

OH083.ASB
06/02/98

PLAINTIFF'S EXHIBIT

K-1971

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

RICHARD LINGERICH, et al.,	:	CASE NO. A9800300
	:	
Plaintiffs	:	Judge Niehaus
	:	
vs.	:	
	:	
ACandS, Inc., et al.,	:	
	:	
Defendants.	:	

**DEFENDANT OWENS-ILLINOIS, INC.'S RESPONSES TO PLAINTIFFS'
FIRST SET OF INTERROGATORIES**

PRELIMINARY STATEMENT

Some of the events which may be relevant to the matters inquired about by Plaintiffs' Interrogatories apparently occurred more than thirty-five years ago. In addition, effective April 30, 1958, Owens-Illinois, Inc. disposed of the business involved in this action by way of sale of that business to Owens-Corning Fiberglas Corporation. Since that time, Owens-Illinois, Inc. has not engaged in the asbestos-containing insulation products manufacturing business. It does not now and it has not since that sale manufactured, distributed or sold any of its Kaylo asbestos-containing insulation products. As a result of the foregoing factors, many of the individuals who might have had personal knowledge of the matters to which plaintiffs' interrogatories relate are deceased, or are otherwise unavailable to Owens-Illinois, Inc., and investigations to date indicate that at least some documents which relate to matters inquired about by these interrogatories were transferred to Owens-Corning Fiberglas Corporation with the transfer of the business in question in 1958. Unless otherwise stated in an answer to a specific interrogatory, the answers set out hereinafter are limited to the period during which Owens-Illinois, Inc. manufactured asbestos-

containing Kaylo insulation products and to the facilities related to that business. The following is a part of and is incorporated by reference in every answer provided hereinafter:

(This answer is accurate as of the date made. However, Owens-Illinois, Inc. cannot exclude the possibility that it may be able to obtain more complete information or even information which indicates that the answer being supplied is incorrect. Owens-Illinois, Inc. objects to answering this interrogatory in regard to any period of time other than the period during which it engaged in the manufacture and sale of the Kaylo products alleged to be involved in this case which ended in mid-1958 or concerning any facility not related to that business, on the basis that any such answer would be irrelevant to the subject matter of the pending litigation, would not be reasonably calculated to lead to the discovery of admissible evidence, and would be burdensome and oppressive.

Commencing in 1963 and continuing through 1977, Kimble Glass Company, a unit of Owens-Illinois, Inc., offered for sale gaskets, inserts and spacers as accessory parts intended for use in conjunction with Kimble's conical end glass piping system. Some of these accessory parts contained asbestos as one of their ingredients. These accessory parts were not manufactured by Kimble, but were purchased from other suppliers. From approximately 1966 through 1977, the Kimble Division also offered for sale a field beading kit which included a small plate and a covering over each of two small hoses. The plate and hose coverings may possibly have contained asbestos, but Owens-Illinois cannot yet confirm the ingredients of these materials based upon its business records presently reviewed. Kimble also sold Glass Lined Reactors manufactured by Schwelm for a period of

time presently unknown which incorporated gaskets containing asbestos as one of their ingredients. At the end of 1977, Owens-Illinois transferred its interest in the glass pipe and Schwelm Reactor product lines and related assets to OI/Schott Process Systems, Inc. in exchange for 50% of the stock of the Corporation and, pursuant to a Sales Agreement dated May 24, 1990, sold its interest in OI/Schott Process Systems, Inc. to Schott Corporation. From 1982 through 1985, Kontes Glass Company, a subsidiary of Owens-Illinois during that time period, purchased certain asbestos-containing materials from other manufacturers and incorporated those materials into four of its products. Based upon the information available to Owens-Illinois to date concerning the nature of Plaintiff's claim, it is Owens-Illinois' understanding that the only Owens-Illinois asbestos-containing product to which the Plaintiff alleges exposure is Kaylo. Therefore, Owens-Illinois objects to responding to these interrogatories in regard to the above described asbestos-containing products sold by Kimble Glass Company and Kontes Glass Company on the basis that any such answer would be irrelevant to the subject matter of the pending litigation, would not be reasonably calculated to lead to the discovery of admissible evidence and would be burdensome and oppressive. In the event that Owens-Illinois is subsequently informed that the Plaintiff alleges exposure to asbestos-containing products sold by Kimble Glass Company or Kontes Glass Company, Owens-Illinois will supplement these answers to interrogatories within a reasonable time after receiving such notice to the extent that a supplementation is necessary in order to respond to the interrogatories in light of the alleged exposure to asbestos-containing products sold by either Kimble Glass Company or Kontes Glass Company.

Furthermore, Owens-Illinois, Inc. objects to the instructions and definitions supplied by plaintiffs with regard to these interrogatories, on the basis that the defini-

tions are overly broad, vague, and often inconsistent with the normal usage and meaning of such words, and the instructions are overly broad, burdensome and constitute an unreasonable expansion of the interrogatories themselves. Owens-Illinois, Inc. therefore gives notice that it does not consider itself bound by the instructions and definitions propounded by plaintiffs, and instead shall answer the interrogatories in a manner consistent with a normal understanding of the language used in the interrogatory and to the extent necessary to fairly and fully answer the interrogatory.

INTERROGATORIES

Q. 1. For each interrogatory below, please state the name and last known address of each person answering it, including whether he/she is employed by Defendant and if employed by Defendant include job title, length of time employed by Defendant and a year by year list of all other positions, titles, or jobs held when working for Defendant.

A. 1. These interrogatory answers were prepared by various people in or associated with the Owens-Illinois, Inc. legal department, including outside counsel, over a period of time beginning in approximately 1977 and continuing to the present. The answers to these interrogatories are based on a review of relevant Owens-Illinois corporate records which will be made available to the plaintiff upon request, or upon information gathered in the course of the asbestos litigation by Owens-Illinois legal department personnel or outside counsel. The person who is authorized by Owens-Illinois, Inc. to sign the verifying affidavit on its behalf is Howard G. Bruss, Assistant Secretary of Owens-Illinois, Inc., One SeaGate, Toledo, Ohio 43666.

Q. 2. Has Defendant ever engaged in the mining, manufacturing, selling, marketing, installation or distribution of asbestos-containing products? If so, please state the following:

- (a) The name of the company engaged in the activity (whether it is Defendant, Defendant's predecessor, or Defendant's subsidiary);
- (b) As to each product mined, manufactured, sold, marketed, installed or distributed, please state the following:
 - 1. The trade or brand name.
 - 2. Its identification number(model, serial number, etc.)
 - 3. The time period it was manufactured, mined, marketed, distributed or sold.
 - 4. Its physical description including color, general composition, and form.
 - 5. A detailed description of its intended use and purpose.
 - 6. A detailed description of the type package in which it was sold, listing the dates of each type of package used, a physical description of the package, and a description of any printed material or trademarks that appeared thereon.
 - 7. The percent of asbestos which it contained.
 - 8. The percent of asbestos by asbestos type (amosite, crocidolite, tremolite, anthophyllite).
- (c) The time period during which each of these products were on the market;
- (d) The material components/ingredients of each such product, giving specific or approximate percentage both by weight and by volume of each material component/ingredient (this interrogatory is not limited to the asbestos component or the product but seeks information as to the nature, weight and volume of non-asbestos ingredients, as well) of each such product;

- (e) How each of these asbestos-containing products can be distinguished from those of competitors;
- (f) A description of the physical appearance of such product; and
- (g) A detailed description of the intended uses.

A. 2. This defendant objects to this interrogatory on the basis that it seeks information which is not relevant to the subject matter of this litigation and is not reasonably calculated to lead to the discovery of admissible evidence, except as it relates to the period of time during which this defendant engaged in the manufacture, sale and distribution of its Kaylo asbestos-containing products. This defendant ceased the manufacture, sale and distribution of its Kaylo asbestos-containing products in 1958. Without waiving the above objection;

(a) Owens-Illinois Glass Company began limited pilot plant operations involving the production of "Kaylo" asbestos-containing products in 1943. Owens-Illinois Glass Company changed its name to Owens-Illinois, Inc. on April 28, 1965. Owens-Illinois Glass Company has been retained as an inactive name saving subsidiary but has no assets or employees.

(b) 1.,3. Owens-Illinois Glass company began the manufacture of commercial quantities of "Kaylo" asbestos-containing products in about 1948, and began the manufacture of commercial quantities of "Kaylo-20" in or after mid-1955, and continued such manufacture until about April 30, 1958.

(b) 2. This defendant ceased the manufacture, sale and distribution of its Kaylo asbestos-containing products in 1958. This defendant has not found information in its records sufficient to enable it to answer this interrogatory.

(b) 4., (f) This defendant ceased the manufacture, sale and distribution of its Kaylo asbestos-containing products in 1958. It believes that Kaylo and Kaylo-20 were premolded, light density rigid products, and were manufactured in two forms, block and pipe covering. Kaylo roof deck and core materials for doors and laminated panels were made of a heavy density material in block form. Kaylo was white or off-white in color, and Kaylo-20 was pinkish in color.

(b) 5., (g) The Kaylo asbestos-containing products manufactured by this defendant were intended to be used for industrial high temperature thermal insulation such as pipe covering and block insulation, and to increase fireproofing and fire protection and for insulation through use as a roof deck or fireproof material or as core material for use in fire doors and laminated panels.

(b) 6. This defendant believes that some of its asbestos-containing insulation products were packaged in corrugated cartons with the trademark Kaylo on the carton. This defendant ceased the manufacture, sale and distribution of its Kaylo asbestos-containing products in 1958 and does not have information sufficient to further answer this interrogatory.

(b) 7., 8., This defendant ceased the manufacture, sale and distribution of its Kaylo asbestos-containing products in 1958. Defendant's documents relating to the composition of each such product, including the type of asbestos contained therein (i.e., amosite or chrysotile) and the quantitative percentage of asbestos, are limited and incomplete. These documents are primarily research records rather than records from the production or manufacture of defendant's Kaylo product. However, this defendant believes its commercially produced asbestos-containing products were hydrous calcium silicates containing between 13% and approximately 20% asbestos. Chrysotile asbestos was the primary type apparently used. Amosite was incorporated to a lesser extent. For some periods of time, light density pipe covering and block insulation contained only

chrysotile asbestos. Roof deck and door core contained both chrysotile and amosite asbestos.

(c) Owens-Illinois Glass Company began limited pilot plant operations involving the production of "Kaylo" asbestos-containing products in 1943. It began the manufacture for sale of commercial quantities of "Kaylo" asbestos-containing products in about 1948, and began the manufacture and sale of commercial quantities of "Kaylo-20" in or after mid-1955, and continued such manufacture until about April 30, 1958.

(d) This defendant has in its records technical reports relating to the development and testing of Kaylo, and will make available to plaintiffs' counsel through its local counsel these records. Many of the reports are contained on microfilm which is old and of poor quality. Adequate copies may not be made from it, and reading it requires a reader device. Other documents possibly relating to this interrogatory may have been produced by Owens-Corning Fiberglas Corporation in the asbestos litigation.

(e) This defendant objects to this interrogatory on the grounds that it is vague and ambiguous. Further, because this defendant does not know what products of its former competitors to which plaintiffs are referring, it cannot answer this interrogatory.

Q. 3. Has this defendant ever sold asbestos-containing products to any other defendant?

A. 3. This defendant objects to this interrogatory on the basis that it seeks information which is not relevant to the subject matter of this litigation and is not reasonably calculated to lead to the discovery of admissible evidence, except as it relates to the period of time during which this defendant engaged in the manufacture, sale and distribution

of its Kaylo asbestos-containing products and except as it relates to plaintiff's employers during plaintiff's periods of employment. This defendant ceased the manufacture, sale and distribution of its Kaylo asbestos-containing products in 1958. Without waiving the above objection, in 1953, this defendant entered into a sales agreement with Owens-Corning Fiberglas Corporation under which it agreed to the sale of Kaylo asbestos-containing products to that corporation. This defendant believes that it ceased the general marketing and sales of its asbestos-containing thermal insulation products at that time, disbanded its sales force, and that thereafter, Owens-Corning Fiberglas Corporation was the primary marketer of its product until the sale of the division to Owens-Corning Fiberglas Corporation in 1958.

Q. 4. If the answer to the preceding Interrogatory is yes, please state the following:

- (a) name each defendant to whom this defendant sold any asbestos-containing product;
- (b) list each product sold to each co-defendant; and
- (c) list the dates of each sale of asbestos-containing products to each co-defendant.

A. 4. Refer to objection and answer to Interrogatory No. 3.

Q. 5. Do any documents, including but not limited to, written memoranda, specifications, recommendations, blueprints or other written materials of any kind or character now exist relating to the design and preparation of the products listed in answer to Interrogatory No. 2? If so, please:

- (a) List each such written material or document:

- (b) Identify the person or persons presently in possession of each such document; and
- (c) State where each such document is located.

A. 5. This defendant has in its records technical reports relating to the development and testing of Kaylo, and will make available to plaintiffs' counsel through its local counsel these records. Many of the reports are contained on microfilm which is old and of poor quality. Adequate copies may not be made from it, and reading it requires a reader device. Other documents possibly relating to this interrogatory may have been produced by Owens-Corning Fiberglas Corporation in the asbestos litigation.

Q. 6. Prior to releasing the products listed in Interrogatory No. 2 for sale and usage, were any tests (either animal or human) conducted on said products to determine potential health hazards involved in the use of, or exposure to, the materials and/or products? If so, please state:

- (a) The name of the products tested and the date of each test.
- (b) The name, address, and job classification of each individual who conducted such tests; and
- (c) The results of such tests.

A. 6. This defendant ceased the manufacture, sale and distribution of its Kaylo asbestos-containing products in 1958 and does not have any records from which it can obtain information sufficient to answer this interrogatory.

During May, 1979, various papers and reports were produced by an employee of the Trudeau Institute, Mr. Allan Logie, regarding animal experiments conducted at laboratories at Saranac Lake involving dust collected during the Kaylo

manufacturing process. These papers and reports may contain information relating to the substance of this interrogatory. This defendant has not been able to find these papers and reports in its business records or correspondence.

This defendant's counsel obtained copies of some of the papers and reports produced by Mr. Logie. However, these copies constitute only a portion of a larger volume of papers and reports which this defendant has not copied. They are available through Winne, Banta, Rizzi, Hetherington & Basralian, 25 E. Salem Street, Hackensack, New Jersey. This defendant also has reason to believe that plaintiffs' counsel has copies of the documents produced by Mr. Logie. Other documents possibly relating to this interrogatory may have been produced by Owens-Corning Fiberglas Corporation in the asbestos litigation.

Those documents found at Saranac Lake and at Owens-Corning Fiberglas Corporation and elsewhere, indicate that during the period of time when Owens-Illinois was in the business of manufacturing asbestos-containing products, the state of government, industrial hygiene and medical community knowledge was that there was a recognized safe exposure level for asbestos dust and that persons installing insulation were not exposed to excessive or hazardous levels of asbestos dust. The foregoing documents also indicate that Kaylo plant employees were x-rayed periodically and displayed no asbestos-related chest disease; that this defendant made appropriate efforts to provide ventilation and to control the emissions of all dust emitted during the manufacturing process within recognized safe levels of exposure, including the use of respirators in some instances, dust collection equipment and other devices as necessary; and that therefore during the period in which this defendant was in the business of manufacturing Kaylo it had no reason to believe that the foreseeable use of Kaylo would create a hazard to users.

The documents produced by Owens-Corning Fiberglas Corporation indicate that the September, 1955

publication in the A.M.A. Archives of Industrial Health was a publication of inhalation experiments.

Q. 7. Before placing in the market the asbestos-containing products that Defendant, mined, manufactured, sold, marketed, installed or distributed on the market, did Defendant make or cause to be made, any studies to determine whether their asbestos-containing products would be hazardous to people? If so, please state:

- (a) The date of said studies;
- (b) What studies were done; and
- (c) The titles of each study.

A. 7. This defendant objects to this interrogatory on the basis that it seeks information which is not relevant to the subject matter of this litigation and is not reasonably calculated to lead to the discovery of admissible evidence, except as it relates to the period of time during which this defendant engaged in the manufacture, sale and distribution of its Kaylo asbestos-containing products. This defendant ceased the manufacture, sale and distribution of its Kaylo asbestos-containing products in 1958.

Without waiving the above objection, this defendant ceased the manufacture, sale and distribution of its Kaylo asbestos-containing products in 1958 and does not have any records from which it can obtain information sufficient to answer this interrogatory.

During May, 1979, various papers and reports were produced by an employee of the Trudeau Institute, Mr. Allan Logie, regarding animal experiments conducted at laboratories at Saranac Lake involving dust collected during the Kaylo manufacturing process. These papers and reports may contain information relating to the substance of this interrogatory.

This defendant has not been able to find these papers and reports in its business records or correspondence.

This defendant's counsel obtained copies of some of the papers and reports produced by Mr. Logie. However, these copies constitute only a portion of a larger volume of papers and reports which this defendant has not copied. They are available through Winne, Banta, Rizzi, Hetherington & Basralian, 25 E. Salem Street, Hackensack, New Jersey. This defendant also has reason to believe that plaintiffs' counsel has copies of the documents produced by Mr. Logie. Other documents possibly relating to this interrogatory may have been produced by Owens-Corning Fiberglas Corporation in the asbestos litigation.

Those documents found at Saranac Lake and at Owens-Corning Fiberglas Corporation and elsewhere, indicate that during the period of time when Owens-Illinois was in the business of manufacturing asbestos-containing products, the state of government, industrial hygiene and medical community knowledge was that there was a recognized safe exposure level for asbestos dust and that persons installing insulation were not exposed to excessive or hazardous levels of asbestos dust. The foregoing documents also indicate that Kaylo plant employees were x-rayed periodically and displayed no asbestos-related chest disease; that this defendant made appropriate efforts to provide ventilation and to control the emissions of all dust emitted during the manufacturing process within recognized safe levels of exposure, including the use of respirators in some instances, dust collection equipment and other devices as necessary; and that therefore during the period in which this defendant was in the business of manufacturing Kaylo it had no reason to believe that the foreseeable use of Kaylo would create a hazard to users.

The documents produced by Owens-Corning Fiberglas Corporation indicate that the September, 1955 publication in the A.M.A. Archives of Industrial Health was a publication of inhalation experiments.

Q. 8. Has sales material been prepared by Defendant or its agents for purposes of marketing or advertising the asbestos products listed in answer to Interrogatory No. 2? If so, please state:

- (a) The name and address of each person or entity who prepared same;
- (b) The name, address and job title of each person who presently has possession of same;
- (c) The date same was prepared; and
- (d) The media used to disseminate the sales material.

A. 8. Refer to Exhibit I. This defendant ceased the manufacture, sale and distribution of its Kaylo asbestos-containing products in 1958. This defendant has not found information in its records sufficient to enable it to further answer this interrogatory.

Q. 9. Would any respirator, mask or other breathing devices prevent inhalation of the asbestos dust and fibers contained in products listed in answer to Interrogatory No. 2? If so, state:

- (a) When the respirator was sold;
- (b) A detailed description of such respirator or other breathing devices, including name of manufacturer and model number;
- (c) The basis of your claim that such respirators or other breathing devices will prevent the inhalation of such dust and fibers;
- (d) Identify any tests performed regarding the efficaciousness of such respirators and other breathing devices in preventing the inhalation of asbestos dust and fibers including date, title, author and number; and
- (e) List all documents which mention, allude or refer to tests performed on breathing

devices which prevented the inhalation of asbestos dust and/or fibers.

A. 9. This defendant objects to this interrogatory on the basis that it calls for expert opinions this defendant is not qualified to answer. Without waiving the above objection, this defendant ceased the manufacture, sale and distribution of its Kaylo asbestos-containing products in 1958. This defendant has not found information in its records sufficient to enable it to answer this interrogatory.

As to objections.



Robert A. Bunda (0019775)

Yvonne D. Bennett (0059613)

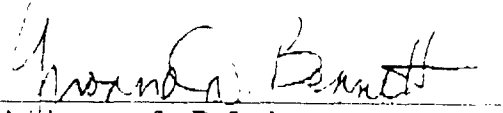
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Trial Counsel for Defendant
Owens-Illinois, Inc.

CERTIFICATE OF SERVICE

This certifies that Defendant Owens-Illinois, Inc.'s Answers to Plaintiff's Interrogatories and Owens-Illinois, Inc.'s Responses to Plaintiff's Request for Production were delivered by U.S. mail this 15th day of June, 1998 to Andrew S. Lipton and Johnathan M. Holifield, counsel for plaintiff, at Manley, Burke, Lipton & Cook, P.C., 225 West Court Street, Cincinnati, OH 45202. A copy of the service letter has been mailed to all counsel of record.



An Attorney for Defendant
Owens-Illinois, Inc.

AFFIDAVIT

STATE OF OHIO)

)SS:

COUNTY OF WOOD)

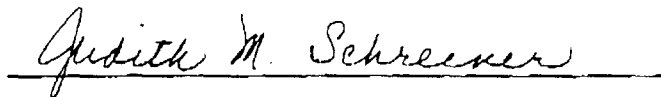
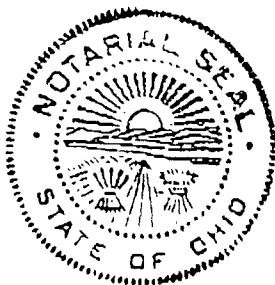
H. G. BRUSS, being duly sworn according to law, deposes and says that he is an Assistant Secretary of Owens-Illinois, Inc., a defendant herein; that as such he is authorized to make an Affidavit on its behalf; and that the facts set forth in the foregoing DEFENDANT, OWENS-ILLINOIS, INC.'S ANSWERS TO INTERROGATORIES, are true and correct to the best of his knowledge, information and belief.



H. G. BRUSS

SWORN TO and subscribed before me this 15th day of JUNE, 1998.

SEAL



Notary Public

JUDITH M. SCHREINER
Notary Public — State of Ohio
My Commission Expires Feb. 2, 2001