

COPY

CAUSE NO. 2000-05-1962-C

FILED 10:00 O'CLOCK 10 M
AURORA DE LA GARZA DIST. CLERK
JAN 18 2001
DISTRICT COURT OF CAMERON COUNTY, TEXAS
[Signature]

ROBERT HENRY VILLARREAL,
Individually and as Personal Representative
of the Heirs and Estate of JOHN HENRY
VILLARREAL

Plaintiffs,

vs.

GAF CORPORATION
HOLDINGS, INC.), ET AL.

Defendants.

§
§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

CAMERON COUNTY, TEXAS

197TH JUDICIAL DISTRICT

PLAINTIFF'S EXHIBIT

USG-552

DEFENDANTS' MOTION TO BIFURCATE

COME NOW, Dana Corporation, Quigley Company, Inc., T&N LTD (f/k/a T&N plc and Turner & Newell plc), Union Carbide Corporation f/k/a Union Carbide Chemicals and Plastics, Inc., and United States Gypsum Company, (hereinafter "Defendants"). Defendants in the above-referenced cause, hereby request the court to bifurcate the determination of the amount of punitive damages, if any, from the trial of all other issues, and in support thereof show:

I.

This is an action by Plaintiffs for damages based upon alleged exposure to asbestos products. In addition to actual damages, Plaintiffs seek an award of punitive damages against the Defendants.

II.

Defendants, in good faith, believe it would be unfairly prejudicial to allow evidence relevant only to the amount of punitive damages to be considered by the jury along with other issues in this matter. According to the Texas Supreme Court in *Transportation Ins. Co. v. Moriel*, 879 S.W.2d 10 (Tex. 1994), "evidence of a defendant's net worth, which is generally relevant only to the amount of punitive damages, by highlighting the relative wealth of a defendant, has a very real potential for

prejudicing the jury's determination of other disputed issues in a tort case." *Id.* at 30. Thus, if presented with a timely motion, the trial court should bifurcate the determination of the amount of punitive damages from the remaining issues. *Id.*

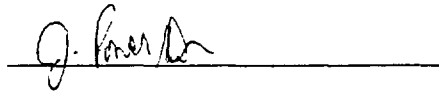
III.

In *Moriel*, the Texas Supreme Court provided that the jury should first hear evidence relevant to liability for actual damages and liability for punitive damages, and then return findings on those issues. The same jury should then be presented with evidence of a defendant's net worth, and any other evidence relevant to the amount of punitive damages, only if it answered the punitive damage liability question in the plaintiff's favor. *Id.*

WHEREFORE. Defendants respectfully request that the court order a bifurcation of the determination of the amount of punitive damages from the remaining issues in this matter, and make such other orders as the court deems fair and just.

Respectfully submitted,

POWERS & FROST, L.L.P.



James H. Powers
Texas State Bar No. 16217400
Sharla J. Frost
Texas State Bar No. 07491100
Gwendolyn S. Frost
Texas State Bar No. 07488750
2600 Two Houston Center
909 Fannin
Houston, Texas 77010
Telephone: (713) 767-1555
Facsimile: (713) 767-1799

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct of Defendants' Motion to Bifurcate has been forwarded to Plaintiffs' counsel of record either by first class mail, return receipt requested, delivery or facsimile on this the 20th day of January, 2001.

