

KENNETH THRAPP AND	§	IN THE DISTRICT COURT
LINDA THRAPP	§	
	§	
VS.	§	OF DALLAS COUNTY, TEXAS
	§	
ARMSTRONG WORLD INDUSTRIES,	§	
INC., ET AL	§	44TH JUDICIAL DISTRICT

**RILEY STOKER CORPORATION'S
RESPONSES AND OBJECTIONS TO PLAINTIFFS'
INTERROGATORIES**

COMES NOW, Defendant, Riley Stoker Corporation, ("RSC") and makes and files this its Answers and Objections to Plaintiffs' Interrogatories to Defendant as follows:

PRELIMINARY STATEMENT

These Interrogatories concern events which may have occurred several years ago. These Responses are believed to be accurate as of the date of service, but defendant's investigation of the underlying facts is continuing.

"Riley Stoker Corporation" refers to and is limited to the officers and directors of Riley Stoker Corporation located in Worcester, Massachusetts and those Riley Stoker employees who defendant believes are responsible for and in possession of corporate documents or information responsive to plaintiffs' Interrogatories.

Neither defendant nor any company it controlled, purchased, or acquired any interest in mined, milled, manufactured, processed, marketed, or distributed asbestos-containing products, as defined below. Defendant is an engineering company that designs industrial and utility fuel burning equipment, manufactures some of the

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component parts and on occasion erects the fuel burning system. Fuel burning equipment is designed in conformance to the specifications of the owner or its agents. Defendant never sold asbestos-containing products, except that defendant did supply some asbestos-containing products as components of some of the boilers it designed. Defendant therefore objects to answering general interrogatories regarding asbestos-containing products, as defined below, because no specific boilers designed by Riley Stoker are identified.

Defendant's product line of industrial and utility fuel burning equipment is marketed and sold primarily to large, sophisticated, and knowledgeable commercial customers whose architects, engineers, consultants, or other agents frequently specified the type, brand, and quality of asbestos-containing component parts (if any) to be utilized in the installation of their boilers. Moreover, asbestos components manufacturers supplied product specifications and tolerances to commercial customers, including defendant, for purposes of product selection and were responsible for providing accurate, effective and adequate instructions for proper and safe application, use, and installation of their asbestos products.

Defendant incorporates by reference this preliminary statement into its response to each Interrogatory.

GENERAL OBJECTIONS

1. As a general matter, plaintiffs' Interrogatories to defendant are objectionable as they are overly broad, compound,

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complex, vague, ambiguous, and are intended to annoy, oppress and inconvenience defendant.

2. Defendant objects generally to the scope of plaintiffs' Interrogatories as being unduly burdensome and not reasonably calculated to lead to the discovery of evidence admissible at trial.

3. Defendant objects generally to plaintiffs' Interrogatories to the extent that they seek information prepared in anticipation of litigation and or protected by virtue of the attorney-client privilege.

4. Defendant objects generally to plaintiff's Interrogatories to the extent that they purport to require defendant to conduct discovery against third-parties or to seek and furnish information from, and to reply to or on behalf of, persons or corporations over whom defendant exercises no control or on whose behalf defendant has no actual or apparent authority to respond. This requirement is unduly burdensome, the information is equally available to plaintiff, and defendant's compliance is not required by law.

5. Riley Stoker Corporation objects to producing any information regarding sites other than those identified by plaintiff in the above-captioned case as a site where plaintiff allegedly worked on a Riley Stoker Corporation boiler.

6. Riley Stoker Corporation objects to the interrogatories as overly broad in that they are not limited and do not specify any appropriate time period.

Defendant incorporates by reference its General Objections into its responses to each Interrogatory.

OBJECTIONS AND DEFINITIONS

Riley Stoker Corporation objects to the terms "asbestos-containing products" and "asbestos products" as vague, ambiguous, overly broad, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence since no particular products, types of products, or sites of exposure are defined. Defendant assumes for the purposes of these responses that "asbestos-containing product" means a thermal insulation product that contains asbestos as an ingredient. Riley Stoker Corporation has never manufactured, produced, processed, distributed, or sold raw asbestos or asbestos-containing thermal insulation products, except that it has on occasion supplied asbestos-containing products as part of a boiler that it has designed. Many of the interrogatories do not, for that reason, apply to Riley Stoker Corporation.

Riley Stoker Corporation objects to plaintiffs' definitions of "defendant" and "you" as rendering these interrogatories overly broad, unduly burdensome and not reasonably calculated to lead to discovery of admissible evidence. Plaintiffs' definition includes predecessors, joint ventures, and subsidiaries, without regard to whether these entities have any connection to this litigation. Furthermore, the inclusion of this defendant's insurance carriers and attorneys within the definition of "you" seeks to invade matters prepared in anticipation of litigation and/or protected by the attorney-client and work product privileges.

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Riley Stoker Corporation objects to plaintiffs' instruction concerning identifying documents as unduly burdensome, oppressive, harassing and expensive.

LIMITATIONS

1. Trial preparation and factual investigation are ongoing. Accordingly, defendant's responses to these Interrogatories are based solely on information known to defendant at the time of the service of these responses. Defendant reserves the right, therefore, to make reference at trial, or in any other proceedings in this action, to facts and documents not identified in these responses, the existence or relevance of which is subsequently discovered by defendant or its counsel.

2. Plaintiffs' Interrogatories are addressed to a corporation which by definition has no independent personal knowledge of the information supplied in these responses. The information supplied in these responses to plaintiffs' Interrogatories is based upon the knowledge of defendant's employees, and authorized agents, and upon information obtained from documents, as to which the person verifying these answers may not have personal knowledge of the matter stated herein.

RESPONSES

1. Please state the name, address and job title of each person who supplied information used in answering these interrogatories.

ANSWER:

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RSC has compiled the information contained in the responses to these interrogatories from various sources. In doing so, RSC has complied with its obligations under the Texas Rules of Civil Procedure to conduct a reasonable investigation in order to prepare its responses, and objects to identifying various individuals as neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. RSC further objects to this interrogatory on the grounds that such identification would be unduly burdensome and impractical, since extensive inquiry was made in the course of RSC's investigation of the facts provided in these responses. RSC further objects to this interrogatory to the extent that it seeks information prepared in anticipation of litigation and/or protected by the attorney-client privilege.

2. Has Defendant, Defendant's predecessor or any of Defendant's subsidiary companies at any time engaged in the marketing, distribution, and/or sale of any commercial and/or industrial products containing asbestos fibers? If yes, please state as to each the following:

a. The name of the company manufacturing, mining, marketing, distributing or selling such products.

b. The trade or brand name of each such product mined, manufactured, and/or marketed.

c. The dates each of such products was placed on and from the market.

d. A description of the physical (chemical) composition of each such product or material including the type of asbestos contained in each product (e.g. amosite, chrysotile, or crocidilite) and the quantitative percentage of asbestos in each product.

ANSWER:

RSC objects to the term "commercial and/or industrial products containing asbestos fibers" as vague and ambiguous.

Without waiving this objection, and subject thereto, RSC states that it was not engaged in the marketing, distribution, and/or sale of asbestos-containing thermal insulation products, except RSC has supplied asbestos-containing products manufactured by others as a component of some of the boilers it has fabricated. RSC relied upon the owner's or its architect's or engineer's specifications for what materials to use and relied upon the manufacturer's specifications and representations for the quality, integrity, and safety of any asbestos-containing products it used or specified. It is impossible to further respond to this interrogatory without reference to a specific boiler.

3. Has Defendant, Defendant's precessors, and/or Defendant's subsidiary companies, at any time, entered into a "rebranding" agreement with any other company, either as a buyer or seller, concerning asbestos materials. If so, please describe the agreement.

ANSWER:

No.

4. Identify by name and address every expert witness you intend to call at the trial of this case. For each such expert witness state:

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- a. The subject matter on which the expert is expected to testify;
- b. The substance of the facts and opinions to which the expert is expected to testify;
- c. A summary of the grounds for each opinion.

ANSWER:

See attached list.

5. Identify by name, address and telephone number every factual witness that Defendant may call to testify in the trial of this case.

ANSWER:

Defendant objects to this interrogatory as vague, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant or admissible evidence. The information sought in this Interrogatory is not discoverable under the Texas Rules of Civil Procedure and case law. See Gutierrez v. Dallas Independent School District, 729 S.W.2d 691 (Tex. 1987).

6. Before placing your asbestos-containing products or materials or substances on the market, did you make or cause to be made, any studies to determine whether your products would be hazardous to people? If so, please state the date of said studies and what studies were done.

ANSWER:

RSC objects to the term "your asbestos-containing products or materials or substances" as vague and ambiguous. RSC assumes that

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these terms refer to asbestos-containing thermal insulation products. RSC did not manufacture asbestos-containing thermal insulation products. As RSC did not place asbestos-containing materials or substances on the market, the remainder of this Interrogatory is not applicable.

7. Based upon the material contents of your products, the method of manufacturing, and the method of application for the purpose of which it was intended, can your asbestos products or materials be generally applied or used without creating dust?

ANSWER:

RSC objects to this request on the grounds that it is irrelevant to the subject matter of the pending litigation, vague, overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and unintelligible.

Without waiving these objections, and subject thereto, RSC states as follows:

Not applicable.

8. Please list any written memoranda, specifications, recommendations or any other written materials of any kind or character existing which relate to the potential health hazards of said asbestos-containing products or materials.

ANSWER:

Not applicable.

9. Has Defendant, Defendant's predecessors or any of Defendant's subsidiary companies at any time, published and/or distributed any brochures, pamphlets, packaging or any other written materials of any kind or character that contained warnings, cautions, caveats or directions concerning the possibility of injury resulting from the use of products listed in your answer to Interrogatory No. 3? If so, please state:

- a. The wording of such warnings.
- b. The date such warning was issued.
- c. Whether any such warning accompanied any of your asbestos-containing products or materials, sales literature, handouts or pamphlets.

ANSWER:

Not applicable.

10. Did Defendant, Defendant's predecessors, or any of Defendant's subsidiary companies receive notice before 1968 that any person was claiming an injury as a result of using asbestos-containing products, manufactured, and/or sold or marketed by Defendant, Defendant's predecessors or any of Defendant's subsidiary companies? If so, please state:

- a. The name and address of each claimant.
- b. The date or notice of each claim.

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ANSWER:

RSC objects to this request on the grounds that it is irrelevant to the subject matter of the pending litigation, vague, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections, and subject thereto, RSC states that it did not manufacture, sell, and/or market asbestos-containing products as RSC understands that term. See Preliminary Statement and Response No. 2.

11. Please state whether or not Defendant, Defendant's predecessors, or Defendant's subsidiary companies, ever conducted any test in the field (i.e., where the asbestos-containing products of Defendant, Defendant's predecessors, or Defendant's subsidiary companies, were being applied, removed or used) to determine the nature and extent of asbestos fiber exposure to insulators, applicators or fellow employees working in the vicinity thereof.

ANSWER:

RSC objects to the term "asbestos-containing products of defendant" as vague and ambiguous. RSC assumes that these terms refer to asbestos-containing thermal insulation products. RSC did not manufacture asbestos-containing thermal insulation products. See Preliminary Statement and Response No. 2 above.

Without waiving these objections, and subject thereto, RSC states that it has periodically conducted air monitoring. At no time have asbestos levels exceeded OSHA standards in effect. In

the absence of specific identification of boilers allegedly containing asbestos products, RSC is unable to further respond to this interrogatory.

12. Please state whether or not Defendant, Defendant's predecessors, or Defendant's subsidiary companies ever obtained any knowledge concerning the likelihood of asbestos being hazardous to human health. If so, please state:

a. When Defendant, Defendant's predecessors, or Defendant's subsidiary companies first become aware of the hazardous potential of asbestos dust and asbestos fibers.

b. The manner in which the Defendant, Defendant's predecessors, or Defendant's subsidiary companies first obtained this knowledge and became aware of said hazards and from what source this information was obtained.

ANSWER:

When federal and/or state law required safety practices to guard against excessive airborne asbestos fibers, RSC has complied with such regulations. Prior to being subject to OSHA regulations, RSC was never informed of any hazard from ordinary use of thermal insulating products.

13. Please state if any medical officer or industrial hygienist or medical consultant ever made at any time any recommendations and/or suggestions to the Defendant, Defendant's predecessors, or Defendant's subsidiary companies pertaining to the risk

or hazards to persons involved in the manufacture or use of asbestos products and, if so, please state when, by whom and to who such recommendations and/or suggestions were made and the substance of each recommendation.

ANSWER:

See Response to No. 12.

14. Please state whether the Defendant, Defendant's predecessors, or Defendant's subsidiary companies at any time have been members of any trade organizations or trade associations composed of other manufacturers, miners, sellers, or distributors of asbestos products, and if so, please identify the name and address of each such association or organization, the dates of membership, and the names of any publications listed or written by such association or organization.

ANSWER:

No.

15. Does (sic) Defendant's products which previously contained asbestos now perform satisfactorily without asbestos?

ANSWER:

Not applicable.

16. Prior to 1972, were Defendants or any of Defendants' predecessors, subsidiaries or contracting divisions, a party to any claim for compensation for injuries allegedly caused by inhalation of asbestos dust or fibers. A "claim" includes, but is not limited

to, personally (sic) injury lawsuits, worker's compensation claims, or other administrative claims, brought under any theory whatsoever.

If "yes", please state:

- a. a description of the claim;
- b. the name and address of each claimant;
- c. the date Defendant received notice of each claim;
- d. the nature of the injuries alleged in each claim;
- e. the name and address of the attorneys representing each claimant;
- f. the style and case number of each claim;
- g. the resolution of each claim;
- h. the name and address of the attorneys or others, employed by or retained by Defendant to defend or otherwise handle each claim;
- i. Please attach a copy of each claim.

ANSWER:

RSC objects to this request on the grounds that it is irrelevant to the subject matter of the pending litigation, vague, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

17. Has Defendant ever shown Dr. Corwin Hinshaw any internal memoranda or corporate documents that mention or discuss the Defendant's knowledge of the hazards of asbestos before 1983?

ANSWER:

No.

18. At any time prior to 1983, has Dr. Corwin Hinshaw ever spoken with any corporate official or employee of Defendants regarding the hazards of asbestos? If your answer to this Interrogatory is yes, please state when such conversation occurred, state who was present or spoke with Dr. Hinshaw and describe what was discussed.

ANSWER:

No.

Respectfully submitted,

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GARY D. ELLISTON
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing document has been forwarded to counsel for Plaintiff, by Hand Delivery, and to all other counsel of record by U. S. Mail, postage prepaid, on this the 15th day of February, 1991.

Gary D. Elliston *LL*
GARY D. ELLISTON