

CAUSE NO. 00-04888-G

DOMINIC BROUSSARD, JR., ET AL.

§

IN THE DISTRICT COURT

§

VS.

§

DALLAS COUNTY, TEXAS

§

GAF CORPORATION (SUCCESSOR TO
RUBEROID CORPORATION), ET AL.

§

§

134TH JUDICIAL DISTRICT

DUPONT'S RESPONSE TO
TEXAS RULES OF CIVIL PROCEDURE 194.2 DISCLOSURES

TO: Joseph Genzer, Plaintiff, by and through his attorneys, Stephanie Finch and Holly Huart whose address is Baron & Budd, The Centrum, 3102 Oak Lawn Avenue, Suite 1100, Dallas, Texas 75219.

Pursuant to Rule 194.2 of the Texas Rules of Civil Procedure, E. I. du Pont de Nemours and Company makes the following disclosures in response to Plaintiff's Request for Disclosure dated March 1, 2001:

1. Rule 194.2(a) Disclosures
Correct Name of Party

The correct name of this party is E. I. du Pont de Nemours and Company.

2. Rule 194.2(b) Disclosures
Potential Parties

This defendant is unaware, at this time, of any other potential parties to this litigation.

3. Rule 194.2(c) Disclosures
Legal Theories and Factual Bases of Claims or Defenses

DuPont's legal theories and the factual bases of claims or defenses are still being developed at this time. The following legal theories and factual bases may be amended or supplemented as information is developed.

DuPont was not negligent because it acted with reasonable care under the circumstances.

According to Plaintiffs' Amended Petition, Plaintiffs' claims against DuPont are based solely on Mr. Genzer's alleged exposure while working at DuPont's facility in Victoria, Texas.

It is DuPont's legal theory that Plaintiffs' injuries and damages were caused by Mr. Genzer's negligence. Further, it is DuPont's legal theory that DuPont owed no duty to Plaintiff. The vast majority of Mr. Genzer's exposure occurred other than on DuPont's premises. Mr. Genzer's exposure, if any, on DuPont premises was the result of conduct, negligence, conditions or activities created by Mr. Genzer himself or his employer. Mr. Genzer's alleged illness was not caused, in whole or in part, by any act or omission of DuPont.

4. Rule 194.2(d)
Amount and any Method of Calculating Economic Damages

DuPont denies that Plaintiffs are entitled to recover any damages, economic or otherwise, against it. Furthermore, as of the making of this disclosure, Plaintiffs have not provided DuPont with any calculation by them of any economic damages that they may be claiming; therefore, DuPont is unable at this time to respond to any method of calculation that Plaintiffs may employ.

Any method used to calculate economic damages should be limited by all statutory and common-law limitations on the amount of recovery.

5. Rule 194.2(e) Disclosures
Persons with Knowledge of Relevant Facts

Based on the limited information available to DuPont at this time regarding the nature and circumstances of Plaintiffs' alleged claims, it is believed that those listed below may have knowledge of relevant facts. As the facts of the case are further developed, this response will be supplemented.

James E. Borden, Jr.
2908 Arroyo Drive
Victoria, Texas 77901
(512) 573-3135
Connection with case: DuPont Victoria employee - fire and safety

Bruce W. Karrh, M.D.
7 Blackhawk Trail
Savannah, Georgia 31411
(912) 598-8992
Connection with case: DuPont employee - medical and safety and fire protection

Robert E. Keith

219 Wearden Drive
Victoria, Texas 77904
(512) 578-5650

Connection with case: DuPont Victoria employee - engineering and environmental

Andrew H. Nickolaus

204 Bristol Court
Victoria, Texas 77904
(512) 578-3964

Connection with case: DuPont Victoria employee - engineering and environmental

Tommy A. Thompson

102 Woodcreek Circle
Victoria, Texas 77904
(512) 575-5127

Connection with case: DuPont Victoria employee - production

To the extent persons are allowed to testify at the trial in this matter, DuPont hereby cross-designates persons with knowledge of relevant facts and co-workers of Joseph Genzer.

6. Rule 194.2(f) Disclosures
Testifying Experts

1. **Morton Corn, Ph.D.**

**Department of Environmental Health Sciences
The Johns Hopkins University
615 North Wolfe Street, Room 6010
Baltimore, Maryland 21205
(410) 955-3602
(410) 955-9334 facsimile**

Dr. Morton Corn is a professor emeritus with the Johns Hopkins University's Department of Environmental Health Sciences in Baltimore. He is currently Director, National Institute of Occupational Safety and Health (NIOSH) Educational Resource Center in Occupational Safety and Health for Training Physicians, Nurses, Hygienists and Safety Professionals, and Director, Division of Environmental Health Engineering.

Dr. Corn is an industrial hygienist with long-standing experience in addressing asbestos-related issues from the perspective of an industrial hygienist and government regulator. He received his Ph.D. degree in Industrial Hygiene and Sanitary Engineering from Harvard University's Division of Engineering and Applied Physics in 1961. He served as Assistant Secretary of Labor for the

Occupational Safety and Health Administration ("OSHA") from 1975 to 1977 during the Ford Administration.

Dr. Corn may testify concerning the following subjects: (a) the uses and characteristics of asbestos and asbestos-containing products; (b) the development of industrial hygiene and occupational safety and health in the United States; (c) the evolution of knowledge in the industrial hygiene community concerning the potential health hazards associated with exposure to dust and asbestos; (d) the characteristics of asbestos dust and fibers and measurements of airborne concentrations of asbestos dust and fibers; (e) standards, guidelines, procedures and practices relating to the control of potential exposure to dust and asbestos dust; (f) exposure assessment and associated exposures for non-asbestos workers and the general public; (g) DuPont's industrial hygiene practices and procedures; and (h) DuPont's practices, programs and procedures for the health and safety of its employees. Dr. Corn is expected to address these subjects in a general context, and also as they relate to DuPont. Dr. Corn is expected to discuss the specific factual allegations by plaintiffs regarding conditions, procedures, and practices at DuPont. Dr. Corn's testimony is based upon (1) his extensive experience and training in the fields of industrial hygiene and occupational health and safety, (2) knowledge of relevant literature, (3) review of documents, discovery, and testimony regarding plaintiff's allegations, (4) review of relevant DuPont documents; and (5) review of the record in this case.

2. Richard J. Lee, Ph.D.
RJ Lee Group
350 Hochberg Road
Monroeville, Pennsylvania 15146
(724)325-1776

Dr. Richard J. Lee is President of the RJ Lee Group, Inc., a consulting firm and analytic laboratory in Pittsburgh. Prior to his affiliation with the RJ Lee Group, Dr. Lee was head of the U.S. Steel Technical Center's Electron Microscopy and Surface Analysis Section for 12 years. He is a theoretical physicist by training, and received his Ph.D. degree from Colorado State University. Dr. Lee was a member of the Health Effects Institute's Literature Review Panel on Asbestos in Buildings, commissioned by Congress. He has also performed work for the EPA and served on various EPA panels and committees regarding asbestos issues. He has also performed investigations of naturally occurring asbestos and other minerals and methods for detection and identification of such minerals. This has included analysis of bulk, air, water, soil and dust samples.

The subject matters on which Dr. Lee may testify include: (a) the history of the guidelines and standards governing exposure to asbestos; (b) the development of scientific knowledge regarding the measurement of asbestos in the air; (c) the aerodynamics of fibers; (d) exposure levels of various activities in the workplace and in public, commercial and private residences including relevant DuPont facilities; (e) analysis and production of bodies of air sampling data for the Environmental Protection Agency and other governmental and private entities regarding naturally occurring forms

of asbestos in the environment; (f) the release of asbestos from clothing; and (g) the results of experiments conducted by himself and others.

Dr. Lee is expected to testify based on (1) his extensive experience and training, (2) knowledge of relevant literature and data, (3) review of documents, discovery, and testimony regarding the plaintiffs' allegations, and (4) review of relevant DuPont documents.

3. **James M. Crapo, M.D.**
Chairman, Department of Medicine
National Jewish Medical and Research Center
1400 Jackson Street
Denver, Colorado 80206
(303)398-1436

Dr. Crapo is a physician specializing in pulmonary medicine. He is Chairman of the Department of Medicine at the National Jewish Medical and Research Center in Denver, Colorado. He is a former Professor of Medicine and Professor of Experimental Pathology at Duke University Medical Center. Dr. Crapo has carried out extensive research into the mechanisms of pulmonary disease resulting from the inhalation of particulates, including the processes associated with asbestos-related disease.

Dr. Crapo is expected to testify generally about the reactions of the lungs to inhaled particulates and foreign substances in both industrial and non-industrial environments. Dr. Crapo is expected to discuss, in particular, the biological effects of exposure to asbestos dust, and the etiology of asbestos-related disease. Dr. Crapo is expected to testify that the risk of asbestos-related lung disease is related to dose, and will provide his opinions regarding the levels of asbestos exposure necessary to produce disease. He may also testify concerning his asbestos-related studies and publications as well as other literature and studies related to asbestos-related diseases.

Dr. Crapo may also review the x-rays and other medical records of Mr. Genzer and render opinions regarding the presence or absence of asbestos-related abnormalities in Mr. Genzer's lungs. Dr. Crapo is expected to describe the diagnostic criteria and methods used in the diagnosis of asbestosis and other asbestos-related conditions. Dr. Crapo may critique the diagnostic reports of the plaintiffs' experts as they relate to plaintiffs' alleged conditions. Dr. Crapo may render opinions regarding the probable cause or causes of Mr. Genzer's condition.

4. **Dr. Bruce W. Karrh**
7 Blackhawk Trail
Savannah, Georgia 31411
(912) 598-8992

Dr. Bruce W. Karrh was the Vice President for Integrated Health Care for DuPont from 1993 until 1996 when he retired. Dr. Karrh received a Bachelor of Science degree in Chemistry from the University of Alabama at Tuscaloosa in 1958 and a Medical degree from the Medical College of Alabama in Birmingham in 1962. He entered the United States Army and performed a rotating internship in 1963 at Brooke General Hospital, Fort Sam Houston, Texas. From 1963 to 1965, Dr. Karrh was a flight surgeon in the U.S. Army medical corps, and from 1965 to 1970, he was in private practice in Athens, Alabama. In 1970, Dr. Karrh became the Medical Supervisor for DuPont's Spruance Plant where he remained until 1973. At that time he became the Research Manager of the Environmental Sciences Group at Haskell Laboratory until 1974. DuPont then appointed Dr. Karrh Assistant Medical Director and then Medical Director in 1977. In 1983, Dr. Karrh was named General Director, Medical, Safety and Fire Protection for DuPont. He was then named Vice President for Safety, Health and Environmental Affairs in 1984 - a position he held until 1993.

Dr. Karrh was a long-standing DuPont employee experienced in addressing health and safety-related topics and issues at DuPont. As part of his duties at DuPont, Dr. Karrh gained knowledge, both historical and current, regarding DuPont's history of and practices regarding safety throughout the company. In the course of his duties, Dr. Karrh became familiar with the history of and practices regarding DuPont's approach to workers' safety and health issues involving exposure to dust and asbestos dust. Much of Dr. Karrh's testimony will be fact testimony; however, he may express opinions in some areas that may be considered expert opinions. Out of an abundance of caution, DuPont is designating Dr. Karrh as an expert because he may be asked to provide such opinions.

Dr. Karrh may testify concerning the following subjects: (a) DuPont's history of providing for health and safety of its employees; (b) policies, procedures and programs for the health and safety of workers including those addressing dust and asbestos dust; (c) medical screening, monitoring and surveillance of DuPont employees; and (d) evolution and understanding of potential health hazards posed by exposures of workers to dust and asbestos dust.

Additional Expert Designations

Plaintiffs have not provided adequate information about Mr. Genzer's alleged diseases, current medical conditions and testifying experts to allow DuPont to determine which additional experts it may need in this case. Further, Plaintiffs have not provided reports from their experts regarding what opinions they may assert with respect to DuPont or Plaintiffs' claims against DuPont, nor have Plaintiffs made their experts available to DuPont for deposition. As recognized by the new Texas Rules on discovery and expert designations, DuPont is not in a position to make more extensive expert designations under these circumstances. To require a party to retain experts without the benefit of this essential information puts the party to an undue burden and unnecessary expense. DuPont will supplement this designation, if necessary, after adequate information is provided with respect to Plaintiffs' testifying experts.

5. It is anticipated that a radiologist with specialized training and experience in "B" Readings will be necessary to review, interpret and render opinions regarding x-rays of Mr. Genzer. This expert is expected to testify generally about presentations seen on x-rays and to explain the presentation that is seen. It is also anticipated that this expert would testify specifically about the findings seen on Mr. Genzer's x-ray films and is anticipated to render an opinion regarding the absence or presence of the findings of any asbestos-related condition of the lung.

6. It is further anticipated that a pulmonologist will be designated to discuss the physical condition of Mr. Genzer and also to discuss Mr. Genzer's medical records. This expert is also expected to discuss the anatomy and function of the respiratory system in the human body. This expert is expected to discuss the nature of asbestos, the symptomatology, disease process and diagnosis of asbestosis and cancers associated with the respiratory and related systems. It is also anticipated that this expert will testify regarding the methods of diagnosis of alleged asbestos-related diseases as compared to other non-asbestos related diseases. It is anticipated that this expert will also discuss historical and/or medical literature pertaining to asbestos-related conditions and other diseases of the respiratory and related systems.

7. To the extent any experts designated by other parties are allowed to testify at the trial in this matter, DuPont hereby cross designates all experts listed by all parties.

8. To the extent any physicians or representatives of health care facilities are listed by Plaintiff Joseph Genzer as experts or fact witnesses, DuPont reserves the right to call them as witnesses and to elicit opinions from them.

7. Rule 194.2(g) Disclosures
Indemnity and Insurance Agreements

DuPont will provide for inspection and copying a list of insurance policies that, subject to their terms, including financial terms, may afford coverage for the claims asserted against it in this action.

8. Rule 194.2(h) Disclosures
Settlement Agreements

None.

9. Rule 194.2(i) Disclosures
Witness Statements

None.

10. Rule 194.2(j) Disclosures
Medical Records and Bills

The records, if any, are attached.

11. Rule 194.2(k) Disclosures
Medical Records and Bills obtained by virtue of an authorization

The records, if any, are attached. Further records will be provided as they are obtained.

Larry E. Cotten

State Bar No. 04861600

Dennis M. Conrad

State Bar No. 04706400

S. Jan Hueber

State Bar No. 20331150

Kirkley Schmidt & Cotten, L.L.P.

2700 City Center II

301 Commerce Street

Fort Worth, Texas 76102-4127

(817) 338-4500

(817) 335-4599 Fax

Attorneys for Defendant

E. I. du Pont de Nemours and Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was served on Plaintiffs' counsel by certified mail, return receipt requested, and a copy of the correspondence letter was served on all other known counsel by regular U.S. mail on this the ____ day of April, 2001.

Counsel