

IL030.ASB
02/28/89

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

CAROL ANN COOKE and JUDITH
ANN O'NEAL, Special Co-
Administrators for the Estate
of Ben Smith, deceased and
CAROL ANN COOKE, Individually,

Plaintiffs,

vs.

ILLINOIS CENTRAL GULF RAILROAD
COMPANY, et al.,

Defendants.

NO. 88 L 52

DEFENDANT, OWENS-ILLINOIS, INC.'S SUPPLEMENTAL 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' Request 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 any such business. It does not now and it has not since that sale manufactured, distributed or sold any asbestos-containing products. As a result of the foregoing factors, investigations to date indicate that at least some documents which relate to matters inquired about by these requests may have been 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 also engaged in a continuing investigation into the matters inquired about in these requests. Unless otherwise stated in an answer to a specific request, the answers set out hereinafter are limited to the period during which Owens-Illinois, Inc. manufactured asbestos-containing insulation products and to the facilities related to that business. The following is a part of and is incorporated by reference in every answer provided hereinafter:

This answer 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 answer being supplied is incorrect. Owens-Illinois, Inc. objects to answering this request in regard to any period of time other than the period during which it engaged in the business involved in this case which ended in mid-1958 or concerning any facility not related to that business, on the basis that any such answer 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.

Furthermore, Owens-Illinois, Inc. objects to the instructions and definitions supplied by plaintiffs with regard to these requests, on the basis that the definitions are overbroad, vague, and often inconsistent with the normal usage and meaning of such words, and the instructions are overbroad, burdensome and constitute an unreasonable expansion of the

requests themselves. Owens-Illinois, Inc. therefore gives notice that it does not consider itself bound by the instructions and definitions propounded by plaintiffs, and instead shall answer the requests in a manner consistent with a normal understanding of the language used in the requests and to the extent necessary to fairly and fully answer the requests.

REQUEST NO. 1. All witness statements of any sort, whether signed or unsigned (together with all documents purporting to reflect the same), and a list of those statement for which a privilege from disclosure is claimed.

RESPONSE NO. 1. This defendant nor its local 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. 2. All data as to the physical or mental condition of Ben Smith prior to his death excluding all documents provided you by plaintiffs' counsel and excluding all documents, copies of which have already been provided plaintiffs' counsel through formal discovery.

RESPONSE NO. 2. This defendant nor its local 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. 3. All data as to the physical or mental condition of Carol Cooke excluding all documents provided you by plaintiffs' counsel and excluding all documents, copies of which have already been provided plaintiffs's counsel through formal discovery.

RESPONSE NO. 3. This defendant nor its local 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. 4. All photographs of Ben Smith.

RESPONSE NO. 4. This defendant has found no documents responsive to this request.

REQUEST NO. 5. All photographs of Carol Cooke.

RESPONSE NO. 5. This defendant has found no documents responsive to this request.

REQUEST NO. 6. All photographs, models, sketches or diagrams of any of the sites at which Ben Smith worked.

RESPONSE NO. 6. This defendant nor its local 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 NO7. All photographs, models, sketches or diagrams of any of the products involved in this litigation.

RESPONSE NO. 7. Refer to Exhibit I of this defendant's answers to plaintiff's Interrogatories which may contain information relevant to the subject matter of this interrogatory.

REQUEST NO. 8. All pamphlets, brochures or other documents prepared, distributed or utilized by defendant to advertise or promote asbestos-containing products during the 1950's or 1960's.

RESPONSE NO. 8. This defendant ceased the manufacture, sale and distribution of asbestos-containing products in 1958. To the extent that this request refers to the period of time during which this defendant engaged in the manufacture, sale and distribution of asbestos-containing products, refer to Exhibit I of this defendant's answers to plaintiff's interrogatories.

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 interrogatory 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 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 asbestos-containing products. Without waiving the above objection, during the period in which this defendant engaged in

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the manufacture of its 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 breath or ingest the asbestos from asbestos-containing products manufactured and/or sold by defendant.

RESPONSE NO. 11. This defendant ceased the manufacture, sale and distribution of asbestos-containing products in 1958. This defendant has no documents responsive to this request in its business records. 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. A transcript (including exhibits), other than those previously produced in this cause, of each instance where an employee of defendant testified at deposition or trial in asbestos disease litigation.

RESPONSE NO. 12. This defendant ceased the manufacture, sale and distribution of asbestos-containing products in 1958. This defendant is aware that the following present or former employees have testified at trial or by deposition in asbestos-related litigation:

Edward C. Ames	10/8/79, 1/10/80, 2/12/81, 3/26/81 and 10/7/81.
Robert Grim	9/6 & 7/84 (trial), 10/11/84 (trial), and 7/1/87 (trial)
Richard L. Grimmie	7/10/79, 10/24/79 (trial) and 10/29/79 (trial).
David Innis	9/27/83.
William Justice	7/11/79 and 5/3/82.

John Pershing	7/26/79.
John Rhoads	7/11/79.
June Welser	7/11/79.
Everett Shuman	4/26/79, 6/12/79, 7/15/80, 8/19/80, and 3/4/81.
Willis G. Hazard	2/11/81, 3/27/81, 12/14/81, 1/27/82.
Richard R. Beck	4/1/81.
Samuel F. Schillaci	4/7/81, 7/31/81 (trial), 11/9/81 (trial), 11/17/81, 4/26-27/82, 6/4/84, 8/28/84, 9/6/84, 11/14/84, 2/5/85, 3/4/85 (trial), 4/30/85, 12/19/85 (trial), 10/8/86, 4/10/87 (trial), 6/25/87 (trial), 11/4/87 (trial), 1/20/88 (trial), 10/15/88 (trial), 11/22/88 (trial), 11/29/88 (trial), 12/8/88 (trial), and 12/15/88 (trial).
George N. Bates, M.D.	4/6/81.
Thomas A. Meehan, Esq.	8/3/81 (trial), 11/9/81 (trial), 12/15/83, 1/16/84, 8/28/84, 6/4/84, and 11/13/84.

Effective April 30, 1958, this defendant sold its asbestos-containing product manufacturing division to Owens-Corning Fiberglas Corporation. At that time certain employees who worked in the division, some of whom are mentioned above, transferred to Owens-Corning Fiberglas Corporation. These individuals have been deposed with regard to asbestos-related litigation involving Owens-Corning Fiberglas Corporation.

This defendant objects to the production of copies of the transcripts of these depositions on the basis that said transcripts are filed with various courts around the country, they are therefore matters of public record, and therefore plaintiffs have equal access to such documents. Defendant reserves the right to advance additional arguments against the

production of such documents if and when plaintiffs file a request for production.

REQUEST NO. 13. A transcript (including exhibits), other than those previously produced in this cause, 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. 13. To the extent that this defendant is in possession of copies of such documents, it possesses copies of documents collected only in preparation for litigation. This defendant objects to producing it. The document is available from its proper source.

REQUEST NO. 14. All documents which record or reflect the asbestos exposure of those present or past employees of defendant who have contracted asbestosis, lung cancer or mesothelioma; this is a request for the documents which reveal the name or address of the employee, the disease and date of diagnosis, the present or last known condition of the employee, the death certificate, the dates and location of each employment and a description of the jobs performed, and the analysis of each air sample taken from the employee's breathing zone or any air reported to be similar thereto.

RESPONSE NO. 14. 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. Without waiving the above objection, during the period in which this defendant engaged in the manufacture of its asbestos-containing products, it received no workers' compensation claims for any asbestos-related disease.

REQUEST NO. 15. Defendant's last three annual reports.

RESPONSE NO. 15. 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 asbestos-containing products.

REQUEST NO. 16. An affidavit stating whether production is complete according to the knowledge of defendant and defendant's insurance carriers, attorneys, agents and employees.

RESPONSE NO. 16. 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., in connection with the preparation of answers to these requests unless otherwise indicated.

AFFIDAVIT

STATE OF OHIO)

)SS:

COUNTY OF LUCAS)

A. H. SMITH, 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.

A. H. Smith

A. H. SMITH

SWORN TO and subscribed

before me this 1st day

of March, 1989.

Shirley J. Sroczynski
Notary Public

My Commission Expires:

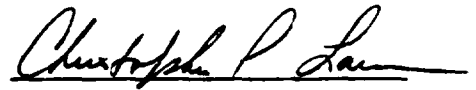
SHIRLEY J. SROCZYNSKI
Notary Public, State of Ohio
My Commission Expires Oct. 15, 1992

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause by enclosing same in an envelope with postage fully prepaid, and by depositing said envelope in a United States Post Office mail box in Peoria, Illinois on 3-6, 1989, addressed to such attorneys at their business address as disclosed by the pleadings of record herein.

COPY MAILED TO:

See attached service list



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& ALLEN
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4 E 5800, Carol Ann Cooke, and Judith Ann O'Neal, Special Co-Administrators
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COOKE - COOKE.E

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, NO. 88 L 52

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