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7
8 Attorneys for Defendant
9 CAPCO PIPE COMPANY, INC.

10
11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

13 IN RE COMPLEX ASBESTOS LITIGATION) DEFENDANT CAPCO PIPE COMPANY'S
14) SUPPLEMENTAL RESPONSES TO
15) PLAINTIFFS' STANDARD
16) INTERROGATORIES TO DEFENDANTS

17 PROPOUNDING PARTIES: ASBESTOS PLAINTIFFS

18 RESPONDING PARTY: DEFENDANT CAPCO PIPE COMPANY, INC.

19 SET NUMBER: ONE [GENERAL ORDER NO. 129]
20 [FIRST SUPPLEMENTAL RESPONSES]

21 Defendant Capco Pipe Company, Inc. ("Capco"), hereby supplements
22 its responses to the San Francisco General Order No. 129 Plaintiffs'
23 Standard Interrogatories to Defendants. With the exception of the
24 first of the following supplemental responses, Capco's responses here
25 provide supplemental information requested by the law firm of Brayton
26 Harley Curtis. A copy of those requests, dated August 28, 1998, is
27 attached hereto as Exhibit A.

28 SUPPLEMENTAL RESPONSE TO INTERROGATORY NOS. 13 AND 14

29 For a short period of time in the late 1960's, Capco was a member
30 of the Asbestos Cement Products Association ("ACPA"), a trade

1 organization that was dissolved in 1970, prior to the 1971 formation
2 of the Asbestos Cement Pipe Producers Association ("ACPPA").
3 Publications received from the ACPA may have included a booklet
4 entitled "Recommended Practices For Fabricating, Handling and Applying
5 Asbestos-Cement Products in the Building and Construction Industries,"
6 which is a booklet known to have been published by that organization,
7 but a copy of which has not been found among Capco's documents at this
8 time. ACPA committees or subcommittees in which, it is believed, a
9 Capco representative participated included the Health and Safety
10 Council and the In Plant Environmental Control Subcommittee.

11 SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 15

12 Prior to 1973, Capco did not receive any documents containing
13 results or conclusions of any studies and/or tests conducted by Bonsib
14 for Standard Oil of New Jersey relating to asbestos exposure in the
15 workplace or the human health consequences of exposure to asbestos.

16 SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 16

17 Prior to 1973, Capco did not receive a copy or any portion of any
18 studies and/or tests conducted by any insurance company including but
19 not limited to Metropolitan Life Insurance Company and Aetna Insurance
20 relating to asbestos exposure in the workplace or the human health
21 consequences of exposure to asbestos.

22 SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 17

23 It is unlikely that "this defendant prior to 1973 received any
24 documents containing results or conclusions of any studies and/or
25 tests conducted by any laboratory including but not limited to the
26 Saranac Laboratory relating to asbestos exposure in the workplace or

1 the human health consequences of exposure to asbestos," to the extent
2 such research was before Capco was founded in 1963. In particular,
3 the Saranac Laboratory asbestos research reportedly occurred during
4 the 1930's through the 1950's, long before Capco was founded.
5 However, by the time Capco was founded, it was well known that
6 excessive exposure to asbestos dust was harmful to the lungs. As for
7 laboratory research since Capco was founded in 1963, Capco would have
8 received information regarding such research to the extent it was
9 reported in the press, including such publications as newsletters of
10 organizations such as the Asbestos Information Association of North
11 America, noted in Capco's Response to Interrogatory No. 14.

12 SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 21

13 Capco conducted tests of ambient air asbestos dust levels at its
14 two A/C pipe manufacturing plants periodically as required by OSHA
15 regulations promulgated in 1972 et seq. That was a matter of OSHA
16 regulatory compliance, but the data is irrelevant here because the
17 plaintiffs in these California actions did not work at those plants,
18 and by that time it was well known that excessive exposure to asbestos
19 dust was harmful to the lungs. It would be very time consuming to
20 attempt to identify "each" such test, because the testing included
21 such things as personal monitoring data for numerous individual
22 employee worksites. However, in general the available records
23 indicate that the periodic testing was conducted at the two respective
24 plants every six months or more often, with samples known to have been
25 taken at least as often as during the months noted below; there may
26 well have been additional monitoring dates not readily identifiable

1 at this time. The time frame for responses to these interrogatories
2 is through 1985, but Capco closed its Ragland plant in 1982. The
3 monitoring was generally conducted by the plant safety engineer, using
4 the membrane filter technology required by OSHA, with the samples sent
5 to an outside laboratory to perform the dust counts.

6 Regarding Capco's Ragland, Alabama plant, various records
7 indicate such testing was conducted during the following months:
8 March 1972, September 1972, April 1973, November 1973, April 1974,
9 June 1974, November 1974, April 1975, December 1975, January 1976,
10 March 1976, June 1977, November 1977, December 1977, March 1978, July
11 1978, September 1978, October 1978, December 1978, February 1979,
12 August 1979, January 1980, June 1980, August 1980, November 1980,
13 December 1980.

14 Regarding Capco's Van Buren, Arkansas plant, various records
15 indicate such testing was conducted during the following months:
16 February 1973, April 1973, May 1973, September 1973, November 1973,
17 January 1974, March 1974, April 1974, October 1974, November 1974,
18 December 1974, January 1975, March 1975, May 1975, February 1976,
19 August 1976, December 1976, May 1977, June 1977, September 1977,
20 December 1977, February 1978, December 1978, June 1979, January 1980,
21 February 1980, August 1980, February 1981, August 1981, February 1982,
22 August 1982, February 1983, August 1983, February 1984, March 1985,
23 August 1985.

24 SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 22

25 Capco caused no such tests to be conducted. Capco was, however,
26 a member of the Asbestos Cement Pipe Producers Association ("ACPPA"),

1 and the ACPPA did "cause to be conducted" studies regarding ambient
2 air asbestos dust levels involved with the handling and installation
3 of asbestos cement pipe. The reports of those two Equitable
4 Environmental Health studies conducted for the ACPPA, both dated in
5 1977, have been identified in Capco's Response to Interrogatory No.
6 19.

7 SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 26

8 At this time Capco continues to lack "insurance available to
9 cover [potential] judgments(s)" in asbestos litigation.

10 SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 29

11 Capco never marketed raw asbestos. The companies from whom Capco
12 purchased raw asbestos are identified in Capco's Response to
13 Interrogatory No. 31. Capco notes the following in further response
14 to Interrogatory No. 29 subparts A through I, as requested:

15 A. Capco never milled or marketed raw asbestos between 1930 and
16 1985.

17 B. Capco never placed on the market or marketed raw asbestos.

18 C. Capco never produced or recalled raw asbestos.

19 D. Capco never marketed any types or grades of raw asbestos.

20 E. Capco never color coded, marked or packaged raw asbestos.

21 F. Capco never marketed raw asbestos for any intended use.

22 G. Capco never marketed raw asbestos pursuant to a U.S.
23 Government list.

24 H. Capco never sold raw asbestos.

25 I. Capco never sold, shipped or distributed raw asbestos.

26 //

1 SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 31

2 Capco's only asbestos-containing products were: (1) asbestos
3 cement underground water pressure pipe, and (2) asbestos cement
4 underground non-pressure sewer pipe (also suitable for underground
5 storm drains). Those were two types of pipe, not three, but both were
6 essentially the same product, i.e., asbestos cement underground pipe,
7 which was joined together using an underground and water-tight type
8 of coupling unit. However, pressure pipe was made to withstand water
9 pumped under pressure and so was thicker-walled; the smallest size
10 pressure pipe Capco made was four inches (4") inside diameter, while
11 the smallest size underground sewer pipe Capco made was six inches
12 (6") inside diameter. In other respects, for both the interrogatory
13 responses are the same, unless otherwise noted.

14 D. The precise chemical composition of Capco asbestos cement
15 underground pipe varied according to the hydrostatic strength and
16 crush strength required of the pipe, and also varied somewhat over
17 time. However, in general the pipe was composed, by weight, of about
18 50% Portland cement, about 35% silica sand, and from 10 to 20 %
19 asbestos depending on the strength required, with more asbestos used
20 for pipe requiring greater strength. In addition, water was a
21 component of the wet cement used in forming the pipe, but following
22 drying and oven curing only a small amount of water would have
23 remained in the pipe.

24 E. Further details as to the "physical appearance and nature,"
25 including response to the supplemental request for details as to the
26 "size, shape, length and diameter" of Capco's asbestos cement

1 underground pipe, are as follows. Water pressure pipe included two
2 sub-varieties known as transmission pipe (to convey water under
3 pressure from its source to a point of distribution), and distribution
4 pipe (such as for use under the streets of a community). The sizes
5 of Capco's asbestos cement underground water pressure pipe (including
6 together distribution pipe and transmission pipe) were inside
7 diameters of 4, 6, 8, 10, 12, 14, 15, 16, 18, 20, 21 and 24 inches.
8 The pipe was made in a number of strength classes according to the
9 maximum operating pressure to be used; there were three strength
10 classes of distribution pipe (100, 150 or 200 pounds per square inch),
11 with higher strength classes for transmission pipe (T-30, T-35, T-40,
12 T-45, T-50, T-60, T-70, T-80, and T-90, i.e., respectively 300 through
13 900 pounds per square inch). The sizes of Capco's asbestos cement
14 non-pressure sewer pipe were inside diameters of 6, 8, 10, 12, 14, 15,
15 16, 18, 20, 21, and 24 inches, and the pipe was made in strength
16 classes according to the crush strength required (i.e., 2400, 3300,
17 4000 or 5000 pounds per linear foot). Capco made both its pressure
18 pipe and non-pressure pipe in standard 13 foot lengths, with half
19 lengths, quarter lengths and special order lengths also available.
20 The lengths of pipe were cylindrical in shape, and at the factory were
21 precisely machine-tapered at the ends to fit into water-tight
22 underground A/C pipe couplings. Each length of pipe sold was provided
23 with a coupling; inside the coupling two rubber ring gaskets were used
24 to ensure a water-tight seal when the lengths of pipe were connected.

25 G. The referenced "U.S. Government's 'Qualified Products List'"
26 presumably would have included asbestos cement underground pipe,

1 because there were federal specifications for such pipe: (1) Federal
2 Specification SS-P-351c for Asbestos Cement Pressure Pipe (1968,
3 superseding prior editions of that specification), and (2) Federal
4 Specification SS-P-331c for Asbestos Cement Non-pressure Sewer Pipe
5 (1967, superseding prior editions of that specification).

6 I & J. The burden of making a compilation, abstract, etc. of
7 Capco's California customer cards would be substantially the same for
8 plaintiffs' counsel or defense counsel. Several years ago Capco
9 supplied the Brayton Harley Curtis law firm with copies of Capco's
10 California customer cards, in alphabetical order; the customer cards
11 indicate dates and dollar amounts of sales to each customer. Copies
12 of those records are also available to other plaintiffs' counsel on
13 request, as noted in Capco's initial Response to Interrogatory No. 31
14 (I & J).

15 SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 47

16 Capco first warned its employees that exposure to asbestos could
17 be hazardous to human health at its inception in 1965.

- 18 A. The first warnings were oral.
19 B. There are no documents that contain the first oral warnings.
20 C. Not applicable.
21 D. Workers were generally advised that excessive exposure to
22 asbestos dust could cause lung disease.

23 SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 53

24 Any and all Capco shipments through ports in the GEOGRAPHIC AREA,
25 like other Capco shipments by sea, were specially packaged for
26 shipment in one of two ways, either: (1) containerized - if the pipe

1 was to be containerized, it was trussed up on pallets the right size
2 to fit into the containers; or (2) roll on/ roll off - whereby the
3 trailer portion of a flatbed truck, loaded with pipe, was driven onto
4 the ship, the cab departed, and at the port of arrival another truck
5 cab would drive the truckload shipment to its worksite destination.
6 Neither method involved longshoremen handling lengths of pipe.

7 In regard to the task of attempting to locate any and all bills
8 of lading that potentially could identify shipments that may have gone
9 through ports in the GEOGRAPHIC AREA, following preliminary review it
10 is apparent that the task would be very time consuming. If
11 plaintiffs' counsel would like to attempt the task, retained boxes of
12 old Capco invoice records are included among somewhat more than 700
13 boxes of Capco documents retained in storage under the custody of
14 Porzio, Bromberg and Newman. Pursuant to C.C.P. § 2030(f)(2),
15 plaintiffs' counsel may make arrangements to inspect such invoice
16 records. The boxes of documents are marked according to the respective
17 sources from which they were acquired at or about the time Capco went
18 out of business.

19 DATED: October 27, 1998

DRYDEN, MARGOLES, SCHIMANECK,
KELLY & WAIT

20
21
22 By:


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Capco Pipe Company, Inc.

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August 28, 1998

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RECEIVED

AUG 31 1998

RE: In re: Complex Asbestos Litigation
Your Client: Capco Pipe Company, Inc.

DRYDEN, MARGOLES, SCHIMANECK,
HARTMAN & KELLY

Dear Mr. Osborne:

The purpose of this letter is to "meet and confer" pursuant to Code of Civil Procedure Section 2030(1) regarding the responses of your client's, Capco Pipe Company, Inc. (hereinafter "Capco"), responses to General Order 129 ("GO 129") Standard Plaintiffs Interrogatories to Defendants.

Just as with any discovery request, Plaintiffs are entitled to all relevant discovery that is itself admissible and appears reasonably calculated to lead to the discovery of admissible evidence. C.C.P. § 2017(a). Defendant's answers must be as complete and straightforward as the information available to defendant permits. C.C.P. § 2030(f)(1). Furthermore, if Capco does not have personal knowledge sufficient to fully respond to the interrogatory, C.C.P. § 2030(f)(1) requires a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations.

The following interrogatories fall short of the requirements of the Discovery Act and GO 129. I am hereby requesting supplemental answers which are fully responsive to the interrogatories and which address the concerns I have set forth below.

DEFENDANT'S INTERROGATORIES

Detailed discussion of those interrogatory responses to which Plaintiffs are requesting amended or supplemental responses follows.

K:\DOCS\DEFENDS\CAPCO\OSBORNE.M&C

INTERROGATORY NO. 15

This interrogatory asks whether your client, prior to 1973, received any documents relating to the studies conducted by Bonsib for Standard Oil of New Jersey and, if so, requests specific information as to those documents. Capco responds, "Not to Capco's knowledge."

The answer is incomplete. If Capco does not have personal knowledge sufficient to fully respond to the interrogatory, C.C.P. § 2030 (f)(l) requires a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations. Please amend the response accordingly.

INTERROGATORY NO. 16

This interrogatory asks whether your client, prior to 1973, received any of the studies conducted by any insurance company relating to asbestos exposure in the workplace and, if so, requests specific information as to those documents. Capco responds, "Not to Capco's knowledge."

The answer is incomplete. If Capco does not have personal knowledge sufficient to fully respond to the interrogatory, C.C.P. § 2030 (f)(l) requires a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations. Please amend the response accordingly.

INTERROGATORY NO. 17

This interrogatory requests information as to whether your client, prior to 1973, received any documents relating to any studies or tests conducted by any laboratory, including but not limited to the Saranac Laboratory, relating to asbestos exposure in the workplace and, if so, requests specific information as to those documents. Capco responds, "Not to Capco's knowledge."

The answer is incomplete. If Capco does not have personal knowledge sufficient to fully respond to the interrogatory, C.C.P. § 2030 (f)(l) requires a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations. Please amend the response accordingly.

INTERROGATORY NO. 21

This interrogatory asks whether your client conducted any tests and/or studies of ambient asbestos dust created during the manufacture, etc. of asbestos-containing products and, if so, specifics as to such testing. Capco responds that it conducted tests "periodically" at two manufacturing facilities.

This response is incomplete and nonresponsive, as subpart B requires the date of each test. Please provide a supplemental response which answers the interrogatory in a complete and straightforward manner.

INTERROGATORY NO. 22

This interrogatory asks whether your client conducted any test and/or studies on ambient asbestos dust levels at any location where asbestos-containing products were installed, utilized or removed and, if so, specific information as to the first five tests and/or studies. Capco responds, "See response to Interrogatory No. 19."

The answer is incomplete to the extent that Capco's response to Interrogatory No. 19 does not answer Interrogatory No. 22. Please provide a supplemental response which answers the interrogatory in a complete and straightforward manner.

INTERROGATORY NO. 26

This interrogatory requests specific information as to insurance available to your client to cover judgment(s) entered against it in asbestos-related personal injury lawsuits. Capco responds, "Capco is currently attempting to secure insurance coverage through negotiations with and threatened litigation against former insurers, but does not at this time have assurance of coverage."

The answer is incomplete. Defendant fails to respond completely to subparts A through D.

C.C.P. § 2030(f)(1) requires a reasonable and good faith effort to fully answer the interrogatories. I believe your client has had ample opportunity to complete its investigation. If new information has been discovered, your client must supplement its response. Otherwise, please amend the response to either delete the "discovery is continuing" language or provide a date certain within the next 30 days as to when discovery will be completed. Please amend the response accordingly.

INTERROGATORY NO. 29

If your client's response to Interrogatory No. 28 is in the affirmative, Interrogatory No. 29 requires specificity as to each activity with regard to raw asbestos. Capco responds, "Not applicable. As noted previously, Capco imported raw asbestos only for its own use; Capco did not market the raw asbestos to others."

The answer is incomplete based on Capco's affirmative response to Interrogatory No. 28. Defendant fails to respond completely to subparts A through I. Please amend the response accordingly.

INTERROGATORY NO. 31

If your client's answer to Interrogatory No. 30 is in the affirmative, Interrogatory No. 31 requests specific information as to your client's activities with regard to asbestos-containing products. Capco responds generally with regard to asbestos-containing pressure pipe, storm drain pipe, and sewer pipe.

The answer is incomplete as described more particularly below. Generally, Capco must respond to each subpart for each of its three products.

As to subpart D, please provide the chemical composition of each type of pipe. Also, this subpart calls for the entire chemical composition and not merely the percentage of asbestos.

As to subpart E, please provide details as to the size, shape, length, and diameter offered by Capco for each type of pipe.

As to subpart G, if Capco does not have personal knowledge sufficient to fully respond to the interrogatory, C.C.P. § 2030 (f)(1) requires a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations.

As to subparts I and J, under C.C.P. § 2030(f)(2), defendants may allow the interrogating party to inspect and copy the records in question. However, this option is allowed only if the answer would necessitate the preparation or the making of a compilation, abstract, etc. of the document, and the burden or expense of making it would be substantially the same for Plaintiffs as for defendants. In addition, the documents from which the answer may be derived must be described with sufficient particularity that they can be located and identified. C.C.P. § 2030(f)(2).

Defendant has not made a proper showing of burden, nor have the responsive documents been sufficiently described. Defendants must do so before making recourse to C.C.P. § 2030(f)(2).

INTERROGATORY NO. 47

This interrogatory asks when your client first warned its employees that exposure to asbestos could be hazardous to human health and the specifics of said warnings. Capco responds with regard to signs and booklets.

Defendant fails to respond completely to subparts B through C. Please amend the response accordingly.

INTERROGATORY NO. 53

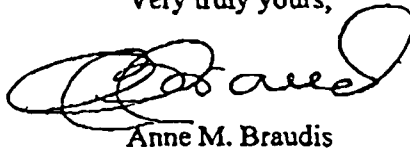
This interrogatory asks whether your client, from 1930 to 1985, ever imported, exported, shipped, etc. raw asbestos or asbestos-containing products into or out of any port in the geographic area and, if so, the specifics of such shipment. Capco responds, "In the 1970's and early 1980's Capco had a number of sales of A/C underground pipe to several customers in Hawaii, some of which shipments may have gone through ports in the GEOGRAPHIC AREA. A search for the relevant bills of lading will be conducted on request to Porzio, Bromberg & Newman."

The answer is incomplete. The interrogatory requires specific information as to documents, and defendants must provide this information in a straightforward manner. Please amend the response accordingly.

In accordance with both the stated goals and clear language of GO 129 and C.C.P. § 2030, please provide verified amended or supplemental responses which completely and thoroughly answer the interrogatories enumerated above on or before **September 28, 1998**. I am available to discuss the issues raised in this letter with you and to discuss extensions of time if such are to be deemed necessary, and I would prefer to resolve this matter short of court intervention.

I look forward to hearing from you and hope we can reach an amenable resolution of this matter.

Very truly yours,



Anne M. Braudis

AMB:cks/ap

cc: Alan R. Brayton
Harry F. Wartnick

VERIFICATION

I, Carmen D. Gonzalez, am the Secretary of CAPCO PIPE COMPANY, INC., and am authorized to make this Verification on its behalf.

I have read the foregoing CAPCO'S SUPPLEMENTAL RESPONSES TO PLAINTIFFS' STANDARD INTERROGATORIES TO ALL DEFENDANTS, and know the contents thereof. I am informed and believe that the matters stated therein are true, and on that ground certify or declare, under penalty of perjury under the laws of the State of California, that the same are true and correct.

Executed at New York, New York, this 30th day of October, 1998.

By: Carmen D. Gonzalez
For: CAPCO PIPE COMPANY, INC.

1 PROOF OF SERVICE

2 The undersigned declares: I am over the age of 18 years and
3 not a party to the within action. I am employed in the county
4 where this service occurs. My business address is One California
5 Street, Suite 2600, San Francisco, California 94111. On the date
6 shown below I served the following document:

7 DEFENDANT CAPCO PIPE COMPANY'S SUPPLEMENTAL RESPONSES TO
8 PLAINTIFFS' STANDARD INTERROGATORIES TO DEFENDANTS

9 by placing a true copy thereof enclosed in a sealed envelope and
10 served in the manner described below to the interested parties
11 herein and addressed to:

12 Richard A. Brody, Esq.
13 WARTNICK,, CHABER, HAROWITZ
14 SMITH & TIGERMAN
15 101 California Street, 22nd
16 Floor
17 San Francisco, CA 94111

Anne M. Bandis
Brayton Harley Curtis
222 Rush Landing Road
P.O. Box 2109
Novato, CA 94948

18 _____ MAIL: I caused such envelope(s) to be deposited in the
19 mail at my business address, with postage thereon fully
20 prepaid, addressed to the addressee(s) designated. I am
21 readily familiar with the business' practice of
22 collecting and processing correspondence to be deposited
23 with the United States Postal Service on that same day in
24 the ordinary course of business.

25 x _____ HAND DELIVERY: I caused such envelope(s) to be delivered
26 by hand to the addressee(s) designated.

_____ BY OVERNIGHT COURIER SERVICE: I caused such envelope(s)
to be delivered via overnight courier service to the
addressee(s) designated.

_____ (FEDERAL) I declare that I am employed in the office of a
member of the bar of this court at whose direction the
service was made.

_____ (STATE) I declare under penalty of perjury under the laws
of the State of California that the foregoing is true and
correct.

24 Executed on October 30, 1998, at San Francisco, California.

25 Noreen Reddin
26 NOREEN REDDIN