

CAUSE NO. 00-03144-E

BILLY RAY CULWELL, et al.,	§	IN THE DISTRICT COURT OF
	§	
Plaintiffs,	§	
	§	
vs.	§	DALLAS COUNTY, TEXAS
	§	
GAF CORPORATION (successor to	§	
RUBEROID CORPORATION), et al.,	§	
	§	
Defendants.	§	191ST JUDICIAL DISTRICT

**DEFENDANT CELANESE LTD.'S RESPONSE TO
PLAINTIFFS BILLY RAY CULWELL AND OSCAR CLARK SARGENT'S
MOTIONS TO COMPEL**

Defendant Celanese Ltd. ("Celanese") files this Response to Plaintiffs Bill Ray Culwell and Oscar Clark Sargent's Motions to Compel and in support shows the following:

**I.
Preliminary Statement**

In June 2000, plaintiffs filed this asbestos personal injury suit against over forty defendants alleging negligence and gross negligence based on products and premises liability theories. Two plaintiffs, Billy Ray Culwell ("Culwell") and Oscar Clark Sargent ("Sargent"), are suing Celanese under a premises liability theory. On June 12, 2001, Culwell and Sargent each filed a Motion to Compel Discovery Responses against Celanese, requesting the court to order Celanese to produce "no later than 48 hours from [sic] the date the Order is entered, full and complete responses to the Interrogatories, Requests for Production and Requests for Admission." In their motions, Culwell and Sargent also seek "reasonable expenses, fees and costs incurred in obtaining the Order."

Plaintiffs' Motions to Compel should be denied in their entirety for the following reasons:

- 1) Celanese timely provided complete discovery responses – subject to its objections – and has already produced thousands of pages of documents to plaintiff's counsel; and
- 2) Celanese has committed no discovery abuses; therefore, plaintiffs are entitled to monetary relief.

II. Factual Background

This suit was filed in June 2000. On July 18, 2000, plaintiffs Culwell and Sargent served their First Set of Interrogatories, Requests for Production and Requests for Admission on Celanese ("Plaintiffs' Discovery Requests"). Plaintiffs' Discovery Requests, which are extremely burdensome and border on abusive, included 20 interrogatories, 98 requests for production, and 61 requests for admission (a total of 179 requests, many of which include subparts). Nevertheless, Celanese timely objected and responded to Plaintiffs' Discovery Requests on August 21, 2000, without seeking an extension.

At the hearing on Plaintiffs' motion to continue Celanese's motion for summary judgment held in this Court on Friday May 4th, 2001, Celanese counsel reminded plaintiffs' counsel that all corporate documents responsive to plaintiffs' requests were previously produced to plaintiffs' counsel several years ago in the *Dominguez* case and all documents responsive to plaintiffs' requests relating to the Pampa plant, at which plaintiffs claim to have worked, were previously produced in the *Cummings* case in April, 2001. In fact, plaintiffs have already listed and described these documents in their supplemental list of trial exhibits served on Celanese on June 11, 2001.

On May 22, 2001, in the Culwell case and May 30, 2001, in the Sargent case, Celanese's counsel received a lengthy but unspecific letter from plaintiffs' counsel complaining of virtually all of Celanese's objections and responses to the 196 requests and demanding supplementation within five business days, or else plaintiffs would file Motions to Compel. Rather than legitimately conferring with Celanese's counsel regarding the complaints, as is required by Tex. R. Civ. P. 191.2., plaintiffs' letters purported to be "conferences" for purposes of Rule 191.2. As discussed below, plaintiffs' counsel's demand for more complete discovery responses is without merit, and it afforded Celanese only five business days within which to comply with plaintiff's unilateral demand, else face a motion to compel.

III. Argument

A. Celanese's Discovery Responses

Plaintiffs falsely state in the Motions to Compel that Celanese has not fully and completely responded to Plaintiffs' Discovery Requests. In fact, plaintiffs make gross misrepresentations in this regard, stating that "Celanese offered no answer whatsoever to 72% of plaintiffs' discovery requests." Plaintiffs further twist the facts by claiming that Celanese provided "non-responsive, evasive or incomplete answers" to seven of the interrogatories and "no response nor [sic] documentation" to one request for production. Celanese did not produce any documents with its responses because plaintiffs' counsel already has all Celanese's responsive documents. Indeed, plaintiffs' counsel has had over

10000 pages of documents produced since July 1999, when they were produced in the *Dominquez v. Owens Corning Fiberglas* case, and the remaining documents since April, 2001, when they were produced in the *Cummings* case.¹ Most of those documents, which are all of Celanese's known documents responsive to the requests at bar, were referenced in Celanese's responses to the requests for production, and plaintiffs' counsel has all those documents already in their offices. Indeed, plaintiffs' counsel has already described and listed all of those documents in their Supplemental Exhibit List, which was served on Celanese on June 11, 2001. Plaintiffs' position that Celanese has produced no documents is disingenuous. Celanese should not be required to supply an exact duplicate of those documents simply because they were produced in a different Baron & Budd asbestos case.

The problem here is that plaintiffs' counsel just does not like Celanese's responses to Plaintiffs' Discovery Requests and are apparently unsatisfied with the documents already produced. The problem is not Celanese's lack of response, and plaintiffs' mere displeasure is not a sufficient reason to compel Celanese to provide additional responses or documents when none exist. Plaintiffs' Motions to Compel Celanese to provide additional and/or more complete discovery responses should be denied.

¹The *Dominguez* and *Cummings* cases are also Baron & Budd asbestos cases, in which Celanese is a defendant and the *Cummings* case specifically involves the same work site at issue in this case, i.e., the Celanese Pampa, Texas plant.

B. Celanese Has Committed No Discovery Abuses

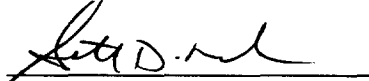
Plaintiffs are not entitled to monetary relief in conjunction with the Motions to Compel because Celanese has committed no discovery abuses and because Plaintiffs' Motions to Compel are baseless, frivolous, and inaccurate. Celanese has been and will continue to be responsive and cooperative. Plaintiffs' Motion to Compel should be denied in their entirety.

**IV.
Prayer**

WHEREFORE, PREMISES CONSIDERED, Defendant Celanese Ltd. prays that Plaintiffs' Motions to Compel and all relief requested therein be in all respects denied and for such other relief to which it may show itself justly entitled.

Respectfully submitted,

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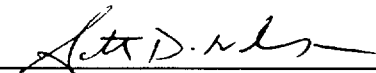
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been served via certified mail, return receipt requested, fax, and/or hand delivery on counsel of record, on this 25th day of June, 2001.



Scott D. Nelson

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**ORDER ON PLAINTIFF BILLY RAY CULWELL AND OSCAR CLARK SARGENT'S
MOTIONS TO COMPEL DISCOVERY RESPONSES FROM
DEFENDANT CELANESE LTD.**

On this day, the Court considered Plaintiff Billy Ray Culwell and Oscar Clark Sargent's Motions to Compel Discovery Responses from Defendant Celanese Ltd. and after reviewing the motions, the response thereto and hearing argument of counsel, the Court is of the opinion that the Motions should be denied.

It is therefore Ordered that Plaintiff Billy Ray Culwell and Oscar Clark Sargent's Motions to Compel Discovery Responses from Celanese Ltd. and the relief requested therein is, in all respects, denied.

Signed this _____ day of _____, 2001.

PRESIDING JUDGE