

JAMES MARVIN COBB and EDNA	§	IN THE DISTRICT COURT
FAYE COBB, WOODROW WILSON	§	
STINSON, SR. and HAZEL STINSON,	§	
JAMES MELBORN McLEOD and	§	
LOLA R. McLEOD, ELTON M. YOUNG,	§	
JOHN S. TATE and MARY A. TATE,	§	
FRANK S. JOHNSON and MAMIE L.	§	
JOHNSON, and SUSIE BARNEY,	§	DALLAS COUNTY, TEXAS
Individually and as Personal	§	
Representative of the Heirs	§	
and Estate of LENZY BARNEY,	§	
SR., Deceased,	§	
	§	
Plaintiffs,	§	
	§	
versus	§	
	§	
KEENE CORPORATION, et al.,	§	
	§	
Defendants.	§	162ND JUDICIAL DISTRICT



DEFENDANT UNITED STATES GYPSUM COMPANY'S
ANSWERS AND OBJECTIONS TO PLAINTIFFS' INTERROGATORIES

To: Susie Barney, Individually and as Personal Representative of the Heirs and Estate of Lenzy Barney, Sr., Deceased, by and through her attorney of record, Mr. Russell W. Budd, Baron & Budd, P.C., The Centrum, 3102 Oak Lawn Ave., Ste. 1100, Dallas, TX 75219.

COMES NOW, UNITED STATES GYPSUM COMPANY Defendant in the above-entitled and numbered cause, and files the attached Answers and Objections to Plaintiffs' Interrogatories.

Respectfully submitted,

DeHAY & ELLISTON, L.L.P.
 1500 Maxus Energy Tower
 717 North Harwood Street
 Dallas, Texas 75201-6508
 Telephone: (214) 953-5454
 Telefax : (214) 953-5455

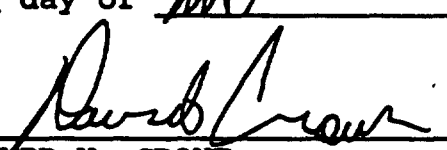
By:


DAVID W. CROWE
State Bar No. 05164250

COUNSEL FOR DEFENDANT
UNITED STATES GYPSUM COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been forwarded to counsel for Plaintiffs, Mr. Russell W. Budd, Baron & Budd, P.C., The Centrum, 3102 Oak Lawn Ave., Ste. 1100, Dallas, TX 75219, by Certified Mail, return receipt requested, on this 12 day of MAY, 1994.


DAVID W. CROWE

PREFATORY STATEMENT

United States Gypsum Company (hereinafter "U.S. Gypsum") has, to the best of its abilities, gathered non-privileged documents into a document repository for inspection by plaintiffs' counsel in response to requests for production served in asbestos litigation. These documents provide information that supplements and expands upon that provided in these answers to Interrogatories. Accordingly, by way of further response to these Interrogatories, U.S. Gypsum hereby offers to make available these documents at a mutually convenient time at its offices at 125 S. Franklin Street, Chicago, Illinois.

In giving its responses to Interrogatories as to asbestos-containing products, U.S. Gypsum refers to products containing commercial asbestos as part of their formulation and to the type of commercial asbestos used as part of the formulation.

OBJECTIONS

U.S. Gypsum objects to the manner in which plaintiff has defined U.S. Gypsum to the extent that plaintiff purports to include in its definition of U.S. Gypsum predecessors-in-interest, subsidiaries, and successors-in-interest of the corporate defendant. In that U.S. Gypsum Company is the named defendant, this definition is overly broad and would require U.S. Gypsum to engage in unduly burdensome research, divulge privileged information and produce privileged documents. This defendant, United States Gypsum Company, responds to these Interrogatories on behalf of itself.

U.S. Gypsum further objects to these Interrogatories to the extent they seek information or documents protected by the attorney-client privilege and the work product rule and to the extent they seek trial preparation or expert materials or documents.

Finally, U.S. Gypsum objects to these Interrogatories to the extent they ask for "identification" of voluminous documents on the ground that they are overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. As set forth infra, U.S. Gypsum will produce documents which are the proper subjects of an appropriate document request.

ANSWERS AND OBJECTIONS TO INTERROGATORIES

INTERROGATORY NO. 1:

For each document listed below, please answer whether such document is a true and correct duplicate of a genuine and authentic document:

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>
a) USG5	Letter 10/8/37 John J. Cuneo to Charles M. Price
b) USG11	Memorandum of Agreement 11/20/36 re Experiments by Gardner at Saranac
c) USG35	Letter 7/9/65 Kipp to Brown, cc: Zimmerman
d) USG44	Letter 5/11/37 Vandiver Brown to J.S. Offutt, enclosing Dr. Gardner's first report dated 5/537
e) USG52	Letter 6/8/50 Ben G. Miriello to United States Gypsum Company
f) USG56	Letter 11/25/53 Poitevin, Canadian Mines Bureau, to Kipp
g) USG76	9/19/67 Gypsum Association Minutes of the Safety Committee Meeting

ANSWER:

(a) USG 5: This defendant admits that this document is an accurate copy of a document found within the files maintained by United States Gypsum Company. United States Gypsum Company has made reasonable inquiry and the information known or readily obtainable by it is insufficient to enable it to either admit or deny that this document is genuine, authentic, a business record, that it was made in the course of a regularly conducted business activity or that it was the regular practice of that business activity to make the document or that this document was made at or near the time of the event.

(b) USG 11: U.S. Gypsum after reasonable inquiry has not located a copy of this document in the Company's files and presently

believes that its counsel obtained a copy only during the course of asbestos litigation, after which the document was added to the Company's litigation document collection. U.S. Gypsum believes that the document was signed by Mr. Shaver but after reasonable inquiry, the information known or readily obtainable by it is insufficient to enable it to admit or deny whether this document was received by U.S. Gypsum in the form attached to plaintiff's request shortly after it was generated. U.S. Gypsum admits the genuineness and authenticity of this document, that it is an accurate copy of the original, and that it was made contemporaneously to the event, activity or occurrence.

(c) USG 35: U.S. Gypsum denies that this document was found within the files maintained by United States Gypsum Company. This defendant admits that this document is genuine, authentic, and an accurate copy of the original.

(d) USG 44: This exhibit contains copies of two documents which will be responded to separately.

With respect to the letter dated May 11, 1937 to J.S. Offutt from Vandiver Brown: This defendant admits that this document is an accurate copy of a document found within the files maintained by United States Gypsum Company. United States Gypsum Company has made reasonable inquiry and the information known or readily obtainable by it is insufficient to enable it to either admit or deny that this document is genuine, authentic, a business record, that it was made in the course of a regularly conducted business activity or that it was the regular practice of that business activity to make the document or that this document was made at or near the time of the event.

With respect to the report "First Progress Report on Asbestosis Experiments at the Saranac Laboratory. May 5, 1937": After making reasonable inquiry, U.S. Gypsum has not located a copy of this document in its files and the information readily known or obtainable by it is insufficient to enable it to admit or deny whether this document is genuine and authentic. Admitted that this document is a true and correct copy of a document located in the files of U.S. Gypsum's outside law firm.

(e) USG 52: United States Gypsum Company received a copy of this document during the course to the asbestos litigation. A copy of this document was not contained in the files of United States Gypsum Company. Therefore, this defendant is unable to answer whether such document is a true and correct duplicate of a genuine and authentic document.

(f) USG 56: This defendant admits that this document is an accurate copy of a document found within the files maintained by United States Gypsum Company. United States Gypsum Company has

made reasonable inquiry and the information known or readily obtainable by it is insufficient to enable it to either admit or deny that this document is genuine, authentic, a business record, that it was made in the course of a regularly conducted business activity or that it was the regular practice of that business activity to make the document or that this document was made at or near the time of the event.

(g) USG 76: United States Gypsum Company received a copy of this document during the course to the asbestos litigation. A copy of this document was not contained in the files of United States Gypsum Company. Therefore, this defendant is unable to answer whether such document is a true and correct duplicate of a genuine and authentic document.

INTERROGATORY NO.2:

For each document listed below, please answer whether such document was kept and/or generated in the regular course of a regularly conducted business activity of any United States Gypsum Company Entity by an employee or representative of any United States Gypsum Company Entity with knowledge of the act, event, condition or opinion recorded.

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>
a) USG5	Letter 10/8/37 John J. Cuneo to Charles M. Price
b) USG11	Memorandum of Agreement 11/20/36 re Experiments by Gardner at Saranac
c) USG35	Letter 7/9/65 Kipp to Brown, cc: Zimmerman
d) USG44	Letter 5/11/37 Vandiver Brown to J.S. Offutt, enclosing Dr. Gardner's first report dated 5/5/37
e) USG52	Letter 6/8/50 Ben G. Miriello to United States Gypsum Company
f) USG56	Letter 11/25/53 Poitevin, Canadian Mines Bureau, to Kipp
g) USG76	9/19/67 Gypsum Association Minutes of the Safety Committee Meeting

ANSWER:

(a) USG 5: United States Gypsum Company denies that this document was prepared by or at the direction of United States Gypsum Company.

(b) USG 11: U.S. Gypsum denies that this document is its business record, or that it was prepared by or at its direction.

(c) USG 35: United States Gypsum Company admits that this document was prepared by or at the direction of United States Gypsum Company, that this document was made at or near the time of the event and that it was made in the course of a regularly conducted business activity, and that it was the regular practice of that business activity to make the document. United States Gypsum Company denies that all statements made in the document were made by or from information transmitted by a person with knowledge, and United States Gypsum Company therefore denies that this document is a business record and reserves the right to object to the admission into evidence of such document as hearsay.

(d) USG 44: This exhibit contains copies of two documents which will be responded to separately.

With respect to the letter dated May 11, 1937 to J.S. Offutt from Vandiver Brown: United States Gypsum Company denies that this document was prepared by or at the direction of United States Gypsum Company.

With respect to the report "First Progress Report on Asbestosis Experiments at the Saranac Laboratory. May 5, 1937": U.S. Gypsum denies that this document is a business record of it or that it was prepared by or at its direction.

(e) USG 52: Not to this defendant's best current knowledge, information and belief.

(f) USG 56: United States Gypsum Company denies that this document was prepared by or at the direction of United States Gypsum Company.

(g) USG 76: Not to this defendant's best current knowledge, information and belief.

INTERROGATORY NO. 3:

For each document listed below, please answer whether such document was found in your files in such a condition as to create no suspicion concerning its authenticity.

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>
a) USG5	Letter 10/8/37 John J. Cuneo to Charles M. Price
b) USG11	Memorandum of Agreement 11/20/36 re Experiments by Gardner at Saranac
c) USG35	Letter 7/9/65 Kipp to Brown, cc: Zimmerman
d) USG44	Letter 5/11/37 Vandiver Brown to J.S. Offutt, enclosing Dr. Gardner's first report dated 5/5/37
e) USG52	Letter 6/8/50 Ben G. Miriello to United States Gypsum Company
f) USG56	Letter 11/25/53 Poitevin, Canadian Mines Bureau, to Kipp
g) USG76	9/19/67 Gypsum Association Minutes of the Safety Committee Meeting

ANSWER:

(a) USG 5: Objection. This Interrogatory is vague and ambiguous with respect to "in such a condition as to create no suspicion concerning its authenticity." Without waiving this objection, this defendant admits that this document is an accurate copy of a document found within the files maintained by United States Gypsum Company.

(b) USG 11: Objection. This Interrogatory is vague and ambiguous with respect to "in such a condition as to create no suspicion concerning its authenticity." Without waiving this objection, U.S. Gypsum after reasonable inquiry has not located a copy of this document in the Company's files and presently believes that its counsel obtained a copy only during the course of asbestos litigation, after which the document was added to the Company's litigation document collection.

(c) USG 35: Objection. This Interrogatory is vague and ambiguous with respect to "in such a condition as to create no suspicion concerning its authenticity." Without waiving this objection, U.S. Gypsum denies that this document was found within the files maintained by United States Gypsum Company. This defendant admits that this document is genuine, authentic, and an accurate copy of the original.

(d) USG 44: This exhibit contains copies of two documents which will be responded to separately.

With respect to the letter dated May 11, 1937 to J.S. Offutt from Vandiver Brown: Objection. This Interrogatory is vague and ambiguous with respect to "in such a condition as to create no suspicion concerning its authenticity." Without waiving this objection, this defendant admits that this document is an accurate copy of a document found within the files maintained by United States Gypsum Company.

With respect to the report "First Progress Report on Asbestosis Experiments at the Saranac Laboratory. May 5, 1937": Objection. This Interrogatory is vague and ambiguous with respect to "in such a condition as to create no suspicion concerning its authenticity." Without waiving this objection, after making reasonable inquiry, U.S. Gypsum has not located a copy of this document in its files and the information readily known or obtainable by it is insufficient to enable it to admit or deny whether this document is genuine and authentic. Admitted that this document is a true and correct copy of a document located in the files of U.S. Gypsum's outside law firm.

(e) USG 52: Objection. This Interrogatory is vague and ambiguous with respect to "in such a condition as to create no suspicion concerning its authenticity." Without waiving this objection, a copy of this document was not found in this defendant's files.

(f) USG 56: Objection. This Interrogatory is vague and ambiguous with respect to "in such a condition as to create no suspicion concerning its authenticity." Without waiving this objection, this defendant admits that this document is an accurate copy of a document found within the files maintained by United States Gypsum Company.

(g) USG 76: Objection. This Interrogatory is vague and ambiguous with respect to "in such a condition as to create no suspicion concerning its authenticity." Without waiving this objection, a copy of this document was not found in this defendant's files.

INTERROGATORY NO. 4:

Has United States Gypsum Company stipulated or agreed to the authenticity of any of the documents referenced in Interrogatory No. 1 with any person prior to the date of these Interrogatories?

ANSWER:

(a) USG 5: Objection. This Interrogatory is overbroad, irrelevant, immaterial, and is not reasonably calculated to lead to

the discovery of admissible evidence. Without waiver of its objections, U.S. Gypsum responds that it has not stipulated or agreed in this action to the authenticity of this document.

(b) USG 11: Objection. This Interrogatory is overbroad, irrelevant, immaterial, and is not reasonably calculated to lead to the discovery of admissible evidence. Without waiver of its objections, U.S. Gypsum responds that it has not stipulated or agreed in this action to the authenticity of this document.

(c) USG 35: Objection. This Interrogatory is overbroad, irrelevant, immaterial, and is not reasonably calculated to lead to the discovery of admissible evidence. Without waiver of its objections, U.S. Gypsum responds that it has not stipulated or agreed in this action to the authenticity of this document.

(d) USG 44: This exhibit contains copies of two documents which will be responded to separately.

With respect to the letter dated May 11, 1937 to J.S. Offutt from Vandiver Brown: Objection. This Interrogatory is overbroad, irrelevant, immaterial, and is not reasonably calculated to lead to the discovery of admissible evidence. Without waiver of its objections, U.S. Gypsum responds that it has not stipulated or agreed in this action to the authenticity of this document.

With respect to the report "First Progress Report on Asbestosis Experiments at the Saranac Laboratory. May 5, 1937": Objection. This Interrogatory is overbroad, irrelevant, immaterial, and is not reasonably calculated to lead to the discovery of admissible evidence. Without waiver of its objections, U.S. Gypsum responds that it has not stipulated or agreed in this action to the authenticity of this document.

(e) USG 52: Objection. This Interrogatory is overbroad, irrelevant, immaterial, and is not reasonably calculated to lead to the discovery of admissible evidence. Without waiver of its objections, U.S. Gypsum responds that it has not stipulated or agreed in this action to the authenticity of this document.

(f) USG 56: Objection. This Interrogatory is overbroad, irrelevant, immaterial, and is not reasonably calculated to lead to the discovery of admissible evidence. Without waiver of its objections, U.S. Gypsum responds that it has not stipulated or agreed in this action to the authenticity of this document.

(g) USG 76: Objection. This Interrogatory is overbroad, irrelevant, immaterial, and is not reasonably calculated to lead to the discovery of admissible evidence. Without waiver of its objections, U.S. Gypsum responds that it has not stipulated or agreed in this action to the authenticity of this document.

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

VERIFICATION

I, F. M. Poremski, declare:

I am the Director, Financial & Accounting Services, of United States Gypsum Company, one of the above named defendants, and am authorized to make this verification for and on behalf of said company;

I have read the foregoing Answers, Objections, and other Responses to Plaintiffs' Interrogatories and am informed and believe that the same is true and on that ground allege that the matters therein stated are true.

I declare, under penalty of perjury, that the foregoing is true and correct, and that this declaration was executed on May 11, 1994 in Chicago, Illinois.

F. M. Poremski

F. M. Poremski

Subscribed and sworn to before me
this 11th day of May, 1994.

Sally A. Bednarcik
Notary Public

