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PLAINTIFF'S EXHIBIT

K-1938

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

TERI BURTON, Special Administrator
of the Estate of Richard Todd,
deceased,
Plaintiff,
v.
OWENS-CORNING FIBERGLAS CORPORATION,
et al.,
Defendants.

No. 93 L 291

**DEFENDANT, OWENS-ILLINOIS, INC., 'S ANSWERS TO
PLAINTIFF'S FIRST SET OF INTERROGATORIES**

PRELIMINARY STATEMENT

Some of the events which may be relevant to the matters inquired about by Plaintiffs' Interrogatories 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' interrogatories 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 interrogatories 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

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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 interrogatories. Unless otherwise stated in an answer to a specific interrogatory, the answers 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 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 interrogatory 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 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.

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 interrogatories in regard to the above described asbestos-containing products sold by Kimble Glass Company and Kontes Glass Company 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. 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 answers to interrogatories within a reasonable time after receiving such notice to the extent that a

supplementation is necessary in order to respond to the interrogatories in light of the alleged exposure to asbestos-containing products sold by either Kimble Glass Company or Kontes Glass Company.

INTERROGATORIES

Q. 1. State the exact name, date and state of incorporation of the corporation providing the answers to these interrogatories and the name of the agent or officer who has taken the "reasonable steps to search the corporate memory" of the corporation (1) investigating the contents of the corporations's records, and (2) trying to ascertain the knowledge of other corporate agents" as required in *Campan v. Executive House Hotel, Inc.*, 105 Ill. App. 3d 576, 587 (1st. Dist. 1982).

A. 1. Owens-Illinois Glass Company was incorporated in the State of Ohio in 1929. Owens-Illinois Glass Company changed its name to Owens-Illinois, Inc. on April 28, 1965. Due to corporate restructuring in 1987, this defendant is now a Delaware corporation. 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 interrogatories unless otherwise indicated.

Q. 2. State the name, address, phone number and subject of testimony of those persons which you will call as witnesses at trial.

A. 2. The identity of expert witnesses to be called at trial is not known at the present time. See Owens-Illinois expert witness disclosure, which was previously filed

and served in this litigation. This defendant reserves the right to designate at a later date expert witnesses to be used at trial

Q. 3. State the following regarding each statement (whether oral or written, signed or unsigned) concerning the occurrence described in this complaint: the name and last known address of the person making the statement; when, where and by whom the statement was taken; whether there any tangible preservation of the statement, and if so, the name and address of the person having possession of the same.

A. 3. This defendant objects to this interrogatory as vague, ambiguous and unintelligible, being irrelevant and not reasonably calculated to lead to the discovery of admissible evidence and not limited to any issue which is the subject of this case. This defendant further objects to this interrogatory on the grounds that it seeks information within the work-product privilege.

Q. 4. If any private firm or company adjuster been directed to investigate the occurrence or ask questions of persons who may have knowledge of facts concerning the occurrence? If so, state the full name and address of each firm or adjuster.

A. 4. This defendant objects to this interrogatory as vague, ambiguous, and unintelligible, being irrelevant and not reasonably calculated to lead to the discovery of admissible evidence and not limited to any issue which is the subject of this case. This defendant further objects to this interrogatory on the grounds that it seeks information within the work-product privilege.

Q. 5. If you have any information regarding RICHARD TODD'S physical condition other than that information furnished you by the Plaintiff's counsel, state the nature of that information, the name and address of its source, and if documentary in nature, its present location.

A. 5. This defendant objects to this interrogatory as being irrelevant and not reasonably calculated to lead to the discovery of admissible evidence and not limited to any issue which is the subject of this case. This defendant further objects to this interrogatory on the grounds that it seeks information within the work-product privilege and on the ground that it is oppressive and burdensome in that it would have to review all of the files and all of the records of all of its attorneys all over the country to respond to this interrogatory. Without waiving the above objections, if defendant has any such information, it would have been obtained through normal discovery in this litigation.

Q. 6. If any photos were taken of the scene of the occurrence or of the persons or objects involve, state the total number of photos, the date of each photo, and the present location of each photo.

A. 6. This defendant objects to this interrogatory as vague, ambiguous and unintelligible, being irrelevant and not reasonably calculated to lead to the discovery of admissible evidence and not limited to any issue which is the subject of this case. This defendant further objects to this

interrogatory on the grounds that it seeks information within the work-product privilege.

Q. 7. If you were named or covered under any policy of insurance, which provides coverage for any claim stated in the complaint, state as to each such policy: the name of the company; the policy number; the effective period; the maximum liability limits; what amounts, if any, have previously been paid under the limit portions of the policy which in the opinion of the carrier reduces the coverage available; whether the carrier denied coverage or tendered a defense under a reservation of rights; whether the policy contains any first party medical pay or disability coverage, and, if so, describe the coverage,; and which, if any, of the carriers listed in your answer is providing a defense to this suit.

A. 7 This defendant objects to this interrogatory 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

compliance is ongoing. This interrogatory answer may be supplemented at a later date.

Q. 8. State the name and address of each person who has employed the lawyer(s) representing you in this case. Illinois Supreme Court Rule of Professions Conduct 3.3 (a) (8).

A. 8. This defendant objects to this interrogatory as being vague, ambiguous, unintelligible, irrelevant, not reasonably calculated to lead to the discovery of admissible evidence and not limited to any issue which is the subject of this case.

Q. 9. State the following about each current employee of Defendant who has a medical degree: name, business address, job title, and whether the person completed a residency in either public health or occupational medicine.

A. 9. This defendant objects to this interrogatory as being 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.

Q. 10. State the following about each current employee of Defendant who is an industrial hygienist: name, business address and job title.

A. 10. This defendant objects to this interrogatory as being irrelevant, not reasonably calculated to

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

Q. 11. Has Defendant ever had one or more persons whose primary responsibility included looking after or monitoring the health of Defendant's employees, such as a medical director? If so, state the following as to each person who has held this position:

- (a) the name and address of the person;
- (b) the name of the position he or she held;
- (c) the dates during which he or she held the position;
- (d) the address of his or her office during the time he or she held the position;
- (e) state whether there was a written job description for that position at that time;
- (f) if there was a written job description, set forth the words of the description or attached a copy hereto.

A. 11. Charles Shook, M.D., deceased, employed from March 25, 1946 until June 30, 1960 was the Medical Director during the period in which this defendant manufactured, sold or distributed Kaylo asbestos-containing products. He reported to the Vice President of Corporate Staff, Director of Corporate Personnel.

This defendant's chief medical officer is responsible for assuring and promoting preventive and corrective medical programs, services and practices to protect and preserve employee health and productivity throughout Owens-Illinois, Inc. The individual in this position develops, organizes, introduces and implements pre-employment and periodic examinations as well as new health programs in order to insure the continued well being of defendant's employees in a safe and healthy environment.

The person in this position is also responsible for the quality of medical service at Owens-Illinois locations.

Q. 12. Has Defendant ever directed or contributed money toward a study of the effects of asbestos upon the health of animals or man? If so, state the following as to each such study:

- (a) the description or title of the study;
- (b) the dates during which it was made;
- (c) brief description of the study;
- (d) whether any of the results were reported into written form, and if so, who now has a copy of the report.

A. 12. This defendant ceased the manufacture, sale and distribution of its Kaylo asbestos-containing products in 1958 and does not have any records from which it can obtain information sufficient to answer this interrogatory.

During May, 1979, various papers and reports were produced by an employee of the Trudeau Institute, Mr. Allan Logie, regarding animal experiments conducted at laboratories at Saranac Lake involving dust collected during the Kaylo manufacturing process. These papers and reports may contain information relating to the substance of this interrogatory. This defendant has not been able to find these papers and reports in its business records or correspondence although it has searched for and continues to search for them.

This defendant's counsel obtained copies of some of the papers and reports produced by Mr. Logie. However, these copies constitute only a portion of a larger volume of papers and reports which this defendant has not copied. They are available through Winne, Banta, Rizzi, Hetherington & Basralian, 25 E. Salem Street, Hackensack, New Jersey. This defendant also

has reason to believe that plaintiffs' counsel has copies of the documents produced by Mr. L. J. Le. Other documents possibly relating to this interrogatory may have been produced by Owens-Corning Fiberglas Corporation in the asbestos litigation.

Those documents found at Saranac Lake and at Owens-Corning Fiberglas Corporation and elsewhere, indicate that during the period of time when Owens-Illinois was in the business of manufacturing asbestos-containing products, the state of government, industrial hygiene and medical community knowledge was that there was a recognized safe exposure level for asbestos dust and that persons installing insulation were not exposed to excessive or hazardous levels of asbestos dust. The foregoing documents also indicate that Kaylo plant employees were x-rayed periodically and displayed no asbestos-related chest disease; that this defendant made appropriate efforts to provide ventilation and to control the emissions of all dust emitted during the manufacturing process within recognized safe levels of exposure, including the use of respirators in some instances, dust collection equipment and other devices as necessary; and that therefore during the period in which this defendant was in the business of manufacturing Kaylo it had no reason to believe that the foreseeable use of Kaylo would create a hazard to users.

The documents produced by Owens-Corning Fiberglas Corporation indicate that the September, 1955 publication in the A.M.A. Archives of Industrial Health was a publication of inhalation experiments.

To the extent that this interrogatory seeks the production of documents, such documents, as outlined in this response, have not been found as part of this defendant's records and, to the extent that this defendant is in possession of copies of documents, it possesses copies only of documents collected in preparation for litigation. This defendant objects to producing the same. The documents are available from their proper source.

Q. 13. Have there been any studies of the effect of asbestos upon the health of any of Defendant's employees? If so, state:

- (a) the description or title of the study;
- (b) the dates during which it was made;
- (c) the location or locations of the plants at which the employees were employed;
- (d) the number of employees studied;
- (e) brief description of the study;
- (f) whether any of the results were reported into written form, and if so, who now has a copy of the report.

A. 13. This defendant ceased the manufacture, sale and distribution of its Kaylo asbestos-containing products in 1958 and does not have any records from which it can obtain information sufficient to answer this interrogatory.

During May, 1979, various papers and reports were produced by an employee of the Trudeau Institute, Mr. Allan Logie, regarding animal experiments conducted at laboratories at Saranac Lake involving dust collected during the Kaylo manufacturing process. These papers and reports may contain information relating to the substance of this interrogatory. This defendant has not been able to find these papers and reports in its business records or correspondence although it has searched for and continues to search for them.

This defendant's counsel obtained copies of some of the papers and reports produced by Mr. Logie. However, these copies constitute only a portion of a larger volume of papers and reports which this defendant has not copied. They are available through Winne, Banta, Rizzi, Hetherington & Basralian, 25 E. Salem Street, Hackensack, New Jersey. This defendant also has reason to believe that plaintiffs' counsel has copies of the documents produced by Mr. Logie. Other documents possibly

relating to this interrogatory may have been produced by Owens-Corning Fiberglas Corporation in the asbestos litigation.

Those documents found at Saranac Lake and at Owens-Corning Fiberglas Corporation and elsewhere, indicate that during the period of time when Owens-Illinois was in the business of manufacturing asbestos-containing products, the state of government, industrial hygiene and medical community knowledge was that there was a recognized safe exposure level for asbestos dust and that persons installing insulation were not exposed to excessive or hazardous levels of asbestos dust. The foregoing documents also indicate that Kaylo plant employees were x-rayed periodically and displayed no asbestos-related chest disease; that this defendant made appropriate efforts to provide ventilation and to control the emissions of all dust emitted during the manufacturing process within recognized safe levels of exposure, including the use of respirators in some instances, dust collection equipment and other devices as necessary; and that therefore during the period in which this defendant was in the business of manufacturing Kaylo it had no reason to believe that the foreseeable use of Kaylo would create a hazard to users.

The documents produced by Owens-Corning Fiberglas Corporation indicate that the September, 1955 publication in the A.M.A. Archives of Industrial Health was a publication of inhalation experiments.

To the extent that this interrogatory seeks the production of documents, such documents, as outlined in this response, have not been found as part of this defendant's records and, to the extent that this defendant is in possession of copies of documents, it possesses copies only of documents collected in preparation for litigation. This defendant objects to producing the same. The documents are available from their proper source.

Q. 14. Have there been any instances where asbestos was a cause of mesothelioma in man?

A. 14. This defendant objects to this interrogatory on the basis that it seeks an expert medical opinion which this defendant is not qualified to render.

Q. 15. How much asbestos is necessary to cause mesothelioma?

A. 15. This defendant objects to this interrogatory on the basis that it seeks an expert medical opinion which this defendant is not qualified to render.

Q. 16. What is the maximum amount of the asbestos to which an individual can be exposed without increasing the risk that the individual will contract mesothelioma?

A. 16. This defendant objects to this interrogatory as being vague, ambiguous, unintelligible, irrelevant, not reasonably calculated to lead to the discovery of admissible evidence and not limited to any issue which is the subject of this case. Further, this defendant objects to this interrogatory on the basis that it seeks an expert medical opinion which this defendant is not qualified to render.

Q. 17. Has Defendant issued a warning about the relationship between asbestos and mesothelioma? If so, state as to each such warning:

- (a) the language of the warning;
- (b) date first issued or distributed;
- (c) date last issued or distributed;
- (d) the method of communication or distribution used;
- (e) the name, position at that time, and current address, position and

employer of each person ordering
recommending the warning.

A. 17. 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 interrogatory. 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. Defendant is informed and believes that at no time prior to 1958 was there reason to believe that the medical and scientific community accepted that there was a causal connection established between exposure to asbestos and a risk of contracting mesothelioma. Further, this defendant does not now and has not in the past engaged in the mining, milling, or selling asbestos.

Q. 18. If your answer to the preceding interrogatory was affirmative, list the name and address of each employee of Defendant who was responsible to investigate whether the warning was reaching the persons who were breathing or ingesting sufficient amounts of asbestos to be at risk of contracting mesothelioma.

A. 18. Refer to objection and answer to Interrogatory No. 17.

Q. 19. If you answer to the second preceding interrogatory was affirmative, list the name and address of each employee of Defendant who was responsible to investigate whether the warning provided the persons at risk of contracting

mesothelioma with a same appreciation of the severity of the disease and the probability of contracting the same.

A. 19. Refer to objection and answer to Interrogatory No. 17.

Q. 20. Did Defendant sell, ship or deliver any asbestos containing products to any of the entities or sites listed on Exhibit B to the complaint? If so, state the following:

- a) the type and quantity sold, shipped or delivered;
- b) the date;
- c) describe or attach the documents evidencing such sale or shipment.

A. 20. 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 ceased the manufacture, sale and distribution of its Kaylo asbestos-containing products in 1958. Without waiving the above objection, this defendant has found no records indicating that it sold, distributed, or otherwise supplied Kaylo insulation products containing asbestos to any of the sites listed on Exhibit B to the Complaint.

Q. 21. If your response to any interrogatory is an objection that it was burdensome, state the name, address and position of the person most knowledgeable about the effort that would be required to answer the interrogatory and the

estimate of that person regarding the man-hours that would be required to answer the interrogatory.

A. 21. This defendant objects to this interrogatory as being vague, ambiguous, irrelevant, overly broad, 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.

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 ANSWERS TO INTERROGATORIES, are true and correct to the best of his knowledge, information and belief.

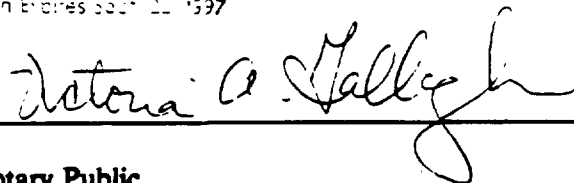


H. G. BRUSS

SWORN TO and subscribed before me this 28 day of March, 19 96

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

SEAL



Notary Public