

NO. 87-C-1934

TOMMY L. HEATHMAN and Wife, \$ IN THE DISTRICT COURT OF
DIXIE A. HEATHMAN \$
 \$
V. \$ BRAZORIA COUNTY, TEXAS
 \$
OWENS-CORNING FIBERGLAS \$
CORPORATION, ET AL. \$ 23RD JUDICIAL DISTRICT

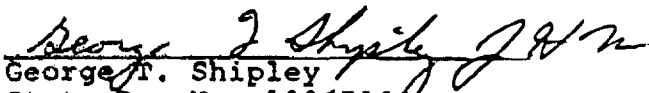
RESPONSES TO REQUEST FOR PRODUCTION

TO: Tommy L. Heathman and Wife, Dixie A.
 Heathman, plaintiffs, by and through their
 attorney of record, Lawrence Madeksho,
 8320 Gulf Freeway, Suite 218, Houston, Texas
 77087.

Owens-Illinois, Inc., one of the defendants, files
these Responses to Plaintiffs' Request for Production.

Respectfully submitted,

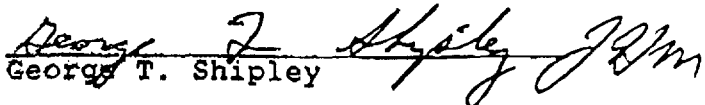
BAKER & BOTTS


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(713) 229-1776

Attorneys for Defendant
Owens-Illinois, Inc.

CERTIFICATE OF SERVICE

This document has been served upon all counsel of
record by hand delivery or by certified mail, return receipt
requested on November 2, 1987.


George T. Shipley

003GAPAI/104A01

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TOMMY L. HEATHMAN and wife,	\$	IN THE DISTRICT COURT OF
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OWENS-CORNING FIBERGLAS	\$	
CORPORATION, et al.	\$	23RD JUDICIAL DISTRICT

DEFENDANT OWENS-ILLINOIS, INC.'S RESPONSES TO
PLAINTIFFS' FIRST REQUEST FOR PRODUCTION

TO: Tommy L. Heathman and Wife, Dixie A. Heathman, plaintiffs,
by and through their attorney of record, Lawrence Madeksho,
8320 Gulf Freeway, Suite 218, Houston, Texas 77087.

General Objections

1. Owens-Illinois, Inc. objects to the plaintiff's requests to the extent that they seek documents and things that are protected by a privilege, such as the investigative privilege, the attorney-client privilege, or the work product privilege.

2. Owens-Illinois, Inc. objects generally to the plaintiff's requests to the extent that they use argumentative terms or otherwise imply facts which Owens-Illinois, Inc. denies.

3. Owens-Illinois, Inc. objects to plaintiff's request for production insofar as it calls for production of documents at the offices of Robert E. Ballard, 800 Commerce Street, Houston, Texas, or Lawrence Madeksho, 8320 Gulf Freeway, Suite 218, Houston, Texas. Owens-Illinois, Inc. states that production of documents in response to the

plaintiff's request for production will be made at the offices of its legal department unless otherwise indicated.

4. Owens-Illinois, Inc. objects to plaintiff's requests for production to the extent that they attempt to impose duties on Owens-Illinois, Inc. beyond those imposed by the Texas Rules of Civil Procedure.

5. Owens-Illinois, Inc. objects to the manufactured and sometimes incorrect definitions of words used by plaintiff in the request for production. In responding to these requests for production, Owens-Illinois, Inc. has attempted to give words their usual, commonly understood meanings.

6. Owens-Illinois, Inc. has attempted to locate and produce all non-privileged documents and things requested in response to the request. Because of the large number of documents and things that had to be reviewed, it is possible that some of the requested items have been overlooked. If responsive items are subsequently found, they will be produced.

7. Defendant objects to many of these request for production because they are actually interrogatories. Subject to this objection, defendant has answered the interrogatories and has considered them as plaintiff's first set of interrogatories.

This answer is accurate as of the date made. However, Owens-Illinois, Inc.'s investigation is continuing, and 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 request in regard to any period of time other than the period during which it engaged in the business 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.

Furthermore, Owens-Illinois, Inc. objects to the instructions and definitions supplied by plaintiffs with regard to these requests, on the basis that the definitions are overbroad, vague, and often inconsistent with the normal usage and meaning of such words, and the instructions are overbroad, burdensome and constitute an unreasonable expansion of the requests 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 requests in a manner consistent with a normal understanding of the language used in the answer

and to the extent necessary to fairly and fully answer the requests.

REQUEST NO. 1. The names and addresses of any custodians of this defendant's record archives or microfiche.

RESPONSE NO. 1. This defendant objects to this request 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. Without waiving the above objection, this defendant states that it has referred to the relevant business records of the Owens-Illinois Glass Company, which are still in the possession of Owens-Illinois, Inc., in connection with the preparation of answers to these requests unless otherwise indicated. Copies of these documents are under the control of this defendant's legal department.

REQUEST NO. 2. Copies of all of this defendant's record retention policies.

RESPONSE NO. 2. This defendant objects to this request 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. Without waiving the above objection, this defendant ceased the manufacture, sale and distribution of asbestos-containing products in 1958 pursuant to the sale of its Kaylo Division to Owens-Corning Fiberglas Corporation on April 30,

1958. It has not found any information in its records pertinent to a record or document retention policy during the period when it manufactured its asbestos-containing products or for the period of years shortly thereafter. In accordance with the contract for the sale of the Kaylo Division, in the ordinary course of business relating to such sale, and because of the production of certain documents by other defendant's in asbestos-related litigation in the United States, this defendant believes that most of its records pertinent to the Kaylo Division were either transferred or made available to the purchaser of the division in 1958. This defendant states that it has not destroyed any documents or records pertaining to the Kaylo Division which were found in its records in 1975 (the year in which this defendant first became aware of asbestos-related actions against it) and thereafter.

REQUEST NO. 3. A full and complete copy of the so called "Wellington Agreement" or "Asbestos Claims Facility Agreement" whereby this defendant and other defendants have agreed among themselves how to apportion settlement agreements to be paid by this defendant and other defendants who are parties to the referenced agreements.

RESPONSE NO. 3. This Defendant objects to this request on the basis that it is irrelevant and immaterial to any issue in this lawsuit and is not calculated to lead to the discovery of admissible evidence.

Texas Rule of Civil Procedure 166b(2)(f) states that a party may obtain discovery of the existence and contents of any insurance agreement under which any person operating an insurance business may be liable to satisfy part of all of the judgment or the existence and contents of any settlement. The requested agreement is neither an insurance contract under which members are insurers for each other or any other entity nor a settlement agreement. The agreement is not discoverable under Rule 166b(2)(f).

Further, the agreement is attorney work product and is protected by the attorney-client privilege.

Finally, the production of this document would violate the attorney work product and attorney-client privileges of those manufacturers and distributors who are not parties to this litigation who are parties to the agreement.

REQUEST NO. 4. Copies of all indices of this defendant's corporate records, including the master index of this defendant's corporate records. Also included in this request is the defendant's records storage inventory index.

RESPONSE NO. 4. This defendant objects to this request as being vague, ambiguous, irrelevant, overly broad, not reasonably calculated to lead to the discovery of admissible evidence and not limited to any issue which is the subject of this case. Copies of indices of this defendant's corporate records include records of sales and other records

that are simply not relevant to this case. Without waiving the above objection, refer to answers to Request Nos. 1 and 2.

REQUEST NO. 5. A complete list of all asbestos-containing products manufactured or sold by this defendant, the percentage of asbestos contained in each product, the years each product was sold, and the specific date for each product that this defendant alleges it put a caution or warning (be specific) on each individual asbestos-containing product manufactured or sold by this defendant. The defendant is specifically advised that this request is not limited to asbestos-containing insulation products.

RESPONSE NO. 5. Kaylo and Kaylo-20. Owens-Illinois Glass Company began limited pilot plant operations involving the production of "Kaylo" asbestos-containing products in 1943. It began the manufacture of commercial quantities of "Kaylo" asbestos-containing products in about 1948 and continued such manufacture until about April 30, 1958. Defendant's investigation as 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, is continuing, although this defendant now believes that this defendant's 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 used to a

lesser extent. This defendant has not found information in its records sufficient to enable it to further answer this interrogatory. However, it does not appear that any warning concerning asbestos was given in that it does not appear that this defendant had reason to believe that the use of its products would result in a foreseeable risk of harm.

REQUEST NO. 6. A complete list of all asbestos-containing insulation products manufactured on behalf of and sold to other manufacturers or distributors for resale. This request includes the specific names of the manufacturers who purchased asbestos-containing products for resale and the specific years or time periods these transactions occurred.

RESPONSE NO. 6. This defendant objects to this request on the basis that it is vague and ambiguous. Without waiving this objection, in 1953, this defendant entered into a sales agreement with Owens-Corning Fiberglas Corporation under which it agreed to the sale of 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.

REQUEST NO. 7. A complete list of all rebrand agreements with other manufacturers concerning asbestos-containing products, the specific years or periods these rebrand agreements existed, and the specific products included in the rebrand agreements.

RESPONSE NO. 7. This defendant entered into no such agreements. Refer to answer to Request No. 6.

REQUEST NO. 8. The names and addresses of any individual or individuals who took photographs of this defendant's boxes, bags, or containers wherein a caution is shown.

RESPONSE NO. 8. This defendant ceased the manufacture, sale and distribution of asbestos-containing products in 1958. This defendant has not found information in its records sufficient to enable it to answer this interrogatory. However, it does not appear that any warning concerning asbestos was given in that it does not appear that this defendant had reason to believe that the use of its products would result in a foreseeable risk of harm.

REQUEST NO. 9. A complete list of all sources of supply of asbestos for this defendant between the years 1935 and 1975. This request is solely for a listing of any manufacturing or mining company or foreign country that supplied asbestos to this defendant during these specific years.

RESPONSE NO. 9. This defendant believes that the chrysotile, which was the primary type of asbestos used in its insulation products, was imported from Canada, and that at least some of this chrysotile was purchased from Canadian JohnsManville, Ltd. This defendant further believes that the amosite asbestos used in some of its insulation products was imported from South Africa and at least a portion of such amosite was purchased from the African and European Agencies. This defendant ceased the manufacture, sale and distribution of asbestos-containing products in 1958 and does not have information sufficient to further answer this request.

REQUEST NO. 10. The complete files of this defendant's participation in connection with the ASTM-C-16 Committee, ASTM-C-17 Committee and ASTM-C-18 Committee. This includes all notes, bulletins, correspondence, books, or pamphlets between the years 1938 and 1959.

RESPONSE NO. 10. This defendant ceased all involvement in the asbestos-containing product business in 1958. It has no documents responsive to this request.

REQUEST NO. 11. A list of the names, addresses, title and employer of all persons who, between the years 1966 and the present time, have participated or have knowledge of the shredding or destruction of documents that were in the custody or control of this defendant. This request is

addressed to documents which related in whole or in part to asbestos or asbestos-related diseases.

RESPONSE NO. 11. This defendant ceased the manufacture, sale and distribution of asbestos-containing products in 1958. This interrogatory is not applicable to this defendant. This defendant has no further documents or information responsive to this request.

REQUEST NO. 12. Copies of all records and documents concerning this defendant's testing and developing of its Kaylo product between the years 1937 and 1944.

RESPONSE NO. 12. Owens-Illinois Glass Company began limited pilot plant operations involving the production of "Kaylo" asbestos-containing products in 1943. It began the manufacture of commercial quantities of "Kaylo" asbestos-containing products in about 1948 and continued such manufacture until about April 30, 1958.

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. This defendant further states that its investigation into the subject matter referred to in this request is continuing.

REQUEST NO. 13. A copy of memo dated February 13, 1956, from Cryor to Horst.

RESPONSE NO. 13. This defendant has found no such document in its business records.

REQUEST NO. 14. A complete copy of the two-page document dated April 30, 1957, from England to Taylor retarding asbestos samples.

RESPONSE NO. 14. This defendant has no found such document in its business records.

REQUEST NO. 15. Complete copies of all editions of this defendant's company publication entitled "The Kaylonizer."

RESPONSE NO. 15. Defendants will produce these documents through its local counsel.

REQUEST NO. 16. Complete copies of all reports from Arthur D. Little, Inc., concerning Kaylo.

RESPONSE NO. 16. 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. This defendant further states

that its investigation into the subject matter referred to in this request is continuing.

REQUEST NO. 17. Complete copies of all correspondence from Arthur D. Little, Inc. to this defendant concerning studies of Kaylo.

RESPONSE NO. 17. Refer to answer to Request no. 16.

REQUEST NO. 18. Complete copies of all correspondence to Arthur D. Little, Inc., concerning studies of Kaylo.

RESPONSE NO. 18. Refer to answer to Request No. 16.

REQUEST NO. 19. A complete copy of the Owens-Illinois booklet entitled "The Story of Kaylo, First in Calcium Silicate".

RESPONSE NO. 19. This document was not found as a part of this defendant's records.

REQUEST NO. 20. A copy of the four-page memorandum dated February 16, 1956, from Shuman to Jackett, et al.

RESPONSE NO. 20. This document was not found as a part of this defendant's records.

REQUEST NO. 21. A copy of the two-page memorandum with two-page attachment dated June 8, 1954, from Taylor to B. F. Trumm, regarding comparison of asbestos and Kaylo and competitive calcium silicates.

RESPONSE NO. 21. This document was not found as a part of this defendant's records.

REQUEST NO. 22. All documents and records of sales of this defendant's asbestos-containing products between the years 1937 and 1948.

RESPONSE NO. 22. This defendant objects to this request as being vague, ambiguous, irrelevant, overly broad, burdensome and oppressive, not reasonably calculated to lead to the discovery of admissible evidence and not limited to any issue which is the subject of this case. It is not reasonable for this defendant to be asked to provide, at great expense and under heavy burden, in response to this overly broad request, information which would not be valuable to the plaintiffs in this case. Without waiving the above objection, this request is not applicable to this defendant. It was not engaged in the manufacture of commercial quantities of Kaylo from 1937 to 1948.

REQUEST NO. 23. Copies of all patents assigned to Owens-Illinois between 1935 and 1975 wherein asbestos was mentioned in whole or in part.

RESPONSE NO. 23. This defendant ceased the manufacture, sale and distribution of asbestos-containing products in 1958. It has no documents responsive to this request in its business records. Its investigation as to information concerning any such United States Patents is continuing. However, it appears that the following patents may have been related to this defendant's asbestos-containing products at one time:

<u>Patent No.</u>	<u>Inventor</u>	<u>Issue Date</u>
2,425,610	Finley	8-12-47
2,439,724	Finley	4-13-48
RE.23,228	Frasor	5-09-50
2,534,303	Serinis	12-19-51
2,540,354	Selden	2-06-51
2,547,127	Kalousek	4-03-51
2,570,835	Mooney, et al.	10-09-51
2,574,667	Shuman	11-13-51
2,665,996	Kalousek	1-12-54
2,748,008	Kalousek	5-29-56
2,787,345	Soubier, et al.	4-02-57
2,788,304	Scovronek	4-09-57

Patents are public records and are available to Plaintiff through Public Sources and may be obtained by Plaintiff at the same expense that would be charged to the Defendant.

REQUEST NO. 24. Copies of all correspondence to other manufacturers of asbestos products between the years 1942 and 1958 dealing in whole or in part with precautions that should be taken with this defendant's Kaylo asbestos-containing products.

RESPONSE NO. 24. This defendant has no documents responsive to this request in its business records.

REQUEST NO. 25. Copies of all correspondence to and from Phillip Drinker between the years 1935 and 1958.

RESPONSE NO. 25. This defendant has no documents responsive to this request in its business records.

REQUEST NO. 26. Copies of all correspondence to and from A. C. Hirth from and to all asbestos products manufacturers or asbestos mining companies, or their representatives, between the years 1938 and 1958.

RESPONSE NO. 26. This defendant has no documents responsive to this request in its business records.

REQUEST NO. 27. A complete listing of all cases, giving the style of the case, the court wherein the case is or was pending, and the names and addresses of the attorneys of record wherein any documents, depositions, or testimony relating to asbestos litigation, in whole or in part, is or was, under seal or subject to a protective order and wherein this defendant is or was a party to the litigation. This request relates to any asbestos litigation wherein the subject of the case is asbestos-related disease or injury, asbestos-related property damage, or litigation between this defendant and its insurance carriers concerning coverage for

claims made against this defendant for asbestos-related disease, injury, or property damage.

RESPONSE NO. 27. This defendant objects to this request on the basis that it seeks information that is irrelevant, immaterial and not calculated to lead to the discovery of admissible evidence. The request is not limited to those documents that may be relevant to this lawsuit or may be discoverable under Rule 166. It is not reasonable for this defendant to be asked to provide, at great expense and under heavy burden, in response to this overly broad request, information which would not be valuable to the plaintiffs in this case.

REQUEST NO. 28. A complete listing of all documents withheld from the foregoing request for production. State the date, nature (letter, memo, report, etc.), author, addressees, and subject matter of the document and the reason why it was not produced, or state the privilege claimed.

RESPONSE NO. 28. See the above responses. No such list exists. In responding to these requests for production, Defendant has objected to many of the requests as being overly broad. In such cases, because the basis of the objection is that it is not reasonable to require Defendant to sort through voluminous records to determine if and to what extent the requested documents exist, it is impossible to specifically identify the documents.

To the extent possible, Defendant has identified the documents it is not producing and the privilege claimed. See, for example, the response to the request that the "Wellington Agreement" be produced.

Request for Hearing and In Camera Inspection:

Owens-Illinois, Inc. moves that the Court grant a hearing on its objections (if the Court deems a hearing to be appropriate), make an in camera inspection of the documents that Owens-Illinois, Inc. seeks to exclude from discovery because of privilege, and exclude from discovery all privileged matters.

Respectfully submitted,

BAKER & BOTTS

By

George I Shipley JRM
George Shipley

State Bar No. 18267100

3000 One Shell Plaza

Houston, Texas 77002

(713) 229-1776

Attorneys for Defendant
Owens-Illinois, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was mailed by certified mail, return receipt requested, to all counsel of record on this 2nd day of November, 1987.

George I Shipley JRM
George Shipley