CAUSE NO. 01-CV-0476

KENNETH N. DIXON, LAFONDA DIXON, INDIVIDUALLY AND AS NEXT OF FRIEND OF DIXIE BELLE DI|XON,	§	IN THE DISTRICT COURT OF
vs.	§	GALVESTON COUNTY, TEXAS
A. P. GREEN INDUSTRIES, INC., ET AL.,	§	10TH JUDICIAL DISTRICT

DEFENDANT UNION CARBIDE CORPORATION'S MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant Union Carbide Corporation moves for summary judgment for the following reasons:

I. BACKGROUND AND OVERVIEW

Kenneth Dixon's family and estate have brought suit against Union Carbide for its alleged negligence in supplying asbestos fiber to manufacturers of joint compound. Union Carbide's asbestos fiber (known as Calidria) was one source of raw asbestos used by joint compound manufacturers during the 1970s. There is no evidence that Union Carbide actually supplied *the* fiber added to joint compound used by Kenneth Dixon. However, plaintiffs claim nonetheless that exposure to joint compound with supposed Calidria fibers caused Dixon's cancer and subsequent death.

Union Carbide should be granted summary judgment in this case because:

- In *Cimino v. Raymark Indus., Inc.*, 151 F.3d 297 (5th Cir. 1998), the Fifth Circuit held that a supplier of asbestos fiber that is subsequently incorporated by a manufacturer into a finished product is not liable under Texas law for failure to warn a user of that asbestos-containing product. Union Carbide cannot be held liable for injuries to Kenneth Dixon allegedly caused by a third party manufacturer's asbestos-containing joint compound, where Union Carbide had no role in the design,

manufacture, or sale of the joint compound.

- Additionally, there is no evidence that Union Carbide was the actual supplier of the asbestos fiber allegedly mixed in joint compound containers used by Kenneth Dixon. Plaintiffs can present only inadmissible speculation, which is insufficient to defeat a no-evidence motion for summary judgment.

II. STANDARD OF REVIEW

A. Summary Judgment: Generally

Summary judgment is appropriate when the non-movant has no viable cause of action or defense based on the nonmovant's pleadings. *National Un. Fire Ins. Co. v. Merchants Fast Motor Lines, Inc.*, 939 S.W.2d 139, 141 (Tex.1997). There is no cause of action available against Union Carbide for supply of asbestos fibers to a third party manufacturer.

B. No-Evidence Summary Judgments

Texas Rule of Civil Procedure 166a(i) provides that a party may move for summary judgment on the grounds that there is no evidence of one or more essential elements of a claim on which the adverse party would have the burden of proof at trial. TEX. R. CIV. P. 166a(i). It is the plaintiffs' burden to bring forth more than a scintilla of evidence to defeat a no-evidence summary judgment motion. *Macias v. Fiesta Mart, Inc.*, 988 S.W.2d 316, 316-17 (Tex. App.–Houston [1st Dist.] 1999, n.w.h.). Evidence which is so weak as to do no more than "create a mere surmise or suspicion of a fact" is not sufficient to satisfy the plaintiffs' burden. *Sonnenberg v. Mike Smith Auto Plaza*, 8 S.W.3d 850, 852 (Tex. App. - Beaumont [9th Dist.] 2000), no writ.

In order to defeat this no-evidence motion for summary judgment, plaintiffs must bring forth **admissible** summary judgment evidence. *United Blood Servs. v. Longoria*, 938 S.W2d 29, 30 (Tex. 1997). This evidence must rise "to a level that would enable reasonable and fair-minded people to differ in their conclusions." *Burroughs Wellcome Co. v. Crye*, 907 S.W.2d 497, 499 (Tex.1995). Plaintiffs are unable to bring forth admissible evidence showing that Union Carbide's asbestos fibers

were added to any particular joint compound used by or around Kenneth Dixon.

III. MOTION FOR SUMMARY JUDGMENT BASED ON TRCP 166a

A. There Is No Cause of Action in Texas Against a Supplier of Asbestos Fiber.

Plaintiffs may not hold Union Carbide liable for the supply of asbestos fibers to joint compound manufacturers. This result is dictated by the Fifth Circuit's decision in *Cimino v. Raymark Indus., Inc.*, 151 F.3d 297, 334 (5th Cir. 1998), in which the court held that an asbestos fiber supplier was not liable to a user of a product incorporating that raw asbestos material.

The facts in *Cimino* are similar to those present in this case. In *Cimino*, Asbestos Corporation, Limited (ACL) was a raw asbestos supplier of chrysotile asbestos mined in Canada. From 1951-1961, ACL sold and shipped the minimally-processed raw asbestos to Fibreboard in the United States. Fibreboard further refined the raw chrysotile asbestos and blended it with other asbestos, including amosite asbestos obtained from other suppliers. Then Fibreboard took the asbestos and incorporated it into a variety of Fibreboard's asbestos-containing finished products. These finished products were then sold to other entities and end users. There was evidence that during the years 1951-1961, ACL supplied at least 50% of the asbestos used by Fibreboard. In 1962, Fibreboard stopped purchasing from ACL. Unlike Fibreboard, ACL was never involved in the design, manufacture, sale, or distribution of any asbestos-containing finished product.

The district court held that ACL was potentially liable due to its derivative relationship with Fibreboard. However, the Fifth Circuit disagreed and held that ACL had no duty to end users who were allegedly harmed by exposure to that raw material incorporated into the finished products of third-party intermediary manufacturers. *Id.* The Fifth Circuit noted that it had previously held that not all asbestos-containing products are defective or unreasonably dangerous. *Id.* at 331. The Court then reasoned that, "if asbestos-containing finished products are not all unreasonably dangerous or defective, then it necessarily follows that ordinary raw asbestos sold to a sophisticated and

knowledgeable manufacturer of such products is not of itself defective or unreasonably dangerous." *Id.* The Court further explained,

> [T]he district court [did not] find that ACL failed to adequately warn Fibreboard or that Fibreboard was not fully knowledgeable of the relevant risks posed by its asbestos-containing insulation products. Indeed, the evidence virtually compels the conclusion that Fibreboard was so aware. That being the case, any failure to warn Fibreboard would be clearly immaterial.

Id. (citing RESTATEMENT (THIRD) TORTS: PRODUCTS LIABILITY (1997) § 2, cmt I).

The Fifth Circuit considered whether on such facts – where a raw material is not itself defective and where the manufacturer is not ignorant of the risks associated with using the material – the supplier may nevertheless owe a duty to warn an end user of potential risks. Looking to the Third Restatement of Torts, the court held that a supplier does not owe such a duty. The court explained,

> *[R]aw-materials sellers are not subject to liability for harm caused by defective design of the end product.* The same considerations apply to failure-to-warn claims against sellers of raw materials. *To impose a duty to warn would require the seller to develop expertise regarding a multitude of different end-products and to investigate the actual use* of raw materials *by manufacturers over whom the supplier has no control. Courts uniformly refuse to impose such an onerous duty to warn.*

Id. at 333 (quoting RESTATEMENT (THIRD) TORTS: PRODUCTS LIABILITY, § 5 cmt. c) (emphasis in original).

In reaching its decision, the Fifth Circuit specifically relied on the following factors: (a) as a "basic raw material," the ACL-supplied asbestos fiber itself was not defective; (b) Fibreboard was a "sophisticated, expert, and knowledgeable manufacturer who produced diverse finished products into which it incorporated, after refining it, the raw asbestos was purchased from ACL (and other suppliers)"; (c) there was no basis for finding that Fibreboard was "unaware of the asbestos-related risks presented by its finished insulation products"; (d) ACL played no role in the design, manufacture, sale, or distribution of the Fibreboard insulation products; and (e) that there was "no

practical way ACL could have warned plaintiffs of the risks posed" by Fibreboard insulation products. *Id.* at 334-35. Accordingly, ACL was not liable as a supplier of this raw material – chrysotile asbestos.

The facts of the instant case are virtually identical to the situation presented in *Cimino.*

a. Union Carbide (like ACL) supplied chrysotile asbestos fibers to numerous manufacturers including those manufacturers at issue in this case, Georgia Pacific and United States Gypsum.1

b. It is undisputed that, like Fibreboard, Georgia Pacific and United States Gypsum were sophisticated users of asbestos.2

c. It is undisputed that there is no basis for finding Georgia Pacific or United States Gypsum was unaware of the risks associated with asbestos.3

d. There is no basis for finding that Union Carbide participated in (1) the design of the joint compounds, (2) the formulation of the joint compound products, (3) the manufacture of the joint compounds, (4) the packaging of the joint compounds, (5) or the decision on whether to place a warning on the packaging.4

e. Union Carbide sold asbestos fibers to various manufacturers. There was no practicable method for Union Carbide to warn the plaintiffs of any alleged risks associated with asbestos.5

The application of *Cimino* to the facts of the case at bar compels the conclusion that Union Carbide cannot be held liable for injuries as a result of alleged exposure to the joint compounds manufactured, sold, and distributed by sophisticated manufacturers.

B. Plaintiffs Have Presented No Evidence of Causation and Duty.

Alternatively, Union Carbide is entitled to summary judgment on the ground that plaintiffs have presented no evidence on the elements of causation and duty. Under Texas law, causation must

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1 See Exhibit A: Deposition transcript of John L. Myers, taken on May 16-17, 2002, on pages 115-123. As stated on pages 115-116 of his deposition, John Myers was an employee of Union Carbide who worked with the particular type of asbestos fiber at issue in this case, Calidria. He started work at Union Carbide's asbestos department in 1966 and moved to the plant that produced the fiber at issue in 1967. He was in charge of marketing the Calidria fiber from 1970-1981.

2 See Exhibit A: pages 115-123; 471-472. Also, see Exhibit C: Paragraphs 3 and 4 of Plaintiffs' Original Petition.

3 See Exhibit A: pages 441-447. Also, see Exhibit C: Paragraphs 4 of Plaintiffs' Original Petition.

4 See Exhibit A: pages 115-123 and 471-472.

be determined on an individual basis; thus, plaintiffs must establish that exposure to Union Carbide's products was a cause of the injury. *See Cimino*, 151 F.3d at 319. Plaintiffs have no evidence that Union Carbide was the actual and specific supplier of the asbestos fiber mixed in the specific joint compound bags used by Kenneth Dixon. Without this evidence, plaintiffs have no evidence that Union Carbide's asbestos fiber caused their injuries. Union Carbide did not owe a duty to Kenneth Dixon unless he was exposed to its asbestos fibers.

It would be sheer speculation to suggest that a particular bag of United States Gypsum or Georgia Pacific joint compound used by Kenneth Dixon contained asbestos fiber supplied by Union Carbide. Speculation is inadmissible at trial and cannot be considered by this Court. *United Blood Servs. v. Longoria*, 938 S.W2d 29, 30 (Tex. 1997). Therefore, for this alternative reason, summary judgment on behalf of Union Carbide is appropriate.

V. SUMMARY JUDGMENT EVIDENCE

Pursuant to Rule 166a(d), Defendant. relies upon the pleadings on file with the court and the following summary judgment evidence:

Exhibit "A": Excerpts from the deposition of John L. Myers taken in Cause No. 48 191131 02; *Gravitt, et al v. Rondex International, Inc., et al.*, in the 48th District Court of Tarrant County, Texas on May 16-17, 2002.

Exhibit "B": Affidavit of Marc Waters.

Exhibit "C": Plaintiffs' Original Petition, filed August 30, 2001.

Exhbits "A", "B", and "C" are incorporated by reference herein.

VI. CONCLUSION

For these reasons, Union Carbide respectfully requests that this Court grant this motion for summary judgment and enter a final order denying all relief requested in Plaintiffs' original petition and all subsequent petitions. Additionally, Union Carbide requests any and all further relief to which

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5 See Exhibit A: pages 471-472.

it may show itself justly entitled.

Respectfully submitted,

POWERS & FROST, L.L.P.

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument has been forwarded to plaintiffs' counsel by hand delivery, and all counsel of record via certified mail, return receipt requested; and/or via overnight carrier; and/or via first class, regular mail, on this the 4th day of September 2002.

CAUSE NO. 01-CV-0476

KENNETH N. DIXON, LAFONDA DIXON, INDIVIDUALLY AND AS NEXT OF FRIEND OF DIXIE BELLE DI|XON,	§	**IN THE DISTRICT COURT OF**
vs.	§	**GALVESTON COUNTY, TEXAS**
A. P. GREEN INDUSTRIES, INC., ET AL.,	§	**10TH JUDICIAL DISTRICT**

ORDER

On this day came for consideration, Defendant Union Carbide Corporation's Motion for Summary Judgment. After considering the pleadings, the Motion, the Response, and other evidence on file, this court grants the motion.

It is hereby, ORDERED, ADJUDGED, and DECREED that the Motion for Summary Judgment is GRANTED.

A final summary judgment denying all relief requested by Plaintiff in Plaintiff's Original Petition and all subsequent petitions filed thereafter is hereby entered.

SIGNED on this _____ day of _____, 2002.

_____
JUDGE PRESIDING

APPROVED AND ENTRY REQUESTED BY:

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CAUSE NO. 01CV0476

KENNETH N. DIXON, LAFONDA DIXON, INDIVIDUALLY AND AS NEXT OF FRIEND OF DIXIE BELLE DIXON	§	IN THE DISTRICT COURT OF
Plaintiffs,	§	GALVESTON COUNTY, TEXAS
VS.	§	
A.P. GREEN INDUSTRIES, INC., ET AL	§	
Defendants.	§	10TH JUDICIAL DISTRICT

NOTICE OF SUBMISSION

Please take notice that Union Carbide Corporation d/b/a Union Carbide Chemicals and Plastics, Inc. has set the following for submission before this Court on the 26th day of September of 2002, at 4:00 p.m.:

Defendant Union Carbide Corporation's Motion for Summary Judgment.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been served on Plaintiffs' counsel of record, **Ian P. Cloud and Troy Chandler, ROBINS, CLOUD GREENWOOD & LUBEL, L.L.P.**, via hand delivery and via first class mail to all other counsel of record on this the 4th day of September, 2002.



IN THE DISTRICT COURT OF TARRANT COUNTY, TEXAS
48TH JUDICIAL DISTRICT
--o0o--

CICERO GRAVITT and JOANNE GRAVITT,

Plaintiffs,

vs.

No. 48 191131 02

BONDEX INTERNATIONAL, INC., et al.,

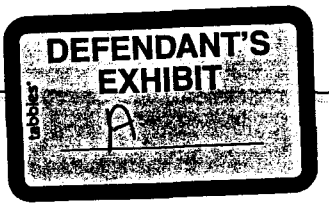
Defendants.

VIDEOTAPED DEPOSITION OF JOHN L. MYERS
VOLUME I

Date: Thursday, May 16, 2002

Time: 10:27 A.M.

Location: Hilton Hotel
1000 Aguajito Road
Monterey, California



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I see the same names on several different documents here.
Q. Okay. And maybe it would be helpful to put this in context. Can you quickly review, we talked a little bit about your work background, why don't you review for the jury your experience in Union Carbide's asbestos business. That started in 1966; is that correct?
A. That's correct.
Q. Okay. Why don't you tell us where you worked and what you did during your career working in the asbestos operation for Union Carbide.
A. I -- it started in 1966 in Niagara Falls, New York, and there I worked on the research and development department. My main responsibility was a -- helping design a pilot plant for producing RG 244. In '67 I went to the King City plant as technical superintendent, and then helped start up the production plant for RG 244.
Q. And for the benefit of the jury, that's one of the grades or types of Calidria asbestos that you sold at Union Carbide; is that correct?
A. Yes, that's correct.
Q. And Calidria was your brand name or trade name?

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A. Trade. That was a trade name, yes.
Q. What did you do after 1970 then?
A. In 1970 I transferred back to Niagara Falls as marketing manager. And in 1981 I transferred back to King City as product and production manager.
Q. Were you the top guy from 1981 to 1985 at the King City facility?
A. At King City, yes.
Q. So you ran the mill; is that correct?
A. The mine and the mill, yes.
Q. And from 1970 to 1981 you were in charge of marketing Calidria asbestos for Union Carbide; correct?
A. Yes.
Q. All right. Now, how many tons of Calidria asbestos were you mining and milling -- hold on a second. I should turn that off.
Approximately how many tons of Calidria asbestos was Union Carbide mining, milling and selling in the 1970s, sir?
A. That would depend on the year.
Q. Can you give us a range?
A. I would say between 20,000 tons and 35,000 tons.
Q. And would that have been true as well in

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the late 1960s when you were first at the King City facility?
A. No. We started off very slow and very small. I would think less -- I don't know the numbers before 1970.
Q. And when you say slow and small, Union Carbide actually started selling asbestos that was mined and milled at King City in 1963; correct?
A. Yes.
Q. So you were three or four years into the operation when you first arrived out there in 1967; correct?
A. Yes. '67, yes.
Q. And part of the reason you were there actually was to expand the operation and to produce another product line; is that correct?
A. Well, that's not really expansion. That's a very small production, RG 244 was a very -- a very low tonnage item.
Q. And that was a kind of asbestos that Union Carbide continued to make and sell throughout the 1970s? It was a successful product line; is that true?
A. Yes.
Q. Okay. In addition to the King City mine, I

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understand that Union Carbide also operated an asbestos mine in Zimbabwe, Rhodesia, in Africa; is that correct?
A. I don't know anything about operating it. I know we had the property in Zimbabwe.
Q. You owned an asbestos mine, you meaning Union Carbide owned an asbestos mine in Zimbabwe; correct?
A. To the best of my knowledge, yes.
Q. And did Union Carbide sell asbestos from their Zimbabwe mine as well?
A. Not to my -- not in the U.S. at least.
Q. Did they sell asbestos from their Zimbabwe mine elsewhere in the world besides the U.S.?
A. I have no knowledge of the Zimbabwe mine.
Q. Did you ever speak with any of the individuals who were involved in that operation in Zimbabwe or as it was previously known Rhodesia?
A. No.
Q. You didn't know anyone from the company who worked in that operation?
A. No.
Q. All right. There were a number of different market sectors that Union Carbide aimed for with their Calidria asbestos; is that true?

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A. Yes.
Q. And a couple of the major ones were asbestos floor tiles; is that correct?
A. Yes.
Q. And asbestos tape joint compounds or joint compounds; correct?
A. Yes.
Q. I want to talk to you a little bit about your tape joint compound sector of the market. Why don't you list for me who your main customers were that you can recall for asbestos used in tape joint compounds.
ASBESTOS DEFENDANTS: Objection. Form.
ASBESTOS DEFENDANTS: Objection. Vague.
THE WITNESS: U.S. Gypsum, National Gypsum, Kelly-Moore, I think there was someone called Proko. I can't recall any others at this time.
BY MR. KRAUS:
Q. How about Synko or Synkoloid, did you sell to them?
A. It doesn't -- I don't remember that we did.
Q. Did you ever sell to a company called Bondex?
A. I don't remember that name.
Q. Did you ever sell asbestos for joint

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compounds sold by Flintkote?
A. I didn't know they were in the tape joint compound -- we sold to the Flintkote company for floor tile, but I didn't know they were tape joint compounds. I don't remember that we ever sold that product to them.
Q. Okay. How about Dowman, does that sound familiar?
A. No.
Q. Kaiser-Gypsum?
A. Yes. Yes.
Q. Hamilton Joint Compound, does that sound familiar?
A. No, I can't be sure of that one.
Q. Okay. Can you give me an estimate of when in your experience Union Carbide began to sell to that sector of the industry?
A. I don't remember.
Q. Did it pre-date your involvement as director of marketing for asbestos?
A. I don't think so. It think it was in the early -- early in the '70s.
Q. So as you sit here today it's your belief that Union Carbide was not selling to that sector of market in the late 1960s?

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A. It was my -- it's my belief that we were not. That was 30 years ago.
Q. Well, I understand. I -- I have seen and it's in my stack of documents here, and I think I asked you about it earlier today a October 1968 brochure for Calidria for use with tape joint compound customers. Do you recall that brochure?
A. Yes.
Q. And does the fact that its date is October 1968 cause you to believe that perhaps there were some sales to that sector of the market in the 1960s?
A. Yes. I guess it would.
Q. And I think that's Exhibit 5391; is that correct? Is that a copy of that?
A. 5391, yes.
Q. Okay. And have you ever done any research to determine what the level or nature of asbestos sales to the joint compound industry was in, at any given time?
A. I'm sorry. Repeat, please.
Q. Have you specifically researched the sales to this sector of the industry for any given period of time, any of these companies that you've just identified for me?

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A. Not that I recall, no.
Q. Now, it is true, wasn't it, that it was not your primary responsibility to handle the joint compound customers during your tenure as director of marketing; is that true?
A. What do you mean "handle them"?
Q. That you were not directly involved in marketing to them?
A. My salesmen were, yes.
Q. Your salesmen were, but you yourself were not directly involved; is that correct?
A. I think I visited some of the companies on occasion if that's what you're asking.
Q. Well, I guess I was trying to determine your level of involvement. Have you testified in the past that you were not involved in marketing to the tape joint compound customers?
A. Well, I think involved in marketing I would be involved if my salesmen were calling on them.
Q. Well, maybe we can approach it this way. Who were the salespeople of those you previously named who were primarily responsible for that sector of your market?
A. We didn't assign our salesmen by sectors.
Q. By customers?

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A. By -- by -- they were assigned primarily by geography. So you could pick out probably anyone on that list and they may or may not have visited the tape joint companies.
Q. If a company like, for example -- you didn't name them but Georgia-Pacific, I take it --
A. Yes.
Q. -- was also a company that you sold to?
A. Yes.
Q. Both for paper and for joint compounds; is that correct?
A. I don't know about paper.
Q. But you did sell to them for use of joint compounds; is that true?
A. To the best of my remembrance, yes.
Q. All right, sir. If Georgia-Pacific had a plant in New York or Ohio and they also had a plant in Georgia, if those were different sales territories, would you typically have one salesman handling them or would there be different salespeople selling to Georgia-Pacific in different regions of the company?
A. There could be different salespeople, yes.
Q. Would that be typically how you handle it given that you say that you broke this up

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geographically or regionally?
A. Yes.
Q. Do you believe that joint compounds are friable products?
ASBESTOS DEFENDANTS: Objection. Form.
THE WITNESS: The dry -- yeah, if it's in dry bags. But if it's ready-mix, no, it's not friable.
BY MR. KRAUS:
Q. Okay. And you would agree with me that a ready-mix joint compound after it is applied and dried needs to be sanded just like a dry-mixed product; is that correct?
A. Yes.
Q. And it certainly produces dust in that operation just like a dry mix one would; is that correct?
A. Yes.
Q. Now, in addition to asbestos sales that we've discussed, Union Carbide made a few products that contained asbestos as well; is that true?
A. Yes.
Q. That was a product called Bakelite which was a Union Carbide product that contained asbestos; correct?

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A. Yes.
Q. There was a product that you all manufactured, I think at a plant in Bound Brook, New Jersey; is that correct?
A. Yes.
Q. Did you use Calidria in the manufacture -- your asbestos Calidria in the manufacture of Bakelite at Union Carbide?
A. As I recall, without reviewing sales records, we sold a few, sold them a little bit when the Canadian asbestos companies were on strike.
Q. So mostly they used Canadian asbestos?
A. Yes.
Q. And the Canadian asbestos for the benefit of the jury is chrysotile asbestos; is that correct?
A. Yes.
Q. And the Calidria asbestos you all sold is also chrysotile asbestos; correct?
A. Yes.
Q. Isn't it true that Bakelite obtained asbestos from 1927 to 1975?
A. I don't know that.
Q. Okay. Have you testified in the past that your understanding from your involvement in answering interrogatories is that Bakelite contained

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asbestos from 1927 to 1975?
A. I don't recall that I said that.
Q. Could you hand me the 1982 deposition.
The first deposition that you gave is in a case called Lester Rice, and, congratulations, that was now 20 years ago.
A. Thank you.
Q. Is that correct?
A. Yes. I don't have my calculator, but --
Q. April 9th, 1982. You've just celebrated your 20th anniversary of testimony in this asbestos litigation.
On page 43 at line 11, you were asked a question, "Now as I understand it Union Carbide marketed a product called Bakelite from 1927 through 1975." Your answer is "Right."
A. Okay.
Q. Do you see that?
A. I haven't found it yet. Oh.
Q. 43, line 11.
A. I'm sorry. Yes, I see that.
Q. Okay. Does that refresh your recollection about when that product was manufactured?
A. Well, obviously it does, but I don't know -- I don't know how I knew that then.

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availability of data developed after the issuance of our report in 1964. Dr. Dernehl and I have revised the asbestos memorandum." Do you see that?
A. Yes.
Q. Was that the practice of the company to keep up-to-date on changes in the medical literature and also in the regulatory environment and change the statements on the hazards of asbestos to follow those changes?
A. As far as I was concerned, it was, yes.
Q. Now, there's reference here to -- in the second paragraph, right in the middle, you see the discussion about "We briefly discussed mesotheliomas, but data is too scanty as yet for a definite policy to be established." Do you see that?
A. Yes.
Q. Do you recall that as being the case at the time, that data was too scanty at that time for a definite policy on mesothelioma to be established?
A. I couldn't personally remember noticing that or paying attention to that.
Q. But -- and I appreciate that, that '69 was many, many years ago. And obviously you -- this is a document that you got?

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A. Yes.
Q. Okay. And take a look, if you would, at what I'm going to show you as Exhibit 1.
(Deposition Exhibit No. 1 was marked for identification.)
BY MR. BICKS:
Q. This is a copy of the asbestos toxicology report dated May 8th, 1969 that was revised?
A. Yes.
Q. Do you see, and again just so we see what we're looking at here, the first sentence says that "It's been known for years that some persons working in asbestos production were prone to develop a disabling lung disease." Was that information that was disclosed to customers of Union Carbide in May 8th of 1969?
A. Again to asbestos customers.
Q. Yes. Thanks.
And let me look just down at the bottom paragraph where it says that, it talks about mesothelioma. Do you see that?
A. Yes.
Q. And can you read to us what that says.
A. It starts "A type of cancer named mesothelioma has been noted to be associated with

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asbestos exposure in recent years. These tumors, while rather few in number to date, may occur in individuals with histories of only slight exposures, and that as much as 20 to 40 years earlier. There is considerable evidence that crocidolite is most frequently associated with mesothelioma. From the data available, it appears that the TLV of 5 million particles per cubic foot may not be low enough to protect against mesothelioma. Research on the problem continues."
Q. And this was information that was provided to the customers of the Union Carbide asbestos business?
MR. KRAUS: Object to the form.
THE WITNESS: Yes.
BY MR. BICKS:
Q. Was this information provided to customers of the Union Carbide asbestos business?
A. Yes, it was.
MR. BICKS: Why don't we just take a short break while we change the tape.
THE VIDEOGRAPHER: This marks the end of volume two, tape number two in today's deposition of John Myers.
We are now going off the record. The time

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on the video screen is 2:35 P.M.
(Recess.)
THE VIDEOGRAPHER: Back on the record again at 2:44.
This marks the beginning of volume two, tape number three in the deposition of John Myers
BY MR. BICKS:
Q. Mr. Myers, take a look at Exhibit J, Myers J, that I've put before you. Do you see that?
A. Yes. Uh-huh.
Q. This is a May 9th, 1969 letter from Mr. Riddle to Mr. Tobin?
A. Yes.
(Deposition Exhibit No. J was marked for identification.)
BY MR. BICKS:
Q. I take it this is a true and complete copy of a Union Carbide document?
A. It appears to be, yes.
Q. Is this the type of letter that was sent out by Union Carbide enclosing a copy of the asbestos toxicology report for a customer?
A. Yes.
Q. Okay. Now, let me show you what we've marked as Exhibit K.

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(Deposition Exhibit No. K was marked for identification.)
BY MR. BICKS:
Q. And tell us what this is.
A. This is a letter from, dated August 6th, 1970 from H.B. Rhodes to Mr. John Juett.
Q. And this is a letter that is enclosing asbestos toxicology information?
A. Yes.
Q. Uh-huh. And you see in the enclosure, the paragraph enclosing the document, the first paragraph on the cover page?
A. Yes.
Q. And it says that "The presentation points out the most pertinent statements, but in recognition of the pitfalls of quoting out of context, also provides the complete articles for your examination." Do you see that?
A. Yes.
Q. Was that the practice of the company often to actually provide complete copies of medical articles on asbestos to customers?
MR. KRAUS: Object to the form of the question.
THE WITNESS: Yes.

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BY MR. BICKS:
Q. And take a look at the status summary that is attached to here.
A. Yes.
Q. Do you see that?
And -- and I think you just -- you skipped one page.
A. Oh.
Q. And what does this say?
A. "Status Summary - Mid 1970 Asbestos Toxicology."
Q. Okay. And do you see in the introductory paragraph, if you turn to that, this is referring to work of Dr. Selikoff. Do you see that?
A. Yes.
Q. Uh-huh. You were asked some questions about Dr. Selikoff by Mr. Kraus. Have you met -- do you know Dr. Selikoff, or did you know him when he was alive?
A. I have met him, yes.
Q. Uh-huh. And do you recall whether or not Union Carbide provided asbestos samples to Dr. Selikoff for various reasons?
A. Yes, we did.
Q. Tell us about that.

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A. I had met Dr. Selikoff and talked to him at a seminar, some kind of a -- he made a presentation there, and I was talking to him during one of the breaks or after a session and telling him about our asbestos pellets and about our short fiber asbestos, and I think during the conversation he requested samples and any information we had on the -- on the asbestos.
Q. Was there any reluctance on your part to turn over your asbestos samples to Dr. Selikoff?
A. Oh, not at all, no.
Q. Why did you do that?
A. Well, we thought it would give us -- give us an opportunity to get some work done by one of the experts in the field.
Q. Uh-huh. Look at the first sentence in the conclusion of this paragraph. What does that say, the first sentence?
A. "These references lead to the conclusion that there is a hazard in the use of asbestos."
Q. And then attached to this there are a series of articles and other items?
A. Yes.
Q. And this was information that was provided to the customers of the Union Carbide asbestos

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group?
A. Yes.
Q. Okay. Look if you would at the last -- at pages 4 and 5 of the asbestos toxicology summary.
A. Okay.
Q. Do you see where it talks -- the heading is "Action by the U.S. Government"?
A. Yes.
Q. And do you see it talks about -- at the paragraph that's right at the bottom of the page, it talks about the Walsh-Healy Public Contracts Act?
A. Yes.
Q. Okay. And it says that "This act reduces the allowable level of asbestos dust from 5 to 2 million particles per cubic foot." Are you with me?
A. Yes.
Q. Okay. And then the sentence that continues over says "Although it has been generally accepted that a worker will not develop asbestosis if he is exposed to no more than 5 million particles per cubic foot of air, even if the exposure continues for his entire working lifetime, the reduction in allowable limit represents an effort to increase the safety factor." Was that the view of the Union Carbide Corporation that was sent to its customers?

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12:45:18 1 According to the government, what does that say
12:45:18 2 after that?
12:45:18 3 A. "Both contentions have merit and the
12:45:18 4 standard has been changed accordingly."
12:45:18 5 Q. "Both contentions have merit and the
12:45:18 6 standard has been changed accordingly." Did I read
12:45:18 7 that right?
12:45:18 8 A. Yes.
12:45:18 9 Q. And then we go to the language that was
12:45:18 10 actually mandated in this statute, and that was the
12:45:18 11 exact language that was on our bag?
12:45:18 12 A. Yes.
12:45:18 13 Q. As your role as an official in the asbestos
12:45:18 14 business did you make efforts to comply with
12:45:18 15 government regulations?
12:45:18 16 A. Yes.
12:45:18 17 Q. And this information --
12:45:18 18 A. Let me -- let me be -- the mill and mine
12:45:18 19 complied with OSHA standards or actually they were
12:45:18 20 administered by CAL/OSHA. The standards did not
12:45:18 21 apply to the marketing group. We would know about
12:45:18 22 the standards and pass that information on to
12:45:18 23 customers.
12:45:18 24 Q. Uh-huh. And this is indicating here, is it
12:45:18 25 not, in the government regulations that the question

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12:45:18 1 of putting cancer on the label came up but the
12:45:18 2 government did not think that that should be done?
12:45:18 3 Am I interpreting that --
12:45:18 4 A. That's correct.
12:45:18 5 MR. KRAUS: Object to the form of the
12:45:18 6 question.
12:45:18 7 BY MR. BICKS:
12:45:18 8 Q. And, sir, you were actually involved in
12:45:18 9 participating in the OSHA hearings, were you not?
12:45:18 10 A. As far as I remember, I was, yes.
12:45:18 11 Q. And while the word cancer may not, it does
12:45:18 12 not appear on this label, does it?
12:45:18 13 A. No.
12:45:18 14 Q. But all the literature that we just looked
12:45:18 15 at that was sent out to customers, if you had to
12:45:18 16 count up how many times the word cancer was
12:45:18 17 mentioned, how many times do you think it would be?
12:45:18 18 A. It would be several hundred at least, I
12:45:18 19 think.
12:45:18 20 Q. Did we also at Union Carbide send out to
12:45:18 21 customers from time to time customer mailings?
12:45:18 22 A. Yes.
12:45:18 23 Q. Of information on the hazards of asbestos?
12:45:18 24 A. Yes.
12:45:18 25 Q. Let me show you what we'll mark as Exhibit

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12:45:18 1 AA.
12:45:18 2 (Deposition Exhibit No. AA was marked for
12:45:18 3 identification.)
12:45:18 4 THE WITNESS: Okay.
12:45:18 5 BY MR. BICKS:
12:45:18 6 Q. Do you have that in front of you, sir?
12:45:18 7 A. Yes.
12:45:18 8 Q. And it says in the first paragraph "As part
12:45:18 9 of our continuing effort to emphasize the importance
12:45:18 10 of keeping you, your employees and your customers
12:45:18 11 advised of the best practices for using asbestos
12:45:18 12 safely, we are enclosing herewith a copy of our
12:45:18 13 material safety data sheet for Calidria asbestos
12:45:18 14 dated September 1st, 1976."
12:45:18 15 A. Yes.
12:45:18 16 Q. And then it indicates that additional
12:45:18 17 copies are available, and then it reflects that
12:45:18 18 additional materials are being sent to customers?
12:45:18 19 A. Yes.
12:45:18 20 Q. Uh-huh. It says down at the bottom -- and
12:45:18 21 can you read to us what that says, that paragraph
12:45:18 22 that says, "Please advise."
12:45:18 23 A. "Please advise each of your employees who
12:45:18 24 handles our Calidria asbestos that you have such
12:45:18 25 safety data and pamphlets and that they are

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12:45:18 1 available to them. In addition, we are also
12:45:18 2 concerned that your customers and ultimately their
12:45:18 3 employees be kept informed by you of the best safety
12:45:18 4 practices for using your product containing
12:45:18 5 asbestos."
12:45:18 6 Q. Now, why was that stated here?
12:45:18 7 A. Well, that's -- we had no way to directly
12:45:18 8 communicate with our customers' employees, and even
12:45:18 9 less of a chance to communicate with our customers'
12:45:18 10 customers or their employees, so this was the best
12:45:18 11 way we could see to try to make sure everyone down
12:45:18 12 the line knew as much as possible.
12:45:18 13 Q. So we're clear, and I think we've heard
12:45:18 14 enough over the last couple days to understand this,
12:45:18 15 but just for the ladies and gentlemen of the jury,
12:45:18 16 Union Carbide was selling asbestos fiber, right, to
12:45:18 17 other parties?
12:45:18 18 A. Yes.
12:45:18 19 Q. Union Carbide wasn't selling asbestos to,
12:45:18 20 you know, end-users, if you will, of asbestos
12:45:18 21 products?
12:45:18 22 A. No. No.
12:45:18 23 Q. The asbestos fiber that Union Carbide was
12:45:18 24 selling to people, those people would put the
12:45:18 25 asbestos in whatever product they were

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manufacturing, and they in turn would sell it to third parties?
A. Yes.
Q. Did Union Carbide have any control over the customers who were ultimately purchasing asbestos?
A. Asbestos-containing products?
Q. Yes.
A. No
Q. Now, this was a 1977 letter. And this was a letter that went to all customers --
A. Yeah.
Q. -- of the Union Carbide asbestos group?
MR. KRAUS: Object to the form.
THE WITNESS: Yes.
BY MR. BICKS:
Q. Was this such a letter?
A. Yes.
Q. Okay. And let me just show you again Exhibit 19 -- Exhibit BB. This is a similar letter to the one that we just looked at.
A. Yes.
(Deposition Exhibit No. BB was marked for identification.)
BY MR. BICKS:
Q. Uh-huh. And this is again a document out

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of the files of the Union Carbide Corporation?
A. Yes.
Q. Accurate, true, correct?
A. Yes.
Q. And you see this letter from Mr. Byrne, the second paragraph from the bottom, he says, "We're also concerned that your customers and ultimately their employees be kept informed by you of the best safety practices for using your products containing asbestos"?
A. Yes.
Q. Was that a concern to the Union Carbide Corporation?
A. Well, it was to our asbestos group, yes.
Q. Okay. 1980, Exhibit OO -- CC. I'm sorry.
(Deposition Exhibit No. CC was marked for identification.)
BY MR. BICKS:
Q. A similar letter to all of the Calidria asbestos customers?
A. Yes.
Q. Enclosing materials on the hazards of asbestos and expressing concern that their employees and customers be notified of those hazards?
A. Yes.

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Q. 1981, Exhibit DD.
(Deposition Exhibit No. DD was marked for identification.)
BY MR. BICKS:
Q. Is this another such letter, November 23rd, 1981 from the files of the Union Carbide Corporation?
A. Yes.
Q. December 9th, 1981, Exhibit EE, another letter to all the customers of the Calidria asbestos business telling them about the hazards of asbestos?
A. I think this was perhaps directed to distributors.
(Deposition Exhibit No. EE was marked for identification.)
BY MR. BICKS:
Q. These were distributors of Calidria asbestos?
A. Yes.
Q. Okay. Let me just ask you, remember the discussion you had with Mr. Kraus about the 5 million -- 5 fiber versus 2 fiber standard? Do you remember that?
A. Yes.
Q. And he was asking you questions about some

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of the changes in the toxicology reports and the disclosures that were made about mesothelioma; do you remember that?
A. Yes.
Q. Uh-huh. Take a look at this information that was being sent out, and I'm looking -- if you look down at the bottom it's page 485450. Really just look for 450 it's probably the easiest.
A. Okay.
Q. This is a government regulation that was sent out?
A. Yes.
Q. And look, do you see the column all the way over to the right? Are you with me?
A. Yes.
Q. And I'm looking at the second paragraph down which says, "It is fair to say." Are you with me?
A. Yes.
Q. And that says, "It's fair to say that the controversy has centered in the area between a two-fiber TWA concentration and five-fiber TWA concentration with variations on the time needed for compliance. Many employers support a five-fiber TWA. Most medical opinion is divided between a

KENNETH N. DIXON, LAFONDA DIXON, INDIVIDUALLY AND AS NEXT OF FRIEND OF DIXIE BELLE DI|XON,	§	**IN THE DISTRICT COURT OF**
vs.	§	**GALVESTON COUNTY, TEXAS**
A. P. GREEN INDUSTRIES, INC., ET AL.,	§	**10TH JUDICIAL DISTRICT**

AFFIDAVIT OF MARC WATERS

IN THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

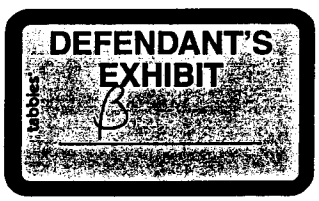
On this day, the below signed personally appeared before me, and having being duly sworn, averred as follows, to wit:

"My name is Marc Waters. I am over twenty-one years of age, of sound mind, have never been convicted of a felony or crime of moral turpitude and am fully competent to give this affidavit. I have personal knowledge of the facts contained herein, and each fact is true and correct;

I am an attorney licensed to practice law in the State of Texas. I represent the Union Carbide Corporation in the above styled and number cause. As part of my representation of the foregoing entities, I am personally familiar with the pleadings on file in the above styled and referenced cause, along with the written discovery that has been conducted, and depositions that have been taken in conjunction with Plaintiff Kenneth Dixon's complaints regarding his alleged exposure to asbestos;

I know that the materials attached to Defendant's Motion for Summary Judgment as Exhibits "A"-"C" are true and correct originals, excerpts and/or copies of originals;

Further Affiant Sayeth Not."



Signed on this the 4th day of September, 2002.

NOTARY PUBLIC STATE OF TEXAS

BARBARA A. WILLIAMS
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
SEPT. 24, 2002

CAUSE NO. 01CV0476

KENNETH N. DIXON, LAFONDA DIXON, INDIVIDUALLY AND AS NEXT OF FRIEND OF DIXIE BELLE DIXON	§	IN THE DISTRICT COURT OF
V.	§	GALVESTON COUNTY, TEXAS
A.P. GREEN INDUSTRIES, INC., ET AL.	§	56TH JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

COMES NOW: Kenneth N. Dixon, LaFonda Dixon, individually and as next of friend of Dixie Belle Dixon, hereinafter referred to as Plaintiffs complaining of:

1. A.P. Green Industries, Inc., formerly known as A. P. Green Refractories Co., is a Delaware corporation and has at all times relevant to this litigation conducted business in the State of Texas but no longer maintains a registered agent for service of process in this State. Therefore, it is hereby requested that service of citation be issued and that this defendant be served by serving the Secretary of State of the State of Texas who shall then forward a copy to: 350 N. St. Paul Street, Dallas, Texas 75201

2. Able Supply Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with an agent for service in the State of Texas, to wit: Thomas J. Daubner 5220 Texas Avenue, Houston, Texas 77011

3. ACandS, Inc. is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with an agent for service in the State of Texas, to wit: C.T. Corporation System 350 North St. Paul Street, Suite 2900, Dallas, Texas 75201

4. AMF Incorporated, (successor in interest to B&B Engineering & Supply Co.), is a corporation organized and existing under and by virtue of the laws of the State of New Jersey with an agent for service in the State of Texas, to wit: CT Corporation 350 North St. Paul, Dallas, Texas 75201

5. Aqua-Chem, Inc. (d/b/a Cleaver-Brooks Division) has at all times relevant to this litigation conducted business in the State of Texas, and can be served with citation by serving its registered agent, to wit: C. T. Corporation System 350 North St. Paul Street, Dallas, Texas 75201

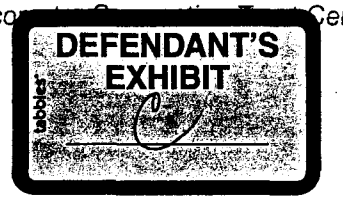
6. C.E. Thurston & Sons has at all times relevant to this litigation conducted business in the State of Texas , but no longer maintains a registered agent for service of process in this State. Therefore, it is hereby requested that service of citation be issued and that this defendant be served by serving the Secretary of State of the State of Texas who shall then forward a copy to the home office at: C.E. Thurston & Sons 4850 Brookside Court, Norkfolk, Virginia 23502

7. Combustion Engineering, Inc. may be served through its agent for service in the State of Texas, to wit: C.T. Corporation System 350 North St. Paul Street, Suite 2900, Dallas, Texas 75201

8. Crown Cork and Seal Company, Inc. Individually and as successor in interest to Mundet Cork Company may be served through its agent for service in the Sate of Texas, to wit: C.T. Corporation System 350 North St. Paul Street, Suite 2900, Dallas, Texas 75201

9. Dana Corporation may be served with citation by serving its registered agent, to wit: C.T. Corporation 350 North St. Paul Street, Suite 2900, Dallas, Texas 75201

10. Ferodo America, Inc. is a Delaware corporation and has at all times relevant to this litigation conducted business in the State of Texas, but no longer maintains a registered agent for service of process in this State. Therefore, it is hereby requested that service of citation be issued and that this defendant be served by serving the Secretary of State of the State of Texas who shall then forward a co[illegible]Center 1209 Orange Street, Wilmington, DE 19801



11. Flintkote Company, a corporation organized and existing under and by virtue of the laws of the State of Delaware, with an agent for service in the State of Texas, to wit: The Flintkote Company 50 California Street, 34th Floor, San Francisco, CA 94111-4712

12. Garlock, Inc. is an Ohio corporation and may be served with citation by serving its registered agent, to wit: C. T. Corporation System 350 N. St. Paul Street, Dallas, Texas 75201

13. Gasket Holding, Inc. individually and successor in interest to Flexitallic Gasket Company, may be served with process through Corporate Headquarters 6915 LaPorte Road, Deer Park, Texas 77536

14. General Refractories Company has at all times relevant to this litigation conducted business in the State of Texas, but no longer maintains a registered agent for service of process in this State. Therefore it is hereby requested that service of citation be issued and that this defendant be served by serving the Secretary of State of the State of Texas who shall then forward a copy to General Counsel 225 City Avenue, Suite 114 Bala Cynwyd, PA 19004

15. Georgia-Pacific Corporation Individually and as successor in interest to Bestwall Gypsum Company may be served through its agent for service in the State of Texas, to wit: C.T. Corporation System 350 North St. Paul Street, Suite 2900, Dallas, Texas 75201

16. Harbison Walker Refractories Company is a Delaware corporation and may be served with citation by serving its registered agent, to wit: C. T. Corporation System 350 N. St. Paul Street, Dallas, Texas 75201

17. I.U. North America, Inc. is a Delaware corporation and has at all times relevant to this litigation conducted business in the State of Texas, but no longer maintains a registered agent for service of process in this State. Therefore, it is hereby requested that service of citation be issued and that this defendant be served by serving the Secretary of State of the State of Texas who shall then forward a copy to: Corporation Trust Center 1209 Orange Street, Wilmington, DE 19801

18. Ingersoll-Rand Company is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with an agent for service in the State of Texas, to wit: C.T. Corporation System 350 North St. Paul Street, Suite 2900, Dallas, Texas 75201

19. J. T. Thorpe Company, individually and as successor in interest to Thorpe Insulation Company, a corporation organized and existing under and by virtue of the laws of the State of New York, with an agent for service in the State of Texas, to wit: W. Miller Thomas Fairchild, Price, Thomas, Haley & Willingham, P.O. Box 1719, 413 Shelbyville Street, Center, TX 75935

20. Kaiser Aluminum & Chemical Corporation may be served through its agent for service in the State of Texas, to wit: C.T. Corporation System 350 North St. Paul Street, Suite 2900, Dallas, Texas 75201

21. Kellogg Brown & Root, Inc. individually and as successor in interest to Brown & Root USA Inc.; the M.W. Kellogg Company; and C.F. Braun and Company, is a Delaware corporation and may be served with citation by serving its registered agent, to wit: C.T. Corporation System 1021 Main Street, Suite 1150, Houston, Texas 77002

22. Kelly-Moore Paint Company, Inc. is a company organized and existing under and by virtue of the laws of the State of California, with an agent for service in the State of Texas, to wit: Kenneth S. Wall 2727 Allen Parkway, Suite 1300, Houston, Texas 77019

23. Metropolitan Life Insurance Company is a corporation organized and existing under and by virtue of the laws of the State of New York, with an agent for service in the State of Texas, to wit: Robert E. Wolin 1717 Main Street, Suite 3100, Dallas TX 75201

24. Mid-Valley, Inc. is a Delaware corporation and may be served with citation by serving its registered agent, to wit: C.T. Corp System, 1021 Main Street, Suite 1150, Houston, TX 77002

25. Minnesota Mining & Manufacturing Co. "3M" is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with an agent for service in the State of Texas, to wit: C.T. Corporation System 350 North St. Paul Street, Suite 2900, Dallas, Texas 75201

26. National Service Industries, Inc. may be served with citation by serving its registered agent, to wit: Prentice Hall 800 Brazos, Austin, Texas 78701

27. North American Refractories Company is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with an agent for service in the State of Texas, to wit: C.T. Corporation System 350 North St. Paul Street, Suite 2900, Dallas, Texas 75201

28. Nosroc Corp has at all times relevant to this litigation conducted business in the State of Texas and may be served with citation by serving the Secretary of State of the State of Texas who shall then forward a copy to the home office at: Nosroc Corp. 300 Delaware Avenue, Suite 1704, Wilmington, Delaware 19801

29. Owens-Illinois, Inc. is a corporation organized and existing under and by virtue of the laws of the State of Ohio, and may be served through its agent for service, to wit: Michael McConnell Fiberglas Tower, One Seagate, Toledo, OH 43666

30. Pfizer, Inc., f/k/a Chas. Pfizer and Company, Inc., may be served through its registered agent, to wit: C.T. Corporation System 350 N. St. Paul Street, Dallas, Texas 75201

31. Quigley Company, Inc. may be served with citation by serving its registered agent, to wit: C.T. Corporation Systems 350 North St. Paul Street, Suite 2900, Dallas, Texas 75201

32. Rapid American Corporation individually and successor in interest to Glen Alden Corporation which is successor in interest to Phillip Carey Corporation and Phillip Carey Manufacturing Company, and may be served with process by serving its registered agent, to wit: CSC Corporation 2711 Centerville Road, Wilmington, DL 19808

33. Riley Stoker Corporation may be served through its agent for service in the State of Texas, to wit: C.T. Corporation System 1021 Main, Houston, Texas 77002

34. Synkoloid, A Division of Muralo Co., Inc. has at all times relevant to this litigation conducted business in the State of Texas, but no longer maintains a registered agent for service of process in this State. Therefore it is hereby requested that this defendant be served by serving the Secretary of State of the State of Texas who will then forward a copy to Synkoloid, A Division of Muralo Co., Inc. 148 East 5th Street, Bayonne, NJ 07002

35. T & N PLC, formerly known as Turner & Newell, PLC, a company organized and existing under and by virtue of the laws of England, with an agent for service in England, to wit: Managing Agent, Bowden House Ashburton Road West, Trafford Park, M17 1RA, England

36. The Carborundum Company is a Delaware corporation doing business in the State of Texas and may be served with citation by serving its registered agent, to wit: Thomas Tardy, III 188 East Capitol Street, Suite 1200, Jackson, Mississippi 39225-2608

37. The Maremont Corporation, a subsidiary of Arvin Industries, Inc., has at all times relevant to this litigation conducted business in the State of Texas and may be served with citation by serving the Secretary of State of the State of Texas who shall then forward a copy to the home office at: The Maremont Corporation 2400 Maremont Parkway, Loudon, Tennessee 37774

38. Triplex, Inc. may be served through its agent for service in the State of Texas, to wit: Toni Trcka 1122 Kress, Houston, Texas 77020

39. U.S. Mineral Products Company may be served through its principal place of business at U. S. Mineral Products Company 14 Furnance Street, Stanhope, NJ 07804

40. Union Carbide Corporation is a corporation organized and existing under and by virtue of the laws of the State of New York, with an agent for service in the State of Texas, to wit: C. T. Corporation 1021 Main, Houston, Texas 77002

41. Uniroyal Holding, Inc. individually and as successor in interest to U. S. Rubber has at all times relevant to this litigation conducted business in the State of Texas, but no longer maintains a registered agent for service of process in this State. Therefore it is hereby requested that service of citation be issued and that this defendant be served by serving the Secretary of State of the State of Texas who shall then forward a copy to Uniroyal Holding, Inc. 70 Great Hill Road, Naugatuck, CT 06770

42. United States Gypsum Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware with an agent for service in the State of Texas, to wit: C.T. Corporation System 350 North St. Paul Street, Suite 2900, Dallas, Texas 75201

43. Viacom, Inc. as successor in interest to CBS CORPORATION (f/k/a WESTINGHOUSE ELECTRIC CORPORATION), a corporation organized and existing under and by virtue of the laws of some state other than the State of Texas, whose agent for service is: Corporation Service Company 800 Brazos, Austin, Texas 78701

hereinafter referred to as Manufacturing Defendants, and for cause of action would respectfully show unto the Court and Jury as follows:

I.

DISCOVERY PLAN

Pursuant to Texas Rules of Civil Procedure 190, Plaintiffs intend to conduct discovery under a Level Three Plan.

II.

VENUE

Venue is proper in Galveston County because a substantial part of the cause of action accrued in Galveston County, and/or Defendants maintained a principle office within Texas in Galveston County. Specifically, Defendant Union Carbide maintains a principal office in Galveston County. Each Plaintiff is asserting a cause of action against Union Carbide as an asbestos product manufacturer and/or premises owner. Since venue is proper as to Union Carbide in Galveston County, venue is proper as to all defendants in Galveston County since the claims against each defendant arise out ot the same transaction, occurrence, or series of transactions or occurrences as outlined below.

III.

BACKGROUND

Kenneth N. Dixon was a carpenter and/or machinist from 1957 to 1970. He was also an employee of Texas Steel from 1974 to 1984. The Defendants during all the times mentioned herein, and for a long time prior thereto, have been engaged in the manufacture, sale, design, supply, distribution, mining, milling, relabelling, resale, processing, application or installation of materials used for insulation containing asbestos and/or machinery requiring or calling for the use of asbestos and/or asbestos containing products. The products and/or machinery manufactured, sold, designed, supplied, distributed, mined, milled, relabeled, resold, processed, applied or installed by Defendants, who were at all times acting through their servants, employees, representatives and agents, were and are placed in the market to be purchased and used by the public.

DEFENDANT SERVED
QUICK EX
SERVICE METHOD AND DATE:
Certified Mail Postmark
CT 6/16
Sec'y of State
Personal
Other
ACK OF SVC SENT
FED EXP TO CCR 6/30/9

Pfizer

Mr. Dixon was exposed to large quantities of asbestos from the products and/or machinery manufactured, sold, designed, supplied, distributed, mined, milled, relabeled, resold, processed, applied or installed by the above-named Defendants. In addition to the fact that the Mr. Dixon was required to handle asbestos containing products and/or machinery containing asbestos, he was exposed to other asbestos products and/or machinery present in the work place, which had been manufactured, sold, designed, supplied, distributed, mined, milled, relabeled, resold, processed, applied or installed by the Defendants. Further, Mr. Dixon was exposed to Defendants asbestos containing products and machinery by working around others who were working directly with the asbestos containing products or machinery.

While performing his normal duties, Mr. Dixon came in contact with the asbestos containing insulation and/or machinery manufactured, sold, designed, supplied, distributed, mined, milled, relabeled, resold, processed, applied or installed by the Defendants, which was a cause of his mesothelioma.

IV.

NEGLIGENCE

The negligence of the Defendants was a proximate cause of the Plaintiffs' injuries and damages. The Defendants knew, or in the exercise of ordinary or reasonable care should have known, that the asbestos containing insulation and/or machinery they manufactured, sold, designed, supplied, distributed, mined, milled, relabeled, resold, processed, applied or installed was poisonous and highly harmful to the Plaintiff's health.

V.

EXEMPLARY DAMAGES

The acts or omissions of the above Defendants, acting through their agents, employees, and/or representatives, was of such character as to make the Defendants guilty of malice. The conduct of the Defendants was in heedless and reckless disregard of the rights of Plaintiffs, and involved such an entire want of care as to establish that it was a result of conscious indifference to the rights, welfare, and safety of Plaintiffs. As a result of the conduct of said Defendants, acting through their agents, employees, and/or representatives, Plaintiffs herein seek exemplary damages in such an amount as to be found to be proper under the facts and circumstances.

VI.

STRICT LIABILITY

Further, the Plaintiffs plead and invoke the doctrine of strict liability. The Defendants' acts or omissions were a producing cause of the Plaintiffs' injuries and damages. Plaintiffs would show that the defective condition of the products and/or machinery rendered such products unreasonably

dangerous, and that the asbestos containing products and/or machinery were in this defective condition at the time they left the hands of the Defendants.

There was a defect in the marketing of the Defendants asbestos containing products and/or machinery at the time they left the possession of the Defendants that was a producing cause of the plaintiffs injuries and damages. The Defendants failed to adequately warn of the asbestos containing products and/or machinery's dangers which rendered them unreasonably dangerous.

In addition there was a defect in the design of the Defendants asbestos containing products and/or machinery at the time they left the possession of the Defendants, which rendered them unreasonably dangerous, which was a producing cause of the plaintiffs injuries and damages.

Mr. Dixon used respiratory devices designed and manufactured by 3M, commonly known as a "dust mask." Plaintiffs would show that the defective condition of such respiratory devices rendered them unreasonably dangerous for the protection against the inhalation of asbestos fibers. Plaintiffs would further show that the respiratory devices were in a defective condition at the time they left the hands of Defendant 3M. The 3M dust masks were defectively marketed and designed which were a producing cause of the plaintiffs injuries.

VII.

CONSPIRACY

Further, Plaintiffs would show that the Defendants individually and as agents of one another and as co-conspirators agreed and conspired among themselves and with other asbestos manufacturers and distributors to injure the Plaintiffs. Defendants entered into a conspiracy to withhold medical and scientific information; to misrepresent material facts about the seriousness of asbestos related diseases; to delete material information from studies and reports; to disseminate misleading information; to prevent the disclosure of medical and scientific information; and/or to alter studies and reports and terminate studies that would prove unfavorable to them. The acts and omissions of the Defendant conspirators constitute fraudulent concealment and/or fraudulent misrepresentation which was a proximate cause of Plaintiffs' injuries and damages. Defendants' acts and omissions amount to a total disregard of the Plaintiffs' rights, which constitute civil conspiracy as that term is defined in law.

VIII.

DAMAGES

Upon trial of this case, it will be shown that Plaintiffs sustained injuries and damages as a proximate and/or producing cause of Defendants' acts and/or omissions; and Plaintiffs respectfully request the Jury to determine the amount of loss Plaintiffs have incurred in the past and will incur in the future, not only from a financial standpoint, but also in terms of good health and freedom from pain and worry. There are certain elements of damages, provided by law, the Plaintiffs are entitled to

have the Jury in this case separately consider to determine the sum of money for each element that will fairly and reasonably compensate the Plaintiffs for the injuries and damages and losses incurred and to be incurred. From the date of the incident in question until the time of trial of this case, those elements of damages to be considered separately and individually for the purpose of determining the sum of money that will fairly and reasonably compensate Plaintiffs including but not limited to the following elements of damages:

1. The physical pain that Mr. Dixon has suffered;
2. The mental anguish that Mr. Dixon has suffered;
3. The amount of reasonable medical expenses necessarily incurred in the treatment of Mr. Dixon injuries;
4. The loss of earning capacity sustained by Mr. Dixon ;
5. The damages resulting from the physical impairment suffered by Mr. Dixon ; and
6. The disfigurement Mr. Dixon has suffered.

From the time of trial of this case, the elements of damages to be separately considered that Plaintiffs will sustain in the future beyond the trial, including but not limited to the following elements of damages:

1. The physical pain that Mr. Dixon will suffer;
2. The mental anguish that Mr. Dixon will suffer;
3. The reasonable value of medical expenses that will necessarily be incurred in the treatment of Mr. Dixon's injuries;
4. Loss of earning capacity
5. The damages resulting from the physical impairment that Mr. Dixon will continue to suffer;
6. The disfigurement Mr. Dixon will suffer; and
7. Funeral and burial expenses, if any.

Plaintiff's spouse, children, and parents also seek past and future damages for loss of spousal, children, and parental consortium, respectively, and loss of household services, as provided by the laws of this State. Spouses and/or wrongful death beneficiaries may seek lost earnings due to the fact that they have missed time from work while taking care of Plaintiffs with an asbestos related disease.

X.

DISCOVERY RULE

Plaintiffs hereby invoke the discovery rule and would show unto the court that they did not know they had an asbestos related disease nor should they have known they had an asbestos related disease prior to two years before filing this lawsuit.

Plaintiffs' damages are far in excess of this Court's minimum jurisdictional limits.

XI.

WRONGFUL DEATH DAMAGES

Plaintiffs hereby assert their right to all damages recoverable pursuant to the wrongful death and survival act as set out in Chapter 71 of the Texas Civil Practices and Remedy Code

XII.

JURY DEMAND

Plaintiffs demand that all issues of fact in this case be tried to a jury.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the Defendants, and each of them, be cited to appear and answer herein, and that upon final hearing, Plaintiffs recover of and from the Defendants, and each of them jointly and/or severally, their damages as alleged, and further that plaintiffs recover of and from the Defendants, and each of them, jointly and/or severally, exemplary damages, together with their joint costs and disbursements herein, and pre-judgment and post-judgment interest as allowed by law, court costs and for such other and further relief, special and general, at law and in equity, to which Plaintiffs may be justly entitled.

Respectfully submitted,

ROBINS, CLOUD GREENWOOD & LUBEL, L.L.P.

By: _____

Ian P. Cloud
TBA No. 00783843
910 Travis, Suite 2020
Houston, Texas 77002
(713) 650-1200
(713) 650-1400 facsimile

ATTORNEYS FOR PLAINTIFF(S)

THE DISTRICT COURTS OF GALVESTON COUNTY

CIVIL CASE INFORMATION STATEMENT

The Case Information Statement is for administrative purposes only. It shall be filed with the Parties Original Pleadings and shall be served upon all other parties to the action.

STYLE: COURT NO. 56TH.

KENNETH N. DIXON, ET AL

-VS-

A.P. GREEN INDUSTRIES, INC., ETC., ET AL

CASE NO. 01CV0476

FILED BY: _____ Plaintiff

✓ Defendant

_____ Other

****

Name of **Primary Attorney** filing this	Name of **Opposing Attorney** if known
Form **Bar No.**	**Bar No.**
Address	Address
City State Zip	City State Zip
Phone No. Fax No.	Phone No. Fax No.

Briefly describe the case, including special characteristics that may warrant extended discovery or accelerated disposition. If discovery LEVEL 3 is requested, explain why. Attach additional sheets if necessary.

Estimated time for discovery _____ Estimated Trial Time _____

Do you presently anticipate adding any parties? _____ When? _____

Level Assignment Preferred:

LEVEL 1	**LEVEL 2**	**LEVEL 3**
$50,000 or less	**All other Cases**	**Court order only**

Is this case suitable for **ADR?** _____ **ADR Method** _____

Signature of Attorney _____ Date _____

All Status Conferences will be set for the Thursday following 90 days from the date of filing.

YOUR STATUS CONFERENCE IS SET AS FOLLOWS:

10TH District Court 9:00 a.m. _____

56TH District Court 9:30 a.m. 08-30-01

122nd District Court 9:30 a.m. _____

212th District Court 9:00 a.m. _____

405th District Court 9:30 a.m. _____

CITATION 717

THE STATE OF TEXAS
CASE NO. 01CV0476-56TH
KENNETH N. DIXON, ET AL
-VS-
A.P. GREEN INDUSTRIES, INC., ETC., ET AL

To: PFIZER, INC., F/K/A CHAS. PFIZER & COMPANY, INC.,
Upon whom process of service may be had by serving: REGISTERED AGENT, C.T. CORPORATION
Address: 350 N. ST. PAUL STREET, DALLAS, TX 75201

Defendant Greetings:

NOTICE TO DEFENDANT: You have been sued. You may employ an Attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. The ORIGINAL petition was filed on the 31ST day of MAY, 2001 in cause number 01CV0476 pending before the 56TH. District Court of Galveston County, Texas. KENNETH N. DIXON, ET AL (Plaintiff/s) VS. A.P. GREEN INDUSTRIES, INC., ETC., ET AL (Defendant/s). See attached Petition for named parties to the suit.

The name and address of the attorneys for plaintiff is IAN P. CLOUD, ROBINS, CLOUD GREENWOOD & LUBEL, L.L.P., 910 TRAVIS, SUITE 2020, HOUSTON, TEXAS 77002

WITNESS, EVELYN WELLS ROBISON, Clerk of this District Courts of Galveston County, Texas. Mailing address: 722 Moody Room 404 County Courthouse, Galveston, Texas 77550.

Issued and given under my hand and seal of Court at Office, this the 4TH day of JUNE 2001.

SEE ATTACHED STATUS CONFERENCE NOTICE

EVELYN WELLS ROBISON
District Clerk – Galveston County, Texas

By: *Edward Reyes*
EDWARD REYES, Deputy Clerk

JUN 14 2001

DISTRICT COURTS OF GALVESTON COUNTY, TEXAS

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OFFICER'S RETURN

Came to hand on the _____ day of _____, 2001 at _____ o'clock at ____M. Executed at _____
Within the County of _____, at _____o'clock _____.M., on the _____ day of _____, 2001 By delivering to the within the named defendant_____
_____
Each in person a true copy of this citation together with the accompanying copy of the petition, having first attached such copy of such petition to such copy of citation and endorsed on such copy of citation the date of delivery.
Total fee for serving citation $_____

_____
Name of Officer or Authorized & Disinterested Person
_____, County, Texas

By:_____, Signature of Deputy of Authorized & Disinterested Person

Authorized & Disinterested person's Verification:
On this the day personally appeared_____, known to me to be the person whose signature appears on the foregoing return. After being duly sworn by me, he/she stated that this citation was executed by him/her in the exact manner recited on the return.
Sworn to and subscribed before me, on this the _____ day of _____, 2001.

Notary's Name Printed:_____

Notary Public in and for the State of Texas_____
Commission Expires:_____