

287-2180
#011488

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

WILLIAM R. CHATTMAN

§

VS.

§

C.A. No. H-87-1007

OWENS-CORNING FIBERGLAS
CORPORATION, ET AL.

§

DEFENDANT'S RESPONSES AND OBJECTIONS TO PLAINTIFF'S
REQUEST FOR PRODUCTION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, THE BENDIX CORPORATION (See Introductory Statement herein), defendant in the above styled and numbered cause and makes this their responses and objections to plaintiff's request for production, and would respond as follows:

INTRODUCTORY STATEMENT

On December 21, 1982, ALLIED CORPORATION acquired more than 50% of the voting stock of THE BENDIX CORPORATION. On January 31, 1983, ALLIED CORPORATION became the sole common stockholder of THE BENDIX CORPORATION. On April 1, 1985, THE BENDIX CORPORATION was merged into ALLIED CORPORATION and ceased to exist as a legal entity. On September 30, 1987, ALLIED CORPORATION was merged into ALLIED-SIGNAL INC. and ceased to exist as a legal entity.



THE BENDIX CORPORATION was incorporated in the State of Delaware and maintained its principal place of business in the State of Michigan. ALLIED CORPORATION was incorporated in the State of New York and maintained its principal place of business in the State of New Jersey. ALLIED-SIGNAL INC. is incorporated in the State of Delaware and maintains its principal place of business in the State of New Jersey.

ALLIED-SIGNAL INC. is the successor in interest to ALLIED CORPORATION which, in turn, was the successor in interest to THE BENDIX CORPORATION. The Automotive Sector of ALLIED-SIGNAL INC. is the business unit with ALLIED-SIGNAL INC. which continues the "BENDIX" friction product lines.

The following responses and objections to plaintiff's request for production are based upon information supplied by employees of THE BENDIX CORPORATION or documents in the possession of THE BENDIX CORPORATION through March 31, 1985. The responses and objections also reflect information or documents acquired by or known to employees of the Automotive Sector of ALLIED CORPORATION from April 1, 1985, through September 29, 1987, as well as information or documents acquired or known to employees of the Automotive Sector of ALLIED-SIGNAL INC. on and after September 30, 1987.

In its responses and objections this party will be identified as "ALLIED-SIGNAL" with the understanding that such term refers to: (a) THE BENDIX CORPORATION prior to April 1, 1985; (b) the Automotive Sector of ALLIED CORPORATION from April 1, 1985, to September 29, 1987; and (c) the Automotive Sector of ALLIED-SIGNAL INC. on and after September 30, 1987. As the context of particular questions may require, the friction products manufactured by ALLIED-SIGNAL and its predecessors will be described by reference to their registered trademark, "BENDIX."

RESPONSES AND OBJECTIONS

1. The Canadian Health Department report of May 30, 1949, wherein asbestos or asbestos-related diseases was discussed in whole or in part.

RESPONSE: See Item No. 1 attached hereto.

2. Copies of all correspondence from Mr. E.A. Martin, director of purchases, to Canadian Johns Manville Company, Ltd., Johns Manville and other suppliers of asbestos to this defendant wherein asbestos, asbestos products, asbestos diseases, or the consequences of asbestos exposure are discussed in whole or in part.

RESPONSE: See Item No. 2 attached hereto.

3. Copies of all corporate memos prepared by Mr. E.A. Martin, director of purchases, wherein asbestos-related diseases are discussed in whole or in part.

RESPONSE: See Item No. 3 attached hereto.

4. Copies of all memos, correspondence and reports of this defendant's safety directors wherein asbestos-related diseases or the health effects of asbestos exposure are discussed in whole or in part.

RESPONSE: Defendant objects to request for production no. 4 for the following reasons: (1) the request is overly broad and general in that said request is in no form or fashion restricted by time. The request is in no form or fashion restricted to the type and kind of alleged exposure that the plaintiff experienced; (2) the request is non-specific and general in that the term "safety directors" is undefined; and (3) to the extent that this request might deal with documents relating to conditions in Allied-Signal's friction material manufacturing facilities, it seeks information that is irrelevant and immaterial to any issue in this suit and is not likely to lead to such information for the reason there is no evidence that the plaintiff was ever employed by this defendant or that the plaintiff has ever worked in such a manufacturing facility.

5. Copies of this defendant's annual reports for the years 1950 to 1975.

RESPONSE: Defendant objects to request for production no. 5 for the following reasons: (1) the request seeks information which is not relevant or material to any issue in the lawsuit and is not calculated to lead to such matters; and (2) such documents are public records and available to the plaintiff.

6. Copies of all of this defendant's record retention policies.

RESPONSE: Defendant objects to request for production no. 6 for the following reasons: (1) such request is overly broad and general in that [a] it is unlimited in time and [b] it is unlimited in subject matter. Defendant consists of more than one business unit and keeps more than one type of record (that is, personnel, payroll, sales, tax, financial records, etc.); (2) since the request is not limited to any business unit that might have any function relating to asbestos and is not limited to records regarding asbestos, said request seeks information which is irrelevant and immaterial to any issue in the suit and is not likely to lead to same; and (3) the request seeks information for purely prejudicial reasons.

7. A list of the names and addresses of any and all custodians of this defendant's corporate records regarding asbestos or asbestos litigation.

RESPONSE: Defendant objects to request for production no. 7 for the following reasons: (1) the request is overly broad and general in that it is not restricted to the custodians of records regarding "asbestos" which might be relevant or material to any issue in this lawsuit. Obviously, some records would not be relevant or material. Without specificity, the request is simply too broad; (2) the request improperly seeks information privileged as communications between attorney and client and/or information protected by the attorney work product doctrine; and (3) this defendant has no such list and, therefore, the request improperly calls for the creation of a document.

8. A complete listing of all names of individuals who participated in responding to this request for production, their address, title and employer.

RESPONSE: Defendant objects to request for production no. 8 for the following reason: Defendant has no such document and, therefore, the request improperly calls for the creation of a document.

9. Copies of all reports to or prepared for this defendant by its own medical doctors or consultants, or outside medical consultants, wherein asbestos diseases, or the diagnosing of asbestos diseases is discussed in whole or in part. This request is for reports prepared specifically for Bendix Corporation and does not relate to the individual medical reports prepared on specific claimants who have filed suit against this defendant. This request is for the period of time from 1970 to the present time.

RESPONSE: Defendant objects to request for production no. 9 for the following reasons: (1) the request is overly broad and general. The request is not restricted to persons who have experienced the type and kind of exposure experienced by the plaintiff herein; (2) the request seeks information which is irrelevant and immaterial to any issue in the lawsuit and is not calculated to lead to same; and (3) to the extent that this request calls for the production of data concerning persons employed by Allied-Signal's friction material manufacturing facilities, it seeks information irrelevant and immaterial to any issue in the lawsuit and information not calculated to lead to same for the reason that there is no evidence that the plaintiff was ever employed by this defendant or present at this defendant's facilities or that the plaintiff was exposed at any facility manufacturing asbestos-containing products.

10. The complete files of this defendant's own employees who have filed claims or lawsuits against this defendant for asbestos-related diseases between the years 1955 and 1975. This request is for this defendant's own employees working in the manufacturing facilities of this defendant.

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RESPONSE: Defendant objects to request for production no. 10 for the following reasons: (1) this request seeks information that is irrelevant and immaterial to any issue in the suit and is not likely to lead to same for the reason that the request is not restricted to the types and kinds of persons with employment the same as the plaintiff herein; (2) the request is overly broad and general for the same reason; (3) the request is further irrelevant and immaterial, for the plaintiff has never been employed by this defendant or present in this defendant's facilities, or according to the evidence, worked in manufacturing facilities. However, in the spirit of cooperation, defendant would state that it has no such documents.

11. Complete copies of all documents furnished to ICF, Incorporated since 1985 regarding the survey of asbestos processors.

RESPONSE: Defendant objects to request for production no. 11 for the following reasons: (1) documents were submitted to ICF, Incorporated pursuant to regulations of the Environmental Protection Agency. In accordance with those same regulations, all such documents and data produced are confidential business information. Therefore, such matters are not discoverable; and (2) the request seeks information that is irrelevant and immaterial to any issue in the lawsuit, as the type and kinds of information accumulated involve manufacturing facilities at which the plaintiff has never worked, location used by Allied-Signal for disposal of process waste, number of personnel employed at manufacturing facilities, gas temperatures at exhaust system outlets, the longitude and latitude of manufacturing facilities and other totally irrelevant subjects.

12. A complete copy of this defendant's products catalogued for the years 1950, 1955, 1960, 1965, 1970, 1975, 1980 and 1985.

RESPONSE: Defendant objects to request for production no. 12 for the following reasons: (1) the request is overly broad and general in that it is not restricted to asbestos-containing products; (2) for the same reason, it seeks information that is

irrelevant and immaterial to any issue in the suit and is not likely to lead to same; and (3) since this defendant has manufactured thousands of different products since 1950, the request is overly broad and general.

13. A complete list of names, addresses and employer of all persons who, between the years 1966 to the present time have participated or have knowledge of the shredding of documents that were in the custody or control of this defendant. This request is addressed to documents which relate in whole or in part to asbestos or asbestos-related diseases.

RESPONSE: Defendant objects to request for production no. 13 for the following reasons: (1) this request, since it uses the term "shredding of documents" is asked for purely prejudicial reasons. For that reason alone, the request should be stricken; (2) the request seeks information which is completely irrelevant and immaterial to any issue in the lawsuit and is not likely to lead to same; and (3) no such list exists and, therefore, the request improperly calls for the creation of a document. However, in the spirit of cooperation, defendant would say that it has never intentionally destroyed any document with the purpose of avoiding its discovery in litigation. Further, defendant's employees have been instructed not to destroy or discard such documents.

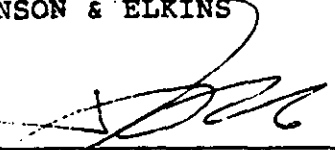
14. A complete listing of all trade associations to which this defendant was a member between the years 1940 and 1975.

RESPONSE: Defendant objects to request for production No. 14 for the following reasons: (1) the request is overly broad and general in that it is not restricted to trade associations which might in any form or fashion deal with asbestos-containing products; (2) the request for the same reasons seeks information that is irrelevant and immaterial to any issue in the lawsuit and is not

calculated to lead to same; and (3) no such list exists and, therefore, the request improperly calls for the creation of a document.

Respectfully submitted,

VINSON & ELKINS

BY 

Danny Van Winkle
State Bar No. 20462500
1001 Fannin, Suite 3114
Houston, Texas 77002-6760
(713) 651-2130

ATTORNEYS FOR DEFENDANT,
ALLIED-SIGNAL INC.

CERTIFICATE OF SERVICE

I, Danny Van Winkle, certify that I have this 3rd day of February, 1988, sent by certified mail or messenger, return receipt requested, a true and correct copy of the foregoing response to plaintiff's request for production to counsel for plaintiff and by regular mail to counsel for all co-defendants.


Danny Van Winkle

MINISTÈRE DE LA SANTÉ
Hôtel du Gouvernement

Division De La Demographie

Quebec

MINISTRY OF HEALTH
Parliament Buildings

Division of Demography

QUEBEC, May 24th, 1949.

Mr. W. E. Soutar,
Ass't to Mine Manager,
Canadian Johns-Manville Co., Limited,
ASBESTOS, P. Q.

Dear Sir:

At your request, I have taken cognizance of the various articles in some newspapers and dealing with the question of the mortality from tuberculosis in the asbestos mining district.

It is my pleasure, and duty I believe, to give my opinion and relative comments on the matter. However, and in the very first place, I wish to emphasize the stand I desire to hold: that I shall confine these comments to the statistical aspect of the problem only.

In the accompanying table, which will be of great assistance in the following study, I have compiled the crude totals of deaths from tuberculosis with those from cancer, violence (all kinds of accidents) and heart diseases. This first comparison is intended to demonstrate that tuberculosis is NOT the leading cause of death in the mining cities, nor in any other. Same table then compares the same totals (and please notice that we are here dealing with totals not rates - the latter being mostly the time misleading for the general public) in Thetford-Mines and Asbestos with those in six other cities where the social and occupational levels are about identical. This "urban" comparison is intended to show that the mortality from tuberculosis is not heavier in Thetford-Mines or Asbestos than in any city. Finally, same table establishes a third comparison over a period of five years (1943 to 1947, latest available figures), as to prove that if there exists a variation, the

W. H. O. R. E.

latter is merely "annual" and without any significance whatsoever.

Besides all this, the totals are broken down in relation to sex and this illustrates that, in Thorford-Mines, the number of women dying from tuberculosis is sometimes larger than the number of men, which leads us to conclude that the "employment" alone cannot be regarded as "exposure" to the disease.

Before analyzing some of these data, it seems appropriate to consider three important facts.

1. The death rate from tuberculosis in Thorford-Mines has been published as 236.1 in 1944. This rate is exact, but its publication as such was erroneous in its underlying significance. I observe that the publication of this rate was made on May 14th, and wonder why the rate of 1941 has been used and not that of 1945 or 1946, both of which were available? In 1944, the rate of 236.1 for Thorford-Mines is exact as already explained, but the rate of 1945 is 117.1 and that of 1946, 137.1, both rates being evidently much lower. Was there any motive for using only the rate of 1944?

2. From this we observe quite a variation between 1944 and 1945. How does it come that this rate registers such a sharp decline in one single year? The explanation is that, inclusive of and prior to 1944 we were (in Canada as a whole) tabulating all deaths by places of occurrence, while, with 1945 and since, we are now compiling by places of residence. The latter method is internationally accepted as a truer picture of any demographic situation. The place of death does not matter much nowadays that a person can go hundreds of miles away from home for treatment, but the residence of the deceased is more logical as a basis for analysis. As a consequence of this, the rate of 236.1 for Thorford-Mines in 1944 thus includes a certain number

of deaths which occurred in that city of people who were not residents of the city, while the rate of 117.1 in 1945 does consider only deaths of residents of the city, no matter the place of their death. So, when publishing the 1944 rate, a similar explanation should have been provided, and mainly because this rate has been compared with those of Granby and Sorci, in which cities no institution for the treatment of tuberculosis is located. My belief is that the comparison was dishonest.

2. Dealing with rates, either general or specific (a rate is always specific) is somewhat misleading and great precaution has to be used in their production. As a rule, rates are a fair way of study, if derived from a grand total. For instance, when we say that the tuberculosis rate for the province, was in 1946 of 72.1 per 100,000

population, this is easily understood. On the other hand, if such a rate is established for a small population, it has always to be borne in mind that so many factors are being involved that the rates lose its significance. It is much better to work with the crude totals of deaths which everyone understands, and this explains why the enclosed table has been built up with those numbers only.

Now let us consider a few of these numbers and, to abbreviate, only those of 1947. We then see that in Bradford-Mingos there were 29 deaths from tuberculosis, 23 from cancer, 4 from violence (all kinds of accidents) and 32 from heart diseases. In that city, tuberculosis thus ranks in the second place, not very far ahead of cancer, while heart diseases claimed only three more victims. But when we consider the sex distribution, we find that there were 15 men and 13 women. (Looking to 1946 there were only 27 deaths, 17 men and 15 women). Can we not conclude from this that tuberculosis is the first cause of death amongst the miners?

What is the situation in the other urban centres?

Asbestos : 5 deaths from T.B. against 4 cancer, 4 accidents
and 13 heart diseases.

Valleyfield : 15 T.B., 12 cancer, 6 accidents, 34 heart.

St. Hyacinthe : 15 T.B., 37 cancer, 7 accidents, 63 heart.

Jonquiere : 32 T.B., 9 cancer, 13 accidents, 14 heart, etc.

After all, comparing the mortality of these cities for tuberculosis only, Jonquiere registers 32 deaths, Chicoutimi : 24; St. Hyacinthe and Valleyfield : 15 each against the 29 in Thetford-Mines and the 5 in Asbestos. Is there such an extraordinary prevalence of tuberculosis in the Asbestos Mining district? I think that some other cities register as many, if not more deaths from tuberculosis and the conclusion comes to the mind : Why should only the situation of Thetford-Mines be "publicized" ?

As stated in the beginning, I have confined the above comments to the statistical data only, with the hope that this may be of assistance to all. Statistics are very important but their value is derived from the "objective" which one has in mind.

(signed)

Yours very truly,
the Demographer,
Paul Parrot, M.D.

TABLE PREPARED BY PAUL FARECT, M.D. DEMOGRAPHER,

Ministry of Health, Parliament Buildings, Quebec.

TOTAL DEATHS FROM TUBERCULOSIS, and other comparative causes, from 1943 to 1947,
in THETFORD MINES and ASBESTOS, and other comparative cities.

		TUBERCULOSIS			CANCER			VIOLENCE (all kinds of accidents)			HEART		
		T	M	F	T	M	F	T	M	F	T	M	F
THETFORD MINES	1943	52	24	28	16	11	5	14	11	3	32	23	9
	1944	32	19	13	11	5	6	10	7	3	35	23	12
	1945	16	8	8	13	6	7	7	6	1	37	13	24
	1946	22	7	15	13	7	6	10	10	0	38	18	20
	1947	29	16	13	23	14	9	4	2	2	32	13	14
ASBESTOS	1943	2	1	1	2	1	1	1	1	0	6	3	3
	1944	4	3	1	4	0	4	2	0	2	9	2	1
	1945	5	2	3	7	4	3	6	5	1	7	3	4
	1946	5	4	1	5	1	4	4	2	2	7	3	4
	1947	5	0	5	4	2	2	4	4	0	13	9	4
VALLEYFIELD	1943	10	5	5	19	10	9	14	11	3	23	10	13
	1944	17	3	14	21	10	11	9	7	2	43	29	14
	1945	14	8	6	22	10	12	8	7	1	40	25	15
	1946	15	8	7	27	13	14	13	8	5	30	17	13
	1947	15	7	8	19	14	5	6	5	1	34	18	16
ST-HYACINTHE	1943	19	5	14	43	17	26	16	14	2	76	41	35
	1944	19	4	15	40	12	28	10	7	3	74	34	40
	1945	15	5	10	32	11	21	11	5	6	58	34	24
	1946	27	11	16	34	10	24	6	6	0	55	22	33
	1947	15	8	7	37	15	22	7	6	1	63	28	35
LA TUQUE	1943	5	1	1	12	9	3	8	8	0	9	6	3
	1944	15	9	6	6	1	5	8	5	3	16	10	6
	1945	12	6	6	9	6	3	7	6	1	4	1	3
	1946	12	4	8	10	5	5	5	2	1	12	6	6
	1947	7	2	5	10	7	3	4	2	2	12	8	4
RIMOUSKI	1943	60	27	33	17	8	9	10	7	3	12	4	8
	1944	12	3	7	9	3	4	7	4	3	9	3	6
	1945	6	1	5	7	3	4	8	7	1	20	7	13
	1946	11	6	5	16	6	10	2	1	1	16	7	9
	1947	11	2	9	9	6	3	6	2	4	19	12	7
CHICOUTIMI	1943	48	19	29	28	17	11	16	12	4	24	12	12
	1944	20	6	14	10	5	4	19	6	2	14	5	9
	1945	21	8	13	17	9	8	22	16	6	16	7	4
	1946	20	9	11	12	6	6	11	12	2	30	13	17
	1947	24	13	11	25	17	8	23	5	1	32	18	24
JONQUIERE	1943	12	8	4	10	6	4	13	9	4	9	6	3
	1944	29	11	18	11	5	6	6	4	2	14	7	17
	1945	19	10	9	13	5	6	8	8	0	15	7	18
	1946	24	13	11	10	7	6	9	9	0	12	7	12
	1947	32	16	16	9	3	6	13	10	9	14	12	22

September 12, 1966

Mr. Noel Hendry
Canadian Johns Manville Co. Ltd.
Asbestos, Quebec
Canada

Dear Noel

Just to be sure you have a copy, an article that appeared in Chemical Week magazine is inclosed.

So that you'll know that Asbestos is not the only contaminat⁴⁹⁴, a second article from O.P. & D Reporter assesses a share of the blame on trees.

My answer to the problem is: if you have enjoyed a good life while working with asbestos products why not die from it. There's got to be some cause.

Director Of Purchases

E. A. Martin

EAM:MAC
ENC:

M. STOLAR
A. ST. JOHN
E. BLAIR
J. MEZERA

ASBESTOS
Health Report

Oct. 18, 1966

A copy of page 7, Chemical Week magazine of October 8, 1966, discloses a couple of letters refuting the article appearing in the same periodical on Sept. 10, 1966.

This may help to quiet the fear that was aroused by Dr. Selikoff's stigmatic report on "Lung Cancer from Asbestos".

The Purchasing Department has a file on the entire subject including the Canadian Health Department report of May 30, 1949, when the subject was previously incited.

K. A. Martin

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Attachment