

C to PC
O to file

transcripts in its possession of trial or deposition testimony provided by Richard E. Grimmie to the plaintiff's counsel with Owens-Illinois' responses to plaintiff's request for discovery in Phelps, 94 L 295 (McLean County). Owens-Illinois is not aware, or in possession of, any other transcripts of any other persons to whom counsel for Owens-Illinois referred during opening statement in McClure. Mr. Grim was never an Owens-Illinois plant worker and Mr. Jackson has never given trial or deposition testimony.

2. All documents served by any party on the opposite party in the "arbitration claim by Owens-Corning Fiberglas Corporation for partial indemnity under a clause in a 1958 contract by which Owens-Corning Fiberglas Corporation acquired the ... asbestos insulation business" of Owens-Illinois, Inc., and the arbitration counterclaims by Owens-Illinois, Inc. against Owens-Corning Fiberglas Corporation as described in pages 55 and 56 of the form 10-K of Owens-Illinois for the fiscal year ended December 31, 1994.

RESPONSE: Owens-Illinois objects to this request as vague and ambiguous with respect to which documents plaintiff is referring to as those "served by any party on the opposite party." Owens-Illinois also objects to this request on the basis that it is overly broad, that it seeks irrelevant and immaterial information which is not reasonably calculated to lead to the discovery of admissible evidence and that it is not limited to any issue which is the subject of this case. Specifically, Owens-Illinois states that the arbitration involved questions of contract construction regarding an indemnity provision contained in a 1958 sales contract between Owens-Illinois and Owens-Corning Fiberglas. The contemporary legal dispute over the terms of the contract is not relevant to this lawsuit.

Furthermore, this request seeks documents that are subject to a Protective Award Compelling Confidentiality and Non-Waiver of Privileges and Protection (the "Award"), a certified copy of which is attached. The Award defined "confidential information" as "[all materials . . . produced and other information disclosed during the

course of discovery, hearings or other proceedings in the] arbitration," including all documents, "filed with . . . or submitted to the Panel." (Award ¶1). Thus, the Award covers all documents "served by one party on the opposite party" in the arbitration, including all pleadings served in the arbitration.

Moreover, the documents requested are subject to a privilege applicable to confidential communications made in reliance on their confidentiality in the course of an arbitration proceeding. See *Illinois Educational Labor Relations Board v. Homer Community Consolidated School District No. 208*, 132 Ill.2d 29, 547 N.E.2d 182 (1989). The Award makes clear that all arbitration information was disclosed in confidence and that the preservation of confidentiality was important to the parties and to the prompt and efficient conduct of the arbitration.

Finally, some of the documents requested, even if not protected from disclosure by the Award or by the privilege described in Homer, are subject to the attorney-client, work product or joint defense privilege.

3. Each different telex or other document by which McKinney of Johns-Manville invited representatives of various companies, including Owens-Illinois, to a meeting on May 22, 1979, and all documents concerning, and minutes of, that meeting.

RESPONSE: Owens-Illinois objects to this request as vague and ambiguous with respect to whether the documents requested include anything other than the document which plaintiff attached to its discovery requests in this case, a copy of which Owens-Illinois previously received from plaintiff's counsel in the course of other litigation. Owens-Illinois also objects that this request seeks irrelevant and immaterial information which is neither admissible nor reasonably calculated to lead to the discovery of admissible evidence. Expressly reserving and without waiving its objections, and subject to them,

Owens-Illinois states that after performing a reasonable search, it believes that it possesses no document by which Johns-Manville invited representatives of various companies to a meeting on May 22, 1979, other than the document referred and attached to plaintiff's discovery request in this case, a copy of which Owens-Illinois obtained as stated above.

4. All documents regarding any other meeting of representatives of three or more of the companies named in the memorandum regarding the CEO Meeting of May 22, 1979 (a copy of which is attached).

RESPONSE: Owens-Illinois objects to this request on the basis that it is vague and ambiguous with respect to which "other meetings . . . regarding the CEO meeting of May 22, 1979" plaintiff is referring to. Furthermore, Owens-Illinois objects that the request is overly broad and that it seeks information that is neither admissible nor reasonably calculated to lead to the discovery of admissible evidence. Expressly reserving and without waiving its objections, and subject to them, Owens-Illinois states that after performing a reasonable search, it believes that it possesses no documents which relate to any other meeting connected with the meeting of May 22, 1979, regardless of the number of company representatives present.

5. The results of all tests performed by, at the direction of, or known to O-I regarding the maximum distance that an asbestos particle can travel through the air;

RESPONSE: This defendant objects to this request to the extent that it calls for documents protected by the work-product privilege or documents obtained in preparation for litigation. This defendant also 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 objections, this defendant ceased the manufacture, sale and distribution of its Kaylo asbestos-containing products in 1958. This defendant has found no documents in its business records responsive to this request.

6. The results of all tests performed by, at the direction of or known to O-I regarding the maximum time that an asbestos particle can travel through the air;

RESPONSE: This defendant objects to this request to the extent that it calls for documents protected by the work-product privilege or documents obtained in preparation for litigation. This defendant also 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 objections, this defendant ceased the manufacture, sale and distribution of its Kaylo asbestos-containing products in 1958. This defendant has found no documents in its business records responsive to this request.

7. The results of all tests performed by, at the direction of, or known to O-I regarding the minimum quantity of asbestos necessary to induce mesothelioma;

RESPONSE: This defendant objects to this request to the extent that it calls for documents protected by the work-product privilege or documents obtained in preparation for litigation. This defendant also 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 objections, this defendant ceased the manufacture, sale and distribution of its Kaylo asbestos-containing products in 1958. This defendant has found no documents in its business records responsive to this request. Further, during the time this defendant was involved in its Kaylo asbestos-containing products business, the state of medical and scientific knowledge was such that there was no reason to believe there was any connection between exposure to asbestos and the risk of contracting mesothelioma.

8. Its original records (or if the originals are not available then the best available copies) of sales or deliveries of Kaylo to:

Mechanical Insulation
AC&S
Commonwealth Edison
Rile Stoker
Babcock & Wilcox
United Engineers & construction
Power Systems
J. L. Allen
Foster Wheeler
Illinois Power Company
CILCO
Brand Insulation

A & M Insulation
Sprinkmann Insulation

RESPONSE: This defendant objects to this request on the basis that it is vague and ambiguous, 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 and except as it relates to plaintiff's employers during plaintiff's periods of employment. This defendant ceased the manufacture, sale and distribution of its Kaylo asbestos-containing products in 1958. Without waiving the above objections, plaintiff has not provided specific locations for any of the companies listed in this request. This defendant has found no records indicating that it sold, distributed, or otherwise supplied Kaylo insulation products containing asbestos to any locations within the state of Illinois for the companies listed in this request.

9. Its original records (or if the originals are not available then the best available copies) of the shipment or delivery (whether for installation by O-I or others) of Kaylo to:

Commonwealth Edison Power Plant
Cordova, IL

Edwards Station Power Plant
Bartonville, IL

Caterpillar Tractor Co.
All locations including Mapleton, East Peoria, Mossville and Morton

Commonwealth Edison's Powerton Plant
Pekin, IL

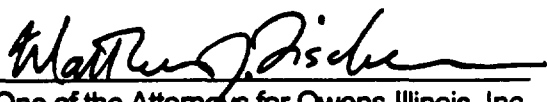
Duck Creek Power Station
Canton, IL

University of Illinois
Urbana/Champaign, IL

Wallace Power Station
East Peoria, IL

RESPONSE: This defendant objects to this request on the basis that it is vague and ambiguous, 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 and except as it relates to plaintiff's employers during plaintiff's periods of employment. This defendant ceased the manufacture, sale and distribution of its Kaylo asbestos-containing products in 1958. Without waiving the above objections, this defendant has found no records indicating that it sold, distributed, or otherwise supplied Kaylo insulation products containing asbestos to any locations listed.

Respectfully submitted,

By: 
One of the Attorneys for Owens-Illinois, Inc.
Joseph J. O'Hara, Jr.
Matthew J. Fischer

SCHIFF HARDIN & WAITE
7200 Sears Tower
Chicago, IL 60606
312/876-1000

SERVICE LIST
Lahne v. Abex Corporation, et al.
No. 96 L 41, McLean County

James Walker
James Walker, Ltd.
207 West Jefferson Street
P.O. Box 3455
Bloomington, IL 61702-3455

Edward J. Matushek III
Haskell & Perrin
200 West Adams Street
Suite 2600
Chicago, IL 60606

Gregory C. Knapp
P.O. Box 205
1952 South Main Street
Eureka, IL 61530

Dennis J. Dobbels
Polsinelli, White, Vardeman & Shalton, P.C.
700 West 47th Street
Suite 1000
Kansas City, MO 64112

Ward Brown
Kurnik, Cipolla, Stephenson & Barasha, Ltd.
120 West Eastman Street
Suite 302
Arlington Heights, IL 60004

Cathy Molchin
Schmidt & Molchin, P.C.
1518 First Financial Plaza
411 Hamilton Boulevard
Peoria, IL 61602-1182

Robert W. Scott
Swain, Hartshorn & Scott
1806 Savings Center Tower
411 Hamilton Boulevard
Peoria, IL 61602

Robert W. Scott
Swain, Hartshorn & Scott
1806 Savings Center Tower
411 Hamilton Boulevard
Peoria, IL 61602

Edward Crane
Deborah Solmor
Skadden, Arps, Slate, Meagher & Flom
333 West Wacker Drive
Chicago, IL 60606-1285

Richard K. Hellerman
Arnstein & Lehr
120 South Riverside Plaza
Suite 1200
Chicago, IL 60606-3913

Robert W. Nierynck
Costigan & Wollrab
P.O. Box 3127
Bloomington, IL 61702-3127

Robert Spitkovsky, Jr.
Johnson & Bell
222 North LaSalle Street
Suite 2200
Chicago, IL 60601

Roland N. Litterst
Litterst Law Office, Ltd.
500 River Valley Plaza
Peoria, IL 61602