

DISTRICT COURT, COUNTY OF BOULDER COLORADO		▲ COURT USE ONLY ▲
1776 6 th St. P.O. Box 4249 Boulder, CO 80306-4249		
IN RE: ASBESTOS CASES		Case No. 89-CV-2000
Attorney: Mary Price Birk #10415 Ronald L. Hellbusch, #26094 Address: Baker & Hostetler LLP 303 E. 17 TH Ave., #1100 Denver, Colorado 80203 Phone #: (303) 861-0600 Fax # (303) 861-7805 E-mail: mbirk@bakerlaw.com	Division: A2	
UNION CARBIDE CORPORATION'S RESPONSES TO PLAINTIFFS' DISCOVERY TO UNION CARBIDE CORPORATION (030624)		

GENERAL OBJECTIONS

Union Carbide Corporation ("Union Carbide") objects to the entire set of Plaintiffs' Discovery Requests on the following grounds, which are hereby incorporated by reference in Union Carbide's responses to individual Discovery Requests below:

GENERAL OBJECTION NO. 1

Union Carbide states that trial preparation and factual investigation are ongoing. Union Carbide's responses to these Discovery Requests are based on information known to Union Carbide at this time. Union Carbide reserves the right, however to make reference at the trial or at any hearing in this action to facts and documents not identified in these responses, the existence or relevance of which is later discovered by it or its counsel. By this reservation, Union Carbide does not in any way assume a continuing responsibility to update its responses to these Discovery Requests, and specifically objects to each Discovery Request that seeks to impose any such

continuing obligation upon Union Carbide to the extent not required by Colorado law. To the extent the information contained herein differs in any respect from any prior responses to discovery, these responses shall be deemed to update and supersede such prior responses.

GENERAL OBJECTION NO. 2:

Union Carbide objects to Plaintiffs' Discovery Requests in their entirety on the grounds that they are not reasonably framed in terms of the facts and subject matter of the present action, with the result that Union Carbide is called upon to speculate as to what information relevant to the present case, if any, may be deemed to fall within the scope of these Discovery Requests as phrased. In addition, Union Carbide objects to this set of Discovery Requests to the extent that they seek the production of information not relevant to any matter at issue in this litigation.

GENERAL OBJECTION NO. 3:

Union Carbide objects to these Discovery Requests insofar as they would require the disclosure of information protected by the attorney-client privilege or work product doctrine.

GENERAL OBJECTION NO. 4:

Union Carbide acquired mineral rights to its Coalinga mine in 1958. From 1958 until late 1963, Union Carbide developed its mining and milling processes. From late 1963 until June 30, 1985, Union Carbide mined and sold a unique tremolite-free short fiber chrysotile asbestos initially known as "Union Carbide Asbestos" and then under the trade name "Calidria" (some distributors marketed Calidria under other trade names). Throughout the time that Union Carbide was in the asbestos business, and particularly

from 1963 to 1965, sales were relatively small. Even as Union Carbide attempted to develop business, Union Carbide remained a relatively small participant with its focus, due to the unique nature of Calidria, on developing applications suitable for the unique fiber. All responses to these Discovery Requests refer to Calidria asbestos only, unless otherwise stated.

GENERAL OBJECTION NO. 5:

Union Carbide objects to this entire set of Discovery Requests to the extent that they call for information about Union Carbide employees or premises, or policies pertaining to Union Carbide employees or premises that are unrelated to the claims in this litigation on the grounds that such requests are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

GENERAL OBJECTION NO. 6:

Union Carbide objects to this entire set of Discovery Requests to the extent that they seek information contained in documents that are available to Plaintiffs' counsel in the repository of Calidria-related documents (the "repository") maintained by Union Carbide's counsel. This repository is supplemented as additional documents are identified and has been supplemented in the past year. Upon request, a visit to the repository by Plaintiffs' counsel can be arranged at a mutually convenient time. The burden of determining the responses to these Discovery Requests is equally as demanding on Plaintiffs' counsel as it is on Union Carbide. The burden on Union Carbide is enhanced because many of the events and circumstances that appear to be at issue took place approximately 40 years ago. With the passage of time, complete records may no longer exist, relevant witnesses with firsthand knowledge are now

deceased, memories have faded, and any attempt to recreate history often presents an insurmountable challenge and an undue burden.

DISCOVERY REQUESTS

1. Do you contend that asbestos mined, milled, distributed and/or sold by Union Carbide or any of its divisions does not cause disease in human beings?

RESPONSE:

See General Objections Nos. 1-6. Subject to its objections, Union Carbide responds as follows:

Union Carbide contends, based on the opinions of experts who have been or will be identified in individual actions, that, due to Calidria's unique mineralogical properties, occupational exposure to Calidria is not associated with the causation of diseases, including mesothelioma, lung cancer and asbestosis, associated with exposures to other forms of asbestos.

2. If your response to discovery request Number 1 is anything other than an unqualified "no" then please identify the following:
 - (a) Every witness who will so testify.
 - (b) Every tangible item upon which you will rely to support such contention.
 - (c) The basis for the opinion of any witness who may testify at any trial or hearing herein that Union Carbide asbestos does not cause disease in human beings.

RESPONSE:

See Union Carbide's Response to Request No. 1, including all objections set forth therein.

Union Carbide further specifically objects to this request on the grounds that it would be impossible for Union Carbide to predict what specific facts and "tangible items" may be relied upon by Union Carbide, its attorneys or witnesses in all cases covered by

these “In re Colorado” Requests, particularly since Union Carbide cannot know what claims, evidence or theories may be advanced by the Plaintiff, Plaintiff’s counsel or Plaintiff’s witnesses in specific cases. Union Carbide does not control the opinions of its expert witness and cannot guarantee or predict with perfect accuracy what materials or studies they may rely upon to inform their opinions. Union Carbide will disclose the subject matters upon which its experts may testify and make those experts available for deposition as appropriate in individual cases.

3. Identify all people who have interpreted the chest x-rays taken of people who worked at the Union Carbide asbestos mine and/or mill in California.

RESPONSE:

See General Objections Nos. 1-6. Subject to its objections, Union Carbide responds as follows:

Beginning in 1963 and running through the sale of the Calidria business, Union Carbide sponsored a medical monitoring program for employees of its Calidria mine and mill in California that included, but was not limited to, periodic chest x-rays. Documents concerning this medical monitoring program, which reflect the identities of radiologists or other medical professionals who reviewed worker x-rays as part of the medical monitoring program, are located at the repository maintained by Union Carbide’s counsel.

During the time period when Union Carbide operated the Calidria mine and King City mill, Union Carbide also retained or consulted with the following outside medical professionals or consultants for the purpose of evaluating the health of persons employed at Defendant’s Calidria mine and King City mill:

a. George Jacobson, M.D.

On or about May 2, 1974, Dr. George Jacobson of the University of Southern California School of Medicine was requested by Union Carbide to review a total of approximately 16 chest x-rays for two different employees of the Union Carbide King City mill in order to give an opinion concerning the radiologic diagnosis of each. On or about May 8, 1974, Dr. Jacobson reported back to Union Carbide that, with respect to both workers in question, the chest radiographs reviewed were within normal limits and there were no changes indicative of asbestosis. Further, at the request of Union Carbide on or about June 7, 1974, Dr. Jacobson was asked to review additional chest x-rays for the same two workers. On or about June 14, 1974, Dr. Jacobson again concluded that there was no evidence of asbestosis or any other form of pneumoconiosis for either Union Carbide worker.

b. Clark Cooper, M.D.

Dr. Clark Cooper of Equitable Environmental Health, Inc. was retained by Union Carbide on or about June 30, 1976 to review the industrial hygiene and occupational medicine program at Union Carbide's Calidria mine and King City mill, with particular emphasis on asbestos-related health issues. Dr. Cooper set forth his overall findings in a report dated August 9, 1976 entitled "Review of Occupational Health Program at the King City Plant of Union Carbide Corporation (With Emphasis on Asbestosis)." In his report, Dr. Cooper concluded that "[t]here was no radiographic, clinical or physiologic evidence to support a diagnosis of asbestosis in any of the four King City plant employees who had been reported as having evidence of impaired pulmonary ventilatory function."

c. Irving Selikoff, M.D.

Prior to June 12, 1984, the chest x-rays of one Union Carbide King City employee were reviewed for special examination by Dr. Irving Selikoff at Mount Sinai Hospital. Dr. Selikoff concluded that the worker in question did not suffer from any asbestos-related disease.

d. Robert N. Sawyer, M.D.

In or about 1984, Dr. Robert N. Sawyer, at the request of Union Carbide, conducted a review of Union Carbide's King City medical monitoring program. Dr. Sawyer's review included a limited review of chest x-rays taken of workers from the King City mill. Dr. Sawyer concluded that there was no evidence in any of the x-rays he reviewed of asbestos-related disease among the King City workforce.

As specified in Union Carbide's expert witness lists, certain expert witnesses retained on behalf of Union Carbide may also have knowledge related to reviews of medical records and/or chest x-rays of former Union Carbide Calidria mine and King City mill employee, and the opinions of those experts are subject to discovery in accordance with applicable rules and orders of the Court. Union Carbide objects to this Request on the basis of work product privilege to the extent it seeks information concerning the review, if any, of King City worker x-rays by non-testifying litigation consultants.

Medical personnel internal to Union Carbide, including Assistant Medical Director Dr. Hilton Lewinsohn in 1984, have also reviewed chest x-rays regarding Union Carbide Calidria employees.

To the extent additional information responsive to this Interrogatory is in the possession of Union Carbide, this information is located at the repository maintained by Union Carbide's counsel.

4. Identify the location and the custodian of the original chest x-rays taken of the people who worked at the Union Carbide asbestos mine and/or mill in California.

RESPONSE:

See General Objections Nos. 1-6. Subject to its objections, Union Carbide responds as follows:

Mee Memorial Hospital, 300 Canal Street, King City, California.

5. Describe and identify any study, collection or compilation of morbidity or mortality data regarding people who worked at the Union Carbide asbestos mine and/or mill in California.

RESPONSE:

See General Objections Nos. 1-6. Subject to its objections, Union Carbide responds as follows:

To the extent that morbidity or mortality data regarding individuals who worked at the Union Carbide Calidria mine and/or mill is in the possession of Union Carbide, such information is located at the repository maintained by Union Carbide's counsel.

6. Produce for viewing, copying and inspection at Trine & Metcalf, P.C. 1435 Arapahoe Ave, Boulder, CO 80302, on or before July 30, 2003, the following:
 - (a) all tangible items upon which you, your attorneys, or any witness you may call to testify at any trial or hearing in this matter, relies to support the proposition that Union Carbide asbestos does not cause disease in human beings.

RESPONSE:

See General Objections Nos. 1-6. Subject to its objections, Union Carbide responds as follows:

Union Carbide further specifically objects to this request on the grounds that it would be impossible for Union Carbide to predict what specific “tangible items” may be relied upon by Union Carbide, its attorneys or witnesses in all cases covered by these “In re Colorado” Requests, particularly since Union Carbide cannot know what claims, evidence or theories may be advanced by the Plaintiff, Plaintiff’s counsel or Plaintiff’s witnesses in specific cases. Union Carbide does not control the opinions of its expert witness and cannot guarantee or predict with perfect accuracy what materials or studies they may rely upon to inform their opinions. Union Carbide will disclose the subject matters upon which its experts may testify and make those experts available for deposition as appropriate in individual cases.

- (b) Any epidemiological study upon which you, your attorneys, or any witness you may call to testify at any trial or hearing in this matter, relies to support the proposition that Union Carbide asbestos does not cause disease in human beings.

RESPONSE:

See General Objections Nos. 1-6. Subject to its objections, Union Carbide responds as follows:

Union Carbide further specifically objects to this request on the grounds that it would be impossible for Union Carbide to predict what specific epidemiological studies may be relied upon by Union Carbide, its attorneys or witnesses in all cases covered by these “In re Colorado” Requests, particularly since Union Carbide cannot know what claims, evidence or theories may be advanced by the Plaintiff, Plaintiff’s counsel or Plaintiff’s witnesses in specific cases. Union Carbide does not control the opinions of its expert witness and cannot guarantee or predict with perfect accuracy what materials or studies they may rely upon to inform their opinions. Union Carbide will disclose the

subject matters upon which its experts may testify and make those experts available for deposition as appropriate in individual cases.

- (c) The underlying data for all epidemiological studies that concern asbestos, conducted by and/or participated in by Union Carbide.

RESPONSE:

See General Objections Nos. 1-6. Subject to its objections, Union Carbide responds as follows:

Union Carbide further specifically objects to this request to the extent that it seeks information concerning asbestos types other than Calidria asbestos and to the extent that it seeks information covered by work product protection. Subject to and without waiving that objection, Union Carbide responds that, to the extent Union Carbide has possession of relevant, non-privileged documents concerning the health of the Union Carbide Calidria mine and mill workers, those documents are located at the repository maintained by Union Carbide's counsel.

- (d) Produce all epidemiological studies whether conducted by you or conducted by others on your behalf or conducted by others on your employees or contractors that you know about, whether published or unpublished, whether preliminary or final, including drafts, which study the effects of exposure to Union Carbide asbestos.

RESPONSE:

See General Objections Nos. 1-6. Subject to its objections, Union Carbide responds as follows:

Although there are numerous epidemiological studies that have been published in the peer reviewed scientific literature which are relevant to assessing the health effects of Calidria asbestos, there has been no formal epidemiological study of Calidria

mine and mill workers. As described in response to Request No. 3, however, Union Carbide Calidria mine and mill workers were subject to a comprehensive medical monitoring program and the physicians administering that program found no evidence of asbestos-related disease.

To the extent additional information responsive to this Interrogatory is in the possession of Union Carbide, this information is located at the repository maintained by Union Carbide's counsel.

- (e) Produce the toxicological reports, studies, preliminary reports, interim reports, and/or drafts which pertain to or discuss toxicological testing of Union Carbide asbestos in your possession, custody or control, whether conducted by you or by others. This should include, but is not limited to, acute, sub-acute, chronic, range finding, experimental and/or any other type of toxicological study including those on humans, animals, and/or other test systems. This should also include TSCA 8c and 8e's.

RESPONSE:

See General Objections Nos. 1-6. Subject to its objections, Union Carbide responds as follows:

To the extent relevant and non-privileged information responsive to this Interrogatory is in the possession of Union Carbide, this information is located at the repository maintained by Union Carbide's counsel.

- (f) Produce the original chest x-rays of all people who worked at the Union Carbide asbestos mine and/or mill in California.

RESPONSE:

See General Objections Nos. 1-6. Subject to its objections, Union Carbide responds as follows:

Union Carbide does not have possession of the original chest x-rays taken as

part of the Union Carbide Calidria mine and mill worker health monitoring program.

Original chest x-rays taken as part of this program were to be maintained at Mee

Memorial Hospital in King City, California.

- (g) Produce all tangible items that you contend support the contention that Union Carbide asbestos does not cause disease in human beings.

RESPONSE:

See General Objections Nos. 1-6. Subject to its objections, Union Carbide responds as follows:

Union Carbide further specifically objects to this request on the grounds that it would be impossible for Union Carbide to predict what specific “tangible items” may be relied upon by Union Carbide, its attorneys or witnesses in all cases covered by these “In re Colorado” Requests, particularly since Union Carbide cannot know what claims, evidence or theories may be advanced by the Plaintiff, Plaintiff’s counsel or Plaintiff’s witnesses in specific cases. Union Carbide does not control the opinions of its expert witness and cannot guarantee or predict with perfect accuracy what materials or studies they may rely upon to inform their opinions. Union Carbide will disclose the subject matters upon which its experts may testify and make those experts available for deposition as appropriate in individual cases.

- 7. Admit that you have no evidence that Union Carbide asbestos does not cause disease in human beings.

RESPONSE:

See General Objections Nos. 1-6. Subject to its objections, Union Carbide responds as follows:

Denied.

8. If your response to # 7) above is anything other than an unqualified admission please produce each and every fact, opinion and tangible item upon which you, or any expert you may call to give testimony at any trial or hearing, base your response.

RESPONSE:

See General Objections Nos. 1-6. Subject to its objections, Union Carbide responds as follows:

Union Carbide further specifically objects to this request on the grounds that it is vague and ambiguous. Union Carbide also objects to this request on the grounds that it would be impossible for Union Carbide to predict what specific facts and “tangible items” may be relied upon by Union Carbide, its attorneys or witnesses in all cases covered by these “In re Colorado” Requests, particularly since Union Carbide cannot know what claims, evidence or theories may be advanced by the Plaintiff, Plaintiff’s counsel or Plaintiff’s witnesses in specific cases. Union Carbide does not control the opinions of its expert witness and cannot guarantee or predict with perfect accuracy what materials or studies they may rely upon to inform their opinions. Union Carbide will disclose the subject matters upon which its experts may testify and make those experts available for deposition as appropriate in individual cases.

AS TO OBJECTIONS AND DEFENSES:

BAKER & HOSTETLER LLP

Duly executed signature on file at the
office of Baker & Hostetler LLP

By: _____
Mary Price Birk, No. 10415
Ronald L. Hellbusch, No. 26094

**ATTORNEYS FOR DEFENDANT UNION CARBIDE
CORPORATION**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of July, 2003, a true and correct copy of the above and foregoing **UNION CARBIDE CORPORATION'S RESPONSES TO PLAINTIFFS' DISCOVERY TO UNION CARBIDE CORPORATION (030624)** was served electronically via JusticeLink to:

J. Conard Metcalf, Esq.
Trine & Metcalf, P.C.
1435 Arapahoe Ave.
Boulder, CO 80302-6390

*Duly executed signature on file at
the office of Baker & Hostetler LLP*
