

FILE NAME: Keene (KNE)

DATE: July 18, 1989

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DOCUMENT DESCRIPTION: Legal - Keene Corporation Response to Plaintiff
Supplemental Interrogatories

Keene

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION : MIDDLESEX COUNTY

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TONY MAYO, et al.,	:	DOCKET NO. W-027328-87
Plaintiffs,	:	
vs.	:	
AC&S INCORPORATED, formerly	:	
Armstrong Contracting &	:	
Supply, Inc., et al.	:	
Defendants.	:	

- - - - - x

LOIS MAJARWITZ, et al.,	:	DOCKET NO. W-032671-87
Plaintiffs,	:	
vs.	:	
AC&S INCORPORATED, formerly	:	
Armstrong Contracting &	:	
Supply, Inc., et al.,	:	
Defendants.	:	

- - - - - x

IGAZIO CARINI, et al.,	:	DOCKET NO. W-017718-88
Plaintiffs,	:	
vs.	:	
AC&S INCORPORATED, formerly	:	
Armstrong Contracting &	:	
Supply, Inc., et al.,	:	
Defendants.	:	

- - - - - x

JOSEPH BILLACK, et al.,	:	DOCKET NO. L-087803-87
Plaintiffs,	:	

vs.	:
FLINTKOTE COMPANY, et al.,	:
Defendants.	:
- - - - - x	
NICHOLAS CATONE, et al.,	:
Plaintiffs,	:
vs.	:
AC&S INCORPORATED, formerly	:
Armstrong Contracting &	:
Supply, Inc., et al.,	:
Defendants.	:
- - - - - x	

KEENE CORPORATION'S RESPONSE TO
PLAINTIFFS' SUPPLEMENTAL INTERROGATORIES

INTRODUCTION

Keene Corporation ("Keene") has never mined asbestos, nor manufactured, processed, fabricated, sold, distributed, or otherwise placed into commerce thermal insulation or acoustical products containing asbestos. A former subsidiary of Keene, Keene Building Products Corporation ("KBPC"), and KBPC's corporate predecessors, Baldwin-Ehret-Hill, Inc. ("BEH"), a Pennsylvania corporation, Ehret Magnesia Manufacturing Company ("Ehret"), a Pennsylvania corporation, and Baldwin-Hill Company ("B-H"), a New Jersey corporation, did at one time manufacture and sell thermal insulation or acoustical products containing

asbestos. Keene expressly denies that it is the successor to the unknown and unforeseen contingent tort, contractual, or other liabilities of KBPC, BEH, and BEH's corporate predecessors.

Keene was formed in 1967 and acquired substantially all of the stock of BEH in 1968. BEH became a subsidiary of Keene. BEH resulted from a 1959 merger of Ehret and B-H. In 1970, BEH was merged, and its business was transferred, into another Keene subsidiary, KBPC. KBPC, BEH, and BEH's corporate predecessors manufactured and sold insulation products, including some thermal insulation and acoustical products containing asbestos.

None of the companies was ever in the business of mining, milling, distributing, or importing raw asbestos fiber. During the 1960's, BEH commenced efforts to eliminate asbestos from its products. By 1972, all asbestos was removed from the thermal insulation and acoustical products manufactured by KBPC which contained it. KBPC ceased to be a Keene subsidiary in 1974 and some assets of KBPC were transferred to Keene and the remainder of the assets remained in KBPC whose stock was sold to a third party. Documents generated after that date are not relevant to this lawsuit.

The information provided in these responses is based upon knowledge obtained through a review of Keene's documents and records and through a review of existing documents and

records of KBPC, BEH, and BEH's corporate predecessors.

Many of the events which may be relevant to the issues in this lawsuit occurred prior to Keene's purchase of the stock of BEH. In addition, much of the information being sought by plaintiff involves events which occurred decades prior to the commencement of this suit. Many of the individuals who might have had personal knowledge of the matters to which plaintiff's discovery relates are deceased or are otherwise unavailable to Keene, and investigations to date indicate that at least some of the documents which relate to the matters inquired about were discarded in the regular course of business prior to commencement of the asbestos personal injury litigation.

Furthermore, no single individual can now be found who is aware of all facts relevant to this litigation. Information must be assimilated from those records which still exist and from former employees of companies other than Keene. Accordingly, Keene can only relay this information; it cannot attest to the accuracy or truthfulness of such responses. Information of this nature is being supplied because it may lead to the discovery of admissible evidence.

For these reasons, the information being provided in these responses may be incomplete. Keene is engaged in a continuing investigation into the subject matter sought by this discovery, and its responses are based upon this investigation. Keene cannot exclude the possibility that its continued

investigation may at some future time reveal more complete information, or even information which indicates that an answer which is now being supplied is incorrect. Keene reserves the right to supplement these responses at a future date if additional information is discovered.

Unless the context requires a contrary interpretation, the terms "defendant," "you," or "your" as used herein refer to KBPC, BEH, and BEH's corporate predecessors only, and are not intended to include or refer to Keene alone or in part. Answers referring to the manufacture, distribution, purchase, or sale of thermal insulation or acoustical products containing asbestos or any activities related thereto are based upon acts of KBPC, BEH, and BEH's corporate predecessors only.

To the extent that the information contained herein differs in any respect from any prior response to discovery, these responses shall be deemed to update and supersede such prior response in any and all cases.

This introduction is explicitly incorporated into each of the responses hereinafter provided.

GENERAL OBJECTIONS

Keene generally objects to these interrogatories as being unduly burdensome, harassing, oppressive, vexatious, boilerplate, overly broad as to time, scope, or location, vague, lacking in particularity, and repetitious. The use of

the words "any," "all," "each," or "every" is overly broad and objected to. Objection is made to the extent these interrogatories assume the truth of facts not proven or facts not in evidence. Objection is made to these interrogatories on the grounds that they seek information which is not relevant or not reasonably calculated to lead to the discovery of admissible evidence. Objection is also made to these interrogatories to the extent that they seek information or materials which have been gathered or prepared in the course of the asbestos litigation, or which are otherwise protected by the attorney-client privilege, the work product doctrine, or by any other applicable privilege. Keene also objects to these interrogatories to the extent that they seek confidential, trade secret, or other proprietary information or materials.

Keene further objects to these interrogatories to the extent that they improperly call for a legal, medical, or scientific opinion or conclusion which Keene is not qualified to render.

To the extent these interrogatories seek information regarding health risks to individuals who worked at plants where thermal insulation or acoustical products containing asbestos were manufactured, Keene objects on the ground that such information is not relevant or not reasonably calculated to lead to the discovery of admissible evidence. See, e.g., Lohrmann v. Pittsburgh-Corning Corp., 782 F.2d 1156, 1165 (4th

Cir. 1986); Martin v. Johns-Manville Corp., 508 Pa. 154, 175, 494 A.2d 1088, 1099 (1985).

Keene further objects to these interrogatories to the extent they seek medical records or other privileged personnel information, and Keene will not provide such information absent an appropriate waiver of the applicable privilege.

Keene does not concede that any of its answers to these interrogatories are or will be admissible evidence at a trial of this action, and Keene does not waive any objection, on any ground, whether or not asserted herein, to the use of any such answer at trial.

These General Objections are explicitly incorporated into each of the responses hereinafter provided.

1. When was the first time that this defendant became aware of the contents and existence of Public Health Bulletin No. 241, entitled "A Study of Asbestosis in the Asbestos Textile Industry" by Dreessen, Dallavalle, Edwards, Miller and Sayers.

ANSWER: Keene objects to this interrogatory on the grounds that it assumes facts not proven or facts not in evidence. Keene objects to this interrogatory on the grounds that it seeks information which is not relevant or is not likely to lead to the discovery of admissible evidence. Without waiving these objections, Keene states that to the best of its current knowledge neither KBPC, BEH, and BEH's predecessors became aware of the referenced article.

2. With respect to the article referred to in Interrogatory No. 1, state:

(a) How defendant became aware of the existence of such article;

(b) How defendant first became aware of the content of such article;

(c) Which individuals or representatives of defendant were the first to become aware of the content and existence of such article;

(d) The job title or position held by that representative(s) of defendant who first became aware of the contents and existence of the article.

ANSWER: Keene objects to this interrogatory as being unduly burdensome, harassing, or oppressive. Keene objects to this interrogatory on the grounds that it is overly broad as to time, scope, or location. Keene objects to this interrogatory on the grounds that it seeks information which is not relevant or is not likely to lead to the discovery of admissible evidence. Without waiving these objections, Keene states see answer to interrogatory No. 1.

3. State whether defendant's knowledge of the contents of the article referred to Interrogatory No. 1 was relied upon by defendant at any time in deciding whether a caution or warning statement should be placed upon the defendant's asbestos containing products concerning the potential health hazards of exposure to asbestos.

ANSWER: Keene objects to this interrogatory as being unduly burdensome, harassing, or oppressive. Keene objects to this interrogatory on the grounds that it is overly broad as to time, scope, or location. Keene objects to this interrogatory

on the grounds that it is vague or lacks particularity. Keene objects to this interrogatory on the grounds that it seeks information which is not relevant or is not likely to lead to the discovery of admissible evidence. Without waiving these objections, Keene states see answer to interrogatory No. 1. Further, Keene states Keene does not have specific information regarding the first awareness which BEH or BEH's corporate predecessors obtained regarding asbestos-related diseases in insulators. It appears, however, that it was not until 1964 that top corporate management employees at BEH first became aware of the possibility of an ascertainable relationship between the inhalation of airborne asbestos fibers and adverse health effects to insulators. Prior to that time, some information regarding the dangers of high levels of exposure to asbestos fiber was received with respect to a small number of plant workers. Keene does not believe that plant worker information is relevant to insulators.

One former employee of BEH, John McAllister, has testified that he personally was aware of the potential hazards of asbestosis among plant workers who were subject to high levels of asbestos exposure, based on his knowledge of silicosis at the time he came to Ehret in 1952. There are no written documents indicating that Mr. McAllister ever made his potential knowledge known to the management of BEH or to Keene during the period of time he was employed by BEH. His

testimony is inconsistent with the recollection and testimony of other BEH employees.

Keene is advised that Edward R. Stevens, president of BEH, was present at a conference sponsored by the New York Academy of Sciences in 1964 at which Dr. Irving Selikoff first presented his hypothesis that installers of thermal insulation products containing asbestos were suspected to be at risk. That paper was published in the Annals of the Academy in December, 1965. Dr. Selikoff's hypothesis was questioned by certain BEH employees. As of 1964, BEH had not received any complaints from users of its insulation products relating to asbestos disease.

In 1965, Miles M. Wilson, Vice President of Sales of BEH, requested that the Health and Safety Committee of the National Insulation Manufacturers' Association ("NIMA") investigate Selikoff's studies and hypothesis. The committee conducted an investigation and reported its findings in the latter part of 1966. A decision was made to place warnings on BEH insulation products which contained asbestos. This decision was implemented. By 1968, efforts to remove asbestos fiber from BEH's thermal insulation and acoustical products had commenced.

4. If the answer to the foregoing Interrogatory is in the affirmative, please state:

(a) How such article influenced the decision concerning the placement of warnings on defendant's asbestos containing products concerning the potential health hazards

posed by exposure to asbestos;

(b) Attach hereto copies of all writings, including memos, letters, etc. concerning defendant's reliance on the article referred to in Interrogatory No. 1 in deciding whether to place warning labels on defendant's asbestos containing products.

ANSWER: Keene objects to this interrogatory as being unduly burdensome, harassing, or oppressive. Keene objects to this interrogatory on the grounds that it is overly broad as to time, scope, or location. Keene objects to this interrogatory on the grounds that it seeks information which is not relevant or is not likely to lead to the discovery of admissible evidence. Keene objects to this interrogatory on the grounds that it assumes facts not proven or facts not in evidence. Without waiving these objections, Keene states see answer to interrogatory No. 1 and 3.

5. When was the first time that this defendant became aware of the contents and existence of the article entitled "A Health Survey of Pipe Covering Operations in Constructing Naval Vessels" by Fleischer, Viles, Gade and Drinker.

ANSWER: Keene objects to this interrogatory on the grounds that it assumes facts not proven or facts not in evidence. Keene objects to this interrogatory on the grounds that it seeks information which is not relevant or is not likely to lead to the discovery of admissible evidence. Without waiving these objections, Keene states that to the best of its current knowledge neither KBPC, BEH, and BEH's

predecessors became aware of the referenced article.

6. With respect to the article referred to in Interrogatory No. 5, state:

(a) How defendant became aware of the existence of such article;

(b) How defendant first became aware of the content of such article;

(c) Which individuals or representatives of defendants were the first to become [sic] aware of the content and existence of such article;

(d) The job title or position held by that representative(s) of defendant who first became aware of the contents and existence of the article.

ANSWER: Keene objects to this interrogatory as being unduly burdensome, harassing, or oppressive. Keene objects to this interrogatory on the grounds that it is overly broad as to time, scope, or location. Keene objects to this interrogatory on the grounds that it seeks information which is not relevant or is not likely to lead to the discovery of admissible evidence. Without waiving these objections, Keene states see answer to interrogatory No. 5.

7. State whether defendant's knowledge of the contents of the article referred to in Interrogatory No. 5 was relied upon by defendant at any time in deciding whether a caution or warning statement should be placed upon the defendant's asbestos containing products concerning the potential health hazards of exposure to asbestos.

ANSWER: Keene objects to this interrogatory as being unduly burdensome, harassing, or oppressive. Keene objects to

this interrogatory on the grounds that it is overly broad as to time, scope, or location. Keene objects to this interrogatory on the grounds that it is vague or lacks particularity. Keene objects to this interrogatory on the grounds that it seeks information which is not relevant or is not likely to lead to the discovery of admissible evidence. Without waiving these objections, Keene states see answers to interrogatory Nos. 5 and 3.

8. If the answer to the foregoing Interrogatory is in the affirmative, please state:

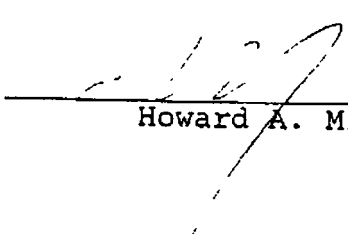
(a) How such article influenced the decision concerning the placement of warnings on defendant's asbestos containing products concerning the potential health hazards posed by exposure to asbestos;

(b) Attach hereto copies of all writings, including memos, letters, etc. concerning defendant reliance on the article referred to in Interrogatory No. 5 in deciding, whether to place warning labels on defendant's asbestos containing products.

ANSWER: Keene objects to this interrogatory as being unduly burdensome, harassing, or oppressive. Keene objects to this interrogatory on the grounds that it is overly broad as to time, scope, or location. Keene objects to this interrogatory on the grounds that it seeks information which is not relevant or is not likely to lead to the discovery of admissible evidence. Keene objects to this interrogatory on the grounds that it assumes facts not proven or facts not in evidence. Without waiving these objections, Keene states see answers to interrogatory Nos. 5 and 3.

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

HOWARD A. MILEAF, being duly sworn, deposes and says that he is Vice President, General Counsel and Corporate Secretary of Keene Corporation. The foregoing is verified on behalf of Keene Corporation. The matters stated therein are not within his personal knowledge and have been prepared pursuant to his directions from information and records available to said corporation. He believes the foregoing to be true.


Howard A. Mileaf

Sworn to before me this
18th day of

July 1989


Notary Public

BONNIE B. HAU
Notary Public, State of New York
No. 41-4947992
Qualified in Queens County
Commission Expires March 6, 1991