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COPY

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF GRAND FORKS

NORTHEAST CENTRAL JUDICIAL DISTRICT

**Grand Forks County Asbestos Litigation**

**HERCULES CHEMICAL COMPANY, INC.'S  
RESPONSE TO PLAINTIFFS' INTERROGATORIES (SET I)**

Hercules Chemical Company, Inc. ("Hercules") hereby serves its Responses to plaintiffs' discovery in this matter.

1. State the name, present business address, present residence, and capacity or title of the individual signing these Interrogatories on behalf of the answering defendant.

**RESPONSE:** J. W. Fidler, Chairman of the Board, Hercules Chemical Company, Inc., 111 South Street, Passaic, New Jersey 07055-7398 will execute these discovery responses on behalf of Hercules. Hercules objects to this interrogatory as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks disclosure of Mr. Fidler's home address.

2. Please state whether or not you have ever held a certificate of authority to do business in the State of North Dakota and the date thereof, the address of your principal place of business, and whether you have either assumed the assets and/or liabilities (or whether you have been held by any court to be legally responsible for asbestos manufacturing or sale) of any predecessor corporation or entity, but including within the definition of predecessor, for the purposes of the instant interrogatory, a prior manufacturer of any asbestos product line which this answering defendant manufactured.

**RESPONSE:** Hercules has neither held a certificate of authority to do business in the State of North Dakota nor assumed the assets and/or liabilities of any predecessor corporation or entity which manufactured, sold or distributed any products containing asbestos. Hercules' principal place of business is 111 South Street, Passaic, New Jersey 07055-7398

3. Please state whether or not you are a corporation. If so, please state:

(a) Your correct corporate name;

**RESPONSE:** Hercules Chemical Company, Inc.

(b) The state of incorporation;

**RESPONSE:** New Jersey.

(c) The date of your incorporation;

**RESPONSE:** Hercules Chemical Company was incorporated in the state of New York on November 15, 1915. As of October 1, 1994, Hercules Chemical Company became a New Jersey corporation.

(d) The address of your principal place of business;

**RESPONSE:** 111 South Street, Passaic, New Jersey 07055-7398.

(e) The addresses of any other places of business;

**RESPONSE:** None.

(f) Whether or not you have ever held a certificate of authority to do business in this state;

**RESPONSE:** No.

(g) Whether or not you have a registered agent for the purpose of accepting service in this state, and if so, the name and present address of that agent;

**RESPONSE:** None.

(h) State your corporate purpose;

**RESPONSE:** Hercules Chemical Company, Inc.'s corporate purpose is the business of manufacturing, distributing and selling various consumer, trade and industrial products.

(i) State whether or not you have or have had subsidiary or predecessor corporation(s), and if so:

1. The name of the subsidiary and/or predecessor;
2. Its date(s) of incorporation; if a corporation;
3. Its state(s) of incorporation;
4. Its corporate purposes.

**RESPONSE:** No.

4. State whether you have controlled, purchased, or in any way acquired any interest (including assets of) in any corporation or business entity which has mined, manufactured, produced, processed, compounded, converted, sold, merchandised, supplied, distributed and/or otherwise placed in the stream of commerce, asbestos products and/or products containing asbestos-containing component parts and, if so, state:

- (a) The name and address of said corporation or business entity;
- (b) The date(s) you controlled, purchased or acquired any interest, including assets;
- (c) The manner of acquisition, including percentage of ownership;
- (d) Identify by summary description all documents with respect to the subject matter of your answer to (a)-(c) above and please attach to the instant interrogatory answers, or otherwise produce pursuant to Rule 34, N.D.R.Civ.P., any documents actually effectuating any of the following: (1) a merger with a predecessor entity as described in the instant interrogatories; (2) any and all written decisions of any court in any jurisdiction addressing successorship liability issues relating to this answering defendant within the context of asbestos-related personal injury, wrongful death, property damage and/or insurance coverage litigation, whether or not such decisions have been published as reported decisional law.

**RESPONSE:** No.

5. Has defendant, at any time, engaged in the manufacture of products containing asbestos fibers and/or products containing asbestos-containing component parts? If so, please state:

**RESPONSE:** Hercules at certain times formulated asbestos-containing products.

- (a) From what source or sources, if any, did your company obtain mined asbestos since the year 1930.

**RESPONSE:** From J-M Canada, Asbestos, Quebec, from 1963 until the 1970s for *Hercules Sta Put* (plumbers putty) and possibly for some period of time in the 1970s for *Hercules Furnace Cement*; from Carey Canada from the late 1970s until 1983 (*Hercules Furnace Cement*) and 1986 (*Hercules Sta Put* (plumbers putty)).

- (b) Whether any warnings, cautions, caveats, or directions accompanied the material referred to in (a) and the language, nature and presentation of said warning, cautions, caveats or directions accompanying or relating to said asbestos.

**RESPONSE:** Hercules did not place warnings on its asbestos-containing products because it believed, and continues to believe, that the products were safe. The asbestos fibers, which comprised a very small percentage of the products, were completely encapsulated and the mastic texture of the products did not permit the release of asbestos fibers. No state or federal governmental entity required warnings on asbestos-containing products sold by Hercules, and to the best of Hercules' knowledge, no other manufacturer or seller of furnace cement, plumber's putty or roofing cement included a warning label on its products.

- (c) Approximately what date said warnings, cautions, caveats or directions first appeared on such, mined asbestos referred to in (a) above.

**RESPONSE:** See Response to Interrogatory No. 5(b).

- (d) Where the asbestos or asbestos materials were manufactured by this answering defendant and/or its predecessor entities as described above.

**RESPONSE:** Hercules compounded asbestos-containing products at its plant at 740 East 134th Street, Bronx, New York, from 1963 until the early 1970s, and at 111

South Street, Passaic, New Jersey until it ceased the manufacturer of asbestos-containing products.

- (e) How long the defendant manufactured asbestos or asbestos materials.

**RESPONSE:** Hercules compounded asbestos-containing *Hercules Furnace Cement* from 1973 until 1983 and asbestos-containing *Hercules Sta Put* (plumbers putty) from 1963 until 1986. With respect to *Roof and Flashing Cement*, see response to Interrogatory No. 8 (a).

- (f) Whether any warnings, cautions, caveats or directions accompany the materials referred to in (a) and the nature, language and graphic presentation of said warnings, cautions, caveats or directions accompanying said asbestos materials manufactured by this answering defendant and/or its predecessors.

**RESPONSE:** Hercules objects to this interrogatory as vague and confusing because it is unclear whether this interrogatory seeks information concerning the raw asbestos fibers which Hercules purchased from J-M Canada and Carey Canada or whether it seeks information concerning products sold by Hercules. To the best of Hercules' knowledge, the bags of raw asbestos fibers which Hercules purchased from J-M Canada and Carey Canada did not at any time contain any warnings or cautions. Because Hercules products did not pose a danger to the user, they did not contain warning labels. See also Response to Interrogatory No. 5(b).

- (g) Approximately what date said warnings, cautions, caveats or directions appeared on the manufactured asbestos or asbestos materials.

**RESPONSE:** Not applicable.

6. Has defendant, at any time, engaged in the mining of materials containing asbestos fibers and/or asbestos? If so, please state:

- (a) The locations at which the asbestos was mined.
- (b) How long the defendant mined asbestos.
- (c) The types of asbestos mined.
- (d) Whether any warnings, cautions, caveats or directions accompanied the materials so shipped, the date these appeared and the exact wordings of the warnings, cautions, caveats or directions and exactly where the warnings, cautions, caveats or directions appeared.

**RESPONSE:** No.

7. Has defendant, at any time, engaged in the processing, marketing, distribution and/or sale of products containing asbestos fibers, including raw asbestos.

**RESPONSE:** Yes.

8. If the answer to 5, 6 and 7 is affirmative, please state as to each such affirmative answer the following where relevant:

- (a) The dates of such manufacturing, mining or processing, marketing, distribution and/or sale specifying as to each.

**RESPONSE:**

1. Hercules Furnace Cement

Until 1973, Hercules Chemical Company purchased in bulk a pre-mixed asbestos-containing furnace cement manufactured by Johns-Manville called Fireite, which it repackaged and sold under its own label as *Hercules Furnace Cement*. Hercules does not know where Johns-Manville manufactured furnace cement. Although Hercules counsel has gathered in asbestos litigation, information about the formulation of JM "Fireite" *Furnace Cement* in 1934, Hercules does not know the formulation of "Fireite" *Furnace Cement* during the time periods in which Hercules can document that it purchased JM "Fireite" *Furnace Cement*. The first evidence Hercules is aware of showing that *Hercules Furnace Cement* was part of the Hercules Product line is from 1939. Between 1973 and 1983, Hercules continued to sell asbestos-containing *Hercules Furnace Cement*, which it formulated on its own. This pre-mixed cement formulated by Hercules contained 6.6% encapsulated chrysotile asbestos fibers. The furnace cement was sold under the brand names *Hercules*

*Furnace Cement* up to mid-1979, *Hercules Hi-Heat Furnace Cement* from mid-1979 to 1981, *Hercules Hi-Heat Furnace/Stove Cement* from 1981 to 1983, and *Hercules For Heats' Sake* from 1973 to 1983. All of these products were identical in composition and are collectively referred to in these responses as "*Hercules Furnace Cement*." *Hercules Furnace Cement* and *For Heats' Sake* was a thick, abrasive paste. *Hercules Furnace Cement* was black until the mid-1970s, and was beige thereafter. Hercules has also, however, marketed a black non-asbestos containing product called *High-Heat Heavy Duty Furnace Cement* in New England since approximately 1990-1991. *Hercules Furnace Cement* and *For Heats' Sake* were intended for use in limited applications as a sealant in furnaces, fireboxes, boilers, stoves and combustion chambers, primarily sealing metal-to-metal joints. They are not insulating products. Commencing in October 1983, the *Hercules Hi-Heat Furnace/Stove Cement* and *Hercules For Heats' Sake* were formulated without asbestos.

2. Sta Put (Plumbers Putty)

From 1963 until 1986, Hercules Chemical Company manufactured and sold *Hercules Sta Put* (plumbers putty), with 3% fully encapsulated chrysotile asbestos fibers (for increased stretchability). *Hercules Sta Put* was a greenish-beige mastic material used in setting up toilet bowls, plumbing fixtures, faucets, strainers, sink frames and other sealing applications. It always remains malleable and cannot release any dust. In 1986, asbestos was removed as an ingredient.

3. Roof and Flashing Cement

Hercules Chemical Company also sold *Hercules Roof and Flashing Cement* (now known as *Hercules Roof and Flashing Sealant*), which it purchased from Karnak Corporation, 330 Central Avenue, Clark, New Jersey 07066. Hercules Chemical Company repackaged this product in its own containers and sold it under the Hercules label. Hercules Chemical Company first began selling this product in or about 1966. According to information supplied by Karnak Corporation, Karnak Corporation last shipped its 155 Amphibikote (a wet surface, emergency roof patching and flashing cement) which contained asbestos to Hercules on or about April 3, 1993, although Hercules Chemical Company has been advised by Karnak that during some unspecified period of time between 1966 and 1993 that product also did not use asbestos as a filler material.

Hercules Chemical Company has never been advised of the specific asbestos content of Karnak's *Roof and Flashing Cement*, and therefore has no knowledge of what percentage of the product may have been

asbestos fibers. Since April 1993, Hercules Chemical Company has purchased 155AF Amphibikote (Asbestos-Free) Roof and Flashing Sealant from Karnak.

The black *Hercules Roof and Flashing Cement* is a smooth, very viscous, sticky mastic that is applied by trowel for use in repairing leaks in asphalt built-up roofs, flashings, chimneys, skylights, vents, downspouts and gutters. It can be applied in wet conditions. It retains its elasticity and ductility so that the coating will resist extreme variations in temperature and weather. The product does not harden or become brittle. The product can be removed from tools by using solvents, or from hands by use of waterless hand cleaner.

- (b) The trade or brand name of each such product mined, manufactured and/or marketed, and an indication as to each as to where it was manufactured or processed or mined.

**RESPONSE:** See Response to Interrogatory No. 8(a)

- (c) The dates and periods of time that each of such products were placed and maintained on the market.

**RESPONSE:** See Response to Interrogatory No. 8(a). Hercules products were distributed by common carrier to distributors, who sold them to contractors, industrial users and retailers.

- (d) A description of the physical (the chemical) composition of each such product including the type of asbestos contained in each such product (i.e., amosite, chrysotile or crocidolite) and the quantitative percentage of asbestos in each product, including the manufacturing formula, mix card, etc. for each such product.

**RESPONSE:** See Response to Interrogatory No. 8(a). Hercules has already produced, subject to a protective order of document confidentiality, the formulae for *Hercules Furnace Cement* and *Hercules Sta Put* (plumbers putty). Hercules objects to this interrogatory, to the extent that it seeks the manufacturing formula for these products, as not reasonably calculated to lead to the discovery of admissible evidence,

and because information concerning the formulation of Hercules products is proprietary and a trade secret.

- (e) A description of the physical appearance of each such product.

**RESPONSE:** See Response to Interrogatory No. 8(a).

- (f) The dates each of such products were withdrawn from the market, if applicable.

**RESPONSE:** Hercules continues to compound and sell *Hercules Furnace Cement* and *Hercules Sta Put* (plumbers putty) and sell *Hercules Roof and Flashing Sealant*, although asbestos fibers have been removed from each. See Response to Interrogatory No. 8(a).

- (g) A detailed description of the intended uses of each product.

**RESPONSE:** See Response to Interrogatory No. 8(a).

9. As to any asbestos products, products containing asbestos component parts, or raw asbestos, mined, converted, fabricated, produced, compounded, manufactured, processed, distributed or sold by defendant, state whether any such product was shipped or sold, or alleged to be shipped or sold, to any employer identified by the plaintiff(s), before or during the time the plaintiff(s) was employed by such employer.

**RESPONSE:** Hercules sold its products to wholesalers, who then sold them to contractors, industrial users and retailers. Hercules has no records which would allow it to determine the ultimate purchaser of its products or the job sites on which they may have been used. For a list of wholesalers who purchased Hercules products, see response to Interrogatory No. 18. Any further information about the ultimate purchasers of Hercules products would have been gathered in depositions and document productions in these cases, the results of which are equally available to plaintiffs' counsel.

Hercules objects to this interrogatory because it is overly broad and unduly burdensome to the extent that it asks Hercules to summarize information gathered in discovery in these and other asbestos cases commenced by the same attorneys representing plaintiffs in these cases, to whom the information is equally available. It is also overly broad and unduly burdensome to the extent that it purports to require Hercules to determine whether its products were used at any of hundreds of job sites identified with varying degrees of specificity on plaintiffs' work histories. To the extent that this interrogatory asks for analyses or summaries of information gathered in discovery and prepared by Hercules' counsel or its insurers, Hercules objects to this interrogatory because it asks for information protected from discovery by the attorney-client privilege, work product doctrine and/or privilege of self-critical analysis.

10. If the answer to No. 7 is in the affirmative, state as to each asbestos product, or raw asbestos:

- (a) When it was shipped or sold;
- (b) How much - stating on a yearly basis - was shipped or sold;

**RESPONSE:** See response to Interrogatory No. 9. Hercules assumes that the reference in this interrogatory to Interrogatory No. 7 is a typographical error and that plaintiffs intended, instead, to cross-reference Interrogatory No. 9.

- (c) Exactly what products (or types) of asbestos was shipped;

**RESPONSE:** See Response to Interrogatory No. 8(a).

- (d) Whether any warnings, cautions, caveats or directions accompanied the materials so shipped, the date these appeared and the exact wordings of the warnings, cautions, caveats or directions, and where the warnings, cautions and caveats or directions appeared;

**RESPONSE:** See Response to Interrogatory No. 5(b).

- (e) A detailed description of the package including its size, color and the wording on the package and the size and color of the wording.

**RESPONSE:** See Responses to Interrogatories Nos. 13(c) and (e). In addition, Hercules states that until the late 1940s or early 1950, *Hercules Furnace Cement* was sold in cans with an orange background with blue and white lettering and a fist and forearm with clouds and lightning bolts surrounding the fist. Beginning in the late 1940s or early 1950s, Hercules containers had an orange "H" with "Hercules" in the center of the "H," above a blue oval with an orange fist and wrist, with orange lightning bolts surrounding the fist. The containers or labels were white. In or about 1965, Hercules began using a white paper label or white can with a black stylized "H" with "Hercules" and the product name in rust color below it. It is believed that *Hercules Sta Put* (plumbers putty) initially came in cans with stripes and no logo. In the early 1980s, Hercules began to use a white plastic container with the logo and printing on the container.

11. As to any asbestos products, products containing asbestos component parts, or raw asbestos, mined, converted, fabricated, produced, compounded, manufactured, processed, distributed or sold by defendant, state whether any such product was shipped or sold, or alleged to be shipped or sold, to any jobsite identified in discovery in any manner by the plaintiff or any person on his behalf, either before or during the time the plaintiff was employed at such jobsite.

**RESPONSE:** Hercules is not aware that plaintiff has identified any jobsite.

Hercules sold its products to wholesalers, who then sold them to contractors, industrial users and retailers. Hercules has no records which would allow it to determine the ultimate purchaser of its products or the location at which its products were used. Any further information about the locations at which Hercules' products were used would

have been gathered in depositions and document productions in these cases, the results of which are equally available to plaintiffs' counsel.

Hercules objects to this interrogatory because it is overly broad and unduly burdensome, in part, to the extent that it asks Hercules to summarize information gathered in discovery in these and other asbestos cases commenced by the same attorneys representing plaintiffs in these cases, to whom the information is equally available. To the extent that this interrogatory asks for analyses or summaries of information gathered in discovery and prepared by Hercules' counsel or its insurers, Hercules objects to this interrogatory because it asks for information protected from discovery by the attorney-client privilege, work product doctrine and/or privilege of self-critical analysis.

12. If your answer to No. 9 is in the affirmative, state as to each asbestos product or raw asbestos:

- (a) When it was shipped or sold;
- (b) How much - stating on a yearly basis - was shipped or sold;
- (c) Exactly what products(s) or types(s) of asbestos was shipped or sold;
- (d) Whether any warnings, cautions, caveats or directions accompanied the materials so shipped, the date these appeared and the exact wordings of the warnings, cautions, caveats or directions, and where the warnings, cautions and caveats or directions appeared;
- (e) A detailed description of the package including its size, color and the wording on the package and the size and color of the wording.

**RESPONSE:** See response to Interrogatory No. 10.

13. Identify with respect to each and every asbestos product, as referred to in Interrogatory Nos. 5-7 above, which answering defendant manufactured, processed, compounded, converted, sold, supplied and/or distributed, the following:

- (a) State during what period of time such product has been manufactured, processed, compounded, converted, sold, supplied and/or distributed by this answering defendant;

**RESPONSE:** See response to Interrogatory No. 8(a).

- (b) All sales literature, including brochures, advertisements, pamphlets or other material describing such products, their uses and methods of application or installation;

**RESPONSE:** Hercules previously produced copies of product catalogues for the years 1974, 1976, 1977, 1979, 1980, 1981, 1982 and 1984 in *Adolf, et al. v. API, Inc., et al.* (hereinafter "Wave I"). If these documents are no longer available to plaintiffs' counsel, Hercules will, upon request, produce additional copies of them. Hercules objects to this interrogatory to the extent that it seeks an identification of advertising materials, which are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

- (c) How such products were packaged, transported, stored or supplied;

**RESPONSE:** Asbestos-containing *Hercules Furnace Cement* was sold in one-pound and five-pound cans, *Hercules For Heat's Sake* was sold in one-gallon and two-gallon cans, and *Hercules Sta Put* (plumbers putty) was sold in 14-ounce, three-pound, five-pound, seven-pound, and 20-pound cans. In addition, Hercules at some point made a small number of five-gallon containers of *Hercules For Heat's Sake* as a special order for a customer. Hercules does not possess information identifying the customer or indicating whether the special order occurred before or after the formula was changed to omit asbestos fibers. *Hercules Roof and Flashing Cement* was packaged in one quart, one gallon and five-gallon cans.

- (d) Any warning labels, inserts or other writings provided with such products and with every such printed warnings, state what period of time it has or had accompanied the products the exact wording of the warning, any amendments, (and dates thereof) made to the wording, where the warning was located on each product or packaging, and on what asbestos products the warnings appear(ed).

**RESPONSE:** See response to Interrogatory No. 6(d).

- (e) Any special instructions provided with such products regarding the use, protection or safety procedures to be employed by persons handling such products.

**RESPONSE:** *Hercules Furnace Cement and Hercules For Heat's Sake*

contained instructions concerning the most effective use of the product, including instructions to wipe all dirt and dust from the metal before applying the product, using a putty knife or trowel to apply a thin layer of the product, and covering all openings completely and pressing tightly into the section or parts being repaired or sealed. Hercules searched for sample labels as part of its responses in *Baer et al. v. A.P.I., et al.*, North Dakota District Court, Burleigh County, Case No. 92-C-2820, and Hercules produced photocopies of those it located. No warnings were required by governmental entity or were necessary under the circumstances because the amount of asbestos in the products was very small, the fibers were completely encapsulated and the product could be applied and removed safely and without the release of asbestos fibers.

14. With respect to your answers to Interrogatories Nos. 5-13, did you ever claim in any document that your product(s) were either safe, effective and/or easy to handle? Is so, identify all such documents, including but not limited to brochures or advertisements (radio, television or printed), and revisions thereof by publication(s) and date.

**RESPONSE:** Hercules objects to this interrogatory as vague and ambiguous in its use of the term "claim in any document" and "safe, effective and/or easy to handle."

Hercules has already produced product catalogues for the years 1974, 1976, 1977, 1979, 1980, 1981, 1982 and 1984, identified special instructions accompanying its products and described why warnings were neither required nor appropriate.

Hercules never advertised *Hercules Furnace Cement* in any trade journal or elsewhere. Hercules advertised *Hercules Sta Put* (plumbers putty) only within the industry. Hercules searched its documents kept in the ordinary course of business for samples of *Hercules Sta Put* (plumbers putty) advertisements as part of its responses in *Baer et al. v. A.P.I., et al.*, North Dakota District Court, Burleigh County, Case No. 92-C-2820, and Hercules produced photocopies of those it located. Hercules did not advertise *Hercules Roof and Flashing Cement* other than by including it in its descriptive catalog and making information available on catalog sheets and envelope stuffers.

15. With respect to your answer to Interrogatories Nos. 5-13, did you specifically inform purchasers, users and/or bystanders near your products in any manner during any time period that your products could cause cancer, asbestosis and other serious diseases? If so, identify each such warning, including documents containing such information by date and location on package or other site or manner of display.

**RESPONSE:** No. No warnings were necessary or required because the asbestos fibers contained in Hercules products comprised a very small percentage of those products, were completely encapsulated and could not be released upon application, curing or removal of the product. Because Hercules products were safe for use and did not present a danger to users, Hercules did not issue warnings concerning their use.

16. Identify any and all labeling or relabeling agreements in existence since 1930, with respect to asbestos-containing products, where any such agreements were

entered into between this answering defendant and other entities, including other defendants in the instant litigation.

**RESPONSE:** Hercules did not enter such relabeling agreements.

17. Identify the method of distribution, including any distribution chain or network of wholesalers and/or distributors of defendant's asbestos products and, in summary fashion, identify documents (by type) evidencing or confirming such chain or system of product distribution, including, but not limited to, distribution from and/or to other defendants in the instant litigation.

**RESPONSE:** Hercules sold its products to wholesalers, who then sold them to contractors, industrial users and retailers. Hercules utilized a manufacturer's representative in its marketing efforts, and wholesalers could submit orders to Hercules directly or to the manufacturer's representative in the vicinity. For products sold in North Dakota, the manufacturer's representative would have been based in Minneapolis. Fred Sweeney was the manufacturer's representative until approximately the early 1970s, when Martin and Associates became the Hercules manufacturer's representative.

The general categories of documents which would describe or summarize Hercules sales figures include various computerized sales figures for *Hercules Furnace Cement* and *For Heat's Sake*, broken down by North Dakota wholesaler, and covering the period March 1983-November 1990, which Hercules produced in the Wave I cases, and which were marked as Exhibit No. 11 at the November 9, 1990 deposition of Jay Fidler (hereinafter "Fidler Deposition"). In addition, Hercules produced, in Wave I, a chart showing the dollar value of sales of *Hercules Furnace Cement*, broken down by month, from January 1949 through February 1966, which was marked Fidler Deposition Exhibit No. 13. No other documents are available which evidence or confirm the chain

of distribution of *Hercules Furnace Cement*. These figures, which indicate nationwide sales of *Hercules Furnace Cement*, are not, and cannot be, limited to the state of North Dakota.

18. Identify your distributors and/or suppliers of either raw or mined asbestos, fiber and/or asbestos products with which you had business contact since 1930.

**RESPONSE:** See the computer list of North Dakota wholesalers of Hercules products showing the sale of *Hercules Furnace Cement* to each from March 1983 - November 1990, Fidler Deposition Exhibit No. 11. See also computer lists of sales of *Hercules Furnace Cement*, *Hercules For Heat's Sake* and *Hercules Sta Put* (plumbers putty) to wholesalers in Montana, South Dakota, Minnesota and North Dakota from 1986-93, produced in *Baer et al. v. A.P.I., et al.*, North Dakota District Court, Burleigh County, Case No. 92-C-2820. Otherwise, Hercules does not possess documentation of sales of asbestos-containing products. Hercules currently maintains sales records going back three years on its computer system. Hercules converted to its present system in 1996 and at that time transferred the previous three years of sales history to the new system.

19. Have any of the products listed in Interrogatory No. 8 above been altered in chemical composition since first being marketed?

**RESPONSE:** See Response to Interrogatory No. 8(a).

20. If so, please state the name, address, job title and job responsibilities of each individual who participated in the design and preparation of such altered manufacturing specifications for each such product.

**RESPONSE:** J. W. Fidler, now Chairman of the Board for Hercules Chemical Company; N. George Tucker, former vice president of manufacturing; and Gangadhar Varma, former Technical Director.

21. Do any written memoranda, specifications, product designs or blueprints or other written material of any kind or character now exist relating to the design, comparison, preparation and/or application of said products which has altered formulae or specifications.

**RESPONSE:** Yes.

22. If so, please state:

- (a) List each such written material or document.
- (b) Who presently has possession of each such document.
- (c) Where it is located.

**RESPONSE:** Hercules has in its possession lists of the ingredients in *Hercules Furnace Cement* and *Hercules Sta Put* (plumbers putty) before and after the changes in formulae to eliminate asbestos fibers in 1983 and 1986, respectively. Pursuant to agreement reached in the Wave I cases, Hercules has produced these formulae upon the execution by plaintiff's counsel of an appropriate stipulation for protective order. Hercules objects to this interrogatory, in absence of an executed protective order, as seeking proprietary information and trade secrets. Hercules Chemical Company does not have any product formula for *Hercules Roof and Flashing Cement*.

23. Prior to, or at any time subsequent to the original release of the products listed in Interrogatories Nos. 6-8 above for sale, were any tests conducted on such products to determine whether potential health hazards were involved in the reasonably foreseeable use of the products themselves or in the use of the packaging which was used with said materials?

**RESPONSE:** Yes.

24. If so, please state:

- (a) The name, address and job classification of each individual who conducted such tests.

**RESPONSE:** The test was conducted by Case Consulting Laboratories, Inc. Charles Anthony, President, reported the results to Hercules in an August 3, 1983 letter.

(b) The nature and results of such tests.

**RESPONSE:** The August 3, 1983 correspondence fully describes the nature and results of these tests. Hercules produced this letter in the Wave I cases and it was marked as Fidler Deposition Exhibit No. 12.

(c) The dates of said tests.

**RESPONSE:** See Response to (b).

(d) Pursuant to Rule 34, N.D.R.Civ.P., please attach complete copies of all reports and results of such testing referred to in the instant interrogatory.

**RESPONSE:** Hercules produced the August 3, 1983 report of Mr. Anthony in the Wave I cases.

25. Do any written memoranda, specifications, blueprints or other written materials of any kind or character, exist relating to the testing of said products or to the packaging of said products, including all testing to determine release of asbestos fibers by such products in applications comparable to the reasonably foreseeable use (handling, installation and removal) of such products.

**RESPONSE:** See Response to Interrogatory No. 24.

26. If so, please state:

- (a) List each such written material or document.
- (b) Who presently has possession of each document and where it is located.

**RESPONSE:** See Response to Interrogatory No. 24.

27. Did defendant make any changes as a result of such tests, including modifications of such products' formulae, changes in warnings and/or withdrawal of such products for marketing in the United States.

**RESPONSE:** Hercules modified the formulae of *Hercules Furnace Cement* and *Hercules Sta Put* (plumbers putty), but these changes did not result from or relate in any way to the Case Consulting Laboratories report. Despite the fact that *Hercules Furnace Cement* and *Hercules Sta Put* (plumbers putty) were not harmful to the user, Hercules modified the formulae of these products to eliminate asbestos fibers to safeguard its employees who were handling asbestos fibers, and to promote and protect the goodwill of Hercules and its products in light of publicity concerning the possible effects of exposure to asbestos-containing products other than furnace cement and plumber's putty, and the apparent view of the general public that any product containing asbestos might be hazardous. With respect to *Hercules Roof and Flashing Cement*, which Hercules did not manufacture and whose formulation Hercules does not know, please see response to Interrogatory Nos. 5 and 8(a).

28. If so, please state:

(a) The nature of the change made.

**RESPONSE:** Hercules changed the formula for *Hercules Furnace Cement* in August 1983 to remove asbestos, and changed the formula for *Hercules Sta Put* (plumbers putty) in November 1986 to eliminate asbestos. With respect to *Hercules Roof and Flashing Cement*, which Hercules did not manufacture and whose formulation Hercules does not know, please see response to Interrogatory Nos. 5 and 8(a).

(b) The name, address and job classification of each such person in charge of said change.

**RESPONSE:** Jay Fidler, now Chairman of the Board, Hercules Chemical Company, Inc.

- (c) The date of said change.

**RESPONSE:** See Response to sub-part (a).

29. As to said asbestos products, either as originally manufactured, or as modified, were any tests conducted thereon to determine potential health hazards involved in the use of materials contained therein or in the handling and use of the packaging containing said product?

**RESPONSE:** See Response to Interrogatory No. 23-24.

30. If so, please state:

- (a) The name, address and job classification of each person conducting said tests.
- (b) The results of said tests.

**RESPONSE:** See Response to Interrogatory Nos. 23-24.

31. Do any written memoranda, specifications, recommendations or other written materials of any kind or character relating to the testing of said products or the packaging of the product exist?

**RESPONSE:** See August 3, 1983 report of Case Consulting Laboratories, Inc.

For documents concerning packaging of Hercules products, see Hercules product catalogs for the years 1974, 1976-77, 1979-82 and 1984, already produced by Hercules in the Wave I cases; and product labels from *Hercules Furnace Cement* and *Hercules Sta Put* (plumbers putty), searched for as part of its responses in *Baer et al. v. A.P.I., et al.*, North Dakota District Court, Burleigh County, Case No. 92-C-2820. Hercules produced photocopies of those it located.

32. If so, please state:

- (a) List each such written material or document and its date.
- (b) Who presently has possession of each such document and where is it located.

**RESPONSE:** See Response to Interrogatory No. 31.

33. Did defendant make any changes as a result of such tests as listed in answer 28?

**RESPONSE:** See Response to Interrogatories Nos. 27-28.

34. If so, please state:

- (a) The nature of the change made;
- (b) The name, address and job classification of each person responsible for making such a change;
- (c) The date of the change;

**RESPONSE:** See Response to Interrogatories Nos. 27-28.

35. Identify all distributors, including in-house distribution units, of your asbestos products in the states of North Dakota, Minnesota, South Dakota and Montana, and state:

- (a) The date(s) your product(s) were sold or delivered to each distributor;

**RESPONSE:** Hercules does not possess documents from before March 1983 identifying the dates or quantities of shipments or sales to particular distributors, and does not have access to this information. For sales of *Hercules Furnace Cement* to North Dakota distributors from March 1983 through November 1990, please see Fidler Deposition Exhibit No. 11. See also computer lists of sales of *Hercules Furnace Cement*, *Hercules For Heat's Sake* and *Hercules Sta Put* (plumbers putty) to wholesalers in Montana, South Dakota, Minnesota and North Dakota from 1986-93, produced in *Baer et al. v. A.P.I., et al.*, North Dakota District Court, Burleigh County, Case No. 92-C-2820. See also Response to Interrogatory No. 18.

Hercules objects to this request as overly broad and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information

concerning distributors outside the states of North Dakota, Minnesota, Montana and South Dakota.

- (b) The quantities or type of product(s) sold or delivered to said distributors during the years of 1930 through the present.

**RESPONSE:** Hercules is unable to determine the quantities of its product sold to any particular distributor before March 1983. Sales of *Hercules Furnace Cement* to North Dakota distributors from March 1983 to November 1990 are identified in the computer print-outs produced by Hercules before the deposition of Mr. Jay Fidler and attached thereto as Fidler deposition Exhibit No. 11. See also computer generated lists of sales of *Hercules Furnace Cement*, *Hercules For Heat's Sake* and *Hercules Sta Put* (plumbers putty) to distributors in Montana, North Dakota, South Dakota and Minnesota from 1986-93, produced by Hercules as part of its responses in *Baer et al. v. A.P.I., et al.*, North Dakota District Court, Burleigh County, Case No. 92-C-2820. The total dollar value of sales of *Hercules Furnace Cement* from January 1949 through February 1966 is depicted in Exhibit No. 13 to the Fidler deposition.

Hercules objects to this interrogatory as overly broad and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information concerning sales of Hercules products to distributors outside the states of North Dakota, Minnesota, Montana and South Dakota.

- (c) Identify by summary description what documents exist relating to said distributors

**RESPONSE:** Hercules has produced a handwritten chart showing the total dollar value of sales of *Hercules Furnace Cement* from January 1949 through February 1966. See Fidler deposition Exhibit No. 13. Hercules has no other documents showing

the sale of Hercules products prior to March, 1983. Hercules has computerized records of sales of *Hercules Furnace Cement* from March 1983 through 1993 and has produced such records, broken down by distributor in the states of North Dakota, Minnesota, Montana and South Dakota.

Hercules objects to this interrogatory as overly broad and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information concerning sales of Hercules products to distributors outside the states of North Dakota, Minnesota, Montana and South Dakota.

- (d) Whether any agreement concerning third party liability has ever existed between you and the distributors; and if so, if such agreement was in writing, attach a copy of such agreement; if such agreement was oral, then set forth fully the terms and the identity of the persons making oral agreement.

**RESPONSE:** Hercules has never entered such an agreement.

36. If you ever manufactured, distributed or sold asbestos or asbestos products in the United States, and then discontinued such activities in this country at any point, did you, either directly or through subsidiaries or affiliates, continue to manufacture, distribute, or sell (or permit by license or other undertaking the continuation of such manufacture, distribution and/or sale by other entities) of such asbestos or asbestos products in other countries after such activities had been discontinued by you in the United States.

- (a) If the answer to this interrogatory is in the affirmative, please describe in detail any and all such foreign activities relating to the manufacture, distribution and sale of such asbestos products after such activities had been discontinued by you in the United States.

**RESPONSE:** No.

37. Did you, at any time, assign or license any of your asbestos products to any person, firm or corporation? If so, state:

- (a) Identify the assignors or licensee;
- (b) The purpose of such assignment or license;
- (c) The name(s) of the product(s) so assigned or licensed;

- (e) The time period of the assignment(s) or license;
- (f) Identify and produce all documents relating to such assignment or license.

**RESPONSE:** No.

38. Did you rebrand any of your asbestos products for other companies? If so,

- (a) Identify such companies;
- (b) Indicate the specific products rebranded for each company;
- (c) The dates of each such rebranding.

**RESPONSE:** No.

39. State the names, titles and addresses of this answering defendant's advertising agents who were employed or used in connection with the promotion of the products specified in your answers to Interrogatories 6-8 and give us a summary of all the instructions given to such agents regarding the uses, safety and health related effects of the use of the products.

**RESPONSE:** Hercules does not possess a list of the names and addresses of its advertising agents during the period of time that it sold asbestos-containing products, but anticipates that the vast majority of its advertising agents would have changed corporate names, may have gone out of business or may no longer even be alive.

Hercules would not have provided its advertising agents with instructions concerning the use of its products because it did not advertise its products outside of the trade, and workers in the plumbing field who would have used Hercules products would have been able to rely upon the instructions on the label concerning proper use of the products. Hercules would not have provided its advertising agents with instructions concerning safety and health-related effects of the use of *Hercules Furnace Cement* and *Hercules Sta Put* (plumbers putty) because Hercules believed, and continues to believe, that these products posed no danger to the users because the

small percentage of asbestos fibers contained within these mastic products remained fully encapsulated. Hercules did not advertise *Hercules Roofing and Flashing Cement* other than by including it in its descriptive catalog and making information available on catalog sheets and envelope stuffers.

Hercules objects to this interrogatory as overly broad and as seeking information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

40. When and how did you first become aware that warnings relating to asbestos health hazards or potential asbestos health hazards had been placed on products distributed by any other entity and state the reason(s) why such warnings of others were not placed on your products at the same time or at least contemporaneously.

**RESPONSE:** Hercules, which sold asbestos-containing products primarily for use in the plumbing industry, did not follow the practices of manufacturers or sellers of insulation products and does not know when, or if, manufacturers or sellers of insulation products placed warnings on their products. To the best of Hercules' knowledge, the bags of raw asbestos fibers which Hercules purchased from Johns-Manville and Carey Canada never contained warnings, and Hercules is aware of no manufacturer or seller of asbestos-containing furnace cement, plumber's putty or roofing cement which included such warnings on its products. Hercules did not place such warnings on its products because Hercules has always believed, and continues to believe, that Hercules products were safe and did not pose any danger to the user.

Hercules objects to this interrogatory as vague, ambiguous and overly broad in its use and definition of the term "you."

41. If this answering defendant was not engaged in some phase of manufacturing or production of asbestos products, state:

- (a) Whether defendant is or was a supplier, distributor, manufacturer's agent, seller and/or contractor of asbestos products;
- (b) For which other entities this answering defendant engaged in any of such activities referenced in subdivision (a);
- (c) Over what period of time and in which geographical area(s) such activities were conducted;
- (d) With which asbestos products were answering defendants involved in such activities;
- (e) What, if any, warnings (including any subsequent warnings, safety procedures or methods undertaken after the sale or distribution of such asbestos products), safety procedures or methods, were employed by this answering defendant to protect persons against hazards from exposure to said asbestos or asbestos products.

**RESPONSE:** Not applicable.

42. Is this answering defendant aware or possessed of knowledge or information concerning the reported causal connection between exposure to asbestos or asbestos products and:

- (a) asbestosis?
- (b) lung cancer?
- (c) mesothelioma?
- (d) other cancers?

**RESPONSE:** Hercules is aware of the reported causal connection between exposure to asbestos or certain asbestos-containing products and asbestosis and mesothelioma, but does not possess information concerning a reported causal connection between exposure to asbestos and lung cancer or other cancers. Hercules does not know whether or not the reported causal connection is truthful or accurate, and does not purport to render a medical conclusion concerning the validity of the reported causal connections because no Hercules employee is qualified to render such a medical expert opinion. Hercules objects to this interrogatory because it calls for a medical expert conclusion.

43. If your answer to Interrogatory No. 42, as to any and/or all of its subparts, is the affirmative, identify:

- (a) When and how this answering defendant first acquired such knowledge or information of such connection;

**RESPONSE:** In the late 1970s.

- (b) If such knowledge or information was obtained by attendance by an employee of this answering defendant at any conference, lecture, convention, symposium or meeting, identify such meeting and provide identity of persons attending or documents obtained;

**RESPONSE:** Not applicable.

44. With regard to any knowledge obtained subsequent to that identified in your answer to Interrogatory No. 42 above, identify:

- (a) All documents or other communications, oral or written, concerning the casual connection between exposure to asbestos or asbestos products and disease, and identity of persons so communicating;

**RESPONSE:** Mr. Jay Fidler, now Chairman of the Board of Hercules Chemical Company, obtained information concerning the alleged causal connection between exposure to asbestos and asbestosis and mesothelioma through media reports, none of which have been saved and none of which can be identified with particularity or specificity. There are no documents sent to, from, or within Hercules which are responsive to Interrogatory No. 42.

- (b) Whether this answering defendant obtained this information or knowledge from or transmitted any such information or knowledge to other defendants in this case? If so, identify:

- (1) manner of receipt or communication for each contact;
- (2) all documents and persons involved.

**RESPONSE:** No.

45. As to any knowledge possessed by answering defendant at any time referred to in your answers to Interrogatories Nos. 42, 43 and 44, did you undertake to inform or educate your employees, distributors and/or ultimate purchasers, users and bystanders of the hazards known to you and the safety precautions which would be necessary or desirable to guard against asbestos-caused cancers and/or other asbestos-caused diseases arising from the use and handling of your products? If so, identify:

- (a) When and in what manner customers, users, or foreseeable bystanders of such products, your own production, sales and distribution employees and/or the general public were so informed;
  - (b) Documents communicating or otherwise disseminating such information;
  - (c) Programs initiated or sponsored to establish or promote safety procedures, methods or usage of equipment intended for use in conjunction with such asbestos products;
  - (d) Published articles or reports by employees (present or former), including those of medical directors, scientists, engineers or other professionals;
  - (e) Symposia or lectures sponsored for the benefit of asbestos product users and/or the general public.
46. When and by what manner did you first become aware of any such hazards, alleged hazards or potential hazards, relating to exposure to asbestos or asbestos products by prospective users and/or bystanders of such products.

**RESPONSE:** It was unnecessary for Hercules to inform users of Hercules products of the purported causal connection between exposure to asbestos fibers and disease because Hercules asbestos-containing products did not release the extremely small volume of fully encapsulated asbestos fibers contained in within them and therefore did not pose a danger to users of these products. In addition, there were no government regulations or statutes which required the use of a warning. Hercules took proper precautions to protect its employees from exposure to raw asbestos fibers, including the use of a fully enclosed and ventilated vessel in which it mixed *Hercules Furnace Cement*.

46. When and by what manner did you first become aware of any such hazards, alleged hazards or potential hazards, relating to exposure to asbestos or asbestos products by prospective users and/or bystanders of such products.

**RESPONSE:** Jay W. Fidler, Chairman of the Board of Hercules Chemical Company, first became aware in the late 1970s of alleged hazards of exposure to raw asbestos fibers or fibers in products which were not fully encapsulated.

47. Have you ever received notice that any other person was/is claiming injury as a result of being exposed to, breathing and/or inhaling asbestos or asbestos containing products manufactured, sold, or distributed by you?

**RESPONSE:** Yes.

48. If so, please state:

- (a) The name and address of each claimant. If such claims number in excess of 100 in each category designated in subdivision (c) of this interrogatory, please list the first 100 such claims in each such category in chronological order.
- (b) The date of notice of each claim.
- (c) A description of the claim, i.e. workman's compensation, third party products liability action, etc.
- (d) The style and court or administrative agency file number of each claim currently pending.
- (e) The result in resolution of each claim which has been settled or taken to judgment following trial or administrative decision.

**RESPONSE:** Hercules first received notice of a claim of injury allegedly resulting from the use of Hercules asbestos-containing products in late 1985. Hercules objects to this interrogatory as overly broad, unduly burdensome, and as seeking information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

49. Does defendant have policies of insurance which might cover the claims that have been made by plaintiffs herein?

**RESPONSE:** Yes.

50. If so, please list the names of each insurance carrier who may have coverage, the amount of such coverage, and the date of each such policy. If such coverage is, or has been the subject of litigation wherein coverage was disputed, please describe in summary fashion all such coverage litigation, in so doing providing the venue, court file numbers and results where such litigation has been concluded.

**RESPONSE:** Hercules has insurance policies written by The Home Insurance Company and Foremost Insurance Company. Each policy covers a different period of time. There has been no litigation concerning this coverage. Hercules has excess coverage with Lloyd's of London and other British insurers (collectively, "London Market" insurers) and North Star, Fireman's Fund and Highlands. Hercules objects to this interrogatory as seeking information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks the dates of each policy or the amount of coverage.

51. Have you ever performed, directed to be performed, financed, sponsored or received the results of any studies or tests concerning the relationship between asbestos exposure from any products manufactured, sold or distributed by you and asbestosis, (either pleural or parenchymal asbestos-caused fibrotic disease) and/or any forms of cancer? If so, identify:

- (a) When, where and at what intervals such studies were performed;
- (b) Were such studies in writing or reported at a later date in writing;
- (c) Were the results of such studies published or otherwise disseminated? If so, state to whom and when;
- (d) Who performed such studies;
- (e) Please produce the results of any and all such studies and attach copies of the same to your interrogatory answers.

**RESPONSE:** See Responses to Interrogatories Nos. 23 and 24.

52. Is this answering defendant aware of the existence of any findings, including citations for alleged violations, made by any governmental agency, body, commission or health organization, including but not limited to the U.S. Public Health Service, U.S. Environmental Protection Agency, OSHA or NIOSH, concerning specific hazards associated with the use and handling of asbestos and asbestos products in plants or on job sites owned or controlled by you, any restrictions in use of same, requirements for medical surveillance and examinations for your workers, dust

monitoring, or availability of safety equipment, all of which were directed toward a determination of the degree of exposure to asbestos or asbestos products which would not cause disease among employees and/or toward the prevention or limitation of inhalation or consumption of asbestos fibers or dust in connection with the use of your asbestos products? If such findings were made, identify:

- (a) The date or dates of such findings and by which organization or entity such findings were made;
- (b) The form in which such findings were made and, if written, the exact wording of same or location in regulation, order, bulletin, report or other writing;
- (c) What steps were taken to comply with such findings and the dates when such acts of compliance occurred;
- (d) How intended users or bystanders near the use of your asbestos products were informed of such findings and if such information was written identify same.

**RESPONSE:** No government entity or agency issued any citations concerning hazards associated with the use or handling of asbestos in the Hercules plant or issued any restriction or requirement relating to it. At some point in the late 1970s or early 1980s, Hercules specifically requested that the New Jersey Department of Labor inspect its manufacturing process at the Passaic, New Jersey manufacturing plant to ensure the safety of its workers. In responding to discovery in *Baer et al. v. A.P.I., et al.*, North Dakota District Court, Burleigh County, Case No. 92-C-2820, Hercules made a diligent search of its documents, where kept in the ordinary course of business, for documents concerning this inspection, and found none. The Department concluded that Hercules' manufacturing process was safe and posed no danger or health hazard to Hercules' employees.

53. Did you perform, direct to be performed, finance, sponsor or receive the results of any asbestos dust monitoring tests at either your manufacturing facilities or at job sites where your asbestos or asbestos products were being applied and/or removed by workers, or under simulated conditions? If so, state:

- (a) The date and location of the first such test;

- (b) When, where and at what intervals subsequent tests were performed;
- (c) Who performed such tests or studies and who funded such tests or studies.
- (d) Where the results of such tests are maintained;
- (e) What steps were taken by you with respect to your asbestos products to improve or limit asbestos release shown by tests, and dates when such improvements were made.

**RESPONSE:** See Response to Interrogatory No. 52.

54. If your answer to the above interrogatory is in the negative, state your reasons for not performing such asbestos dust monitoring tests.

**RESPONSE:** Not applicable.

55. Identify any medical examination or medical monitoring programs which were offered or sponsored by this answering defendant and/or its insurance carrier(s) for employees of this answering defendant handling or otherwise being exposed to asbestos and asbestos products. With respect to each such program, state:

**RESPONSE:** See Response to Interrogatory No. 52. In addition, Hercules conducted periodic examinations or monitoring of the health of its employees.

- (a) Manner of communicating with employees about such program;

**RESPONSE:** Only a couple of employees worked in the Mixing Department where *Hercules Furnace Cement* and *Hercules Sta Put* (plumbers putty) were mixed, and communications were informal.

- (b) Whether participation in such programs) was mandatory or optional as a matter of company policy.

**RESPONSE:** Until government statute required mandatory examinations and monitoring, Hercules' medical monitoring program was optional.

- (c) What percentage of workers permitted to undergo such examination actually participated;

**RESPONSE:** In 1976 and again in the early 1980s, Hercules gave examinations to the two supervisors whose work required them to spend extensive period of time in the Mixing Department. Both participated.

- (d) What percentage of workers participate in such programs) were found to have asbestosis, lung cancer, colon cancer, or mesothelioma;

**RESPONSE:** None. The results of the examinations were all within normal limits.

- (e) With respect to (d), what percentage of such workers were paid disability or workmen's compensation benefits or for whose benefit medical expenses were paid to undergo treatment for such conditions.

**RESPONSE:** None.

56. With respect to those medical programs) identified in defendant's answers to Interrogatory No. 55, state:

- (a) Whether defendant had a written or unwritten policy that the results of such medical examinations should not be revealed to defendant's employees;
- (b) If your answer to subject (a) above is in the affirmative, did such policy extent to those employees whose medical examination revealed evidence of asbestos-related diseases, including but not limited to asbestosis, lung cancer and mesothelioma;
- (c) If such policy was or is written, identify all doctors, clinics, associations and personnel associated with defendant who were instructed as to defendant's policy;
- (d) Whether there is a central repository where the results of such medical examinations or studies are located;
- (e) Whether defendant's policy included instructions to disclose results of medical examinations to the personal physicians of employees, or others;
- (f) Whether defendant performed, financed or assisted in performing medical examinations on employees of other entities, including but not limited to defendants named in this lawsuit. If the answer is in the affirmative, list the name(s) of such other entities;
- (g) Whether defendant performed, financed or assisted in performing medical examinations on employees of other corporations of

business entities not named as defendants in this lawsuit. If the answer is in the affirmative, list the name(s) of such corporation(s) or business entities.

- (h) Identify all documents or agreements setting forth conditions under which such programs were to be performed and instructing the examiner(s) as to (non-) disclosure of results;
- (i) Whether answering defendant admits or denied any policy of nondisclosure, have any medical or other corporate personnel employed by defendant now or in the past ever testified as to the existence of such policy of nondisclosure. If so, identify the witness, the date, the proceeding, and the existence of any transcripts, notes of testimony or sworn statements of such witnesses.

**RESPONSE:** Not applicable.

57. Did you, since 1930, or do you now maintain (either as an employee or consultant) a medical director and/or director of research and development? If so, identify and state the duties and responsibilities of the position and to which person(s) in the corporate structure the director reports or reported.

- (a) Methods of dissemination of public relations information to defendant's purchasers, advertisers, distributors, factory workers, contractors, insulators, users, consumer of asbestos products and/or the general public;
- (b) Safety equipment and/or protective clothing. to be utilized while handling defendant's asbestos products;
- (c) Medical programs to be offered or sponsored by defendant.

**RESPONSE:** Hercules did not have a medical director or a director of research and development. Hercules relied upon an outside consulting firm, Foster D. Snell, in the development of new products. N. George Tucker, former Director of Manufacturing, supervised the manufacture of Hercules products, and former Chemist and Technical Director, Gangadhar Varma, worked in the development of new products. Messrs. Tucker and Varma reported to Mr. Jay Fidler. Hercules objects to the remainder of this interrogatory and its subparts as vague, ambiguous, confusing and incomprehensible.

58. Identify all presidents or chief executive officers employed by you or any of your predecessors from 1930 through the present.

**RESPONSE:** Samuel Wander served as President and Chief Executive Officer from 1915-1962. Mr. Jay Fidler was President and Chief Executive Officer of Hercules Chemical Company, Inc. from 1962-1998. He is now Chairman of the Board. David M. Siegal succeeded Mr. Fidler as President in 1998.

59. Identify all trade organizations, associations, or other entities, including but not limited to the Asbestos Textile Institute (A.T.I.), the Friction Materials Institute, the Industrial Hygiene Foundation (I.H.F.), the National Insulation Manufacturer's Association (N.I.M.A.), the Asbestos Information Association (A.I.A.), the National Insulation Contractor's Association (N.I.C.A.), the Quebec Asbestos Mining Association (Q.A.M.A.), the Refractory Institute, and the Fluid Sealing Association, to which you have belonged or in which you have participated since 1930.

**RESPONSE:** None.

60. Identify all persons attending on your behalf any meetings held by trade or professional organizations, associations, including those entities identified in answer to Interrogatory No. 59, at which matters relating to asbestos health hazards or potential asbestos health hazards were addressed.

**RESPONSE:** None.

61. Identify the names or nature of all notes, reports, studies, or other writings submitted or received by you and your representatives at meetings identified in answer to Interrogatory No. 60.

**RESPONSE:** Not applicable.

62. Identify any documents received by you from or submitted by you to those trade organizations, associations including those entities identified in answer to Interrogatory No. 50, relating to the relationship between asbestos exposure and disease or possible asbestos-caused disease.

**RESPONSE:** Hercules assumes that this interrogatory was intended to cross-reference Interrogatory No. 59, and that the reference to Interrogatory No. 50 was a typographical error. If so, Hercules states that this interrogatory is not applicable. See response to Interrogatory No. 59.

If this interrogatory was, in fact, meant to cross-reference Interrogatory No. 50, Hercules objects to this interrogatory because it is vague and ambiguous because Interrogatory No. 50 does not relate to trade associations. Hercules also objects to this interrogatory because, to the extent that it asks for communications between Hercules and its insurers, it asks for information which is protected from disclosure by the attorney-client privilege, work product doctrine and privilege of self-critical analysis.

63. Identify all agreements, oral or written, between you, any of the other defendants in this lawsuit and/or any other organizations, associations or other entities identified in your answer to the preceding interrogatory or any medical or scientific foundations, relating to the standardization of:

- (a) Specifications for asbestos-containing products;
- (b) Specifications for paper or burlap bags, or other packaging to be used for the transport and/or storage of asbestos cement;
- (c) Warning or caution labels to be applied to asbestos products and/or their packaging, cartons, containers, or boxes;
- (d) Methods of dissemination of public relations information to defendant's purchasers, advertisers, distributors, factory workers, contractors, insulators, users, consumers of asbestos products and/or general public;
- (e) Safety equipment and/or protective clothing to be utilized while handling defendant's asbestos products;
- (f) Medical programs to be offered or sponsored by defendant.

**RESPONSE:** None.

64. Did you ever direct to be performed, sponsor, finance, or ever receive the results of any studies or tests performed by any entity relating to asbestos exposure and its effects upon human life? If so, identify:

- (a) All documents summarizing findings or results of those studies or tests which you have in your possession or control;
- (b) All communications, oral or written, between answering defendant and the entity conducting said studies and tests.
- (c) All documents relating to such studies and test received or submitted by you either directly, through associated or predecessor companies, through other companies or other entities.
- (d) By whom the research was conducted, giving complete names and addresses.

- (e) The dates that each such test was conducted.
- (f) The complete results of each test or study, and if published, when and where.
- (g) Whether the research person or organization was an agent or employee of defendant or was paid by defendant for said research.
- (h) All recommendations or findings of such studies relating to:
  - (1) adequacy or inadequacy of threshold limit values;
  - (2) substitution of materials other than asbestos to be used in the insulation process.
- (i) Where documents and/or communications identified in answers to (a)-(d) of this Interrogatory are maintained.

**RESPONSE:** No.

65. Do you intend to present at trial of the above-captioned case a defense based in any respect upon alleged Threshold Limit Values (TLV's) with respect to asbestos exposure? If the answer to this interrogatory is in the affirmative, please describe with reasonable particularity those facts which underlie the so-called "TLV defense" that will be presented.

**RESPONSE:** Hercules has not yet determined what medical expert testimony, if any, it will introduce at trial, and will disclose its experts' opinions in accordance with the scheduling orders in these cases.

66. Did you ever rely upon any Threshold Limit Value (TLV) for asbestos in any respect while you were engaged in the manufacture and/or distribution and/or sale of asbestos products? If the answer to this interrogatory is in the affirmative, please state the following:

- (a) The specific manner in which this answering defendant relied upon TLV's in determining that its asbestos products did or did not present a health hazard to users and/or bystanders of such product.
- (b) When in time this answering defendant first began relying upon TLV's for asbestos, and how this reliance was altered, if so, over time.
- (c) A specific description of all aspects of the reliance which was placed by this defendant upon TLV's for asbestos, including in this description a historical narration of such reliance.

**RESPONSE:** Hercules objects to this interrogatory as vague and ambiguous in its use of the term "Threshold Limit Value." Hercules did not base the formulations of

its products upon any assumptions about whether a certain amount of exposure to asbestos fibers might be safe. While *Hercules Furnace Cement* and *Hercules Sta Put* (plumbers putty) contained an extremely small volume of asbestos fibers, particularly when compared with other asbestos-containing products, Hercules believed, and continues to believe, that its products were safe because the extremely small volume of asbestos fibers contained within them were fully encapsulated in the mastic form of the product and could not be released and inhaled.

67. Identify all physicians who were employed, retained or otherwise engaged by answering defendant for the provision of medical services at any of its asbestos product manufacturing facilities from 1930 to the present for the employees working at such facilities.

**RESPONSE:** Hercules objects to this interrogatory as seeking information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, particularly because no employee of Hercules Chemical Company, past or present, has ever complained of any injury or condition resulting from inhalation of asbestos fibers.

68. Did any of the defendant's medical directors identified in answer to Interrogatory No. 57, physicians identified in answer to Interrogatory No. 67, or other corporate personnel ever make, at any time, recommendations or suggestions to this answering defendant pertaining to the risks of hazards to persons using, handling or being exposed to defendant's asbestos products? If so, state:

**RESPONSE:** Hercules placed N. George Tucker, Vice President of Manufacturing, in charge of eliminating potential dust generated in the formulation of Hercules products.

(a) When such recommendations or suggestions were made;

**RESPONSE:** If the formulation of a Hercules product generated dust of any kind, whether asbestos-containing or not, Mr. Tucker was responsible for implementing a dust collection system to remove such dust. Recommendations concerning dust collection during the process of formulating *Hercules Furnace Cement* were made and implemented before Hercules began compounding *Hercules Furnace Cement*. The mixing vessels in which Hercules compounded *Hercules Furnace Cement* and *Hercules Sta Put* (plumbers putty) included a dust collection system built into the cover of the mixing vessels.

- (b) to whom and by whom were such recommendations or suggestions made;

**RESPONSE:** These recommendations were made to Mr. Jay Fidler and implemented.

- (c) Whether such recommendations included:
- (1) implementation of dust monitoring programs;
  - (2) structural modifications of existing ventilation systems and/or installation of new ventilation equipment;
  - (3) provision of separate locker facilities and/or protective equipment or clothing for defendant's employees or other persons using, handling or being exposed to defendant's asbestos products;

**RESPONSE:** (1) Yes.

(2) Yes.

(3) Hercules objects to this sub-part as seeking information

which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

- (d) Whether employment of any of defendant's medical directors, physicians or other corporate personnel was terminated for

reasons other than retirement, disability or death. If so, which such physicians and for what reason?

**RESPONSE:** Not applicable.

69. Identify the scientific or medical periodicals to which defendant, its medical department or industrial hygiene division subscribed from 1930 to the present, and the dates of such subscriptions.

**RESPONSE:** Hercules did not subscribe to scientific or medical periodicals and did not have a medical department or industrial hygiene division. Hercules subscribed to pertinent trade journals in the plumbing field, including Chemical Week. Hercules objects to this interrogatory as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

70. Did defendant, its medical department or industrial hygiene division maintain a medical and/or scientific library at any time from 1930 to the present? If so, state;

- (a) the dates such library existed;
- (b) The number of volumes maintained therein;
- (c) The number of employees, part-time or full-time, assigned to maintenance of said library, and to whom in the corporate structure those employees report(ed).

**RESPONSE:** Hercules did not maintain a formal medical and/or scientific library, and did not have a medical department or industrial hygiene division.

71. Please state the amounts spent or contributed by this answering defendant annually from 1930 to the present time for research into the relationships, if any, between exposure to and/or inhalation of smoke, dust, fibers and/or particles containing asbestos or asbestos products and any pulmonary pathology.

**RESPONSE:** Hercules has conducted no research concerning any alleged relationship between inhalation of asbestos fibers and pulmonary pathology because Hercules believed, and continues to believe, that its products contain an extremely small percentage of chrysotile fibers which remain fully encapsulated and pose no

danger to the user. Hercules objects to this interrogatory as seeking information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

72. Please state the dollar amount annually contributed by this answering defendant to any independent medical research group or groups conducting studies or research into the relationship, if any, between exposure to asbestos-containing products and disease, pulmonary or otherwise.

**RESPONSE:** See Response to Interrogatory No. 71.

73. Please state the name and addresses of the organizations or groups conducting the studies or research referred to in answer 72.

**RESPONSE:** See Response to Interrogatory No. 71.

74. Has any employee of answering defendant ever made a claim for asbestosis or any other asbestos-caused or asbestos-related disease, including lung or any other illness, under an occupational disease or workers compensation statute of any state? If so, state:

- (a) The date that defendant first received notice of any such claim;
- (b) The total number of such claims per year received to date;
- (c) The number of such claims for which disability benefits and/or medical expenses were paid by defendant.
- (d) Identify all persons to whom disability benefits and/or medical expenses were paid by defendant and the exact medical diagnosis, disease and/or condition for which such benefits/expenses were paid.

**RESPONSE:** No.

75. How many employees of answering defendant have been known by defendant to be suffering from, having suffered from or whose deaths have been caused by asbestosis or mesothelioma. State the date such disease of any employee was first known by defendant.

**RESPONSE:** None.

76. Identify all of defendant's compensation, disability and/or health insurance carriers or adjusters from 1930 to the present. With respect to each, state:

- (a) Dates of coverage;

- (b) Whether defendant's insurance rates were ever increased due to health hazards associated with defendant's asbestos products and exposure of defendant's employees thereto;
- (c) Whether defendant's insurance rates were ever increased as a result of claims submitted for asbestos-related diseases and/or disability;
- (d) Identify all reports, findings, studies, recommendations, communications or other documents issued by such carriers or adjusters to defendant relating to defendant's asbestos products and hazards associated with exposure thereto.

**RESPONSE:** Hercules objects to this interrogatory as seeking information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

77. Identify each and every magazine and/or trade publication in which answering defendant advertised its asbestos products from 1925 to the present.

**RESPONSE:** Hercules has advertised its products in the following magazines: Supply House Times, The Wholesaler, Domestic Engineering, The Contractors, and Plumbing and Mechanical. Hercules objects to this interrogatory as overly broad and unduly burdensome in that it seeks information dating back to 1925.

78. Did you discuss or present in any meetings, conventions, conferences, correspondence, memoranda, or any other writing, the costs financial or logistical associated with either making your asbestos products safe or the use thereof less hazardous? If so, identify all such written or oral presentations by date, place and attendance at meetings, or appropriate date; author and recipient of written material associated therewith. Your response should include considerations regarding medical surveillance, physical examinations, establishment of changing areas separate from the insulation area, dust control and monitoring programs, availability of safety equipment and general improvement of working conditions. This interrogatory requires the identification of not only programs or policies which were instituted, but those which were rejected by you alone or in conjunction with others.

**RESPONSE:** Hercules objects to this interrogatory and vague, ambiguous and a mischaracterization of facts in its use of the term "making your asbestos products safe," because *Hercules Furnace Cement* and *Hercules Sta Put* (plumbers putty) contained

an extremely small quantity of fully encapsulated chrysotile asbestos fibers which Hercules believed, and continues to believe, were not released from the product and posed no danger to users.

Without waiving this objection, Hercules states that no meetings were held concerning the removal of asbestos from its products. Hercules held meetings concerning the safety of its products, and concluded that its products were safe. Hercules' decisions to change the formulae of *Hercules Furnace Cement* and *Hercules Sta Put* (plumbers putty) to omit asbestos fibers related in no way to costs, and related instead to maintaining the good will of the company in light of the apparent public perception that all asbestos-containing products posed a hazard. With respect to *Hercules Roof and Flashing Cement*, which Hercules did not manufacture and whose formulation Hercules does not know, please see response to Interrogatory Nos. 5 and 8.

79. When was the first time that this answering defendant or any of its predecessors ever installed a dust collector or dust collection system in a portion of its manufacturing or warehouse facilities where asbestos or asbestos products were manufactured, stored, or handled?

**RESPONSE:** Hercules installed a dust collection system before it began manufacturing *Hercules Furnace Cement* and *Hercules Sta Put* (plumbers putty). See Response to Interrogatory No. 68(a).

80. Have you ever negotiated with labor unions representing workers handling or working with asbestos or asbestos products concerning working conditions, safety equipment procedures or other protective measures aimed at eliminating or reducing the risks associated with exposure to such products? If so, identify when such negotiations took place, with what unions, and identify all documents reflecting such agreements since 1925.

**RESPONSE:** No. Hercules objects to this interrogatory as overly broad and unduly burdensome in that it seeks information dating back to 1925; and as seeking matters which are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

81. Identify all documents which exist, either in the files of answering defendant or which have been produced in other proceedings or "asbestos litigation", that represent communications between any of the defendants to this suit, other manufacturers, suppliers or distributors or asbestos products, the United States government, trade organizations, including but not limited to the A.T.I., the Friction Materials Institute, the Fluid Sealing Association, the I.H.F., the N.I.M.A., the A.I.A., the N.I.C.A., the Q.A.M.A., the Refractory Institute, or scientific or medical foundations, such as Saranac Lake Laboratory or Mt. Sinai School of Medicine:

- (a) Discussing the possible relationship between asbestos exposure and asbestosis, lung cancer, mesothelioma and/or other diseases;
- (b) Medical or scientific studies concerning the relationship between asbestos exposure and asbestosis, lung cancer, mesothelioma and/or other diseases;
- (c) Discussing the publication or non-publication of any medical or scientific findings concerning such relationship.

**RESPONSE:** Hercules does not possess any documents responsive to this request.

82. Identify all employees or consultants retained by this defendant who have spoken or testified relating to this defendant's asbestos products with relation to asbestos health matters generally:

- (a) In any litigation, now pending or previously, involving this answering defendant;

**RESPONSE:** None, other than Mr. Fidler, whose deposition has been taken by counsel for plaintiffs.

- (b) Before congressional or OSHA proceedings or hearings or investigative or administrative proceedings of any other state or federal governmental agency or unit or communicating in writing with any congressional body or administrative agency (state, local, or federal) relating to this subject matter;

**RESPONSE:** None.

- (c) At any symposium, course, lecture or other meeting; (d) With respect to (a)-(c) above, identify with reasonable particularity the name of the case, court term and number, or other description of proceedings and/or meeting, including the times that they took place.

**RESPONSE:** None.

- (d) With respect to (a)-(c) above, identify with reasonable particularity the name of the case, court term and number, or other description and/or meeting, including the times that they took place.

**RESPONSE:** Not applicable.

83. Please identify any and all efforts which have ever been made by this answering defendant and/or any of its predecessors, to influence administrative rule-making and/or administrative policy with respect to asbestos products manufactured, or formerly manufactured by this answering defendant and/or its predecessors. (For the purposes of the instant interrogatory, the term "efforts" includes participation in such administrative proceedings by virtue of the presentation of writings in the form of correspondence, reports, memoranda and argument, as well as participation through live testimony, oral presentations and informal meetings).

**RESPONSE:** None.

84. Identify all persons who have testified on your behalf, and all documents which have been presented on behalf of this answering defendant or its predecessors, or utilized for preparation of testimony at OSHA, NIOSH, Congressional and/or other state or federal governmental hearings or investigative proceedings on the subjects of the biological effects on human life of exposure to asbestos and/or the setting, modification, feasibility and acceptance of allegedly safe or proper levels of such exposure to asbestos and asbestos products and/or the use of protective devices addressing asbestos exposure. For all such testimony identify:

- (a) The dates and descriptions of proceedings;
- (b) The relationship between persons testifying and answering defendant, i.e., employee or consultant;
- (c) All studies, test results, or other scientific or medical documents relied upon by said persons as a basis for any recommendations made or testimony given;
- (d) Whether, at any time prior to or following such testimony, you were possessed of knowledge of documents suggesting that existing or

proposed threshold limit values were not safe or proper, or that lower threshold limit values were necessary in order to prevent asbestos-caused disease. If your answer is in the affirmative, identify origin of knowledge and all documents relating thereto.

**RESPONSE:** None.

85. Have any investigation or other reports been prepared, compiled, submitted or made by or on your behalf in this action? If so, as to each such investigation or report, state fully and in detail:

- (a) The identity of same by date, subject matter, name, address, job title or capacity of the person or persons to whom addressed or directed.
- (b) The name, address, job title or capacity of the person or person to whom addressed or directed.
- (c) The name, address and present whereabouts of the person who had present custody or control thereof and the purpose of such preparation.

**RESPONSE:** Hercules objects to this interrogatory as seeking disclosures of the materials which are protected by the attorney-client privilege and/or the work product doctrine.

86. Do you, your agent, employees or representatives know of any statement having been made by the plaintiffs pertaining to any circumstances of the illnesses which are the subject matter of this lawsuit?

**RESPONSE:** No.

87. If the answer to the foregoing Interrogatory is in the affirmative, was any such statement in writing and, if so, in whose possession is such statement, and when and where may it be inspected by the plaintiffs?

**RESPONSE:** Not applicable.

88. If your answer to Interrogatory 86 is in the affirmative and any such statement was oral, please state when and where was any such statement made, in whose presence was such statement made, and the substance of such statements.

**RESPONSE:** Not applicable.

89. Do you send or have you at any time sent counsel or other representatives to courses or seminars aimed at defending asbestos cases? If so, please identify such courses or seminars.

**RESPONSE:** Hercules objects to this interrogatory as seeking information which is protected by the attorney-client privilege and/or work product doctrine, and which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

90. Identify all expert witnesses whose testimony has been presented at trial within the past five years by this answering defendant in other asbestos cases, pending or otherwise, on behalf of answering defendant.

**RESPONSE:** No experts separately designated by Hercules to testify with respect to Hercules products have testified on behalf of Hercules. The only experts who have testified on behalf of Hercules are medical experts jointly and collectively retained by the defendants in certain jurisdictions. Hercules objects to this interrogatory because it is overly broad and asks for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that it asks for information about jointly retained medical experts.

91. Identify all present or former employees of this answering defendant, other than plaintiffs, who have testified against this answering defendant in a litigation matter or before a state or governmental agency or unit.

**RESPONSE:** None.

92. With respect to your answers to Interrogatories Nos. 90 and 91, identify all documents, including but not limited to transcripts or notes of testimony employed by or resulting from the testimony of such witnesses or employees.

**RESPONSE:** Not applicable.

93. Identify:

- (a) Any expert whom you intend to call as a witness or otherwise utilize in connection with this litigation;

**RESPONSE:** Hercules will disclose its testifying experts in accordance with the Case Management Orders in these cases.

- (b) Any co-worker of plaintiffs whom you have interviewed or intend to call as a witness in this litigation.

**RESPONSE:** Hercules will disclose any co-workers it intends to call as witnesses in accordance with the scheduling order in this case. Hercules objects to this interrogatory to the extent that it seeks disclosure of co-workers whom Hercules has interviewed, as seeking information protected by the work product doctrine.

94. If plaintiffs were ever employed by answering defendant or worked on a job contracted by answering defendant:

- (a) Identify any work records, employment records or job records with respect thereto;
- (b) Identify any invoices, purchase orders or other documents evidencing the use of product manufactured by defendant on said job(s);
- (c) If answering defendant cannot identify documents as to (a) and (b) above, confirm or deny the existence and use of defendant's products during the relevant time period;
- (d) Identify any products not manufactured by, but relabeled or otherwise altered by defendant and used on said job(s).

**RESPONSE:** Not applicable.

### **GENERAL OBJECTIONS**

Hercules objects to plaintiffs' definition of "you" to the extent that it includes attorneys and insurance carriers, as overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and as seeking information which is protected by the attorney-client privilege and/or the work product doctrine. Hercules also objects to these interrogatories, which exceed 230, including sub-parts, as unduly burdensome.

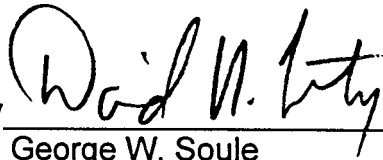
In response to plaintiffs' interrogatories, Hercules has conducted, or is conducting, a thorough and reasonable search of those sections of its records where documents or other materials responsive to plaintiffs' interrogatories are most likely to be kept in the ordinary course of business pursuant to established policies of record retention. In addition, Hercules Chemical Company, Inc., has spoken to, or is in the process of speaking to, those employees who are most likely to have knowledge of the location and/or existence of those documents which are responsive to plaintiffs' discovery requests. Hercules objects to plaintiffs' interrogatories to the extent that they seek information which cannot be ascertained through this process, and to the extent the plaintiffs' interrogatories attempt to impose upon Hercules a more lengthy and complicated task of gathering information than required by the North Dakota Rules of Civil Procedure.

Hercules objects to plaintiffs' interrogatories to the extent that they seek information which is equally available to plaintiffs, including, but not limited to, information sent by or transmitted to plaintiffs, information sought by plaintiffs' counsel in formal discovery in the Wave I North Dakota Federal District Court cases, information asked and obtained during the November 9, 1990 deposition of Mr. Jay Fidler by plaintiffs' counsel in the Wave I cases, and documents produced by Hercules pursuant

to that deposition and information disclosed in discovery responses in *Baer et al. v. A.P.I., et al.*, North Dakota District Court, Burleigh County, Case No. 92-C-2820.

Dated: July 25, 2000.

BOWMAN AND BROOKE LLP

By 

George W. Soule

David N. Lutz

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Minneapolis, MN 55402

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# AFFIDAVIT OF SERVICE

[illegible]

Donna M. Gibb, being first duly sworn, deposes and says that on the 25th day of July, 2000, she served the attached:

1. Hercules Chemical Company, Inc.'s Response to Plaintiffs' Interrogatories (Set I)

Upon

**Jeanette T. Boechler, Esq.  
Boechler, P.C.  
1120 - 28th Avenue North, Suite A  
P.O. Box 1932  
Fargo, North Dakota 58107**

David C. Thompson, Esq.  
David C. Thompson, P.C.  
321 Kittson Avenue  
P.O. Box 5235  
Grand Forks, North Dakota 58206-5235

By U.S. Mail, postage prepaid, addressed to said attorney(s) at said address(es), the last known address(es) of said attorney(s).

  
Donna M. Gibb

Subscribed and sworn to before me  
this 25th day of July, 2000.

*Debra A. Palmquist*  
Notary Public

DEBRA A. PALMQUIST  
NOTARY PUBLIC - MINNESOTA  
My Commission Expires Jan. 31, 2006