

NO. 2000-757

IGNACIO SERAFIN, ET AL	§	IN THE COUNTY COURT
	§	
VS.	§	AT LAW NO. 3
	§	
CHEVRON U.S.A. INC.	§	EL PASO COUNTY, TEXAS

**CHEVRON U.S.A. INC.'S AMENDED RESPONSES
TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

TO: IGNACIO SERAFIN, by and through his attorney of record, Jennifer Kinder, BARON & BUDD, 3102 Oak Lawn Avenue, Suite 1100, Dallas, Texas 75219-4281.

NOW COMES CHEVRON U.S.A. INC., Defendant herein, and makes and files this its Amended Response to Plaintiff's First Set of Interrogatories.

Respectfully submitted,

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BISSELL & LEDYARD, L.L.P.

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ATTORNEYS FOR DEFENDANT,
CHEVRON U.S.A. INC.

OBJECTIONS

A. OBJECTIONS TO DISCOVERY

1. Defendant objects to Plaintiff's First Set of Interrogatories and Request for Production in their entirety because they were served at a time in direct contravention of Standing Order No. 1 for asbestos litigation in the District Courts and County Courts at Law of El Paso County, Texas. Plaintiff served the subject discovery on or about June 24, 1999 at a time when Standing Order No. 1 prohibited such interrogatories being served and responses being required without leave of court after hearing. See paragraph No. 14 of Standing Order No. 1.
2. Defendant objects to Plaintiff's Interrogatories and Request for production as they are overly broad, over burdensome and harassing given that Plaintiff has not yet adequately specified the work history of Ignacio Serafin. Specifically, Defendant would show that Standing Order No. 1 includes master discovery propounded to the Plaintiff which provides that the Plaintiff is to detail the applicable employment history including the dates when the Plaintiff or decedent worked for each employer, the location and description of each job site where Plaintiff or decedent was employed, the dates the Plaintiff or decedent worked at each such job site, the wage rate for each job site where asbestos exposure is claimed, each job site where the Plaintiff claims the Plaintiff or decedent was exposed to asbestos, the dates when it is claimed Plaintiff or decedent was exposed to asbestos and the name, business address, home address, relationship to Plaintiff and present occupation of each and every witness that has knowledge of fact relevant to any time that Plaintiff claims that the Plaintiff or decedent was exposed to asbestos containing products. The information provided by Plaintiff did not (and still does not) comport with the requirements of Standing Order No. 1 and accordingly, Plaintiff has not provided sufficient information to establish presence of the Plaintiff or decedent on Defendant's premises such that discovery to Defendant is justified.
3. Defendant objects to the whole of Plaintiff's discovery requests as being so overly broad and over burdensome that Plaintiff's discovery constitutes harassment. This suit involves a person employed by a finite number of employers at a finite number of locations during specific years (albeit yet unidentified specifically by Plaintiffs). Plaintiff's claim is that Plaintiff or decedent was exposed to asbestos containing products on Defendant's premises during the course and scope of his employment with various known employers. Plaintiff should be seeking production of records and information relevant to issues raised by that particular fact situation. Plaintiff's attempts to expand discovery to include information regarding irrelevant time periods and irrelevant materials produced at irrelevant locations by irrelevant persons or entities constitutes an impermissible abuse of the discovery rules and general misuse of the laws of the State of Texas.

B. OBJECTIONS TO PLAINTIFF'S DEFINITIONS

1. Defendant objects to Plaintiff's definition of the terms "Defendant", "you", "your", and "your company". To the extent the terms can be read to refer to Defendant's attorneys, any interrogatory or request for production utilizing any of these terms necessarily invades the work product privilege in violation of Rule 192.5 of the Texas Rules of Civil Procedure and Rule 503 of the Texas Rules of Evidence. To the extent the terms are defined to include predecessors, divisions, subsidiaries, foreign subsidiaries, foreign subsidiaries of predecessors, and/or affiliates, as well as present and former officers, directors, agents, employees and other persons acting or purporting to act on behalf of the corporate defendant, any interrogatory or request for production utilizing these terms is so overly broad, and over burdensome as to make any request or interrogatory utilizing the term virtually impossible to answer. Further, to the extent the definition is defined to include any merged, consolidated, or acquired predecessors, divisions, subsidiaries, foreign subsidiaries, foreign subsidiaries of predecessors, and/or affiliates, any interrogatory or request for production utilizing any of these terms is necessarily overly broad, over burdensome, and calls for material which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to Plaintiff's apparent attempt to place upon Defendant the burden to seek information from former officers, directors, agents and employees over whom Defendant no longer has dominion or control. Any interrogatory or request for production utilizing any of these terms is a "fishing expedition" in violation of Texas law as concerns discovery.
2. Defendant objects to Plaintiff's definition of the terms "document", "documents", "written materials", or "printed matters" as the definition of those terms renders any interrogatory or request for production utilizing any of these terms overly broad, over burdensome, harassing, and reduces any such interrogatory or request for production to a "fishing expedition" in violation of Texas law concerning discovery. Defendant further objects to the definition of these terms as calling for the production of material or information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to the definition of these terms to the extent it purports to include an obligation to locate and produce information or documentation which is no longer in the possession or control of this Defendant or from entities who are not parties to this cause of action.
3. Defendant objects to Plaintiff's definition of the words "meeting" or "meetings" as any interrogatory or request for production utilizing those terms is overly broad, and over burdensome in that it purports to require documentation or information concerning any casual or coincidental meeting.
4. Defendant objects to Plaintiff's definition of the terms "potential health hazards" or "health hazards" in that any interrogatory or request for production utilizing these terms is vague and ambiguous in that issues exist and minds differ with respect to impairments or disabilities and their associations with exposures to asbestos dust and fibers, if any.

INTERROGATORIES

INTERROGATORY NO. 1:

For each person who has supplied any information used in answering these interrogatory state the name, address, job title, length of time employed by Defendant, and a year-by-year list all other positions, titles, or jobs held when working for Defendant.

ANSWER:

In addition to all previous objections which are incorporated herein, Defendant specifically objects to this interrogatory as it invades the work product privilege embodied in Rule 192.5 of the Texas Rules of Civil Procedure and Rule 503 of the Texas Rules of Evidence.

Defendant has not undertaken an effort to provide information or documentation which constitutes "work product" as that term is defined in the Rules of Civil Procedure. Any such material arguably otherwise responsive to this request is withheld.

Without waiving the foregoing, the interrogatories to which this question applies are, for the most part, interrogatories to which no one person has a precise answer. Interrogatories inquiring about expert witnesses and settlement agreements are answered by counsel. Most of the remaining questions require that a conclusion be reached from looking at documents or talking to various and sundry people, both within this Defendant's organization and without. Answers given to these interrogatories are based on the best information which is available to counsel upon reasonable inquiry, at the time the answers are given. Defendant's answers are accordingly based upon the best information which is available to Defendant and Defendant's counsel upon reasonably inquiry.

The interrogatories are being executed by H. P. Walker, Chevron U.S.A. Inc., P. O. Box 7643, San Francisco, California 94120-7643.

INTERROGATORY NO. 2:

Have you ever been convicted or cited for of any offense (criminal, misdemeanor or felony any violation of federal or state regulations (including but not limited to, OSHA or other regulatory bodies), or country or city ordinances? If so, please list each offense and/or citation, identify court or the administrative body in which the case was filed and the date the conviction, citation violation was issued.

ANSWER:

In addition to all previous objections which are incorporated herein, Defendant specifically objects to this interrogatory as being overly broad and impossible to answer, given the definition of "you". Defendant further objects to this interrogatory as calling for information which is irrelevant.

Defendant has not undertaken historical research to identify and locate all present and past agents or employees of all "merged, consolidated, or acquired predecessors, divisions, subsidiaries, foreign subsidiaries or predecessors, and/or affiliates"; and then to contact and interview all such persons for information or documentation arguably responsive to this request.

Without waiving the foregoing, we have not found any instance where the El Paso facility has been cited by OSHA for any asbestos-related incident. If further information is located, this response will be supplemented.

INTERROGATORY NO. 3:

Please state whether a medical monitoring program, medical examination program or other medical surveillance program ("program") was provided to workers at Defendant's Premises. If programs were offered, please describe these programs in detail; specify in your response to whom such programs were offered (i.e. contractor employees and Defendant employees); describe the dates that the aforementioned programs were in place; and state what documents concerning the describe programs exist.

ANSWER:

In addition to all previous objections which are incorporated herein, Defendant objects to this interrogatory as it is overly broad in that it is not limited to any applicable time period. Defendant further objects to this interrogatory to the extent it seeks information which may be confidential, privileged or private to other persons who are otherwise protected from disclosure.

Without waiving the foregoing, the El Paso Refinery used outside contractor physicians for employee physicals and medical services with support from the corporate medical department in San Francisco. The refinery is not believed to have conducted such programs on contractor employees during the applicable periods. Defendant reserves the right to supplement this response as additional information is located.

INTERROGATORY NO. 4:

Please state the years during which Defendant Operated a medical department and identify persons who directed, headed or supervised said department and state the years of their service in capacity.

ANSWER:

In addition to all previous objections which are incorporated herein, Defendant objects to this interrogatory as vague and ambiguous given Plaintiff's definition of the term "Defendant". Defendant further objects to this interrogatory as it is overly broad and calls for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because the interrogatory is not limited to the applicable time periods (which have yet to be provided by Plaintiffs) nor in scope to the premises made the basis of this action.

Defendant has not undertaken historical research to identify and locate all present and past agents or employees of all "merged, consolidated, or acquired predecessors, divisions, subsidiaries, foreign subsidiaries or predecessors, and/or affiliates"; and then to contact and interview all such persons for information or documentation arguably responsive to this request.

Without waiving the foregoing, the El Paso Refinery did not maintain a medical department between 1940 and 1977. The El Paso Refinery used outside contractor physicians during this time. A corporate medical department in California was available to consult with the safety engineers at each facility. The corporate medical director in the 40's, 50's and 60's was Dr. Lee Curtis (now deceased). Dr. Gordon Richmond was the corporate medical director from 1970 up to 1975. From 1980 to 1983, Dr. R.E. Swencicki (now deceased) shared the position with Dr. William T. Kelly (February 1980 to June 1980) and with Dr. Samuel N. Bacon (June 1980 to October 1983). Dr. Swencicki held the medical director position from then until 1995. From 1995 to present, the corporate medical director is Dr. T. L. Bridge, 575 Market, San Francisco, California 94105-2856.

INTERROGATORY NO. 5:

Have you ever provided safety equipment to persons working on Defendant's Premises? If so, please list the safety equipment provided and indicate when the equipment was first provided, to whom the equipment was provided and under what circumstances the equipment was provided. Further, identify the person with the most knowledge of your "safety equipment" policies.

ANSWER:

In addition to all previous objections which are incorporated herein, Defendant objects to this interrogatory as it is vague, ambiguous, overly broad and over burdensome given Plaintiff's definition of the terms "you" and "your". Defendant further objects to this interrogatory as overly broad, over burdensome and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence given that the term "safety equipment" is nowhere defined and necessarily therefore includes equipment which is in no way relevant to Plaintiff's claims. Defendant further objects to this interrogatory as it is not limited to any applicable time period nor in scope to any applicable unit, work site or to contractors.

Defendant has not undertaken historical research to identify and locate all present and past agents or employees of all "merged, consolidated, or acquired predecessors, divisions, subsidiaries, foreign subsidiaries or predecessors, and/or affiliates"; and then to contact and interview all such persons for information or documentation arguably responsive to this request.

Without waiving the foregoing, on information and belief, it is not our policy to provide such equipment to contractor employees. Specifically, we believe the contracts with contractors required contractors to provide their own safety equipment. However, based on information presently available, it appears that if a contractor determined he was without a piece of safety equipment, the refinery would provide the contractor with access to whatever equipment it had available. Defendant reserves the right to supplement this response as additional information is located.

INTERROGATORY NO. 6:

Please list all asbestos-containing products ("products") used at Defendant's Premises. State what these products were used for, from whom these products were purchased, where the products were installed, and the specific persons or contractors who installed these products. Further, indicate the first year each specific asbestos-containing product was no longer purchased installed on Defendant's Premises.

ANSWER:

In addition to all previous objections which are incorporated herein, Defendant further objects to this interrogatory as overly broad, over burdensome and harassing in that it is not limited in scope nor to any applicable time period. Defendant further objects to this interrogatory as calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Without waiving any of the foregoing, we have located a number of purchase orders, invoices

and work orders from the El Paso facility which contain information regarding the use or purchase of such products. (Some of the documents produced may not reflect actual use of such products because we may have located and produced information received from manufacturers and suppliers from whom we purchased no products.) Please refer to our response to Plaintiffs' Request for Production No. 19 provided in Cause No. 98-1338; *Mary Hermosillo vs. Owens Corning, et al*; In the District Court, El Paso County, Texas, County Court at Law No. 2 and to documents which have been provided to Plaintiff's counsel in this case by supplement. Defendant reserves the right to supplement this response as additional information is located.

INTERROGATORY NO. 7:

Please state whether any asbestos-containing products in place or in use at Defendant's Premises have been abated at any time. If so, please list each person or company involved with the abatement of asbestos, including address and telephone number, and state the dates and particular locations of each abatement procedure.

ANSWER:

Without waiving any previous objection, insulation was replaced with non-asbestos insulation when insulation was replaced with non-asbestos insulation incident to some other work or repair in the 1970s. Records located to date indicate that the refinery began to specify calcium silicate or asbestos free insulation in the early 1970s. Defendant reserves the right to supplement this response as additional information is located.

INTERROGATORY NO. 8:

Do you contend that Defendant, Defendant's representatives, insurance carriers and/or agents performed any measurements and/or studies prior to 1970 to determine the quantity of asbestos fibers in the air at the Chevron facility? If the answer is anything other than "no", identify each and every fact which supports this contention.

ANSWER:

In addition to all previous objections which are incorporated herein, Defendant objects to this interrogatory as it is impossible to answer given the definition of "you" and "Defendant".

Defendant has not undertaken historical research to identify and locate all present and past agents or employees of all "merged, consolidated, or acquired predecessors, divisions, subsidiaries, foreign subsidiaries or predecessors, and/or affiliates"; and then to contact and interview all such persons for information or documentation arguably responsive to this request.

Without waiving the foregoing, this information is presently unknown. Defendant reserves the right to supplement this response as additional information is located.

INTERROGATORY NO. 9:

State in detail what tests have been conducted with regard to the quantity, quality threshold limit values of asbestos dust or particles to which workers were exposed while us working with or around, or installing asbestos-containing products in any of your facilities. Please state where and when these tests were conducted, by whom these tests were conducted, and results of any such test.

ANSWER:

In addition to all previous objections which are incorporated herein, Defendant objects to this interrogatory as being overly broad and over burdensome, especially given the definition of the term "your".

Defendant has not undertaken to conduct historical research to identify and locate all present and past agents or employees of all "merged, consolidated, or acquired predecessors, divisions, subsidiaries, foreign subsidiaries of predecessors, and/or affiliates"; and then to contact and interview all such persons for information or documentation arguably responsive to this request.

Without waiving any foregoing objections, please refer to documents produced to Plaintiff's counsel by Defendant in this case or in prior cases. Defendant reserves the right to supplement this response as additional information is located.

INTERROGATORY NO. 10:

Have you ever had a policy requiring workers on Defendant's premises to use respirators? (If so, please state when this policy was implemented; describe this policy in detail; state to whom it applied (i.e. Defendant employees and contractor employees); and describe what types and tn names of respirators were required by you.

ANSWER:

In addition to all previous objections which are incorporated herein, Defendant objects to this interrogatory as overly broad and calling for information which is neither relevant nor reasonably calculated to lead to admissible evidence.

Without waiving the foregoing, Chevron would have expected its contractors to take all reasonable precautions, including the use of respiratory protection, whenever the contractor deemed it necessary and appropriate. In addition, the refinery required contractors to abide by all applicable laws and regulations during the applicable time periods which necessarily would have included any requirements imposed by OSHA. Further, please refer to documents produced to Plaintiff's counsel by Defendant in this case.

INTERROGATORY NO. 11:

Do you contend that at no time during the time frame between 1948-1990, Defendant did have the right to advise or, if necessary, control the activities of employees of contractors, work on the premises of the Chevron facility, who were engaged in activities which could be potentially hazardous to either themselves or CHEVRON U.S.A., INC. employees? If the answer is anything other than "no", identify each and every fact which supports this contention.

ANSWER:

In addition to all previous objections which are incorporated herein, Defendant objects to this interrogatory as it is vague and argumentative.

Without waiving the foregoing, Chevron retained independent contractors to perform various activities on the premises of the Chevron facility because independent contractors were experts in the various fields in which they were retained. The contractors were independent and control over the details of the work was left to their expertise. Further, each independent contractor agrees to take all reasonable precautions to protect the workmen. Chevron anticipated that most, if not all, advice and control of contractors' day to day activities regarding safety would come from the contractors' employer.

INTERROGATORY NO. 12:

Have you ever warned workers on Defendant's Premises of the hazards of asbestos-containing products? If so, describe in detail the methods of such warnings, who you warned and when. Please include in your response a description of any written warnings relating to the hazards of asbestos in place at Defendant's Premises and state when the written warnings installed, how many were installed, and whether they have been removed.

ANSWER:

In addition to all previous objections which are incorporated herein, Defendant objects to this interrogatory as it is overly broad, over burdensome, vague, harassing and it calls for information which is neither relevant or reasonably calculated to lead to the discovery of admissible evidence. This interrogatory is especially vague and harassing given Plaintiff's definitions of the term "you".

Defendant has not undertaken historical research to identify and locate all present and past agents or employees of all "merged, consolidated, or acquired predecessors, divisions, subsidiaries, foreign subsidiaries or predecessors, and/or affiliates"; and then to contact and interview all such persons for information or documentation arguably responsive to this

Without waiving the foregoing objections, we have not yet been able to identify what specific information, if any, was posted or disseminated at Defendant's El Paso Refinery during the applicable periods. Defendant reserves the right to supplement this response as additional information is located.

INTERROGATORY NO. 13:

Please state the year you first learned that persons could suffer physical injury through the inhalation of asbestos fibers and how Defendant became aware of the existence of asbestos hazards. Further, please identify any documents that would indicate that asbestos fibers, when inhaled, can be hazardous to the health of human beings.

ANSWER:

In addition to all previous objections which are incorporated herein, Defendant objects to this interrogatory as being overly broad and over burdensome, especially given the definition of the term "your".

Defendant has not undertaken to conduct historical research to identify and locate all present and past agents or employees of all "merged, consolidated, or acquired predecessors, divisions, subsidiaries, foreign subsidiaries of predecessors, and/or affiliates"; and then to contact and interview all such persons for information or documentation arguably responsive to this request.

Without waiving any foregoing objections, please refer to documents produced to Plaintiff's counsel by Defendant in this case or in prior cases. Defendant reserves the right to supplement this response as additional information is located.

INTERROGATORY NO. 14:

If Defendant has ever been a member of any trade organization that published or disseminated any documents or information relating to the hazards of asbestos, state the names of such organizations and list the dates of membership.

ANSWER:

In addition to all previous objections which are incorporated herein, Defendant further objects to the purported burden of this interrogatory to search all materials ever published by any of these trade organizations for any specific information.

Defendant has not undertaken historical research to identify and locate all present and past agents or employees of all "merged, consolidated, or acquired predecessors, divisions, subsidiaries, foreign subsidiaries or predecessors, and/or affiliates"; and then to contact and interview all such persons for information or documentation arguably responsive to this request.

Without waiving the foregoing, Defendant has been a member of the American Petroleum Institute from 1949 to the present and the National Safety Counsel from 1949 to present.

INTERROGATORY NO. 15:

Identify every individual ever employed at Defendant's facilities who has made or presented a Worker's Compensation or other claim for personal injury or death resulting from inhalation asbestos. Please include in your response the date of any such claims and a description of the injury alleged.

ANSWER:

In addition to all previous objections which are incorporated herein, Defendant objects to this interrogatory as overly broad and over burdensome. Defendant objects to this interrogatory insofar as it is potentially violative of the rights of privacy of other individuals making such claims, if any. To the extent the interrogatory seeks information about lawsuits, such records are public and the information is equally available to Plaintiffs or their counsel.

Defendant has not undertaken historical research to identify and locate all present and past agents or employees of all "merged, consolidated, or acquired predecessors, divisions, subsidiaries, foreign subsidiaries or predecessors, and/or affiliates"; and then to contact and interview all such persons for information or documentation arguably responsive to this request.

INTERROGATORY NO. 16:

Do you contend that Defendant specifically warned Plaintiff about the hazards of asbestos-containing products? If the answer is anything other than "no", identify each and every which supports this contention.

ANSWER:

Whether Plaintiff ever saw or heard any warning on Defendant's premises is unknown.

INTERROGATORY NO. 17:

Please identify the date when Defendant first provided any Warnings to its own employees regarding the potential health hazards of asbestos.

ANSWER

In addition to all previous objections which are incorporated herein, Defendant objects to this interrogatory as overly broad and over burdensome given Plaintiff's definition of the term "Defendant".

Defendant has not undertaken historical research to identify and locate all present and past agents or employees of all "merged, consolidated, or acquired predecessors, divisions, subsidiaries, foreign subsidiaries or predecessors, and/or affiliates"; and then to contact and interview all such persons for information or documentation arguably responsive to this request.

Without waiving the foregoing, this interrogatory is incapable of being fully and reliably answered because Defendant is a corporation comprised of many individuals, all of whose personal knowledge regarding asbestos would be impossible to ascertain. Due to the size of Defendant's business and the number of decades over which it has operated with the attendant personnel changes, it is impossible to determine when or how any one employee first appreciated any potential health hazard of asbestos and provided any warning to another employee.