. it seeks the discovery of information that is neither relevant to the suit nor reasonably calculated to lead to the discovery of admissible evidence;
- c. it seeks discovery of attorney work product which is exempt; and
- d. it seeks discovery of information protected by attorney-client privilege.

Defendant has objected to this interrogatory. However, without waiving said objection, Defendant did not acquire its interest in the facility until 1974. Further, Defendant divested itself of its interest in the facility in 1995.

INTERROGATORY NO. 20:

If you contend that venue is not proper, identify by municipality and county the location you contend is your principal place of business within this state for purposes of venue, as well as your next three most significant business locations within this state. If you do not contend that any of your locations are a principal place of business, identify up to four of your places of business where your highest level decision makers within this state work.

ANSWER: Defendant is not making such a contention.

CAUSE NO. 90G2055

WELDON R. MOAKE, et al.

Plaintiffs,

VS.

**OWENS-CORNING FIBERGLAS
CORPORATION, et al.**

Defendants.

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IN THE DISTRICT COURT OF

BRAZORIA COUNTY, TEXAS

239th JUDICIAL DISTRICT

CERTIFICATE OF WRITTEN DISCOVERY

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW SOUTHWESTERN REFINING COMPANY, INC., DEFENDANT,

herein and states the following was served on all known counsel of record:

1. Southwestern Refining Company, Inc.'s First Amended Answers to Plaintiff's Interrogatories.

Respectfully submitted,

BROWN SIMS, P.C.

By: *Robin A. Howard*

G. Byron Sims

Texas Bar No. 18419000

James A. Tatem

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ATTORNEYS FOR DEFENDANT,
SOUTHWESTERN REFINING
COMPANY, INC.

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing has been forwarded to all known counsel of record on this the 16th day of **November, 2001**, via:

<u>X</u>	Facsimile Transmission
<u> </u>	Federal Express
<u>X</u>	Certified Mail, Return Receipt Requested, and
<u> </u>	Hand Delivery
<u> </u>	Regular Mail

Robin A. Howard
Robin Howard