

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MC LEAN

NANCY KEILHACK, Individually and)
as Special Administrator of the)
Estate of Thomas Keilhack, deceased,)
Plaintiff,)
v.) No. 92 L 212
OWENS-CORNING FIBERGLAS CORPORATION,)
et al.,)
Defendants.)

**DEFENDANT, OWENS-ILLINOIS, INC.'S RESPONSES TO
PLAINTIFFS' FIRST REQUEST FOR DISCOVERY FROM
DEFENDANT, OWENS-ILLINOIS, INC.**

PRELIMINARY STATEMENT

Some of the events which may be relevant to the matters inquired about by Plaintiffs' Requests for Production apparently occurred more than thirty-five years ago. In addition, effective April 30, 1958, Owens-Illinois, Inc. disposed of the business involved in this action by way of sale of that business to Owens-Corning Fiberglas Corporation. Since that time, Owens-Illinois, Inc. has not engaged in the asbestos-containing insulation products manufacturing business. It does not now and it has not since that sale manufactured, distributed or sold any of its Kaylo asbestos-containing insulation products. As a result of the foregoing factors, many of the individuals who might have had personal knowledge of the matters to which plaintiffs' requests relate are deceased, or are otherwise unavailable to Owens-Illinois, Inc., and investigations to date indicate that at least some documents which relate to matters inquired about by these requests were transferred to Owens-Corning Fiberglas Corporation with the transfer of the business in question in 1958. Owens-Illinois, Inc. is engaged in a continuing investigation in an attempt to locate, confirm the transfer of, or confirm the absence of, such documents and is

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also engaged in a continuing investigation into the matters inquired about in these requests. Unless otherwise stated in a response to a specific request, the responses set out hereinafter are limited to the period during which Owens-Illinois, Inc. manufactured asbestos-containing Kaylo insulation products and to the facilities related to that business. The following is a part of and is incorporated by reference in every response provided hereinafter:

This response is accurate as of the date made. However, Owens-Illinois, Inc.'s investigation is continuing, and Owens-Illinois, Inc. cannot exclude the possibility that it may be able to obtain more complete information or even information which indicates that the response being supplied is incorrect. Owens-Illinois, Inc. objects to responding to this request in regard to any period of time other than the period during which it engaged in the manufacture and sale of the Kaylo products alleged to be involved in this case which ended in mid-1958 or concerning any facility not related to that business, on the basis that any such response would be irrelevant to the subject matter of the pending litigation, would not be reasonably calculated to lead to the discovery of admissible evidence, and would be burdensome and oppressive.

Commencing in 1963 and continuing through 1977, Kimble Glass Company, a unit of Owens-Illinois, Inc., offered for sale gaskets, inserts and spacers as accessory parts intended for use in conjunction with Kimble's conical end glass piping system. Some of these accessory parts contained asbestos as one of their ingredients. These accessory parts were not manufactured by Kimble, but were purchased from other suppliers. From approximately 1966 through 1977, the Kimble Division also offered

for sale a field beading kit which included a small plate and a covering over each of two small hoses. The plate and hose coverings may possibly have contained asbestos, but Owens-Illinois cannot yet confirm the ingredients of these materials based upon its business records presently reviewed. Kimble also sold Glass Lined Reactors manufactured by Schwelm for a period of time presently unknown which incorporated gaskets containing asbestos as one of their ingredients. At the end of 1977, Owens-Illinois transferred its interest in the glass pipe and Schwelm Reactor product lines and related assets to OI/Schott Process Systems, Inc. in exchange for 50% of the stock of the Corporation and, pursuant to a Sales Agreement dated May 24, 1990, sold its interest in OI/Schott Process Systems, Inc. to Schott Corporation. From 1982 through 1985, Kontes Glass Company, a subsidiary of Owens-Illinois during that time period, purchased certain asbestos-containing materials from other manufacturers and incorporated those materials into four of its products. Based upon the information available to Owens-Illinois to date concerning the nature of Plaintiff's claim, it is Owens-Illinois' understanding that the only Owens-Illinois asbestos-containing product to which the Plaintiff alleges exposure is Kaylo. Therefore, Owens-Illinois objects to responding to these requests in regard to the above described asbestos-containing products sold by Kimble Glass Company and Kontes Glass Company on the basis that any such response would be irrelevant to the subject matter of the pending litigation, would not be reasonably calculated to lead to the discovery of admissible evidence and would be burdensome and oppressive. In the event that Owens-Illinois is subsequently informed that the Plaintiff alleges exposure to asbestos-containing products sold by Kimble Glass Company or Kontes Glass Company, Owens-Illinois will supplement these responses to requests within a reasonable time after receiving such notice to the extent that a supplementation is necessary in order to respond to the requests in light of the

depicting the plant or machinery in question, any parts thereof, or of Thomas Keilhack.

RESPONSE NO. 3. This defendant objects to this request in that it seeks information protected by the attorney-client and/or the attorney work-product privilege. Without waiving the above objection, this defendant has found no documents responsive to this request.

REQUEST NO. 4. all photographs, models, sketches or diagrams of any of the sites at which Thomas Keilhack worked;

RESPONSE NO. 4. This defendant objects to this request in that it seeks information protected by the attorney-client and/or the attorney work-product privilege. Without waiving the above objection, neither this defendant nor its counsel is in possession of materials referred to in this request. This defendant reserves the right to supplement its response at any time in the future.

REQUEST NO. 5. all photographs, models, sketches or diagrams of any of the products involved in this litigation;

RESPONSE NO. 5. This defendant objects to this interrogatory on the basis that it seeks information which is not relevant to the subject matter of this litigation and is not reasonably calculated to lead to the discovery of admissible evidence, except as it relates to the period of time during which this defendant engaged in the manufacture, sale and distribution of its Kaylo asbestos-containing products. This defendant

further objects to this request in that it seeks information protected by the attorney-client and/or the attorney work-product privilege. Without waiving the above objections, refer to Exhibit I which may contain information relevant to the subject matter of this request.

REQUEST NO. 6. all pamphlets, brochures or other documents prepared, distributed or utilized by Defendant to advertise or promote asbestos containing products during the 1950's, 1960's, 1970's, 1980's, and 1990's;

RESPONSE NO. 6. This defendant objects to this request on the basis that it seeks information which is not relevant to the subject matter of this litigation and is not reasonably calculated to lead to the discovery of admissible evidence, except as it relates to the period of time during which this defendant engaged in the manufacture, sale and distribution of its Kaylo asbestos-containing products. Without waiving the above objection, refer to Exhibit I. This defendant ceased the manufacture, sale and distribution of its Kaylo asbestos-containing products in 1958.

REQUEST NO. 7. all medical articles, case reports, textbooks or other documents which relate to any "state-of-the-art" defense you will present.

RESPONSE NO. 7. The documents which this defendant intends to rely upon at trial are not known at the present time. This defendant reserves the right to designate documents to be used at trial at a later date. As a partial listing, however, the following materials may be relied upon: "A Study of Asbestosis in the Asbestos Textile Industry," Dreessen, W.C. (1938); an article published in the Transactions of the

Eleventh Annual Meeting, Industrial Hygiene Foundation, November 7, 1946 by J. J. Bloomfield; "A Health Survey of Pipe Covering Operations in Constructing Naval Vessels," Fleischer, Drinker, et al., (1946); "Asbestos Exposure During Naval Vessel Overhaul," Marr, William T. (1964); "Prevalence of Chronic Respiratory Disease," Ferris, B. G., Jr. (1971); "Asbestosis and Bronchogenic Carcinoma," Isselbacher, K. J. (1953); Annals of the New York Academy of Sciences Volumes 132 and 330; and the Threshold Limit Values promulgated by the American Conference of Governmental Industrial Hygienists for the years 1946 through 1958. This defendant objects to producing these documents on the grounds that they are public documents and are as available to plaintiff's counsel as they are to this defendant.

REQUEST NO. 8. a transcript (including exhibits) of each instance where an expert witness has testified in support of Defendant's "state-of-the-art" defense in asbestos disease litigation;

RESPONSE NO. 8. This defendant objects to this request as being vague, ambiguous, irrelevant, overly broad, burdensome and oppressive, not reasonably calculated to lead to the discovery of admissible evidence and not limited to any issue which is the subject of this case.

REQUEST NO. 9. each document authored by an employee of Defendant in the course of his employment, dealing in whole or in part with the consequences of exposure to asbestos;

RESPONSE NO. 9. This defendant objects to this request as being unintelligible, overly broad, burdensome and oppressive, not reasonably calculated to lead to the

discovery of admissible evidence and not limited to any issue which is the subject of this case.

REQUEST NO. 10. all medical records of those present or former employees of Defendant who have filed claims for worker's compensation or occupational disease benefits alleging an injury or disease from exposure to asbestos and all personnel and employment records which evidence or reflect the duration, quantity and quality of his or her exposure to asbestos while employed by Defendant;

RESPONSE NO. 10. This defendant objects to this request on the basis that it seeks information which is not relevant to the subject matter of this litigation and is not reasonably calculated to lead to the discovery of admissible evidence, except as it relates to the period of time during which this defendant engaged in the manufacture, sale and distribution of its Kaylo asbestos-containing products. This defendant ceased the manufacture, sale and distribution of its Kaylo asbestos-containing products in 1958. Without waiving the above objection, this defendant has found no documents responsive to this request in its business records. During the period in which this defendant engaged in the manufacture of its Kaylo asbestos-containing products, it received no workers' compensation claims for any asbestos-related disease.

REQUEST NO. 11. each written warning, caution or other document which was intended by Defendant to reach those persons who would breathe or ingest the asbestos from asbestos containing products manufactured and/or sold by Defendant;

RESPONSE NO. 11. This defendant objects to this interrogatory on the basis that it seeks information which is not relevant to the subject matter of this litigation and is not reasonably calculated to lead to the discovery of admissible evidence, except as it relates to the period of time during which this defendant engaged in the manufacture, sale and distribution of its Kaylo asbestos-containing products. Without waiving the above objection this defendant ceased the manufacture, sale and distribution of its Kaylo asbestos-containing products in 1958. This defendant has not found information in its records sufficient to enable it to answer this request. However, it does not appear that any warning concerning asbestos was given in that it does not appear that this defendant had reason to believe that the use of its products would result in a foreseeable risk of harm.

REQUEST NO. 12. all reports, notes, letters, memoranda, or other documents showing or purporting to show what OWENS-ILLINOIS, INC. knew about the relationship between asbestos dust and health;

RESPONSE NO. 12. This defendant objects to this request as being vague, ambiguous, unintelligible, irrelevant, overly broad, burdensome and oppressive, not reasonably calculated to lead to the discovery of admissible evidence and not limited to any issue which is the subject of this case.

REQUEST NO. 13. all documents reflecting or evidencing a summary of periodic chest x-rays or other medical examinations of the workers employed at any Owens-Illinois, Inc. plant wherein asbestos was used at any time. Stated another way, Plaintiff Nancy Keilhack is requesting the summaries or reports

of the plant health surveys or employee health surveys, which reports or summaries were prepared or used to evaluate the health hazards, if any, at the plant;

RESPONSE NO. 13. This defendant objects to this request on the grounds that the phrase "health hazards" is vague, ambiguous, and overly broad, seeks information which is not relevant to the subject matter of this litigation, and is not reasonably calculated to lead to the discovery of admissible evidence, except as it relates to the period of time during which this defendant engaged in the manufacture, sale and distribution of its Kaylo asbestos-containing products. Without waiving the above objection, this defendant has found no documents in its business records responsive to this request for the relevant time period. The documents referred to in defendant's answer to Interrogatory No. 12 in the Nancy Reilhack case filed simultaneously herewith may contain information related to the subject matter of this request. Further, this defendant has no records indicating that any of its employees at its Kaylo manufacturing plants developed any asbestos related disease during the time defendant manufactured Kaylo.

REQUEST NO. 14. each policy of insurance which may be construed to provide coverage for the claim stated in the Complaint;

RESPONSE NO. 14. This defendant objects to this request on the ground that it seeks irrelevant and immaterial information which is not reasonably calculated to lead to the discovery of admissible evidence. Expressly reserving and without waiving its objections, and subject to them, this defendant states that the issues surrounding its insurance coverage for asbestos claims are complex. Because of disputes over possible insurance coverage, this defendant has engaged in

litigation against certain insurance carriers which may provide coverage for asbestos claims. One such lawsuit resulted in a decision of the United States District Court of the District of Columbia in Owens-Illinois, Inc. v. Aetna Casualty and Surety Company, 597 F.Supp. 1515 (D.D.C. 1984).

The litigation between this defendant and Aetna Casualty and Surety Co. has been settled. The terms and conditions of the settlement agreement are confidential, and as a consequence, the parties are precluded from disclosing the terms or contents of the agreement. Litigation with other insurance carriers is ongoing. This answer to be supplemented at a later date.

REQUEST NO. 15. all documents reflecting payments or agreements for payments made under any of the policies described in the preceding paragraph which the carrier claims or could claim as a full or partial exhaustion of the policy limits or otherwise affect the amount of coverage available in this case;

RESPONSE NO. 15. Refer to this defendant's objection and answer to Request for Production No. 14.

REQUEST NO. 16. each document authored by an employee of Defendant in the course of his employment, dealing in whole or in part with the consequences of exposure to asbestos;

RESPONSE NO. 16. This defendant objects to this request as being cumulative, burdensome and oppressive. Without waiving the above objection, refer to objection to Request for Production No. 9.

REQUEST NO. 17. all medical records of those present or former employees of Defendant who have filed claims for worker's compensation or occupational disease benefits alleging an injury or disease from exposure to asbestos and all personnel and employment records which evidence or reflect the duration, quantity and quality of his or her exposure to asbestos while employed by Defendant;

RESPONSE NO. 17. This defendant objects to this request as being cumulative, burdensome and oppressive. Without waiving the above objection, refer to objection and answer to Request for Production No. 10.

REQUEST NO. 18. each written warning, caution or other document which was intended by Defendant to reach those persons who would breathe or ingest the asbestos from asbestos containing products manufactured and/or sold by Defendant;

RESPONSE NO. 18. This defendant objects to this request as being cumulative, burdensome and oppressive. Without waiving the above objection, refer to objection and answer to Request for Production No. 11.

REQUEST NO. 19. a transcript (including exhibits) of each instance where an employee of Defendant testified at deposition or trial in asbestos disease litigation;

RESPONSE NO. 19. This defendant objects to this request as being vague, ambiguous, irrelevant, overly broad, burdensome and oppressive, not reasonably calculated to lead to

the discovery of admissible evidence and not limited to any issue which is the subject of this case.

REQUEST NO. 20. a transcript (including exhibits) of each instance where an individual whom Defendant listed, retained or called as an expert witness, testified at deposition or trial in asbestos disease litigation;

RESPONSE NO. 20. This defendant objects to this request as being vague, ambiguous, irrelevant, overly broad, burdensome and oppressive, not reasonably calculated to lead to the discovery of admissible evidence and not limited to any issue which is the subject of this case.

REQUEST NO. 21. all agreements to which Defendant is a party and which relate to the manner in which this case shall be evaluated, delayed or defended, including, but not limited to, all Wellington agreements and all documents exchanged by the parties thereto;

RESPONSE NO. 21. This defendant objects to this request on the grounds that it is vague, ambiguous, overly broad, seeks information which is not relevant to the subject matter of this litigation, and is not reasonably calculated to lead to the discovery of admissible evidence. This defendant further objects to this request in that it seeks information protected by the attorney-client and/or the attorney work-product privilege.

REQUEST NO. 22. Defendant's last three annual reports;

RESPONSE NO. 22. This defendant objects to this request on the basis that it seeks information which is not relevant to the subject matter of this litigation and is not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST NO. 23. all documents, objects, and tangible things, as defined in Supreme Court Rule 214, which are or were in the possession of any consulting expert as defined in Supreme Court Rule 220 which do not contain the consulting expert's opinion;

RESPONSE NO. 23. This defendant objects to this request on the grounds that it is vague, ambiguous, overly broad, seeks information which is not relevant to the subject matter of this litigation, and is not reasonably calculated to lead to the discovery of admissible evidence. This defendant further objects to this request in that it seeks information protected by the attorney-client and/or the attorney work-product privilege.

REQUEST NO. 24. All documents reflecting or evidencing the sale and/or shipment of asbestos-containing products to any job site listed on Exhibit A, including, but not limited to, purchase orders, invoices, accounts receivable cards, and bills of lading.

RESPONSE NO. 24. This defendant objects to this request on the basis that it seeks information which is not relevant to the subject matter of this litigation and is not reasonably calculated to lead to the discovery of admissible evidence, except as it relates to the period of time during which this defendant engaged in the manufacture, sale and distribution

of its Kaylo asbestos-containing products. This defendant ceased the manufacture, sale and distribution of its Kaylo asbestos-containing products in 1958. Without waiving the above objection, this defendant has found no documents responsive to this request in its business records.

REQUEST NO. 25. a list of the names, addresses and employers of each person involved or consulted in the preparation of your response to this Request;

RESPONSE NO. 25. This defendant states that it has referred to the relevant business records of the Owens-Illinois Glass Company, which are still in the possession of Owens-Illinois, Inc., and to some of the documents produced by Owens-Corning Fiberglas Corporation in the asbestos litigation, in connection with the preparation of answers to these requests unless otherwise indicated.

REQUEST NO. 26. an affidavit stating whether production is complete according to the knowledge of Defendant and Defendant's insurance carriers, attorneys, agents and employees.

RESPONSE NO. 26. Refer to the attached affidavit.

EXHIBIT A

Jobsites:

Mount Clare Bowling, 2957 Harlem Avenue, Chicago, IL;
Zenith Corporation, 1900 N. Austin Avenue, Chicago, IL;
Brookfield Zoo, Brookfield, IL;
Continental Assurance Company, 55 Jackson, Chicago, IL;
Tinker Toy Factory, Lake and Crawford (now Pulaski), Chicago, IL;
First National Bank of Lincolnwood, 6401 N. Lincoln Avenue,
Lincolnwood, IL;
Cenetex Project - Oak Grove Home Development - single family
dwellings in Chicago, area;
Ammice Brothers - Housing Project - single family dwellings in
Chicago area;
City of Chicago Low Income Housing Project, Chicago, IL
Kimberly Clark Executive Office Buildings, Menasha-Neenah, WI;
Appleton High School East, Appleton, WI;
City & County Building, Indianapolis, IN;
Purdue University, West Lafayette, IN;
Valparaiso University, Valparaiso, IN;

AFFIDAVIT

STATE OF OHIO)

)SS:

COUNTY OF WOOD)

H. G. BRUSS, being duly sworn according to law, deposes and says that he is an Assistant Secretary of Owens- Illinois, Inc., a defendant herein; that as such he is authorized to make an Affidavit on its behalf; and that the facts set forth in the foregoing DEFENDANT, OWENS-ILLINOIS, INC.'S RESPONSES TO **REQUEST FOR PRODUCTION**, are true and correct to the best of his knowledge, information and belief.

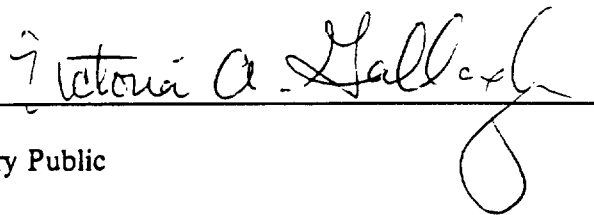


H. G. BRUSS

SWORN TO and subscribed before me this 12 day of January, 19 96

My Commission Expires: Sept, 22, 1997

SEAL



Notary Public

VICTORIA A. GALLAGHER
Notary Public, State of Ohio
My Commission Expires Sept 22, 1997