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DANA COMPANIES

MOTION & RELEVANT EXHIBITS

STUCKART V. AC+S

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

DOROTHY STUCKART, Individually and as Successor-in-Interest to KEVIN STUCKART, Decedent; THEODORE STUCKART; RACHEL STUCKART; and DOES ONE through TEN, inclusive

Plaintiffs,

v.

AC and S, INC., et al,

Defendants.

Case No.: CGC-09-275304

PLAINTIFFS' OPPOSITION TO DEFENDANT DANA COMPANIES, LLC'S MOTION FOR SUMMARY ADJUDICATION; PLAINTIFFS' RESPONSE TO DEFENDANT DANA COMPANIES, LLC'S SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS; PLAINTIFFS' SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE; DECLARATION OF SARAH E. GILSON IN SUPPORT THEREOF

Date: August 7, 2012
Time: 9:30 a.m.
Dept.: 503
Judge: Hon. Teri L. Jackson

Trial Date: September 17, 2012

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I. INTRODUCTION

A. Plaintiffs' Discovery Is Factually Rich As To Dana's Liability For Punitive Damages.

Plaintiffs' discovery cites to documents which prove that by the 1960s, industrial hygienists had recommended to Dana the use of special respirators for the control of asbestos dust and the safety of Dana employees. In 1964 and again in 1966, Dana's Victor plant was inspected by an industrial hygienist for, among other industrial contaminants, **hazardous asbestos dust** concentrations.

Plaintiffs' discovery cites to documents which prove that in 1973, Dana received notice from General Motors that Dana oil pan gaskets in their packaging were releasing unacceptable levels of asbestos dust. They requested that all Dana cartons be vacuumed out, bagged in plastic, labeled and disposed of. Dana was furthermore instructed to place a cautionary statement on their cartons.

Plaintiffs' discovery cites to documents which prove that in 1980, Dana knew that end user mechanics were using wire brushes to scrape asbestos gasket material off engines. Dana knew this was hazardous because as of the 1960s Dana knew that scraping off gasket material from an engine block with a wire brush would release asbestos fibers into the air. Dana knew that as a result, the end users of its products were often at a higher risk of exposure than its own employees in its plants. Plaintiffs' discovery establishes that **despite its actual knowledge of these hazards, Dana failed to warn the consumers of its asbestos products of the hazards therein.** Plaintiffs' discovery responses are factually rich, and as such Dana has failed to shift its burden of production on this Motion.

B. A Triable Issue Exists As To Dana's Liability For Punitive Damages.

Assuming the above evidence is considered "factually devoid" and this Court finds Dana did shift its burden of production, Plaintiffs' evidence presented here raises a triable issue as to Dana's liability for punitive damages.

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All of Dana's relevant divisions admit in discovery that "pleural plaques and thickening, asbestosis, lung cancer in association with asbestos, and mesothelioma were all causally associated with exposure to certain types of asbestos fiber and levels of exposure as of the 1960s."

As early as 1964, Dana was receiving warnings about asbestos from asbestos suppliers. Johns-Manville, a supplier of raw asbestos to Dana, put warning labels on their packages of asbestos sent to Dana's factories starting in 1964; however Dana did not relay those warnings onto its asbestos products.

Dana's PMK admits that by 1968, Dana knew that inhalation of asbestos fibers could cause disease By 1971, Dana (and all its relevant divisions) had received notice of a worker's compensation claim against Dana for an asbestos-related injury by former employee Clarence Hankins.

Dana's corporate representative admitted that if a company has knowledge of a hazard such as asbestos, and if its products created a hazard, the company would be expected to pass on such knowledge to the end users of its products.

Nevertheless, Dana never printed the word "asbestos" on any of its actual gaskets, even though it was known to Dana that end users of the gaskets would regularly encounter the material outside its packaging installed in an engine. Dana only placed a caution on the packaging of "**certain**" of its gaskets in 1984. Dana "**may have**" placed a warning tag on **certain** Spicer/Dana axle assemblies it sold with brakes attached starting in 1985. Dana **never placed any warnings on its Spicer clutches**, on the products themselves or on their packaging.

Dana's Person Most Knowledgeable for its Victor gasket division and product line, Marcella Duncan, was deposed in *Michael Brown, et al. v. Honeywell International, Inc., et al.* in 2010. Ms. Duncan testified that although Victor manufactured asbestos-containing gaskets through June of 1988, it sold asbestos-containing gaskets through 1990. Ms. Duncan admitted that had Dana not continued to sell the remainder of its asbestos gasket inventory after June of 1988, Dana would have lost money.

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Marketing a product which is known to cause harm, for the purpose of maximizing profit, has been found to constitute just the kind of conscious disregard which justifies a finding of punitive damages. Plaintiffs' evidence creates a triable issue of fact that Dana consciously disregarded the health and safety of men such as Kevin Stuckart.

C. **The Relevant Defendant Is *Dana Companies, LLC* And Dana's Focus On Its "Divisions" Is A Non Sequitur.**

Dana's Motion focuses, at its very core, on a non-sequitur. There is no difference between the corporate awareness of asbestos hazards known to **Dana** as opposed to one of Dana's **divisions**. "As against a principal, both principal and agent are deemed to have notice of whatever either has notice of, and ought, in good faith and the exercise of ordinary care and diligence, to communicate to the other." Cal. Civ. Code § 2332 (West) Imposing a duty of communication among corporate departments is supported by the well-established rule imputing knowledge of corporate officials to the corporation itself.

Dana's discovery responses overall evidence that the "divisions" of Dana were not divided as far as the flow of corporate knowledge is concerned. **All** of Dana's divisions admit in discovery that "pleural plaques and thickening, asbestosis, lung cancer in association with asbestos, and mesothelioma were all causally associated with exposure to certain types of asbestos fiber and levels of exposure as of the 1960s." **All** of Dana's divisions received notice of the same 1971 worker's compensation claim for an asbestos-related disease made by a former Dana employee.

In the words of Marcella Duncan, Dana's Person Most Knowledgeable, "Dana was the **corporation**, and that was the **people**. It was the divisions that sold the products." **Dana Companies, the Defendant at issue here**, is charged with the knowledge of asbestos hazards developed by its many divisions throughout the 1960s, 1970s and 1980s, and is charged with the failure of **any** of its products to carry a warning detailing same for decades.

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Moreover, discovery in this case, including depositions which Defendant attended as "Dana Companies LLC", establishes that Decedent Kevin Stuckart was exposed to asbestos from multiple products for which Dana is liable, including Spicer axles, Spicer clutches, Dana axles and Victor gaskets. Even were one division to withhold knowledge from the parent company, Plaintiffs have provided evidence rendering every division at issue individually liable for punitive damages here.

II. STATEMENT OF FACTS

A. Plaintiffs' Discovery Is Not Factually Devoid And Dana Has Not Shifted Its Burden Of Production.

Plaintiffs' discovery cites to evidence which documents **Dana Companies**' knowledge of the hazards of asbestos:

> "Dana Companies was well aware of the hazards of asbestos decades before Mr. Stuckart's first exposure to asbestos via Victor gaskets. As set forth in the attached declaration of Dr. Barry Castleman, in 1973, Dana was notified by the General Motors Hydramatic Division that there were 'unacceptable levels of asbestos dust' on 'Asbestoprene' oil pan gaskets GM received from the Dana Corporation. GM employees were ordered to vacuum residue out of the shipping cartons before disposing of them. The residue was to be bagged in plastic, labeled, and land-filled. The GM inspector further requested that Dana label the gasket shipping carton with the caution statement specified in the OSHA asbestos standard. Defendant was notified that its products were unsafe, and yet it failed to warn consumers."
>
> [...]
>
> "As to additional documents, Plaintiffs also refer you to:
> - Kemper Insurance Industrial Hygiene Report (1964);
> - Kemper Insurance Industrial Hygiene Report (1966);
> - Minutes of the Victor Gasket Division Plant Safety Committee (May 10, 1972);
> - DANA CORPORATION Intra-Company Communication (April 25, 1973);
> - DANA CORPORATION Intra-Company Communication re: OSHA intent to reduce TWA exposure (May 6, 1980);
> - John Zietz, DANA Victor division chief engineer, article "What Will Replace Asbestos Gaskets" (Diesel & Gas Turbine Progress, July 1980);
> - DANA CORPORATION Victor Products Division correspondence re. warning labels (April 1, 1982);
> - DANA CORPORATION Intra-Company Communication re: continued sale of obsolete asbestos Chicago stock (January 17, 1990);
> - DANA CORPORATION Intra-Company Communication re. asbestos bearing material (February 26, 1990);
> - FMSI Exhibit List, which is attached.

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- Deposition of Thomas Joseph Zagurski (*Davidson v. Burns International Services Corp., et al.*, SFSC Case No. 429088), August 11, 2004. Defendant was present at this deposition, making this deposition equally available.
- Deposition of Marcella Leigh Duncan (Victor/Dana Sales Operation Manager 1968+) (*Toma v. Abex Corporation, et al.*, Alameda County Superior Court No. RG- 03083024), June 16, 2003."

(See Plaintiffs' Responses to Dana's Special Interrogatory No. 34, attached as Exhibit C to the Declaration of Michelle Clowser in support of Dana's Motion for Summary Adjudication.) [1]

B. Plaintiffs' Evidence Shows Dana (And All Its Divisions) Knew Of The Hazards Of Asbestos And Did Not Warn Consumers Thereof.

1. Dana (And All Its Divisions)'s Knowledge.

Dana's Person Most Knowledgeable for its Victor gasket division and product line, Marcella Duncan, was deposed in *Michael Brown, et al. v. Honeywell International, Inc., et al.* in 2010. (See Deposition of Marcella Duncan, *Michael Brown, et al. v. Honeywell International, Inc., et al* , attached to the Gilson Decl. as **Exhibit A**.) Ms. Duncan testified that Victor produced gaskets predominantly for automobiles, trucks and some heavy duty applications. (Id. at 22:14-19; 23:3-10.)

As of 1946, Dana knew that injury to the health of employees and the public could be caused by asbestos. (Id. at 90:10-19.) Dana's corporate headquarters was based in Ohio since 1928. (Id. at 88:9-12.) As an Ohio corporation Dana had a duty to follow the laws and regulations of the State of Ohio. (Id. at 88:13-16.) In 1946 the Ohio Department of Health issued legal requirements for the prevention and control of industrial public health hazards, which included harmful exposure to asbestos dust. (Id. at 89:5-16; 90:18-23.) As an Ohio corporation Dana had notice of these regulations, and the warnings about exposure to asbestos dust. (Id. at 90:25-91:19.)

[1] Dana has served with their Motion "Objections to Plaintiffs' Evidence in Opposition to Defendant Dana Companies, LLC's MSA" This document comprises an objection to an Opposition which, obviously, had not yet been filed. The "Objections" appear to be, in reality, objections to Plaintiffs' discovery responses. This is simply not the proper use of evidentiary objections. Moreover, Plaintiffs do not rely on the Declaration of Barry Castleman in their Opposition, making these "Objections" both moot and glaringly premature.

By the 1960s, industrial hygienists had recommended to Dana the use of special respirators for the control of asbestos dust and the safety of Dana employees. (See Kemper IH Studies, 1964 and 1966, attached to the Gilson Decl. as **Exhibit B**.) In 1964 and again in 1966, Dana's Victor plant was inspected by an industrial hygienist on behalf of Kemper Insurance. (Id.) The plant was examined for, among other industrial contaminants, asbestos dust concentrations. (Id.) Victor implemented dust control measures at its manufacturing plant, including requiring employees to wear respiratory masks. (See Deposition of Marcella Duncan, *Michael Brown, et al. v. Honeywell International, Inc., et al*, at 106:15-107:20, attached to the Gilson Decl. as **Exhibit A**.)

All of Dana's relevant divisions admit in discovery that "pleural plaques and thickening, asbestosis, lung cancer in association with asbestos, and mesothelioma were all causally associated with exposure to certain types of asbestos fiber and levels of exposure as of the 1960s." (See Dana Companies LLC (Spicer Clutch Division)'s 2009 Supplemental Responses to GO 129 Friction Interrogatories at 25:26-28, attached to the Gilson Decl. as **Exhibit C**; see also Dana Companies LLC (Spicer Axle Division)'s 2009 Responses to Standard GO 129 Friction Interrogatories, at 25:10-12, attached to the Gilson Decl. as **Exhibit D**; see also Dana Companies LLC (Victor Gasket Division)'s 2009 Amended Responses to GO 129 Standard Interrogatories at 41:8-11, attached to the Gilson Decl. as **Exhibit E**.)

As early as 1964, Dana was receiving warnings about asbestos from asbestos suppliers. (See Deposition of Marcella Duncan, *Michael Brown, et al. v. Honeywell International, Inc., et al*, at 128:3-129:11, attached to the Gilson Decl. as **Exhibit A**.) Johns-Manville, a supplier of raw asbestos to Dana, put warning labels on their packages of asbestos sent to Dana's factories starting in 1964; however Dana did not relay those warnings onto its asbestos products. (Id.)

Dana's PMK admits that by 1968, Dana knew that inhalation of asbestos fibers could cause disease. (Id. at 107:23-108:12.) By 1971, Dana (and all its relevant divisions) had received notice of a worker's compensation claim against Dana for an asbestos-related injury by former employee Clarence Hankins. (Id. at 108:21-109:1; see also Dana Companies LLC (Spicer Clutch Division)'s 2009 Supplemental Responses to GO 129 Friction Interrogatories at 17:14-18:1, attached to the Gilson Decl. as **Exhibit C**; see also Dana Companies LLC (Spicer Axle

Division)'s 2009 Responses to Standard GO 129 Friction Interrogatories, at 19:19-21, attached to the Gilson Decl. as **Exhibit D**.)

In 1973, Dana received notice from General Motors that Dana oil pan gaskets in their packaging were releasing unacceptable levels of asbestos dust. (Id. at 136:25-138:16; see also Intra-Company Communication dated April 25, 1973, attached to the Gilson Decl. as **Exhibit F**.) They requested that all Dana cartons be vacuumed out, bagged in plastic, labeled and disposed of. (Id; see also Intra-Company Communication dated April 25, 1973, attached to the Gilson Decl. as **Exhibit F**.) Dana was furthermore instructed to place a cautionary statement on their cartons. (Id; see also Intra-Company Communication dated April 25, 1973, attached to the Gilson Decl. as **Exhibit F**.)

In 1980, the head of engineering for Dana's Victor division, John Zeitz, wrote an article entitled "What Will Replace Asbestos Gaskets." (Id. at 111:15-112:23; see also "What Will Replace Asbestos Gaskets", attached to the Gilson Decl. as **Exhibit G**.)

The article stated:

> One problem for all suppliers and users of asbestos products us how the end user disposes of the product. In the gasket business this is a particularly sensitive area because **often the end user finds himself using a wire brush or scraper to scrape asbestos off of an engine part to clean up residue gasketing.**
>
> Unfortunately, **it is the asbestos you cannot see that finds its way into the lungs.** So unless special preventative health procedures are followed, **the end user of asbestos gaskets may be in more potential danger that the personnel in the producer's facility.**
>
> [Asbestos suppliers] state very simply that once the material reaches the consumer, the asbestos is locked-in by the various processes used in manufacture. Granted, this may be true, but **it is very difficult for most gasket suppliers to verify that this condition continues throughout the use of the product when they consider the asbestos-contained material is typically sheared, torn, calendared, scraped, sanded, punched, burned, formed, compressed and ground it its further manufacture and use as a gasket.**
>
> Asbestos seems to be used in the majority of cylinder head applications and intake manifold applications, exhaust manifold applications and a large number of extremely heavily loaded flanges.

(Id.; see also "What Will Replace Asbestos Gaskets", attached to the Gilson Decl. as **Exhibit G**.)

Dana knew that to install its gasket a mechanic would necessarily have to remove a gasket first. (Id. at 119:19-25.) Dana knew that end user mechanics were using wire brushes to scrape asbestos gasket material off engines. (Id. at 113:14-19.) Dana knew this was hazardous because as of the 1960s Dana knew that scraping off gasket material from an engine block with a wire brush would release asbestos fibers into the air. (Id. at 118:1-119:8.) Dana knew that the end users of its products were often at a higher risk of exposure than its own employees in its plants. (Id. at 113:3-13.) Despite its actual knowledge of these hazards, Dana never tested its own gaskets for fiber release of asbestos. (Id. at 120:5-12.)

Although Dana manufactured asbestos-containing gaskets through June of 1988, it **sold** asbestos-containing gaskets through 1990. (Id. at 75:15-76:7.) Ms. Duncan admitted that had Dana not continued to sell the remainder of its asbestos gasket inventory after June of 1988, Dana would have lost money. (Id. at 78:5-11.)

2. Dana (And All Its Divisions)'s Failure to Warn.

Dana did not place **any** warnings concerning asbestos on its gasket packaging until 1984-85. (Id. at 138:25-139:10.)

Dana's corporate representative admitted that if a company has knowledge of a hazard such as asbestos, and if its products created a hazard, the company would be expected to pass on such knowledge to the end users of its products. (Id. at 92:22-93:7.) The "caution label" finally placed on "**certain** gaskets and gasket materials" said "substantially" "CAUTION. CONTAINS ASBESTOS FIBERS. AVOID CREATING DUST. BREATHING ASBESTOS DUST MAY CAUSE SERIOUS BODILY HARM." (See Dana Corporation (Victor Gasket Division) 2005 Amended Responses to GO 129 Standard Interrogatories, at 34:18-22, attached to the Gilson Decl. as **Exhibit H.**) Dana never printed the word "asbestos" on any of its actual gaskets, even though it was known to Dana that end users of the gaskets would regularly encounter the material outside its packaging installed in an engine. (See Deposition of Marcella Duncan, *Michael Brown, et al. v. Honeywell International, Inc., et al* , at 104:17-25, attached to the Gilson Decl. as **Exhibit A**; see also "What Will Replace Asbestos Gaskets", attached to the Gilson Decl. as **Exhibit G.**)

Dana "**may have**" placed a warning tag on **certain** Spicer/Dana axle assemblies it sold with brakes attached starting in 1985. (See Dana Companies LLC (Spicer Axle Division)'s 2009 Responses to Standard GO 129 Friction Interrogatories, at 48:10-49:5, attached to the Gilson Decl. as **Exhibit D**.)

Dana **never placed any warnings on its Spicer clutches**, on the products themselves or on their packaging. (See Dana Companies LLC (Spicer Clutch Division)'s 2009 Supplemental Responses to GO 129 Friction Interrogatories at 49:28-50:2, attached to the Gilson Decl. as **Exhibit C**.)

C. The Relevant Defendant Is *Dana* And Dana's Focus On Its "Divisions" Is A Non Sequitur.

1. Dana Companies LLC (Formerly Dana Corporation) Is Liable For Dana Axles, Spicer Clutches, Spicer/Dana Transmissions And Victor Brand Gaskets.

Dana Companies began as Spicer Manufacturing Corporation in 1916, and changed its name to Dana Corporation in 1946. (See Dana Companies LLC (Spicer Clutch Division)'s Supplemental Responses to GO 129 Friction Interrogatories at 19:7-9, attached to the Gilson Decl. as **Exhibit C**.) Dana created its Spicer Clutch Division in approximately 1947. (Id. at 19:22-24.) Dana made asbestos-containing Spicer Clutches through 1983. (Id.) Dana formed its Industrial Power Transmission Division in the 1970s. (Id. at 19:27-20:6.) Dana sold asbestos-containing industrial clutches and couplings through at least 1991. (Id.)

Dana formed its Spicer Axle Division in the early 1950s. (Id. at 19:13-19.) Dana sold asbestos-containing Spicer Axle components through the 1990s. (Id.)

Dana formed its Victor Gasket Division in 1967. (See Dana Companies LLC (Victor Gasket Division)'s 2009 Amended Responses to GO 129 Standard Interrogatories at 21:19-26, attached to the Gilson Decl. as **Exhibit E**.) Dana manufactured asbestos-containing Victor gaskets through 1988. (Id.) As of 1985, only 14.7% of the gasket materials sold by Victor Products Division to its top 23 O.E.M. accounts comprised non-asbestos-containing products. (See Intra-Company Communication Dated February 8, 1985, attached to the Gilson Decl. as **Exhibit I**.)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

DOROTHY STUCKART, Individually and as Successor-in-Interest to KEVIN STUCKART, Decedent; THEODORE STUCKART; RACHEL STUCKART; and DOES ONE through TEN, inclusive

Plaintiffs,

v.

AC and S, INC., et al,

Defendants.

Case No.: CGC-09-275304

DECLARATION OF SARAH E. GILSON IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANT DANA COMPANIES, LLC'S MOTION FOR SUMMARY ADJUDICATION

Date: August 7, 2012
Time: 9:30 a.m.
Dept.: 503
Judge: Hon. Teri L. Jackson

Trial Date: September 17, 2012

I, SARAH E. GILSON, declare:

1. I am an attorney at law, duly licensed to practice before all Courts in the State of California. I am counsel of record for Plaintiffs herein. I make this Declaration of my own personal knowledge, and if called upon as a witness, I could and would testify competently thereto.

///

2. Attached hereto as **Exhibit A** is a true and correct copy of excerpts from the Deposition of Marcella Duncan in *Michael Brown, et al. v. Honeywell International, Inc., et al.*

3. Attached hereto as **Exhibit B** is a true and correct copy of Kemper IH Studies, 1964 and 1966.

4. Attached hereto as **Exhibit C** is a true and correct copy of relevant pages from Dana Companies LLC (Spicer Clutch Division)'s 2009 Supplemental Responses to GO 129 Friction Interrogatories.

5. Attached hereto as **Exhibit D** is a true and correct copy of relevant pages from Dana Companies LLC (Spicer Axle Division)'s 2009 Responses to Standard GO 129 Friction Interrogatories.

6. Attached hereto as **Exhibit E** is a true and correct copy of relevant pages from Dana Companies LLC (Victor Gasket Division)'s 2009 Amended Responses to GO 129 Standard Interrogatories.

7. Attached hereto as **Exhibit F** is a true and correct copy of Dana Intra-Company Communication dated April 25, 1973.

8. Attached hereto as **Exhibit G** is a true and correct copy of the article "What Will Replace Asbestos Gaskets."

9. Attached hereto as **Exhibit H** is a true and correct copy of relevant pages from Dana Corporation's (Victor Gasket Division) 2005 Amended Responses to GO 129 Standard Interrogatories.

10. Attached hereto as **Exhibit I** is a true and correct copy of Dana Intra-Company Communication Dated February 8, 1985.

11. Attached hereto as **Exhibit J** is a true and correct copy of excerpts from the Deposition of Chris Stuckart, Vol. I, taken March 7, 2012.

12. Attached hereto as **Exhibit K** is a true and correct copy of excerpts from the Deposition of Ronald Larner, Vol. I, taken February 7, 2012.

13. Attached hereto as **Exhibit L** is a true and correct copy of excerpts from the Deposition of Andrew Janoski, Vol. I, taken January 25, 2012.

14. Attached hereto as **Exhibit M** is a true and correct copy of excerpts from the Deposition of Andrew Janoski, Vol. II, taken January 25, 2012.

15. Attached hereto as **Exhibit N** is a true and correct copy of excerpts from the Deposition of Walter Mangerich, Vol. I, taken February 1, 2012.

16. Attached hereto as **Exhibit O** is a true and correct copy of the excerpts from Deposition of Walter Mangerich, Vol. II, taken February 2, 2012.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Declaration was executed on July 24, 2012, at San Francisco, California.

SARAH E. GILSON

EXHIBIT "A"

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

Michael Brown, et al., Frank Sylvasy (Estate), et al.,	)	Case No.: CV-09-702689 Case No.: CV-09-695277
Plaintiffs,	)	JUDGE HANNA JUDGE SPELLACY
vs.	)	
Honeywell International, Inc., et al.,	)	
Defendants.	)	

- - -

Deposition of Marcy Duncan, a witness herein, taken by the Plaintiff, as upon cross-examination and pursuant to the Ohio Rules of Civil Procedure and Notice as to time and place and stipulations hereinafter set forth, at the Residence Inn Indianapolis Northwest-Marriott, 6220 Digital Way, Indianapolis, IN 46278, on on Wednesday, June 2nd, 2010, at 10:00 a.m., before George J. Staiduhar, a Notary Public within and for the State of Ohio.

- - -

A Yes.

Q Is there a reason why you did not do that in preparation for your deposition today?

A I didn't know what to look for. At any given time, there were over 50,000 different gaskets manufactured, and there were a lot more that were considered part numbers. When you put something in a kit, it takes another part number to create the kit.

So you may have ten gaskets in the kit sold individually as ten different part numbers and then the kit would have another number. So you are looking at a lot of different part numbers and gasket numbers, and I didn't know what to look for.

Q Did your job duties have to do with the sale of gaskets for automobiles or something else?

A It was predominantly automobiles, probably trucks, buses, some heavy duty like semitruck diesel.

Q Like a Cummins engine?

A Yes, because I was with the aftermarket division at that time, so it would have been any gaskets that were available through Victor in the Service Parts Division for the aftermarket sales.

Q Now, let's just limit it down to

automobile gaskets, and in that time period, you had said earlier there were over 50,000 gaskets.

What percentage of those gaskets were for automobile use rather than heavy equipment or marine or anything like that?

A I would be guessing.

Q Well, can you give me your best estimate?

A Probably around 70 to 80 percent of them. Very few of the gaskets that were sold from the aftermarket were for heavy-duty applications.

Q And for heavy-duty applications, what are we talking about?

A Construction, like your diesel, there were some diesel but not a lot.

Q For diesel, we already mentioned Cummins would be one?

A Yeah. When I think of diesel, it would be like Class 8 in vehicular, so that would be like your Cummins, your Mack.

Q Caterpillar?

A Yeah, but Cat was more construction.

Q How about Detroit Diesel?

A That would be Class A Allison engines.

A That's correct.

Q And you became the sales operation manager of Victor Reinz Division?

A At the time, it was actually Victor Products Division.

Q Okay.

A Yes, sir.

Q And what type of products did Victor, the Victor Products Division, sell at that point in time as of May 23rd, 1988, when you started working there?

A Gaskets.

Q And were you selling any asbestos-containing gaskets?

A No.

Q And you are aware that Victor claims that it stopped producing asbestos-containing gaskets in June of 1988?

A June of 1988.

Q So would you have been selling asbestos-containing gaskets between May 23rd and June of 1988?

A Probably not.

Q And what's the basis for that statement?

A Let me requalify that. Yes, we could

have sold asbestos-containing gaskets during that period. We stopped manufacturing the last asbestos-containing gasket in June of 1988.

Q Okay. And you are aware that Victor continued to sell those gaskets until 1990, correct?

A Some of those gaskets that contained asbestos were sold up into the early 1990s, yes, sir.

Q Can you tell me why Victor continued to sell asbestos-containing gaskets after they ceased the manufacture of them in 1988?

A Customers' request.

Q Was it also to clear the inventory?

A No, because if a customer didn't want asbestos any longer, whether we had inventory or not he would not have received asbestos gaskets.

Q I guess my question is, the asbestos gaskets, if you went to non, all non asbestos-containing gaskets in '88, why didn't you just get rid of all asbestos-containing gaskets?

MR. DORAN: Objection.

A It gets complicated. A transition like that becomes as much of a burden on the customer as it does on the manufacturer with depleting inventories as well as all the paperwork attached to making an engineering change to a product.

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Q Okay. So if they were being produced on contract for the customers, would Victor still be producing asbestos-containing gaskets after June of 1988?

A No, sir.

Q Now, if Victor did not sell those asbestos-containing gaskets that were on hand after June of 1988, they would have lost money, wouldn't they?

MR. DORAN: Objection.

A If they had not sold them?

Q Yes, ma'am.

A Yes.

MR. MISMAS: We have been going another hour. Do you want to go to lunch?

MR. DORAN: The preference is to push through, and she is on vacation and have flights.

(Discussion held off the record.)

(Recess had.)

BY MR. MISMAS:

Q And you came back to Lisle after we were talking there -- I am going to ask you another question real quick.

Are you familiar with a company called Genuine Parts Company?

A Yes, sir.

Q And how are you familiar with Genuine

is, is located?

A Yes. It is in the repository in Toledo, Ohio.

MR. MISMAS: And I will ask Perry to provide me with a copy of that list.

MR. DORAN: You make a formal request, and we will address your formal request.

MR. MISMAS: Okay.

BY MR. MISMAS:

Q And do you know when Victor/Dana first got into the business of selling asbestos-containing products?

A In 1909 Victor Manufacturing, a gasket company --

MR. MISMAS: Let's go off the record for two seconds.

(Pause.)

A May I correct my last statement?

Q Sure.

A I believe I answered it incorrectly. You asked about Victor/Dana. That would have been 1967.

Q How about Dana itself?

A Dana never -- Dana was the corporation, and that was the people. It was the divisions that sold the products.

Q Okay.

A If that makes sense.

Q No, I understand. And I don't want to try to get into a discussion of corporate law with you, but do you understand a division is part of that corporation?

A Yes.

Q So it is your testimony it was not until 1967 that Dana Corporation started selling asbestos-containing products?

A Gaskets.

Q Gaskets. Okay.

You don't know whether or not Dana sold asbestos, Dana Corporation sold asbestos-containing products prior to 1967 other than they started selling gaskets in 1967, correct?

A Correct.

MR. DORAN: Objection to the form of the last question.

Q Are you familiar with a product from Dana called Spray Craft?

MR. DORAN: Objection.

A No, sir.

Q And do you know where Dana's corporate headquarters is?

A Toledo, Ohio.

Q And you are aware that --

A Which Dana?

Q Dana Corporation.

A There is no Dana Corporation any more.

Q Dana Companies, LLC?

A Perrysburg, Ohio.

Q And are you aware that Dana Corporation's headquarters moved to Ohio in 1928?

A Around that time.

Q As the corporate representative of Dana, do you believe that Dana had a duty to follow the laws and regulations of the State of Ohio?

A Yes, sir.

Q This is going to be Exhibit 2.

MR. MISMAS: We will mark this as 2 and the notice of depo as Exhibit 1.

(Plaintiffs' Doran Deposition Exhibits 1 and 2 were marked for identification.)

(Pause.)

A Okay.

Q Ready, Ms. Duncan?

A Yes, sir.

Q Okay. Can you turn that first page over? That's just a document authenticating the document.

Do you see the first page, it says "legal requirements for the prevention and control of industrial public health hazards, Division of Industrial Hygiene, Ohio Department of Health, Columbus, Ohio, 1946. Regulations for the prevention and control of diseases resulting from exposure to toxic fumes, vapors, mists, gases, and dusts in order to preserve and protect the public health adopted by the Ohio Public Health Council effective February 16th, 1946, filed with the Secretary of State, March 1st, 1946, effective January 1st, 1947." Did I read that correctly?

A Yes, sir.

Q Now, can you turn the page, and do you see about halfway down where it says regulation 247?

A Yes, sir.

Q Regulation 247, "harmful exposure"?

A Yes. I'm sorry.

Q Okay.

A Yes, I see it.

Q "No employer shall use or permit to be used in the conduct of his business, manufacturing

establishment, or other place of employment any process, material, or condition known to have an adverse effect on health unless regional provisions have been made to prevent injury to the health of the employees and of the public.

"The concentrations of dusts, fumes, mists, vapors, or gases and the air breathed by employees shall not exceed the following maximum allowable concentrations for an eight-hour daily exposure." Do you see that?

A Yes, sir.

Q Did I read that correctly?

A Yes, sir.

Q And if we turn the page, it says mineral dusts, all the way like -- about eight tenths of the way down.

A I see it.

Q It says mineral dusts, and it says asbestos?

A Yes.

Q And this is one of the materials that this regulation was regulating, correct?

A Yes.

MR. DORAN: Objection.

Q And you told me earlier that Dana had

a duty to be aware of the laws and regulations of the State of Ohio, correct?

A Yes, sir.

Q So Dana had a duty to be aware of this 1946 regulation?

MR. DORAN: Objection to the form of the question. Calls for a legal conclusion.

Q You can go ahead and answer.

A I would think, yes.

Q Okay. And Dana would have known in 1946 that -- Dana would have known in 1946 that injury to their workers from exposure to their employees and to the public by asbestos could cause -- strike that again.

That Dana would have known by 1946 that injury to the health of the employees and/or the public could be caused by asbestos, correct?

MR. DORAN: Objection to the form of the question.

A In unregulated conditions, yes.

Q Toss that one. I have one more question. You don't have to look at it.

Did Dana have a duty to test its asbestos-containing products, which it was selling in Ohio, while at its corporate headquarters in Ohio to see if their use would violate the requirements of this

regulation?

MR. DORAN: Objection to the form of the question. Predicate, foundation. Calls for a legal conclusion, and it is irrelevant. There is no evidence --

MR. MISMAS: No speaking objections. You can say "irrelevant." No speaking objections. That's fine. You can say irrelevant, but no speaking objections.

MR. DORAN: Objection to the form of the question. Same reasons.

A Dana relied on public and governmental tests concerning the gaskets that I know of to make sure they were within regulations.

Q Okay. But that's not my question.

(Question read.)

MR. DORAN: Objection to the form of the question. Calls for a legal conclusion.

A I don't know.

Q That's a fair answer. You don't know.

Once a company has knowledge of the dangers of a hazard such as the hazard created by asbestos, do you expect the company to pass it on -- strike that -- once a company has knowledge of the

dangers of a hazard such as asbestos, do you expect the company to pass on its knowledge to the end users of its products?

MR. DORAN: Objection to the form of the question.

A If their products create a hazard, yes.

Q Thank you.

Do you have Mr. Sylvasy's answers, Dana's answers to interrogatories in front of you?

A Yes.

MR. MISMAS: And that will be Exhibit 3.

(Plaintiffs' Doran Deposition Exhibit 3 was marked for identification.)

Q I take for granted you have seen these before?

A Yes, sir.

Q And these are Dana Companies, LLC's responses for first master set of interrogatories propounded to all defendants in the Frank Sylvasy case, which is Case No. CV695277 in the Court of Common Pleas, Cuyahoga County, Ohio, correct?

A Yes, sir.

highlight the graphite. The Nitroseal was a kind of a supermarketing tool, that graphite gasket material, but as a general rule, no.

Q So none of the Victor gaskets -- I will give you an example. Say we are seeing an exhaust manifold gasket. It wouldn't say exhaust manifold gasket -- let me just see something. Okay.

I am out buying an exhaust manifold gasket that is going to say Victor on it. It is not going to say Corbestos on it?

A No, sir.

Q And they would not have said asbestos on them, would they?

A Not in the later years. I remember seeing some packaging back from the 1930s that did have the word "asbestos" on it.

Q How about from '68 to '88 during the time period you worked there, did you ever see any Victor gaskets made or sold by the Dana Company that had the word "asbestos" on them.

A No.

Q Did any of the gaskets manufactured or sold between '68 and '88 that you -- that Dana or Victor produced have the word "asbestos" on them?

A Not that I recall.

asbestos, why put them in there?

A Because they were our material packaging.

Q But back to (b) 1., it says "asbestos-containing products," doesn't it?

A I understand the differentiation you are making, sir.

Q Okay. I am just asking.

A No. I understand.

Q Because it is kind of hard. I wouldn't have had to go through all this. This would have been -- okay.

Can we go to page 41 of these?

A Yes.

Q And the question states of the interrogatories "please state the year the Defendant was first advised of either the threshold limit values or maximum allowable concentrations of both asbestos and total dust by the American Conference of Governmental Industrial Hygienists," which is the ACGIH "and state the name of the employee/official that did that."

And it states in the second sentence, it says "Defendant is aware that in the 1960s and thereafter Victor Manufacturing & Gasket Company implemented dust control safety measures in the presence

of raw asbestos fiber aimed at keeping dust levels below prevailing TLVs. It would appear from historical records that Victor Manufacturing & Gasket Company kept abreast of industrial hygiene literature dealing with the TLVs."

Did I read that correctly?

A Yes, sir.

Q Can you tell me what dust control safety measures Dana/Victor implemented?

MR. DORAN: Objection.

A The dust control safety measures were taken in the Robinson, Illinois, plant where they actually manufactured the gaskets, some of the gasket materials that contained asbestos fibers, and the people who were in the material manufacturing area were required to wear respiratory, you know, the masks.

Q Okay. And what year were they required to -- what was the first year that the Victor/Dana employees were required to wear masks?

MR. DORAN: Objection to form.

A I believe it was in the early '68. That was the transition merger, whatever the legal term was, transpired in '67.

Q So Dana knew in 1968 that asbestos fibers released in the air could cause disease?

MR. DORAN: Objection.

A They knew that a certain amount would cause -- would be harmful.

Q So Dana knew in 1968 that breathing asbestos fibers could cause disease, correct?

MR. DORAN: Objection.

A That certainly a certain level of asbestos fibers in the breathable air would be harmful.

Q I am not asking about levels; I am asking you that Dana/Victor knew in 1968 that inhalation of asbestos fibers could cause disease?

MR. DORAN: Objection.

A Yes.

Q And if I am correct from reading your prior testimony, in 1971, Clarence Hawkins filed the first Workers' Compensation claim for an asbestos-related disease against Dana?

A I think it was Hankins, H-a-n-k-i-n-s.

Q Let me ask the question again so the record is clear.

Ms. Duncan, and by reading your prior testimony, I am aware that the first Workers' Compensation claim for an asbestos-related injury or disease filed against Dana was in 1971 by Clarence Hankins?

A Yes, sir.

Q Do you know what happened to Clarence Hankins?

MR. DORAN: Objection.

A I believe he died.

Q Do you know what he died from?

A No, sir.

Q And even after 1971 when Mr. Hankins filed his asbestos-related Workers' Compensation claim, Dana/Victor still did not put warnings on their gasket material, did they?

MR. DORAN: Objection. Form of the question.

A The gasket material and the gaskets that were manufactured were not harmful because of the method of manufacturing containing the asbestos fibers within that material. So there were no warnings necessarily required to put on the product.

Q When you say they were not harmful, what's the basis for that statement?

A The asbestos fibers were encapsulated in rubber binders. They were not loose in the product at all. They were encapsulated.

Q Okay. But the majority of Dana's asbestos-containing gaskets were 80 percent asbestos,

MR. MISMAS: This is No. 4.

(Plaintiffs' Doran Deposition Exhibit 4 was marked for identification.)

Q Can you take a look at that for a minute? You have seen this before?

A Yes.

Q So you know where we are going.

A (Witness reading.)

It is always interesting for me to see the government regulatory agencies keenly interested in seeing asbestos --

MR. DORAN: Wait for a question to be asked, Marcy.

Q What I have handed you is "What Will Replace Asbestos Gaskets by John E. Zeitz" reprinted from July 1980 Diesel & Gas Turbine Progress. Is that correct?

A Yes.

Q And on the bottom, there is a Bates stamp number that says VPD-142-0002632?

A 633. Oh, on the front 632. I'm sorry. I was looking at the other page.

Q And this document is in the Dana document or repository, correct?

A Correct.

Q And then first highlighted passage on the bottom, it says "John E. Zeitz is a division chief engineer of the Victor Products Division of Dana Corporation," correct?

A Yes.

Q Okay. And on the next highlighted section, it says "the cost of company-wide health programs and controlling the environment in which asbestos is handled is causing many to seek alternatives to using the product. One product for all suppliers and users of asbestos products is how the end user disposes of the product.

"In the gasket business, this is a particularly sensitive area because often the end user finds himself using a wire brush or scraper to scrape an asbestos off of an engine part to clean up residue gasketing.

"Unfortunately, it is the asbestos you cannot see that finds its way into the lungs. So unless special preventive health procedures are followed, the end user of asbestos gaskets may be in more potential danger than the personnel in the producer's facility. This could be particularly true in large volume engine rebuild operations."

So let me ask you a question,

Ms. Duncan:

Mr. Zeitz feels that the potential danger to the person, to the end user of the product, exposure to asbestos is more dangerous than those in the plant making the product, correct?

MR. DORAN: Objection.

A That's what he indicates on paper, yes.

Q Okay. And he is the chief engineer at the Victor Products Division of Dana Corporation, correct?

A Yes, at that time.

Q Okay. And Mr. Zeitz and Dana knew that end users-mechanics were using wire brushes to scrape asbestos off an engine part or cleanup the residue gasket, correct?

MR. DORAN: Objection, form.

A Yes. He knew they were inappropriately not following the directions packaged with the gaskets.

Q Can you tell me where that's in here?

A No, sir.

Q It is not in here, is it?

Q What was the purpose behind them asking people not to create dust while removing a Dana gasket?

MR. DORAN: Objection to form.

A Because of the -- on a head block, depending how old the engine is, if it is original equipment or it can attach itself to the block from heat and uses and stuff like that, and because it does contain fibers.

Q Asbestos fibers?

A In some of the head gaskets, you don't want to create dust that you are going to breathe.

Q Okay. So in the 1960s, Dana/Victor knew that scraping an asbestos-containing gasket would release asbestos fibers into the air?

MR. DORAN: Objection to form.

A I don't know what Dana knew other than the fact that for health and safety reasons warnings were harmful, the inhalation of excessive dust caused from asbestos was harmful.

Q I am just asking you -- and I think we are getting a little mixed up in our questions and our answers -- what I am asking you, in the 1960s, Dana knew, Dana/Victor knew that scraping an asbestos-containing

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gasket with a wire brush would release asbestos fibers into the air, correct?

MR. DORAN: Objection to the form.

A To the best of my knowledge, yes.

Q And they knew that in the 1970s?

A Yes.

Q And they knew that in the 1980s?

A Yes.

Q But they did not put an asbestos warning on any of its gaskets until the mid '80s, correct?

MR. DORAN: Objection to form.

A To the best of my knowledge, it was around '84-85.

Q And just along that -- on that last line of questioning -- and you would agree with me -- that Dana/Victor knew that mechanics were using wire brushes in the '70s to scrape -- oh, never mind.

I will ask you, you would agree in the 1970s Dana knew that a mechanic who was installing a Victor gasket that contained asbestos would first have to remove a gasket that contained asbestos, correct?

MR. DORAN: Objection to form.

A They would first have to remove a gasket to replace it. It may not necessarily have been

an asbestos-containing gasket because they were not all asbestos-containing.

Q And the same thing for the '70s.

A Correct.

Q What year did Dana/Victor -- what year did Dana/Victor start testing its products for the release of asbestos?

A Dana/Victor did not perform any tests themselves.

Q On fiber release from their own gaskets, correct?

A That's correct.

Q Don't you think a reasonable prudent company that in the 1960s knew that asbestos was hazardous to human health in certain quantities would have done testing on the removal and handling of their -- would a reasonable prudent company in the 1960s, don't you think hold -- I'll start over again.

Don't you think a reasonably prudent company in the 1960s would actually have gone into the field and done testing on the handling and removal of their gasket materials to discover whether or not harmful levels of dust were released from the handling of their gasket materials that contained asbestos?

MR. DORAN: Objection to the form of

the raw asbestos fibers that we used in the production of our gasket materials.

Q So Johns-Manville was one of the suppliers of the -- of raw asbestos to Dana?

A Yes, sir.

Q Are you aware that Johns-Manville put warning labels on their bags of raw asbestos in 1964?

MR. DORAN: Objection.

A I remember that there were some warning labels that they put on their big bundles, but I don't recall what they said.

Q So if Johns-Manville put warning labels that said "Caution: Asbestos may cause cancer" on their bags of raw asbestos shipped to Dana/Victor in 1964, Victor would have known -- that Dana/Victor would have known that asbestos could cause cancer by those labels?

MR. DORAN: Objection. Form.

A I never saw the labels.

Q I am not asking you personally. I am asking you as the corporate representative of Dana Corporation. If Johns-Manville put asbestos warning labels on their bags of raw asbestos that Dana used in 1964 that said "cancer," Dana/Victor would have been aware that asbestos could cause cancer, wouldn't it?

MR. DORAN: Objection to the form of the question.

A If they did, the answer would be yes.

Q And if Johns-Manville put warning labels on its bags of raw asbestos in 1968 that said "asbestos could cause cancer," Dana/Victor would have known that in 1968, wouldn't they?

MR. DORAN: Objection to the form of the question.

A Yes, sir.

Q Who else were the suppliers of raw asbestos fiber to Dana?

A The only other one that I know is Lake Asbestos in Quebec.

Q How about Union Carbide, did they supply asbestos?

A They did not supply raw asbestos. What I remember Union Carbide supplying was graphite.

Q Okay. Do you remember Union Carbide supplying a product by the name of Colidria?

MR. DORAN: Objection to the form of the question.

A I never heard that word before.

Q Do you remember a company by the name

didn't ask me. I'm sorry.

Q No. Go ahead. In No. 7, what was the verbiage that was changed?

A In No. 7 those types of gaskets up until 1988, some of them contained asbestos, and some of them did not.

Q Okay. And we went through what all those are already?

A Yes, sir.

Q Did you review any materials when you were making the changes to these affidavits?

A No, sir.

MR. MISMAS: No. 6.

(Plaintiffs' Doran Deposition Exhibit 6 was marked for identification.)

Q And just for the record, this is Plaintiff's Exhibit 6. There is a Bates stamp number, I think it is VPD 188-0002118.

Have you seen this document before?

A Not to my knowledge.

Q Okay. And this document is from the document repository, the Bates stamp from there?

A Uh-huh.

Q I am going to read to you, this is a

Dana Corporation intracompany communication dated April 25th, 1973, to J. E. Lane.

Do you know who J. E. Lane is?

A John -- or Jack Lane, yes.

Q Who was he?

A He worked for the Chicago plant, and during the time that I knew him, I thought he was -- worked with the HR group, but I can't recall.

Q Okay. And this is from J. F. Feldman, and who is that?

A John Feldman is the -- he was the light duty sales manager.

Q Okay. Did we talk about him before?

A Yes, we did.

Q Okay. Now, this memorandum states "as you know, we sell Hydramatic Asbestoprene oil pan gaskets for service use. About half of what we ship Hydramatic is reshipped in our" something" to AC Spark Plug for their service packaging. The remainder is packaged by Hydramatic and sent to OMPD.

"A General Motors safety inspector has toured Hydramatic and reported unacceptable levels of asbestos dust in their packaging location. He has directed Hydramatic to vacuum the residue out of our cartons before the cartons are disposed of. The residue

must be plastic bagged, labeled, and disposed of in landfill.

"In addition, he requested that our cartons be labeled with a cautionary statement per the attached page from the Federal Register.

"I am to write Mr. H. J. Thomas, Safety Director at Hydramatic, indicating we will comply with this request. This situation could be a potential" -- do you know what that says?

A I can't see the one word, "books," looks like the other one.

Q Yeah. "Of" something "books both in our plant and at Hydramatic. I don't know how the union will react to this carton label. Will Messrs. Dehr, Lillis, McGranahan, et al. review it, and let me know how to respond to Hydramatic."

Now, I want you to look at No. 6 on your affidavit.

A I don't need to. I was incorrect. I did not know that they were making Asbestoprene oil pan gaskets for Hydramatic.

Q So your affidavit is wrong?

A That portion of the affidavit is incorrect, yes, sir.

Q And even though it says in here that

they wanted cautionary labels in '73, Hydramatic did, Dana didn't put warnings on until the '80s, did they?

MR. DORAN: Objection to the form of the question.

Q Asbestos warnings.

A The asbestos warnings that I am aware of that were put on were in 1984-85 is when they began.

Q And that's 12 years after this.

MR. DORAN: Objection.

A Yes.

Q And per the General Motors safety inspector, there were unacceptable levels of dust in the packaging of where the Asbestoprene gaskets were, wasn't there?

MR. DORAN: Objection to the form of the question. John, she has never seen the document, and she has no personal knowledge as to what the General Motors inspector found.

MR. MISMAS: It is your document. I don't care.

MR. DORAN: And so that calls for speculation.

MR. MISMAS: She is the corporate rep. I am not asking her about personal knowledge. A corporate representative doesn't talk about corporate

EXHIBIT "B"

CABLE ADDRESS "KEMPSAFCO"

KEMPER INSURANCE

AMERICAN MOTORISTS INSURANCE COMPANY

HOME OFFICE: CHICAGO 40

SHERIDAN ROAD AT LAWRENCE AVENUE

LONGBEACH 1-8000

CHICAGO 40

April 14, 1964

Mr. W. E. Leeder, Safety Director
Victor Manufacturing and Gasket Company
5750 West Roosevelt Road
Chicago 50, Illinois

Dear Mr. Leeder:

Attached with this letter is the report of several Industrial Hygiene visits made to your plant during March, 1964. With exception of the oven room in Department 14, at the time of sampling all processes appeared to have reasonable controls. I am frankly concerned about the Oven Department. Not so much from the standpoint of the concentrations measured but from the lack of medical literature on the subject of human exposure to diacetone alcohol vapor. I think it would be wise to adopt a conservative approach in solving this problem.

It was a pleasure to be of service to you and I am looking forward to the time when I can return.

Sincerely yours

William H. Krebs

William H. Krebs
Industrial Hygienist

804-9-498
Enc.

cc: M. J. Hill
R. D. Garden

INDUSTRIAL HYGIENE STUDY X
FOR THE
VICTOR MANUFACTURING AND GASKET COMPANY
CHICAGO, ILLINOIS

On March 4, 11, and 16, 1964, Industrial Hygiene visits were made to your company to determine the nature and extent of employee exposures to Methylethyl Ketone, toluene, trichlorethylene, asbestos dust, diacetone alcohol, formaldehyde, phenol, and industrial noise. Air samples were collected at times and locations indicating normal employee exposures.

CONCLUSIONS

1. Employees in Department 33 were exposed to solvent vapors which, at the time of sampling, were present in concentrations below the threshold limitvalue.

2. Employees in Department 07 were exposed to toluene vapor in concentrations below the threshold limit value.

3. Employees in Department 09 were exposed to toluene vapor concentrations below the threshold limit value. However, employees working over raw rubber containers were exposed to concentrations exceeding the threshold limit value.

4. Employees in Department 06 were exposed to trichlorethylene vapor in concentrations below the threshold limit value.

5. Employees in Department 01 were, at times, exposed to asbestos dust concentrations exceeding the threshold limit value.

6. Employees in Department 14 were, at times, exposed to diacetone alcohol vapor in concentrations which exceeded the threshold limit value.

7. Employees in Department 17 were exposed to phenol vapor in concentrations below the threshold limit value.

8. Employees in Department 17 were exposed to formaldehyde vapor in concentrations below the threshold limit value.

9. At the time of sampling the fiberizer operator in Department 01 was exposed to industrial noise levels exceeding tentative safe levels.

10. At the time of sampling the bagging operator was exposed to an industrial noise level which exceeded the tentative safe level in the 150-300 cps active band.

11. At the time of sampling employees working on or near presses in Department 14 were exposed toindustrial noise levels exceeding tentative safe levels.

RECOMMENDATIONS

1. It is recommended that a ventilation consultant be contacted to make specific recommendations with regard to redesigning the oven ventilation system in Department 14. If the oven ventilation system cannot be corrected by October 15, 1964, it is further recommended that employees within the oven room be subjected to appropriate medical tests to determine the nature and extent of diacetone alcohol vapor inhalation. Please refer to my correspondence with Mr. W. E. Leeder, March 17, 1964, and to the DISCUSSION of this report for further comments on this subject.

2. It is recommended that employees working in Department 01 continue to wear approved respirators for the control of asbestos dust. Respirators should be worn by the fiberizer operator, bagging operator, and beater room operator at those times when asbestos dust is airborne.

3. It is recommended that employees in Department 14 working at or near the presses be provided with personal protective hearing appliances. To attenuate industrial noise from the presses.

4. It is recommended that the windows by the trichlorethylene degreaser in Department 06 be permanently closed.

5. It is recommended that the raw rubber containers in Department 09 be provided with suitable covers preventing excessive discharge of toluene vapor into the work room air. Toluene is flammable and employees should not use open flames near the raw rubber containers, sheeter mills, or the mixers.

THRESHOLD LIMIT VALUES

Methyl ethyl ketone vapor should be kept below average concentrations of 250 parts per million (P.P.M.). Toluene vapor should be kept below average concentrations of 200 P.P.M. Trichlorethylene vapor should be kept below average concentrations of 100 P.P.M. Diacetone alcohol vapor should be kept below average concentrations of 50 P.P.M. Asbestos dust should be kept below average concentrations of 5 million

particles per cubic foot of air (M.P.P.C.F.). Phenol vapor should be kept below average concentrations of 19 milligrams of vapor per cubic meter of air (mg/M3). Formaldehyde vapor should be kept below average concentrations of 6mg/M3. These values, recommended by the American Conference of Governmental Industrial Hygienists, represent the levels below which most employees may be repeatedly exposed, day after day, without adverse effects.

Industrial noise levels in the specified octave bands should be kept below average intensities indicated by the tentative safe level curve on the Octave Band Analyses graphs. These tentative safe levels indicate the average intensities below which most employees may be repeatedly exposed, day after day, without adverse hearing effects. Recent literature and empirical data indicate that it may be advisable to adopt lower tentative safe levels in the future.

AIR SAMPLING AND ANALYSIS

Methyl ethyl ketone, toluene, and diacetone alcohol vapors concentrations were measured with J-W Aromatic Hydrocarbon Indicator. This instrument, primarily a direct reading explosion-meter, can be used to determine concentrations of specified solvent vapors by applying appropriate correction factors.

Trichlorethylene vapor concentrations were determined using a Kitigawa grab sampling instrument. The amount of trichlorethylene present is determined by the length of color change within the chemical containing tube.

Phenol and formaldehyde vapor concentrations were determined by aspirating one cubic foot of air through 15 milliliters of water in midget impingers. Aliquots of water were subsequently analyzed by the diazotization method and the phenylhydrazine method to determine the amounts of phenol and formaldehyde vapors respectively.

Airborne asbestos dust samples were collected in midget impingers containing 10 milliliters of water. Air was aspirated through the water at a rate of 0.1 cubic feet of air per minute. The resulting dust suspensions were counted under 300X Lightfield magnification.

Industrial noise levels in the specified octave bands were measured with the General Radio Octave Band Analyzer, Model 1558-A.

These methods are standard for Industrial Hygiene practice.

DISCUSSION

Several engineering and health criteria indicating a need for a re-evaluation of the oven room in Department 14 were mentioned in a letter to Mr. W. E. Leeder, dated March 17, 1964. Recent chemical analyses of air samples collected within the oven room indicate diacetone alcohol vapor concentrations exceeding the threshold limit value. Diacetone alcohol ordinarily presents only a low degree of hazard to health in industrial handling. While capable of causing systemic injury at high concentrations, diacetone alcohol has good warning properties (irritation of the eyes, nose, and throat) so that acute systemic injury, even mild narcosis, should not occur under the normal conditions found in industrial operations. There are no reports in the literature of toxic effects to humans resulting from the industrial handling of diacetone alcohol. However, the literature also states that there is not adequate data available upon which to establish a safe level for prolonged and repeated vapor exposure. The threshold limit of 50 P.P.M. is probably based upon human comfort. Table VI indicates that employees working within the oven room are exposed to concentrations at their work stations exceeding the threshold limit value. Recommendation 1 was made on the basis of empirical and chemical data. If it is not possible to correct the ventilation system within six months, it may be advisable to have kidney and liver function tests performed on the oven room employees. It might be added that these employees should not be needlessly alarmed particularly if these tests can be perfofmed in the course of a routine physical examination.

Employees in Department 33 are exposed to solvent vapor levels below the threshold limit value. Table I indicates that the employee at the open dip tank receives an exposure of 650 P.P.M. This man's exposure when considered over an 8 hour day is below the threshold limit for methyl ethyl ketone. It might be suggested that the local exhaust ventilation on the cementing bench be enhanced by extending the hoods to the area where parts are painted.

Tables II and III indicate employees in Departments 07 and 09 are exposed to toluene vapor in concentrations below its threshold. Table III indicates that raw rubber in the containers by the various sheeter mills provides a source of toluene vapor exposure. This concentration can be minimized by providing lids for the containers. A recommendation was made to this effect.

Table IV indicates the trichlorethylene degreaser is leaking. At the time of sampling it was recommended that the windows

adjacent to the degreaser be permanently closed preventing excessive vapor discharge. In every case, drafts should be prevented from coming in contact with the degreaser's vapor phase.

Employees in Department 01 at times are exposed to asbestos dust concentrations exceeding the threshold limit of 5 M.P.P.C.F. These employees should continue to wear respirators whenever asbestos dust is airborne. It may be advisable to continue the annual X-Ray program to detect the primary stages of asbestosis.

Employees in Department 17 working at the ovens are exposed to phenol and formaldehyde vapor levels below the threshold limit value. Phenl and formaldehyde on occasion may result in contact dermatitis. However, in this situation this writer believes this to be the exception rather than the rule. If dermatitis should arise these employees should be provided with phenol and formaldehyde resistant gloves.

Graphs 1 and 2 indicate the fiberizer and bagging operators at times are exposed to industrial noise intensities above the tentative safe levels. As these exposures are not continuous, no recommendation is made for the control of industrial noise. Graphs 3, 4, 5 and 6 indicate continuous noise levels in Department 14. These employees should be provided with protective hearing appliances preventing industrial hearing losses.

I want to thank you for the cooperation and assistance I received while making this study.

Respectfully submitted

William H. Krebs
Industrial Hygienist

804-498
4-14-64

CABLE ADDRESS KEMPERCO

KEMPER INSURANCE

MUTUAL INSURANCE BUILDING · CHICAGO 40

LOngbeach 1-8000

April 4, 1966

Mr. W. Leeder, Safety Director
Victor Manufacturing & Gasket Company
5750 West Roosevelt Road
Chicago, Illinois 60650

Dear Mr. Leeder:

The attached industrial hygiene report covers the results of the study made in your plant on March 18, 1966.

Investigated at that time were the asbestos operation and the rubber sheeting mills.

The results of the study showed excessive concentrations of asbestos dust at the bagging and beater operations. Also, excessively high concentrations of toluene were found at the sheeting mill #2707.

My thanks are extended for the courtesy and consideration shown on this visit. Should you have any questions as to the report or the recommendations made, please do not hesitate to contact me.

Yours very truly

George Krafcisin

G. J. Krafcisin
Industrial Hygienist
Special Technical Services Section

788-7-466
Enc.

VMG-42-0001134

VMG-42-0001134

REPORT OF INDUSTRIAL HYGIENE STUDY #17
AT
VICTOR MANUFACTURING & GASKET COMPANY
CHICAGO, ILLINOIS

This report covers the results of a study made in this plant on March 18, 1966. Investigated during the study were the asbestos fiberizing, bagging and beater operations, and the solvent vapor concentrations at the rubber sheeting mills.

RECOMMENDATIONS

1. That the sheeting mill #2707 be more completely enclosed on the sides and bottom to provide better capture of solvent vapors by the ventilation system. (See Discussion)

2. That the covers on the raw rubber containers be kept in place at all times when material is not actually being removed.

3. That the operators or the asbestos bagging operation and the beater operation be provided with and required to wear United States Bureau of Mines approved pneumoconiosis producing dust respirators on the job.

SUMMARY OF RESULTS

The operator of the bagging operation is exposed to asbestos dust concentrations of almost nine times the threshold limit value of five million particles per cubic foot of air.

The beater operator is exposed to between three and four times the threshold limit value for asbestos dust.

The operator of the sheeting mill #2707 is exposed to toluene concentrations of more than twice the threshold limit value of 200 parts per million of air.

DISCUSSION

The rubber sheeting mill #2707 at the present time is equipped with local exhaust ventilation. However, it is not very effective because the hood on the mill is too far away from the source of production of solvent vapors. The canopy hood on this mill is two or three feet above the rollers. The rollers become coated with solvent, and solvent drips off of the rollers onto the floor beneath the mill. If the vapors from the evaporating solvent are captured at all, they pass through the operators breathing zone before entering the hood. Any draft in the area

will also prevent the vapors from being captured.

For these reasons, the sheeting mill should be enclosed as much as possible, leaving open only those places where direct access to the machine is necessary for operation. This would mean completely enclosing the bottom of the machine, the front of the machine up to the top of the front roller, the sides of the machine, and the back as high as possible. This should make it possible to control the solvent vapor exposure without increasing the exhaust flow rate, although that may be necessary also.

It was noted that the covers used for the containers of raw rubber at the sheeting mills were not always used. Stricter employee supervision is necessary in this case.

Although no samples were taken there, the other large sheeting mill in the same room as #2707 probably presents a similar problem.

The operators of the bagging operation and the beater operation were wearing respirators during this study. However, these respirators were not United States Bureau of Mines approved type. The ones being used were intended for use with non-toxic nuisance dusts only. Asbestos dust does not fall in this category. *

Should you have any questions about this report or if we can help you in any way, please do not hesitate to contact us.

Respectfully submitted

George Krafcisin

G. J. Krafcisin
Industrial Hygienist
Special Technical Services Section

788-466

VMG-42-0001136

SOLVENT VAPOR CONCENTRATIONS
MARCH 18, 1966

Location of Sample	MEK	IPA	TOLUOL	DA
KC66143-Breathing zone of operator of sheeting mill #1911	43	10	72	Trace
KC66144-Breathing zone of operator of sheeting mill #2707	11	21	455	1
KC66145-Breathing zone of operator of sheeting mill #2707	9	28	475	1

MEK - Methyl Ethyl Ketone

IPA - Isopropyl Alcohol

DA - Diacetone Alcohol

Threshold limit value for Toluol (Toluene) is 200 parts per million.

All measurements are given in parts per million.

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VMG-42-0001137

ASBESTOS DUST CONCENTRATIONS
MARCH 18, 1966

Location of Sample	Exposure-MPPCF
KC66146-Breathing zone of fiberizer operator	4
KC66147-Breathing zone of bagger operator	45
KC66148-Breathing zone of beater operator	16
KC66149-Breathing zone of beater operator, during complete cycle	18

Threshold limit value for asbestos dust is 5MPPCF.

MPPCF - Millions of Particles Per Cubic Foot.

VMG-42-0001138

EXHIBIT "C"

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Attorneys for Defendant
DANA COMPANIES, LLC
(formerly known as DANA CORPORATION)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

IN RE: COMPLEX ASBESTOS LITIGATION, Plaintiffs,	(ASBESTOS) Case No. 828684 DEFENDANT DANA COMPANIES, LLC'S SUPPLEMENTAL RESPONSES AND OBJECTIONS TO PLAINTIFF'S STANDARD INTERROGATORIES TO FRICTION DEFENDANTS PURSUANT TO GENERAL ORDER 129

PROPOUNDING PARTY: PLAINTIFFS

RESPONDING PARTY: DANA COMPANIES, LLC

SET NUMBER: ONE

PRELIMINARY STATEMENT

These interrogatories seek information about events that occurred many years ago. These responses are based upon a reasonable investigation into the relevant facts and information currently known to Dana Companies.

Defendant responds to these interrogatories at this time with respect to its former Spicer Clutch Division.[1] This Preliminary Statement applies to and is incorporated into each response. Dana Companies responds to these interrogatories after reasonable

[1] The names of various divisions manufacturing clutches within Defendant have changed over the years. To minimize confusion, these responses use the term "Spicer Clutch Division" to refer to the line of business that produced clutches for automotive vehicles.

investigation with the best available information presently known to it about the Spicer Clutch Division and its historical product lines. In some cases, Defendant is not aware of any individuals with personal knowledge of relevant information covering early years of the Spicer Clutch Division. Moreover, the documents available do not provide all of the information sought. Accordingly, Defendant will respond only to the extent that there is information currently available and reviewed that it believes is sufficient to respond to, in whole or in part, the interrogatory.

Defendant reserves the right to amend, supplement, modify or otherwise change these responses in the event that it acquires additional information responsive to these interrogatories, or if it appears that inadvertent or administrative omissions or errors have been made. Unless otherwise requested in the interrogatory, these responses are limited to U.S.A. manufacturing and sales.

To the extent that these responses refer to documents that may contain information responsive to an interrogatory, those documents will be made available for review upon request, at a mutually agreeable time, in Toledo, Ohio. An index is available for the documents in Defendant's document repository.

GENERAL OBJECTIONS

Because General Order No. 129 restricts the objections that may be interposed to these standard interrogatories, this Defendant asserts the following general objections which are permitted by General Order 129.

Defendant objects to each interrogatory and part thereof to the extent they call for information protected by (a) the attorney-client privilege, (b) attorney-work-product doctrine, (c) any applicable privilege relating to communications between counsel for Defendant and counsel for other defendants regarding this or similar litigation, (d) any applicable privilege relating to communications between Defendant's employees or counsel and Defendant's insurers regarding the defense of this claim or claims of this

type, (e) any privilege relating to confidential trade secrets or confidential communications, (f) the right of privacy, or (g) any other privilege.

INTERROGATORIES

INTERROGATORY NO. 1:

IDENTIFY the person verifying these answers on YOUR behalf.

RESPONSE:

Much of the information sought by these interrogatories has been accumulated over time and not necessarily for the purpose of responding to these interrogatories. It is not possible to now identify each person who, at some time, may have provided information that is now being used to respond to these interrogatories. No single employee, officer, or agent of the company has direct knowledge of the documents and information necessary to supply each and every response. Thomas Dickson, former engineer with the Spicer Clutch Division of the former Dana Corporation, has verified the responses to these interrogatories in order to comply with verification requirements under state law. Mr. Dickson can be contacted c/o Janis Foley, Cooper & Walinski, LPA, 900 Adams Street, Toledo, Ohio 43604.

INTERROGATORY NO. 2:

State the date of first employment with YOU, and the dates and titles of each job position the person verifying these interrogatories has held while employed by YOU.

RESPONSE:

See Response to Interrogatory No. 1, which is incorporated herein as if fully rewritten. Thomas Dickson was employed by Defendant from 1964 to 2000, and held a number of positions in engineering, sales, and marketing. From 1964 to 1966 he was in a training program at the Transmission Division in Toledo, Ohio. From 1966 to 1971 he was a salesman in the Service Parts Division in Toledo, Ohio. From 1971 to 1976, he was a Regional Manager of the Spicer Clutch Division in Allentown, Pennsylvania. From 1977 to 1981, he was the Clutch Plant Foreman in Auburn, Indiana. From 1981 to 1986, he was the Chief Engineer of the Clutch Division in Auburn, Indiana. From 1986 to 1993,

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B. Whether participation in any such program was a mandatory condition of employment or was voluntary;

C. Whether THIS DEFENDANT has DOCUMENTS of such program(s);

D. The IDENTITY of the custodian of such DOCUMENTS.

RESPONSE:

Defendant, Dana Companies, LLC (formerly Dana Corporation) had employees, including plant nurses, as well as consultants who administered physical examinations for some employees. Asbestos-related medical examinations were not provided to employees at the Spicer Clutch Division facilities because the employees at the Spicer Clutch Division facility did not handle or work with raw asbestos and were not otherwise exposed to asbestos fiber in amounts exceeding applicable occupational limits. At no time has Defendant made, manufactured, or sold end products that could cause intensely high exposures.

INTERROGATORY NO. 25:

Prior to 1973, did any person file a Workers' Compensation claim for asbestos-related injury against THIS DEFENDANT or against any Workers' Compensation insurance carrier which provided coverage for THIS DEFENDANT? If so, state the total number of such claims, and for the first 20 such claims state:

A. The date of such claim;

B. The name of the claimant;

C. The case number;

D. The court in which the claim was field;

E. The IDENTITY of THIS DEFENDANT'S custodian of DOCUMENTS evidencing such claims.

RESPONSE:

As to the Spicer Clutch Division, Defendant is not aware of any worker's compensation claims. Defendant's first record of a workers compensation claim for an alleged asbestos-related disease was filed in 1971, by Clarence Hankins, at Victor

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Products Division's Chicago plant. Defendant does not know if the claimant did indeed contract an asbestos-related disease, or if so, if it was caused by exposure to asbestos during the course of his employment with Defendant. Additional information responsive to this request may be derived from documents located in Defendant's document repository in Toledo, Ohio. Defendant's documents will be made available for inspection and copying at a mutually convenient time. The burden of compiling responsive information from these documents would be substantially the same for the Plaintiffs as it would be for Defendant. C.C.P. § 2030.230.

INTERROGATORY NO. 26:

Does THIS DEFENDANT have insurance available to cover judgment(s) entered against it in asbestos-related personal injury lawsuits? If so, state:

A. The name and principal place of business of any insurance carrier who has issued such policy of insurance;

B. The number and effective date of each policy;

C. The amount(s) of coverage of each policy;

D. The applicable dates of coverage.

RESPONSE:

Defendant objects to this interrogatory as overly broad and unduly burdensome because Plaintiffs have not identified a particular product or dates and extent of exposure to that product. Defendant further objects to responding to this interrogatory and relies upon the privilege between an insurer and insured in discussions regarding the defense of any claim or category of claims. Subject to and without waiving objections, available documents responsive to this request will be made available for review upon execution of a confidentiality agreement.

INTERROGATORY NO. 27:

State whether YOU have controlled, purchased, or in any way acquired any controlling interest in any corporation or business entity which has mined, manufactured, produced, processed, compounded, sold, supplied, distributed and/or

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otherwise placed RAW ASBESTOS or ASBESTOS-CONTAINING PRODUCTS in the stream of commerce. If so, state:

A. The name and address of said corporation or business entity;

B. The dates YOU controlled, purchased or acquired any interest; and

C. The nature of the business as it pertains to asbestos.

RESPONSE:

Defendant began business operations in 1904. It was incorporated in 1916 under the name Spicer Manufacturing Corporation. In 1946, the corporation changed its name to Dana Corporation. In 2008, under a bankruptcy plan of reorganization, Dana Corporation was merged into Dana Companies, LLC.

Defendant objects to the characterization of any of the businesses described as predecessors to Defendant. In 1919, Defendant (incorporated as Spicer Corporation in 1916) acquired Salisbury Axle Company. In 1954, Salisbury Axle was liquidated. Defendant subsequently formed Spicer Axle Division, Mobile Off-Highway Division, and Spicer Heavy Axle Division, which manufactured completed axle assemblies. At customer request, some completed axles incorporated finished brake assemblies that contained linings made with asbestos and other ingredients. Sales of such products ended sometime in the 1990s, although the exact date is unknown to Defendant at this time.

In 1929, Defendant acquired all outstanding capital stock of Brown-Lipe Gear Company of Syracuse, New York.

In 1947, Defendant acquired Auburn Clutch Co., which later became Spicer Clutch Division. Spicer Clutch Division manufactured clutches, primarily for heavy duty trucks, that incorporated clutch facings that may have contained asbestos until 1983. Defendant did not manufacture the clutch facings. Non-asbestos clutch facings were available no later than 1981. Defendant sold the Spicer Clutch Division in 1998.

In 1973, Defendant acquired the stock of Formsprag. It merged with Defendant in 1975, and Formsprag Division was formed. Formsprag Division manufactured industrial

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clutches and flexible couplings. Some of the clutches were assembled with facings that contained asbestos. The facings were not manufactured by Defendant. In the 1970s, Formsprag became part of Defendant's Industrial Power Transmission Division. In 1991, Formsprag became part of Warner Electric Division. Defendant sold the flexible couplings part of the business in 1993. Defendant sold the industrial clutch business in 2000.

Wichita Clutch Company became a division of Defendant in 1981 as the result of a dissolution of Wilson-Wichita, a former subsidiary. Wichita Clutch manufactured clutches and brakes for industrial and marine uses. Some clutches and brakes contained friction materials that contained asbestos. The friction materials were not manufactured by Wichita Clutch. By early 1987, Wichita Clutch had ceased manufacturing products with components that contained asbestos. In 1991, Wichita Clutch became part of the Warner Electric Division of Defendant. Wichita Clutch was operated as part of the Warner division until the year 2000 when assets, including related facilities, subsidiary operations, and product lines of Wichita Clutch, were sold.

In 1985, Defendant acquired the stock of Warner Electric Brake & Clutch Company, which merged into Defendant in December 1986. Warner Electric Division manufactured electric clutches, electric brakes, electric wheel brakes, and other products. Some Warner Electric products were assembled with facings that contained asbestos, which were assembled into clutch rotors and brake magnets, in wheel brake linings and actuating magnets. Warner Electric Brake & Clutch Company began a program in 1983 to phase out the use of components that contained asbestos. By the Spring of 1986, Warner Electric ceased manufacturing electric clutches, brakes, and clutch/brakes with friction material that contained asbestos as a component. In 2000, the assets of Warner Electric were sold.

INTERROGATORY NO. 28:

If THIS DEFENDANT entered into any agreements for the rebranding of any ASBESTOS-CONTAINING FRICTION PRODUCTS by THIS DEFENDANT for resale or

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F. If said documents or copies still exist, where they are located

RESPONSE:

Defendant's document repository contains many documents, including numerous catalogs, brochures, and sales literature for the years 1965 to 1989, that provide information, pictures, and diagrams concerning the manufacturing and sale of thousands of Spicer Clutch Division's products. Defendant's documents will be made available for inspection and copying at a mutually convenient time. The burden of compiling responsive information from these documents would be substantially the same for Plaintiffs as it would be for Defendant. C.C.P. § 2030.230.

INTERROGATORY NO. 33:

When do YOU contend THIS DEFENDANT first became aware that there is an association between asbestos exposure and disease in human beings?

RESPONSE:

Although it is not possible to respond to this interrogatory with any degree of certainty, Defendant understands that as early as the 1930s there was medical literature reporting on individual cases and textile manufacturer plant experience. These reports involved asbestos textile manufacturing plant employees whose work environments were largely uncontrolled and could have exceeded hundreds of asbestos fibers per cc. The disease associated with these intensely high exposures was asbestosis. At no time has Defendant made, manufactured, or sold end products that could cause such intensely high exposures, nor does Defendant believe that such exposures occurred at its manufacturing facilities. At all relevant times the available data has shown that clutches made with asbestos-containing clutch facings are not hazardous to workers' health.

It is not possible to pick a specific time or date when it was known that certain distinct diseases were causally related to exposures to certain types and/or levels of exposure. Defendant understands that pleural plaques and thickening, asbestosis, lung cancer in association with asbestosis, and mesothelioma were all causally associated with exposure to certain types of asbestos fiber and levels of exposure as of the 1960s.

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Defendant does deny that all fiber types cause mesothelioma and that asbestos exposure causes cancer other than as listed above. Defendant also denies that any asbestos-related disease occurs as a result of exposure to gaskets and gasket materials of the type manufactured and/or sold by Defendant. Defendant also denies that any asbestos-related disease occurs as a result of exposure to asbestos-containing products manufactured and/or sold by the Spicer Clutch Division.

INTERROGATORY NO. 34:

How do YOU contend THIS DEFENDANT first became aware that there is an association between asbestos exposure and disease in human beings?

RESPONSE:

See Response to Interrogatory No. 33, which is incorporated herein as if fully rewritten.

INTERROGATORY NO. 35:

Either attach all DOCUMENTS or disks containing such data, evidencing the information upon which YOUR contentions in Interrogatory Nos. 34 and 35 are based or describe such DOCUMENTS with sufficient particularity that they may be made the subject of a request for production of documents.

RESPONSE:

See Response to Interrogatory No. 33, which is incorporated herein as if fully rewritten. Information responsive to this request may be derived from Defendant's documents located at Defendant's document repository in Toledo, Ohio. Defendant's documents will be made available for inspection and copying at a mutually convenient time. The burden of compiling responsive information from these documents would be substantially the same for Plaintiffs as it would be for Defendant. C.C.P. § 2030.230.

INTERROGATORY NO. 36:

When did YOU first warn YOUR employees that exposure to asbestos could be hazardous to human health? State:

A. Whether the first such warning was written or oral;

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supplied asbestos-containing friction material that may have been used by the Spicer Clutch Division in the manufacture of certain clutch brakes.

INTERROGATORY NO. 57:

As to each ASBESTOS-CONTAINING FRICTION PRODUCT listed in YOUR preceding answers to these interrogatories, did DEFENDANT warn of the health hazards of asbestos? If so, state for each such warning:

A. The content, size, color and location; whether the warning appeared on the material and/or on the container and/or placed on a tag; whether the warning was included in contracts; whether the warning was included in advertising or other promotional material;

B. State whether YOU have any photographs thereof;

C. The inclusive dates on which YOU used each such warning;

D. State all changes YOU made in such warnings and the dates of such changes;

E. IDENTIFY the person most knowledgeable about YOUR warnings and warning policy;

F. Do YOU have or know of samples, photographs or DOCUMENTS depicting the above warnings?

RESPONSE:

The United States Government warning regulations did not apply to asbestos-containing clutches. Among other things, with respect to clutches made with asbestos-containing clutch facings: 1) The fibers were encapsulated in the product; 2) The exposure to the facing in the clutch, if any, would have been of such short duration that there would be no opportunity for a meaningful exposure; 3) The type of asbestos generally used in clutch facings does not create a significant risk of harm at levels of exposure associated with such facings; 4) The exposure to the clutch facing would not have occurred on a frequent basis; 5) Historical medical and scientific evidence did not support a risk of harm from exposure to asbestos in clutch facings. Accordingly, to Defendant's

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knowledge, the Spicer Clutch Division did not accompany its finished products with Material Safety Data Sheets or package labels warning of the health hazards of asbestos. The clutches sold by the Spicer Clutch Division that were made with asbestos-containing facings were not of a nature or type that, when used in an ordinary and foreseeable manner, would have presented a significant potential for exposure. As such, the Spicer Clutch Division did not believe that its products made with asbestos-containing facings posed any hazards toward end users.

INTERROGATORY NO. 58:

State whether any surveys or studies of ambient asbestos dust have been conducted by YOU or on YOUR behalf at vehicle repair or maintenance facilities. If yes, state as to each such survey or study:

A. The subject matter, title and date of each study;

B. The date and the name of the person authorizing the study;

C. The reason for the study;

D. IDENTIFY the persons who conducted the study;

E. The date the study was completed;

F. Whether the results were published and disseminated and, if so, where and to whom;

G. The results of the study;

H. If statistical analyses were made, state the date and describe the results and assumptions upon which they were based;

I. Either attach all DOCUMENTS or disks containing such data, evidencing the information sought in this interrogatory and its subparts to YOUR answers to these interrogatories or describe such DOCUMENTS with sufficient particularity that they may be made the subject of a request for production of documents;

J. IDENTIFY the person(s) presently most knowledgeable about the information sought in this interrogatory or its subparts.

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VERIFICATION

I, Thomas Dickson, state that I have read the foregoing responses and objections to Plaintiffs' interrogatories and the same are true and accurate to the best of my knowledge and belief.

Much of the information sought by these interrogatories has been accumulated over time but not necessarily for purposes of responding to these interrogatories. It is not possible to now identify each person who, at some time, may have provided information that is now being used to answer these interrogatories. No single employee, officer, or agent of the company has direct knowledge of the documents and information necessary to supply each and every response. I do not have direct knowledge regarding every specific response. I am informed that the review of the documents and discussions referred to above support the responses based upon the information available as to the date of my signature.

Thomas Dickson

Sworn to and subscribed in my presence this 23 day of December, 2009.

NOTARY PUBLIC SEAL INDIANA

Notary Public - State of Indiana
My Commission Expires 4-2-2016

EXHIBIT "D"

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Attorneys for Defendant
DANA COMPANIES, LLC

L/D MTC 2/12/10
CALENDARED
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SUPERIOR COURT – STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO – UNLIMITED JURISDICTION

RONALD PALMER and CAROL PALMER, Plaintiffs, vs. AC AND S, INC., et al, Defendants.	(ASBESTOS) Case No. 275247 DANA COMPANIES, LLC'S RESPONSES AND OBJECTIONS TO PLAINTIFFS' STANDARD INTERROGATORIES TO FRICTION DEFENDANTS PURSUANT TO GENERAL ORDER 129 WITH RESPECT TO THE AXLE PRODUCT DIVISIONS

PROPOUNDING PARTY: Plaintiffs RONALD PALMER and SHARON PALMER

RESPONDING PARTY: Defendant DANA COMPANIES, LLC

SET NUMBER: ONE (1)

PRELIMINARY STATEMENT

This preliminary statement applies to and is incorporated into each response. Defendant responds to these interrogatories after reasonable investigation with the best available information presently known to it about the Spicer axle product line. In some cases, Defendant is not aware of any individuals with personal knowledge of relevant information covering early years of axle manufacturing. Moreover, the documents available to Defendant do not provide all of the information sought. Accordingly,

Defendant will respond only to the extent that there is information currently available and reviewed that it believes is sufficient to respond, in whole or in part, to the interrogatory. Unless otherwise requested in the interrogatory, these responses are limited to U.S.A. manufacturing and sales.

The Spicer axle product lines have historically included axles for off-highway vehicles, heavy vehicles, light vehicles, and trailers. Throughout this document, the term "Off-Highway Products" refers collectively to Spicer Off-Highway Products Division, Spicer Axle Outdoor Power Equipment Components Division, and other entities that had historical responsibility for Defendant's off-highway axle product lines. The term "Heavy Axle Products" refers to Defendant's Commercial Vehicle Systems Division to the extent that, historically, it had responsibility for heavy axle product lines, as well as other entities that historically manufactured heavy axles, including the former Heavy Axle Division. The term "Light Axle Products" refers to Defendant's Torque-Traction Technologies Group, which includes Defendant's wholly-owned subsidiaries Torque-Traction Technologies, Inc., Torque-Traction Manufacturing Technologies, Inc., and Torque-Traction Integration Technologies, Inc., to the extent that, historically, these entities had responsibility for light axle product lines, as well as other entities that historically performed light axle-related work, including the former Spicer Light Axle Division. The term "Trailer Axle Products" refers to the Spicer Trailer Products Division to the extent that it, historically, manufactured trailer axle products, as well as other entities that historically manufactured trailer axle products, including C&M Chassis Products, Inc. (formerly known as C&M Spring Co., Inc.), the Kershaw Axle Division, and the Truck and Trailer Equipment Division. Finally, the term "Axle Product Divisions" will be used to refer collectively to Off-Highway Products, Heavy Axle Products, Light Axle Products, and Trailer Axle Products.

Some axle assemblies manufactured by the Axle Product Divisions were dressed with brake assemblies. In the past, some of the brake assemblies were made with friction material made with asbestos. Defendant's Axle Product Divisions never manufactured

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friction materials; rather, such materials were purchased either separately or as components of brake assemblies by the Divisions from various brake assembly and/or friction material suppliers. As a consequence, Defendant has limited information relating to friction materials made with asbestos that were components of some of the axles they manufactured and sold. Any asbestos in such materials was encapsulated or bonded.

In addition, up until no later than the 1980s, Light Axle Products may have put asbestos-containing cover gaskets on certain fully dressed axles. Those gaskets were not manufactured by the Light Axle facilities, but rather were purchased from other suppliers. As a result, and because of the many years that have elapsed since such gaskets were last used, Defendant has incomplete information concerning such gaskets made with asbestos. Any asbestos in such gaskets was encapsulated or bonded.

Defendant's investigations to respond to these interrogatories are ongoing, and Defendant reserves the right to amend, supplement, modify or otherwise change these responses in the event that it acquires additional responsive information, or if it appears that inadvertent or administrative omissions or errors have been made.

To the extent that these responses refer to documents that may contain information responsive to an interrogatory, those documents will be made available for review upon request, at a mutually agreeable time, in Toledo, Ohio. An index is available for the documents in Defendant's document repository.

GENERAL OBJECTIONS

Because General Order No. 129 restricts the objections that may be interposed to these standard interrogatories, this Defendant asserts the following general objections which are permitted by General Order 129.

Defendant objects to each interrogatory and part thereof to the extent they call for information protected by (a) the attorney-client privilege, (b) attorney-work-product doctrine, (c) any applicable privilege relating to communications between counsel for Defendant and counsel for other defendants regarding this or similar litigation, (d) any

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some employees. Medical examinations were not provided to employees at the Spicer Axle Division facilities because the employees at the Spicer Axle Division facility did not handle or work with raw asbestos and were not otherwise exposed to hazardous levels of asbestos fiber. At no time has Defendant made, manufactured, or sold end products that could cause intensely high exposures.

INTERROGATORY NO. 25:

Prior to 1973, did any person file a Workers' Compensation claim for asbestos-related injury against THIS DEFENDANT or against any Workers' Compensation insurance carrier which provided coverage for THIS DEFENDANT? If so, state the total number of such claims, and for the first 20 such claims state:

A. The date of such claim;

B. The name of the claimant;

C. The case number;

D. The court in which the claim was field;

E. The IDENTITY of THIS DEFENDANT'S custodian of DOCUMENTS evidencing such claims.

RESPONSE:

As to employees or former employees of the Axle Product Divisions, Defendant is not aware of any such worker's compensation claims. Defendant's first record of a worker's compensation claim for an alleged asbestos-related disease was filed in 1971, by Clarence Hankins, at Victor Products Division's Chicago plant. Defendant does not know if the claimant did indeed contract an asbestos-related disease, or if so, if it was caused by exposure to asbestos during the course of his employment with Defendant. Additional information responsive to this interrogatory may be derived from documents located at Defendant's document repository in Toledo, Ohio. Defendant's documents will be made available for inspection and copying at a mutually convenient time. The burden of compiling responsive information from these documents would be substantially the same

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for the Plaintiffs as it would be for Defendant. C.C.P. § 2030.230.

INTERROGATORY NO. 26:

Does THIS DEFENDANT have insurance available to cover judgment(s) entered against it in asbestos-related personal injury lawsuits? If so, state:

A. The name and principal place of business of any insurance carrier who has issued such policy of insurance;

B. The number and effective date of each policy;

C. The amount(s) of coverage of each policy;

D. The applicable dates of coverage.

RESPONSE:

Yes. Additional information responsive to this interrogatory may be derived from documents relating to insurance coverage located at Defendant's document repository in Toledo, Ohio. Such documents will be made available for inspection and copying at a mutually convenient time upon execution of a Confidentiality Agreement, except for documents protected from discovery based upon the privilege between an insurer and insured in discussions regarding the defense of any claim or category of claims.. The burden of compiling responsive information from these documents would be substantially the same for the Plaintiffs as it would be for Defendant. C.C.P. § 2030.230.

INTERROGATORY NO. 27:

State whether YOU have controlled, purchased, or in any way acquired any controlling interest in any corporation or business entity which has mined, manufactured, produced, processed, compounded, sold, supplied, distributed and/or otherwise placed RAW ASBESTOS or ASBESTOS-CONTAINING PRODUCTS in the stream of commerce. If so, state:

A. The name and address of said corporation or business entity;

B. The dates YOU controlled, purchased or acquired any interest; and

C. The nature of the business as it pertains to asbestos.

INTERROGATORY NO. 32:

IDENTIFY all brochures, pamphlets, catalogs or other advertising relating to ASBESTOS-CONTAINING FRICTION PRODUCTS and/or RAW ASBESTOS which YOU manufactured, sold, distributed or supplied from 1930 to 1985. For each such document, state:

A. A description of the document;

B. The year it was printed;

C. The period of time in which it was used;

D. The purpose of said document;

E. Whether the documents or copies of said document presently exist;

F. If said documents or copies still exist, where they are located

RESPONSE:

Defendant's document repository contains many documents, including numerous catalogues, brochures, and other sales literature, that provide information, pictures, and diagrams concerning the manufacturing and sale of products of the Axle Product Divisions. Information responsive to this request may be derived from such documents, which are located at Defendant's document repository in Toledo, Ohio. Defendant's documents will be made available for inspection and copying at a mutually convenient time. The burden of compiling responsive information from these documents would be substantially the same for Plaintiffs as it would be for Defendant. C.C.P. § 2030.230.

INTERROGATORY NO. 33:

When do YOU contend THIS DEFENDANT first became aware that there is an association between asbestos exposure and disease in human beings?

RESPONSE:

Although it is not possible to answer this interrogatory with any degree of certainty, Defendant understands that as early as the 1930s there was medical literature reporting on individual cases and textile manufacturer plant experience. These reports involved

DO NOT ATTEMPT TO SAND, GRIND, CHISEL, FILE, HAMMER OR ALTER BRAKE LININGS IN ANY MANNER WITHOUT PROPER PROTECTIVE EQUIPMENT.

FOLLOW O.S.H.A. STANDARDS FOR PROPER PROTECTIVE DEVICES TO BE USED WHEN WORKING WITH ASBESTOS MATERIALS."

In addition, with respect to Off-Highway Products, Defendant made available instruction manuals and other information for each off-highway axle. These materials may have contained the following or similar language:

"WARNING

Some vehicle manufacturers may require assembly of brake components on Dana axles that utilize materials containing asbestos fibers.

BREATHING ASBESTOS DUST MAY BE HAZARDOUS TO YOUR HEALTH AND MAY CAUSE SERIOUS RESPIRATORY OR OTHER BODILY HARM.

Follow O.S.H.A. standards for proper protective devices to be used when working with asbestos materials."

With respect to Heavy Axle Products, by at least the mid-1980s, the following language was included in heavy axle maintenance manuals, which manuals were distributed to customers of such axles:

"CAUTION

ASBESTOS BRAKE LININGS CONTAIN ASBESTOS FIBERS

BREATHING ASBESTOS DUST MAY BE HAZARDOUS TO YOUR HEALTH AND MAY CAUSE SERIOUS RESPIRATORY OR OTHER BODILY HARM

AVOID CREATING DUST

DO NOT REMOVE BRAKE DRUM WITHOUT PROPER PROTECTIVE EQUIPMENT

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DO NOT WORK ON BRAKE LININGS WITHOUT PROPER PROTECTIVE EQUIPMENT

DO NOT REPLACE BRAKE LININGS WITHOUT PROPER PROTECTIVE EQUIPMENT

DO NOT ATTEMPT TO SAND, GRIND, CHISEL, FILE, HAMMER OR ALTER BRAKE LININGS IN ANY MANNER WITHOUT PROPER PROTECTIVE EQUIPMENT

FOLLOW O.S.H.A. STANDARDS FOR PROPER PROTECTIVE DEVICES TO BE USED WHEN WORKING WITH ASBESTOS MATERIALS."

Defendant's investigation with respect to axles sold by Heavy Axle Products continues. The investigation to date has revealed that any brakes made with asbestos that Defendant installed onto heavy axles came with a warning from the brake manufacturer, which warning stated that the brake contained asbestos

With respect to Trailer Axle Products, by at least the mid-1980s, the following language was included in Defendant's installation and field maintenance manual for trailer axles, brakes and components, which manual was distributed to customers of such products:

"DANGER! ASBESTOS BRAKE LININGS CONTAIN ASBESTOS FIBERS

BREATHING ASBESTOS DUST MAY BE HAZARDOUS TO YOUR HEALTH AND MAY CAUSE SERIOUS RESPERATORY OR OTHER BODILY HARM

AVOID CREATING DUST

DO NOT REMOVE BRAKE DRUM WITHOUT PROPER PROTECTIVE EQUIPMENT

DO NOT WORK ON BRAKE LININGS WITHOUT PROPER PROTECTIVE EQUIPMENT

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DO NOT REPLACE BRAKE LININGS WITHOUT PROPER PROTECTIVE EQUIPMENT

DO NOT ATTEMPT TO SAND, GRIND, CHISEL, FILE, HAMMER OR ALTER BRAKE LININGS IN ANY MANNER WITHOUT PROPER PROTECTIVE EQUIPMENT

FOLLOW O.S.H.A. STANDARDS FOR PROPER PROTECTIVE DEVICES TO BE USED WHEN WORKING WITH ASBESTOS MATERIALS."

Defendant's investigation with respect to axles sold by Light Axle Products continues.

Material Safety Data Sheets and other information relating to certain axle products were also made available to customers upon request.

Additional information responsive to this interrogatory may be derived from documents relating to warnings located at Defendant's document repository in Toledo, Ohio. Defendant's documents will be made available for inspection and copying at a mutually convenient time. The burden of compiling responsive information from these documents would be substantially the same for Plaintiffs as it would be for Defendant. C.C.P. § 2030.230.

INTERROGATORY NO. 58:

State whether any surveys or studies of ambient asbestos dust have been conducted by YOU or on YOUR behalf at vehicle repair or maintenance facilities. If yes, state as to each such survey or study:

A. The subject matter, title and date of each study;

B. The date and the name of the person authorizing the study;

C. The reason for the study;

D. IDENTIFY the persons who conducted the study;

E. The date the study was completed;

VERIFICATION

I, Gregory Fett, am the Chief Materials Engineer, Dana Spicer Axle Division, and am authorized to make this verification on its behalf.

I have read the foregoing Dana Companies, LLC's responses and objections to Plaintiffs' interrogatories and know its contents. No single employee, officer, or agent of defendant has direct knowledge of the documents and information necessary to supply each and every response. I verify that the responses are true based on my personal knowledge as well as that based on information assembled by authorized employees of defendant. I am informed that the review of documents by and information from authorized employees of defendant support the responses based upon the information available as to the date of my signature.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

12/29/09
Date

Gregory Fett

EXHIBIT "E"

Edward R. Hugo [Bar No. 124839]
Randall K. Bernard [Bar No. 181522]
BRYDON HUGO & PARKER
135 Main Street, 20th Floor
San Francisco, CA 94105
Telephone: (415) 808-0300
Facsimile: (415) 808-0333

Attorneys for Defendant
DANA COMPANIES, LLC
(formerly known as DANA CORPORATION)

SUPERIOR COURT – STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO – UNLIMITED JURISDICTION

IN RE: COMPLEX ASBESTOS LITIGATION	(ASBESTOS) Case No. 828684 DEFENDANT DANA COMPANIES, LLC'S AMENDED RESPONSES TO PLAINTIFFS' STANDARD INTERROGATORIES TO ALL DEFENDANTS PURSUANT TO GENERAL ORDER NO. 129 [San Francisco County Superior Court Asbestos General Order No. 129]

PROPOUNDING PARTY: PLAINTIFFS

RESPONDING PARTY: DANA COMPANIES, LLC

SET NUMBER: ONE

PRELIMINARY STATEMENT

Defendant -Dana Companies, LLC (formerly known as Dana Corporation) is providing these amended responses to interrogatories pursuant to San Francisco Superior Court General Order No. 129. That Order provides that defendants shall respond to the standard interrogatories without any objections except for objections based upon privilege.

These interrogatories seek information about events that occurred many years ago. These responses are based upon a reasonable investigation into the relevant facts and

information currently known to Dana Companies, LLC. These responses supersede all prior responses to interrogatories in this jurisdiction.

Defendant responds to these interrogatories at this time for the Victor Products Division of Dana Corporation, excluding Reinz Wisconsin Gasket Co., for the period 1967 to date, and Victor Manufacturing & Gasket Company for the period Defendant owned its stock (1966-67).[1] Dana Companies, LLC provides information concerning Victor Manufacturing & Gasket Company for the time period before Defendant acquired its stock, based upon investigation and document reviews, to the extent it is known. If Plaintiffs provide information of alleged exposure to specific products of Defendant not encompassed by these responses, Defendant will investigate further and may supplement these responses.

Defendant reserves the right to amend, supplement, modify or otherwise change these responses in the event that it acquires additional information responsive to these interrogatories, or if it appears that inadvertent or administrative omissions or errors have been made.

To the extent that these responses refer to documents that may contain information responsive to an interrogatory, those documents will be made available for review upon request, at a mutually agreeable time, in Toledo, Ohio.

GENERAL OBJECTIONS

Because General Order No. 129 restricts the objections that may be interposed to these standard interrogatories, this Defendant asserts the following general objections which are permitted by General Order 129.

Defendant objects to each interrogatory and part thereof to the extent they call for information protected by (a) the attorney-client privilege, (b) attorney-work-product doctrine, (c) any applicable privilege relating to communications between counsel for Defendant and counsel for other defendants regarding this or similar litigation, (d) any

[1] The former Victor Products Division of Dana Corporation, excluding Reinz Wisconsin Gasket Co., is hereinafter referred to as "Victor Products Division."

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category of claims. Documents responsive to this interrogatory will be made available for review upon the execution of a Confidentiality Agreement.

INTERROGATORY NO. 27:

State whether YOU have controlled, purchased, or in any way acquired any controlling interest in any corporation or business entity which has mined, manufactured, produced, processed, compounded, sold, supplied, distributed and/or otherwise placed RAW ASBESTOS or ASBESTOS-CONTAINING PRODUCTS in the stream of commerce. If so, state:

A. The name and address of said corporation or business entity;

B. The dates YOU controlled, purchased or acquired any interest; and

C. The nature of the business as it pertains to asbestos.

RESPONSE:

Defendant began business operations in 1904. It was incorporated in 1916 under the name Spicer Manufacturing Corporation. In 1946, the corporation changed its name to Dana Corporation. In 2008, under a bankruptcy plan of reorganization, Dana Corporation was merged into Dana Companies, LLC.

Defendant objects to the characterization of any of the businesses described as predecessors to Defendant. In 1919, Defendant (incorporated as Spicer Corporation in 1916) acquired Salisbury Axle Company. In 1954, Salisbury Axle was liquidated. Defendant subsequently formed Spicer Axle Division, Mobile Off-Highway Division, and Spicer Heavy Axle Division, which manufactured completed axle assemblies. At customer request, some completed axles incorporated finished brake assemblies that contained linings made with asbestos and other ingredients. Sales of such products ended sometime in the 1990s, although the exact date is unknown to Defendant at this time.

In 1929, Defendant acquired all outstanding capital stock of Brown-Lipe Gear Company of Syracuse, New York.

In 1947, Defendant acquired Auburn Clutch Co., which later became Spicer Clutch Division. Spicer Clutch Division manufactured clutches, primarily for heavy duty trucks,

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that incorporated clutch facings that may have contained asbestos until 1983. Defendant did not manufacture the clutch facings. Non-asbestos clutch facings were available no later than 1981. Defendant sold the Spicer Clutch Division in 1998.

In March, 1958, Defendant acquired the stock of Chelsea Products. The stock was liquidated in 1961. Defendant subsequently formed the Drivetrain Service Division, which manufactured power take-offs, some of which used gaskets that contained asbestos as components of the final product. This division was phasing out the use of gaskets that contained asbestos by the mid-1980s. Defendant presently believes that the division's last manufacture of power take-offs with gaskets that contained asbestos was in or before 1988. Chelsea Products was sold in 2000.

In 1966, Defendant acquired the stock of an California corporation named Victor Manufacturing & Gasket Company. The company manufactured gaskets and gasket materials for use in internal combustion engines, some of which contained asbestos as a component. In 1967, Victor Manufacturing & Gasket Company was dissolved pursuant to and in conformity with relevant provisions of the California Business Corporation Act of 1933, contained at Ill. Rev. Stat. Ch. 32 §74-81 (1967). Victor Manufacturing & Gasket Company was not merged with Defendant. Defendant denies that it is liable for products manufactured by the dissolved company.

In 1967, Defendant formed Victor Gasket Division which manufactured gaskets and gasketing materials. In approximately 1973, the division was renamed Victor Products Division. In 1993, the name of this division was changed to Victor Reinz Division. Some, but not all, of the gaskets Victor Products Division made contained asbestos mixed with other materials, such as steel, elastomeric binder material, and copper. Some gaskets contained no asbestos and were always made of cellulose, metals, rubber, cork, and other materials. By mid-1988, asbestos was no longer used as an added component in the manufacture of gaskets. In 2003, the division was renamed Sealing Products.

From September 1967 until February 1969, Defendant owned the stock of Smith & Kanzler Company, a New Jersey corporation incorporated in 1964 and located in Linden, New

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Jersey. Defendant did not incorporate Smith & Kanzler Company but came to own its stock as a result of the dissolution of Victor Manufacturing & Gasket Company. Smith & Kanzler Company manufactured SprayCraft. Several courts have determined that Defendant is not responsible for products manufactured, sold, or distributed by Smith & Kanzler Company. See, e.g., Dana Corporation v. Celotex Asbestos Settlement Trust, et al., 251 F.3d 1107 (6th Cir. 2001); In re School Asbestos Litigation, 1993 U.S. Dist. LEXIS 7984 (E.D. Pa. June 14, 1993); Anderson Memorial Hospital v. W.R. Grace & Co.-Conn, et al., CA No. 92-CP-24-279, Court of Common Pleas, County of Hampton, South Carolina; In re State of West Virginia Public Building Asbestos Litigation, Civil Action No. 86-C-458, Circuit Court of Monongalia County, West Virginia. In February, 1969, less than 18 months after acquiring the stock of Smith & Kanzler Company, Defendant sold the stock to Philip Carey Corperation (Ohio).

In 1973, Defendant acquired the stock of Formsprag. It merged with Defendant in 1975, and Formsprag Division was formed. Formsprag Division manufactured industrial clutches and flexible couplings. Some of the clutches were assembled with facings that contained asbestos. The facings were not manufactured by Defendant. In the 1970s, Formsprag became part of Defendant's Industrial Power Transmission Division. In 1991, Formsprag became part of Warner Electric Division. Defendant sold the flexible couplings part of the business in 1993. Defendant sold the industrial clutch business in 2000.

In 1977, Defendant acquired the shares of Weatherhead Company. The company manufactured hydraulic fittings and hose assemblies, which did not contain asbestos. This business was sold in 2002.

In 1977, Defendant acquired Williams Air Control, which became known as the Fluid Controls Division. Fluid Controls Division made exhaust brake lines, which incorporated rings and gaskets, some of which contained asbestos. Defendant presently believes that the division's last manufacture of such products was in or before 1988. Defendant sold the Fluid Controls Division in 1998.

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In June 1979, Defendant acquired the stock of Wix Corporation. It merged into Defendant in 1984 and the Wix Division was formed. It manufactured and sold aftermarket automotive filters, a small percentage of which contained gaskets that contained asbestos as a component. Defendant presently believes that the division's last manufacture of filters with gaskets containing asbestos was in 1988.

In 1980, Defendant acquired the stock of Tyrone, which manufactured hydraulic pumps. The pumps are not believed to have contained asbestos. This business was sold in February 2000.

In July 1981, the assets of two Boston Industrial Products businesses were acquired. Boston Industrial Products made and sold conveyor belting and rubber flat goods which did not incorporate asbestos. Defendant sold this portion of Boston Industrial Products in 1997. Boston Industrial Products' other line of business was hoses, which did not incorporate asbestos. Defendant sold this business in 2002.

Wichita Clutch Company became a division of Defendant in 1981 as the result of a dissolution of Wilson-Wichita, a former subsidiary. Wichita Clutch manufactured clutches and brakes for industrial and marine uses. Some clutches and brakes contained friction materials that contained asbestos. The friction materials were not manufactured by Wichita Clutch. By early 1987, Wichita Clutch had ceased manufacturing products with components that contained asbestos. In 1991, Wichita Clutch became part of the Warner Electric Division of Defendant. Wichita Clutch was operated as part of the Warner division until the year 2000 when assets, including related facilities, subsidiary operations, and product lines of Wichita Clutch, were sold.

Defendant purchased the assets of Racine Hydraulics in 1982, and created the Racine Hydraulics Division. Racine Hydraulics Division manufactured industrial hydraulic valves and pumps, some of which incorporated gaskets that contained asbestos. The gaskets were used to seal mechanical joints to prevent hydraulic fluid leakage. In 1986, Racine Hydraulics began to phase out the use of gaskets that contained asbestos. Defendant presently believes that the division's last manufacture of valves and pumps with gaskets

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that contained asbestos was in 1988. A portion of Racine Hydraulics Division was sold in 1988. The remaining portion of the division merged into Gresen Hydraulics, which was sold in February 2000.

In May, 1985, Defendant purchased Royalflex Hose. Royalflex manufactured hoses and became part of the Boston Industrial Products Division.

In 1985, Defendant acquired the stock of Warner Electric Brake & Clutch Company, which merged into Defendant in December 1986. Warner Electric Division manufactured electric clutches, electric brakes, electric wheel brakes, and other products. Some Warner Electric products were assembled with facings that contained asbestos, which were assembled into clutch rotors and brake magnets, in wheel brake linings and actuating magnets. Warner Electric Brake & Clutch Company began a program in 1983 to phase out the use of components that contained asbestos. By the Spring of 1986, Warner Electric ceased manufacturing electric clutches, brakes, and clutch/brakes with friction material that contained asbestos as a component. In 2000, the assets of Warner Electric were sold.

In 1993, Defendant acquired the stock of a company named Reinz Wisconsin Gasket Company. The company manufactures and markets gaskets from gasket materials made by others. Current available information is that this subsidiary phased out asbestos in the early 1990s, with the last use of gasketing materials containing asbestos in 1993.

INTERROGATORY NO. 28:

State whether THIS DEFENDANT, between 1930 and 1985, has ever engaged in the following activities with regard to RAW ASBESTOS, and if so, state the inclusive dates of such activity:

A. Mining;

B. Milling;

C. Supply;

D. Importing;

E. Processing;

F. Distribution;

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A. State the business addresses and name of the CONTRACT UNIT;

B. State the inclusive periods of time the CONTRACT UNITS were working in the GEOGRAPHIC AREA;

C. State the name and address of each job site within the GEOGRAPHIC AREA and the dates the CONTRACT UNIT worked at those job sites, and, IDENTIFY the RAW ASBESTOS and/or ASBESTOS-CONTAINING PRODUCTS installed or removed on each occasion;

D. Either (1) attach all DOCUMENTS evidencing the information sought in this Interrogatory and its subparts to your answers to these Interrogatories, or (2) attach disks containing such data, or (3)describe such DOCUMENTS with sufficient particularity that they may be made the subject of a request for production of documents.

RESPONSE:

See Response to Interrogatory No. 42, which is incorporated herein as if fully rewritten.

INTERROGATORY NO. 44:

When do YOU contend that THIS DEFENDANT first became aware that there is an association between asbestos exposure and disease in human beings?

RESPONSE:

It is not possible to state precisely if or when a corporation can be said to have such knowledge; that is a mixed question of fact and law. Knowledge or awareness cannot be imputed to Defendant based upon the knowledge or familiarity of an employee or agent of Defendant. Although it is not possible to respond to this interrogatory with any degree of certainty, Defendant understands that as early as the 1930s there was medical literature reporting on individual cases and textile manufacturer plant experience. These reports involved asbestos textile manufacturing plant employees whose work environments were largely uncontrolled and could have exceeded hundreds of asbestos fibers per cc. The disease associated with these intensely high exposures was asbestosis. At no time has Victor Products Division made, manufactured, or sold end products that could cause such

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intensely high exposures, nor does Defendant believe that such exposures occurred at its manufacturing facilities. Nor has Victor Products Division ever made or sold products that contained asbestos intended for use by any trades other than those utilizing gasket or gasket materials. At all relevant times the available data has shown that gaskets and gasket materials that contained asbestos are not hazardous to workers' health.

It is not possible to pick a specific time or date when it was known that certain distinct diseases were causally related to exposures to certain types and/or levels of exposure. Defendant understands that pleural plaques and thickening, asbestosis, lung cancer in association with asbestosis, and mesothelioma were all causally associated with exposure to certain types of asbestos fiber and levels of exposure as of the inception of Victor Products Division in 1967. Defendant does deny that all fiber types cause mesothelioma and that asbestos exposure causes cancer other than as listed above. Defendant also denies that any asbestos-related disease occurs as a result of exposure to gaskets and gasket materials of the type manufactured and/or sold by Defendant.

INTERROGATORY NO. 45:

How do YOU contend that THIS DEFENDANT first became aware that there is an association between asbestos exposure and disease in human beings.

RESPONSE:

See Response to Interrogatory No. 44, which is incorporated herein as if fully rewritten.

INTERROGATORY NO. 46:

Either (1) attach all DOCUMENTS evidencing the information upon which YOUR contentions in YOUR answers to Interrogatories No. 44 and 45 are based, or (2) attach disks containing such data, or (3) describe such DOCUMENTS with sufficient particularity that they may be made the subject of a request for production of documents.

RESPONSE:

See Response to Interrogatory No. 44, which is incorporated herein as if fully rewritten. Information responsive to this interrogatory may be derived from Defendant's

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VERIFICATION

I, Marcy Duncan, am the former Sales Operations Manager in the Sealing Products Division of Defendant Dana Companies, LLC and am authorized to make this verification on its behalf.

I have read the foregoing Dana Companies, LLC's responses and objections to Plaintiff's interrogatories and know its contents. No single employee, officer, or agent of defendant has direct knowledge of the documents and information necessary to supply each and every response. I verify that the responses are true based on my personal knowledge as well as that based on information assembled by authorized employees of defendant. I am informed that the review of documents by and information from authorized employees of defendant support the responses based upon the information available as to the date of my signature.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

5/28/09
Date

Marcy Duncan
Marcy Duncan

EXHIBIT "F"

JFFeldmann File

DANA CORPORATION — Victor Products Division, Detroit

INTRA-COMPANY COMMUNICATION

SUBJECT: Hydramatic Division, GMC - OSHA

DATE: April 25, 1973

TO: J. E. Lane

As you know, we sell Hydramatic ASBESTOPRENE oil pan gaskets for service use. About half of what we ship Hydramatic is re-shipped, in our cartons, to AC Spark Plug for their service packaging. The remainder is packaged by Hydramatic and sent to GMPD.

A General Motors safety inspector has toured Hydramatic, and reported unacceptable levels of asbestos dust in their packaging location. He has directed Hydramatic to vacuum the residue out of our cartons before the cartons are disposed of. This residue must be plastic bagged, labeled, and disposed of in land fill.

In addition, he requests that our cartons be labeled with the cautionary statement per the attached page from the Federal Register.

I am to write Mr. H. J. Thomas, Safety Director at Hydramatic, indicating we will comply with this request.

This situation could be a pocketful of fish hooks, both in our plant and at Hydramatic. I don't know how the union will react to this caution label. Will Messrs. Dehr, Lillis, McGranahan, et all, review it and let me know how to respond to Hydramatic.

cc: S.M.L.
R.S.McG.

J. F. Feldmann/hjp

PLAINTIFF'S EXHIBIT 1 11-5-02

encl.

Bill - If they want labels, why not put them on? The potential union ~~[illegible]~~ reaction could be handled by definition in the Federal Register which clearly exempts bagged fibers from airborne fiber control. [illegible]

VPD-188-0002119

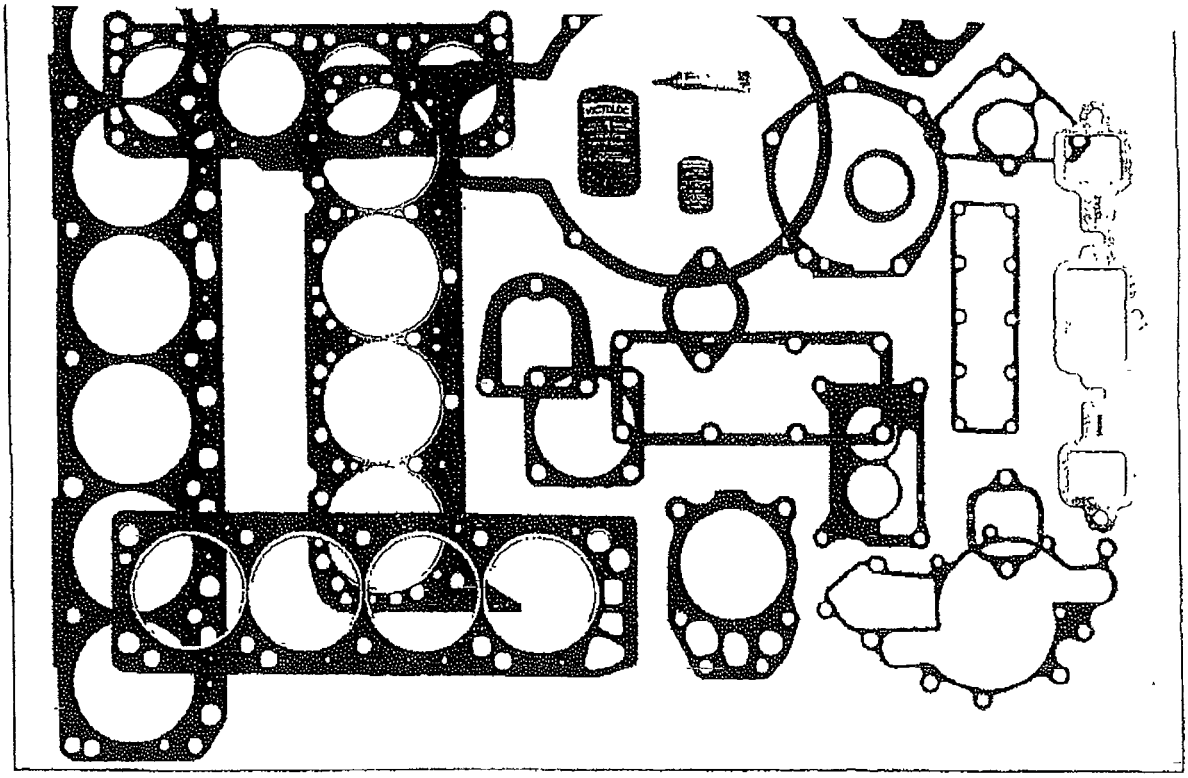
EXHIBIT "G"

Dana Corp.

What Will Replace Asbestos Gaskets?

By John E. Zeitz

REPRINTED FROM July 1980
DIESEL & GAS TURBINE PROGRESS



What Will Replace Asbestos Gaskets?

By John E. Zeitz

GASKET suppliers and gasket material producers have been working for several years on programs to develop asbestos-free gasket materials for use in all the sealing needs of vehicular and industrial applications. And the tempo of this development is increasing.

Asbestos has been an important part of gasket materials since the advent of the internal combustion engine. It has a number of good characteristics, and has been used extensively. These good characteristics are the physical properties of asbestos, such as high heat resistance, excellent crush resistance, dimentional stability, and the ability to be produced into a homogeneous product.

The ability to produce a homogeneous product is greatly aided by the material's high surface area per unit weight, a factor as high as 60 sq. ft./gram (5.6 m^2/gram). Added to these physical properties, relatively low cost and ease of processing must be included among the advantages of asbestos.

However, there are a number of disadvantages with the material. First, there is growing emphasis on costly preventive health and control substance programs required for those handling the materials. There is also a growing belief on the part of influential users and producers of asbestos products, as well as outside groups, that the use of asbestos in automotive and other vehicles should be curtailed.

The cost of company-wide health programs and controlling the environment in which asbestos is handled is causing many to seek alternatives to using the product. One problem for all suppliers and users of asbestos products is how the end user disposes of the product. In the gasket business this is a particularly-sensitive area because often the end user finds himself using a wire brush or scraper to scrape asbestos off of an engine part to clean up residue gasketing.

Unfortunately, it is the asbestos you cannot see that finds its way into the lungs. So unless special preventive health procedures are followed, the end user of asbestos gaskets may be in more potential danger than the personnel in the producer's facility. This could be particularly true in large volume engine rebuild operations.

Government regulatory agencies are keenly interested in seeing asbestos usage curtailed, or eliminated from industrial and commercial products. Though no timetables have been set, it is very likely a special license or waiver will be needed as early as 1985. And, by 1990, the use of asbestos may not be permitted under any circumstances.

It may be that government regulations alone may eventually force the elimination of all asbestos from areas where it is now used — including gaskets. The number of regulatory agencies controlling asbestos continues to grow. There are primarily six federal agencies concerned with asbestos. There are the Environmental Protection Agency (EPA), the Department of Transportation (DOT), the Consumer Protection Safety Commission (CPSC), the Mine Safety Health Administration (MSHA), the Occupational Safety and Health Administration (OSHA), and the Food and Drug Administration (FDA).

Among these six agencies, approximately 20 regulations have been promulgated to control

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John E. Zeitz is division chief engineer at the Victor Products Division of Dana Corporation.

exposure of asbestos from various sources. Added to these are the many international and state regulations, and the regulatory situation is certainly challenging

Another disadvantage of asbestos is its scarcity Compared to oil, the U.S. is more completely dependent on foreign sources for asbestos than it is for petroleum Although general asbestos supplies seem adequate, the long grades such as number 4 and 5 fiber lengths used extensively for gasket materials have been in tight supply for the past four years

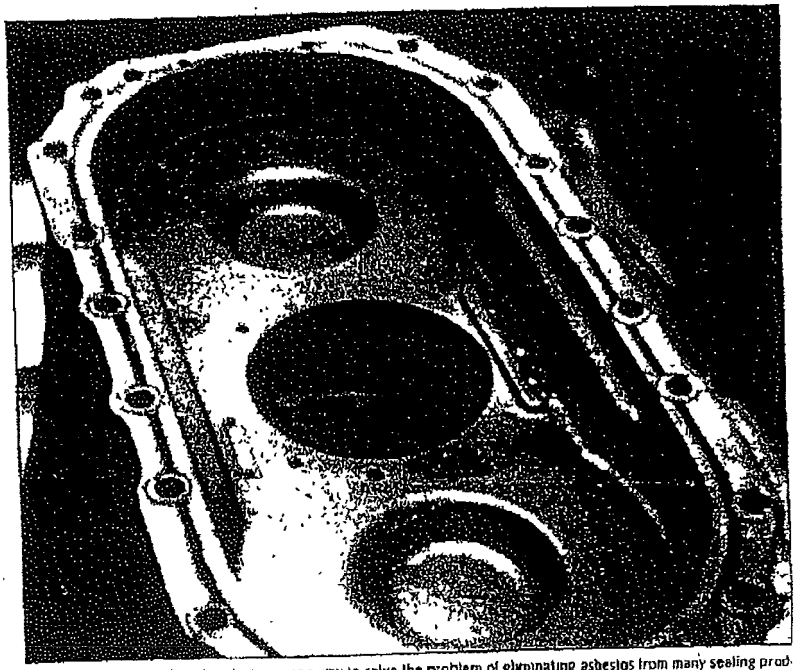
The final disadvantage of asbestos is that it does not always solve all the problems that it is asked to solve In short, better heat resistance sealability and crush resistance are often required Asbestos has served us well and will continue to do so but there are more and more demands for better solutions At present, the majority of gaskets in the U.S. do contain asbestos. Most of them contain 80% asbestos in their composition with the rest being polymer binder systems and fillers.

The problem of replacing asbestos is of very large magnitude. However, before we get into reviewing what is being done to replace asbestos, we should probably consider what the asbestos suppliers are currently saying about the situation They state very simply, that once the material reaches the consumer, the asbestos is locked-in by the various processes used in manufacture. Granted, this may be true, but it is very difficult for most gasket suppliers to verify that this condition continues throughout the use of the product when they consider the asbestos-contained material is typically sheared, torn, calendered, scraped, sanded, punched, burned, formed, compressed, and ground in its further manufacture and use as a gasket.

Because of the disadvantages mentioned and the lack of technical verification of the safety of the material when processed and used as gasketing, several major domestic users have embarked upon programs to eliminate asbestos gaskets from their product lines. Let's examine what asbestos-free materials will have to do when they replace asbestos products in gaskets Replacement materials will have to have high-heat resistance, excellent crush resistance, dimentional stability, and homogeneity As another reference point, we should examine those products currently available in the marketplace, These are cellulose, anaerobics, RTV, and rubber-coated steel.

A number of companies have eliminated asbestos gasketing, and gaskets in general, from their current assemblies. The General Motors Corporate V-6 has only two gasket applications in the engine: the cylinder head gasket and the intake manifold gasket. Both of these applications are with asbestos containing materials. Many transmission manufacturers are also eliminating gaskets from their assemblies and replacing them with liquid sealant to reduce the tolerances required for assembly. This permits them to develop quieter-running transmissions and gear boxes — another upcoming regulation

Asbestos seems to be used in the majority of cylinder head applications and intake manifold applications, exhaust manifold applications, and a large number of extremely heavily loaded flanges However, the critical requirements of these various applications are not the same from application to application Cylinder head and intake manifold applications require materials having good homogeneity and the resulting conformability that permits a good fluid seal. Exhaust manifold applications require the high-heat resistance characteristics of asbestos and heavily loaded flanges require the crush and extrusion resistance of asbestos. So it is possible to replace asbestos in different ways for different applications More importantly, it appears that if we could improve certain properties in certain applications, we could present design engineers and the marketplace with an improved product with greater appeal



Anaerobic and other liquid sealants are one way to solve the problem of eliminating asbestos from many sealing products. Shown here is a 28 in. long housing with a liquid gasket seal ready for assembly

For years gasket material producers and designers have attempted to improve the binder systems in gaskets. This work was done because the binder system appeared to be the limiting ingredient in gasket functional design. Little was done to improve the fiber characteristics and to obtain increased functional characteristics through this method. We are now looking at that 80% of the gasket which represents the fiber to see what can be done in replacing asbestos to improve its functional characteristics. However, to do this, one quickly finds that no single man-made fiber or other high temperature material approaches asbestos in its crucial physical properties. It is therefore necessary to blend materials to obtain the desired properties. The types of materials blended are mainly various fibers and fillers, although rubber coated steel is also considered an alternative.

Clay is one such filler. It is inexpensive, compressible in bulk, and fills the voids between the larger fibers of glass, nylon, or aramid Clays are easily dispersed in mixtures of water From a sealing point of view, the clay reduces the spring rate of the facing, and improves the load bearing capabilities Temperature resistance is above 3000 F (1649 C). Clay, when added to most materials, increases the surface area to the magnitude of asbestos. Clay has better conformability properties than asbestos.

Mica is basically a filler, also, and has been used for years in the paper industry Vermiculite is the thermal or chemically expanded form of mica which is very economical, has high surface area, and good temperature resistance (above 2000 F) It has relatively low strength, but good slip characteristics, caused by the low coefficient of friction of the particle Mica has better torque and heat resistant properties than asbestos.

Graphite has the highest heat resistance of the materials presently under consideration with the tensile strength increasing until 4000 F and heat resistant above 5000 F. The material is very costly but can be used in layers. The unique low frictional characteristics of the platelets help where motion is a problem.

Glass fiber is another candidate. It normally endures heat to 1100 F, where softening and fusing takes place However, it has good strength and the thinnest diameter or highest surface area of any man-made fiber. It will be used to reinforce mica, clay or baryties based compounds in the same way as aramids and nylons will be used.

In some applications cellulose fiber may be favored But it is used very sparingly, if at all, in materials requiring high temperature resistance because of its low charring temperature In applications where heat is not above 300 F, however, the fiber can be used as a successful carrier web or matrix for a variety of fillers

Organic fibers also have potential Aramids such as Kevlar and polyamides such as Nomex are examples of current organic fibers. These fibers have tremendous tensile strength and modulus, and yet some grades are relatively flexible. Although these materials begin degrading at 500 F, they do not disintegrate or gasify and at 2000 F have higher strength than asbestos and are being used in compounds in small quantities.

High strength or engineering ceramics have possibilities, too, although there are technical problems on how the ceramic fibers are bonded together. Ceramics are typically metal oxides, nitrides, or carbides and have a temperature range of up to 3000 F, and compressive strength which is more than twice that of asbestos. At these temperatures the binder systems disintegrate and it is necessary to still keep the ceramic together. In addition, ceramic fibers are 30 times the diameter of asbestos, so homogeneity is a problem; but for high temperature exhaust gas applications this is an acceptable alternative when blended with other fibers.

Coated metals will also find a niche. They have the physical strength of the substrate metals coated with a well bonded yet embossable sealing coating of nitrile or silicone. There is no wicking because of the solid steel barrier as well as good relaxation properties and good extrusion properties.

As a result of current programs, we can predict that in exhaust and turbocharger applications, graphite, ceramic fibers and fillers, and mica, combined with stainless steel substrates, will be popular materials. For cylinder head and intake manifold applications, we see the use of organic fibers and binders and inorganic fillers formed by a paper making process and also combined to metal substrates. Embossed steel or aluminum with high temperature coatings will continue to be used where engine structure permits.

In high load and high extrusion gasket applications, the most prevalent materials will be rubber coated steel, cellulose fibers with elastomeric binders, glass fiber with fillers and elastomeric binders, densified organic fibers and fillers with elastomeric binders, and liquid systems such as RTVs and anaerobics.

The final cost of non-asbestos materials is still not resolved. Material suppliers have been given a target of less than two times what we are paying for material today and most feel comfortable with this. Since the asbestos-free material makes up only a portion of the gasket's cost, the total selling price should be significantly less than twice current pricing. In the long term, it is expected that asbestos-free products with improved properties will sell for no more than current products — certainly on a total engine package basis.

The trick to replacing asbestos is to blend the fibers and fillers and polymers to reduce the cost and optimize the physical and chemical properties using multivariable analysis. And the initial results look excellent. Currently, asbestos free versions of Victor's popular Victocor, Solicor, Victopac, Corbestos, and Ceramic materials are being sampled and tested by O.E. diesel and gasoline manufacturers in the U.S. and abroad and compare favorably in performance to existing materials. The current price structure is considered attractive.

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EXHIBIT "H"

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DANA CORPORATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO – UNLIMITED JURISDICTION

IN RE: COMPLEX ASBESTOS LITIGATION	Case No.: CGC-84-828684 DEFENDANT DANA CORPORATION'S AMENDED RESPONSES TO PLAINTIFFS' STANDARD INTERROGATORIES TO ALL DEFENDANTS PURSUANT TO GENERAL ORDER No. 129

PRELIMINARY STATEMENT

Defendant Dana Corporation is providing these amended responses to interrogatories pursuant to San Francisco Superior Court General Order No. 129. That Order provides that defendants shall respond to the standard interrogatories without any objections except for objections based upon privilege.

These interrogatories seek information about events that occurred many years ago. These responses are based upon a reasonable investigation into the relevant facts and information currently known to Dana. These responses supersede all prior responses to interrogatories in this jurisdiction.

Defendant responds to these interrogatories at this time for the Victor Products Division (now known as Sealing Products), excluding Reinz Wisconsin Gasket Co., for the period 1967 to date, and Victor Manufacturing & Gasket Company for the period Defendant owned its stock (1966-67).[1] Dana provides information concerning Victor Manufacturing & Gasket Company for the time

[1] Victor Products Division (now known as Sealing Products), excluding Reinz Wisconsin Gasket Co., is hereinafter referred to as "Victor Products Division."

EXHIBIT B

RESPONSE TO INTERROGATORY NO. 33:

Defendant does not understand itself to be a "Contractor Defendant," and therefore, this interrogatory is inapplicable.

INTERROGATORY NO. 34:

Did any of the distributors identified in your Answer to Interrogatory Nos. 29 and 31 above have an exclusive distributorship? If so, state the relevant time period.

RESPONSE TO INTERROGATORY NO. 34:

See Responses to Interrogatory Nos. 29 and 31, which are incorporated herein as if fully rewritten. Investigation is ongoing, and Defendant reserves the right to supplement or amend this response.

INTERROGATORY NO. 35:

IF THIS DEFENDANT entered into any agreements for the rebranding of any ASBESTOS-CONTAINING PRODUCTS by THIS DEFENDANT for resale or distribution by another person or entity, describe each agreement's terms and the parties to said agreement, the duration of the agreement, and name of each product(s) and/or material(s) covered by each such agreement.

RESPONSE TO INTERROGATORY NO. 35:

Defendant does not presently believe that it entered into written rebranding agreements. At its customers' request, Defendant placed customer names on some gaskets and gasket packaging.

INTERROGATORY NO. 36:

As to RAW ASBESTOS and as to each such ASBESTOS-CONTAINING PRODUCT listed in YOUR responses to Interrogatories No. 29 and 31 did DEFENDANT warn of the health hazards of asbestos? If so, state for each such warning:

A. The content, size, color, and location; whether the warning appeared on the material and/or on the container, and/or was placed on a tag; whether the warning was included in contracts; whether the warning was included in advertising or other promotional materials.

B. State whether you have any photographs thereof;

C. The inclusive dates on which you used each such warning;

D. State all changes you made in such warnings and the dates of such changes; and

E. Identify the person most knowledgeable about your warnings and warning policy.

RESPONSE TO INTERROGATORY NO. 36:

The gaskets manufactured by Victor Products Division were and are safe for intended use. In accordance with federal regulations first implemented in the 1970's and as current today, Defendant's gaskets that contained asbestos did not require a warning. Defendant's gaskets and gasket materials did not require a warning for one or more of these reasons: 1) While many of Defendant's gaskets and/or gasket materials did not contain asbestos, in those products that did contain asbestos, the fibers were locked into the product with elastomeric or other binders; 2) The use of the gaskets was of such short duration that there was no opportunity for a meaningful exposure; 3) The type of asbestos generally used in gaskets does not create a significant risk of harm at levels of exposure associated with gaskets; 4) The gaskets were not used on a frequent basis; and 5) Historical medical and scientific evidence did not support a risk of harm from gaskets.

Nevertheless, in response to the growing awareness of hazards of exposure to raw asbestos or friable products that contained asbestos, and in response to some customer inquiry, in 1984-85, Victor Products Division began inserting a caution label with certain gaskets and gasket materials. The label for certain finished gaskets said substantially as follows: "CAUTION. CONTAINS ASBESTOS FIBERS. AVOID CREATING DUST. BREATHING ASBESTOS DUST MAY CAUSE SERIOUS BODILY HARM." The label for gasket materials read substantially as follows: "WARNING. This material contains asbestos fibers. Avoid creating air-borne fibers or dust. Follow OSHA work practices, including the use of appropriate dust control equipment. Inhalation of air-born asbestos fibers may cause asbestosis or other serious bodily harm. Smoking greatly increases this risk of serious bodily harm." The language used in warnings may have changed over time.

VERIFICATION

I, Marcy Duncan, am Sales Operations Manager of the Sealing Products Division of Defendant Dana Corporation and am authorized to make this verification on its behalf.

I have read the foregoing Dana Corporation's response to interrogatories and know its contents. No single employee, officer, or agent of defendant has direct knowledge of the documents and information necessary to supply each and every response. I verify that the responses are true based on my personal knowledge as well as that based on information assembled by authorized employees of defendant. I am informed that the review of documents by and information from authorized employees of defendant support the responses based upon the information available as to the date of my signature.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

11/28/05
Date

Marcy Duncan
Marcy Duncan

EXHIBIT "I"

DANA CORPORATION — VICTOR PRODUCTS DIVISION

INTRA-COMPANY COMMUNICATION

SUBJECT Asbestos vs Non-Asbestos Product DATE February 8, 1985

TO Dick Forde

The following analysis covers the dollar sale of each of the reference products for 1984 at the top 23 O.E. accounts plus material sales.

Customer	Total Sales	Non-Asbestos
CATERPILLAR		
Morton	$16,460,000	$1,560,000
Mossville	4,244,000	507,400
Cummins	$ 3,592,860	$1,077,800
John Deere	$ 3,832,051	$ 726,800
O.M.C.	$ 943,000	$ 140,000
J.I. Case	$ 694,100	$ 70,000
Massey Ferguson	$ 96,000	$ 10,000
White Farm	$ 349,600	$ 42,000
Waukesha	$ 715,000	$ 572,000
AMC	$ 184,000	$ 180,000
Buick	$ 540,000	$ 54,000
Cadillac	$ 300,000	$ 0
Chevrolet	$ 1,828,000	$ 91,400
Chrysler	$ 186,000	$ 0
Detroit Diesel	$ 1,054,000	$ 31,620
Ford	$ 273,000	$ 54,600
GMWDD	$ 1,977,000	$ 98,850

Asbestos vs Non-Asbestos Product

Customer	Total Sales	Non-Asbestos
Allis Chalmers	$ 269,382	0
I.H.C.	$ 1,955,000	$ 97,750
Mack Truck	$ 615,000	$ 123,000
Oldsmobile	$ 1,358,000	$ 814,800
Pontiac	$ 414,000	$ 165,600
Rockwell Int'l.	$ 159,000	0
White Engines	$ 227,000	$ 68,100
Material Sales	$ 2,000,000	$ 30,000
	$44,265,993	$6,515,720
	Percent Non-Asbestos	14.7%

Jim Buescher

az/

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO - UNLIMITED JURISDICTION

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DOROTHY STUCKART, Individually and as Successor-in-Interest to KEVIN STUCKART, Decedent; THEODORE STUCKART; RACHEL STUCKART; and DOES ONE through TEN, inclusive,

Plaintiffs,

vs.

No. CGC-09-275304

AC and S, INC., et al.,

Defendants.

_____/

DEPOSITION OF MARCELLA DUNCAN

PMK OF DANA COMPANIES, LLC

Taken before Patrice E. Morrison, RMR, CRR

June 14, 2012

A I wasn't given any training. I visited the plants quite often and watched the production processes in various areas, but I wasn't hands-on trained, no, ma'am.
Q And have you ever attempted to install an asbestos-containing Victor gasket yourself?
A Not personally, no.
Q And have you ever attempted to remove a used asbestos-containing Victor gasket?
A No, ma'am.
Q And have you ever seen anyone remove a Victor gasket that had been used and was asbestos containing?
A Yes, ma'am.
Q Where did you see that?
A In the test cells at the division offices. There's engine test cells.
Q When did you first see those tests?
A It would probably have been around 1978, when I first visited the new division offices in Lisle.
Q What was your purpose in viewing tests on removal of gaskets in the engine test cells in 1978?
A I was up for a seminar and we did a building tour and toured all the engineering areas, and basically they showed us what they did and things like that.

Q Do you remember seeing any tools that were used by the persons who were removing those gaskets when you toured that facility in 1978?
A I'm not sure what they were, but I know they used, like, a flat screwdriver to pop the head gaskets off.
Q Do you recall ever hearing any discussion about precautions to be taken by the persons who were removing asbestos-containing gaskets to avoid exposure to, you know, the hazards of asbestos?
MR. CELBA: I'm going to object.
MR. BERNARD: Are you talking just during the test removal?
MR. CELBA: Also it's argumentative in form and assumes facts not in evidence.
Go ahead.
A You mean during my visit there?
Q Right.
A I don't recall.
Q Do you recall seeing any posted warnings on the walls or anywhere in that facility concerning precautions to be taken or the hazards involved in removing asbestos-containing gaskets?
MR. CELBA: Same objection.
Go ahead.

A I don't recall at that time, no, ma'am.
Q And aside from your tour of that facility in 1978 during a seminar where you saw removal of gasket, did you ever see removal of gaskets at any other time as part of your tenure with Victor Products?
A I saw a lot from, like, my family and boyfriends. And in Churubusco, we had, like, a hands-on shop where they would do training, mechanics training and things like that. And they also did presentations at the division office for mechanics and things like that.
Q Now, was this training given by Victor Products?
A One of the -- usually one of the engineers, depending on what the subject was. If it was just about the various applications and material, you know, depended on who gave the presentations, but they'd usually do presentations in the -- either in the test cell area or in the conference room.
Q And these presentations were available to who?
MR. CELBA: Object. Lack of foundation. Speculation.
A I know there were other Dana people. I think there were some outside people. I'm not sure who all, because I didn't really pay that much attention to them. I didn't have to go.

Q Do you know if this training, for instance, in removal of gaskets by mechanics, was it offered by Dana to people who didn't work for the Dana company?
MR. CELBA: I'm going to object. Misstates the testimony of this witness.
A I don't know what all the trainings were or who all the people were that attended.
Q And you don't know if Dana offered this training, was my question, to people outside of the company.
MR. CELBA: Same objection. Foundation. Speculation.
A I don't know about Dana. At that facility, it was Victor Products, and I'm not sure who all the people were that received any kind of training or education on our products.
Q If you could pull -- before I get into the notice itself, the categories, I just want to talk about a couple of exhibits here that I marked, No. 5, and it's the Intra-Company Communication to Cummins, 00512 at the bottom. Could you pull that out?
A Yes, I have it.
Q Have you ever seen this document before?
A Yes, I have.
Q Was that at a prior deposition?

A Yes, ma'am.
Q Is this a document that was prepared by the Dana Corporation in its normal course of business?
MR. CELBA: I'm going to object. Foundation. Speculation.
Go ahead.
A The document was prepared by a Victor Products Division employee and --
UNIDENTIFIED SPEAKER: I'm sorry.
THE WITNESS: I'm sorry?
UNIDENTIFIED SPEAKER: Counsel, can we have that document, what exhibit number?
MS. VILLASENOR: No. 5.
BY MS. VILLASENOR:
Q I'm sorry, ma'am. Were you finished with your answer?
A You asked if this was a document that was prepared in the normal course of business for Victor?
Q Well, it says Dana Corporation and also Victor Products Division on the top, and my question is, is this a document that was prepared in the normal course of business by Dana Corporation, and I'll add the Victor Products Division.
MR. CELBA: Same objections.
A For the Victor Products Division, there were all

kind of different reports done for various reasons. This just looks like one of them. We did a lot of different reports during the normal course of business.
Q Do you have any reason to doubt that this is a business record for the Victor Products Division of Dana Corporation?
MR. CELBA: Same objection.
A No, ma'am
Q Do you know who the author is? And if you look on the second page, Mr. Jim, I think it's Beuscher?
A Beuscher.
Q Beuscher. Thank you. Do you know that gentleman?
A Yes, I do.
Q And what was his title with -- was it Victor Products?
A Yes, ma'am.
Q What title did he hold?
A At that time, he was the general sales manager for the Victor Products Division.
Q And who was Mr. Dick Forde, F-O-R-D-E, or Forde?
A It's Forde, and Dick Forde was the general manager of the Victor Products Division at that time.
Q Did you have any involvement in assisting with the preparation of this intra-company communication?

A No, ma'am.
Q Did you ever see this document while you were still employed with Victor?
A Not that I recall, no.
Q Does Mr. Beuscher still work for the Dana Corporation in any of its divisions?
A No, ma'am. He's been retired for many years.
Q Do you know approximately when he retired?
A He was retired when I came back to the division in 1988. I don't know exactly for how long. I think just a couple years.
Q Is he still alive, as far as you know?
A As far as I know, yes.
Q And how about Mr. Forde? Is he still with the Dana Corporation in any of its divisions?
A No, ma'am. He's also been retired for several years.
Q And approximately when did he retire?
A I'm not sure, because he left our division and went to another division. I'm not really sure, but it was after I came back to the division in '88.
Q Relative to some of the terms, the words that we see in this document, I wanted to ask you some questions. Underneath the name Dick Forde, it says "The following analysis covers the dollar sale of

each of the reference products for 1984."
Do you know what they're referring to when they say reference product?
MR. CELBA: Object. Foundation. Speculation. Document speaks for itself.
A No, ma'am, I don't.
MS. VILLASENOR: And just to respond to the objection, I'm not sure that it does speak for itself, Counsel, because I don't see reference products defined, but I'll keep going here.
Q This appears to be a report for the year 1984, and that would be total sales for the year of 1984; is that your understanding?
MR. CELBA: Same objection.
A It says that it's 1984 for the top 23 OE accounts plus material sales.
Q And "OE" meaning original equipment?
A Yes, ma'am.
Q And so would that mean original equipment manufacturers as opposed to -- or let me ask you. Is that just original equipment manufacturers?
MR. CELBA: Same objection.
A It would be the original equipment, or vehicular, you know, the people who are making the original equipment that the product went into.

EXHIBIT "J"