

CAUSE NO. 00-5325-D

JOHN H. RISLEY, ET AL.	§	IN THE DISTRICT COURT
	§	
VS.	§	105 TH JUDICIAL DISTRICT
	§	
GAF CORPORATION, ET AL.	§	NUECES COUNTY, TEXAS

**ASARCO INCORPORATED'S RESPONSES TO
PLAINTIFF'S REQUESTS FOR DISCLOSURE**

TO: ISABEL T. GUERRERO, Plaintiff, by and through his attorney of record, Elizabeth R. Schick, Baron & Budd, P.C., 3102 Oak Lawn Avenue, Suite 1100, Dallas, Texas 75219.

Comes now ASARCO Incorporated formerly known as American Smelting and Refining Company, a corporation of the State of New Jersey, with a principal place of business in the State of Arizona (subsequently referred to as "ASARCO" or "Defendant"), named Defendant herein, and in answer to Plaintiff's Requests for Disclosure, makes its responses as attached hereto pursuant to Rule 194 of the Texas Rules of Civil Procedure.

Respectfully submitted,

HUNTER & HANDEL, P.C.
555 North Carancahua, Suite 1600
Corpus Christi, Texas 78478
(361) 884-8777
(361) 884-1628 Facsimile

By: 
Rodney R. Handel
State Bar No. 08897460
ATTORNEYS FOR DEFENDANT,
ASARCO INCORPORATED f/k/a AMERICAN
SMELTING AND REFINING COMPANY

OF COUNSEL:
PORZIO, BROMBERG & NEWMAN, P.C.
100 Southgate Parkway
Morristown, New Jersey 07962-1997
(973) 538-4006
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been duly served on all counsel of record via facsimile or Certified Mail, Return Receipt Requested on this 27th day of January, 2002.

A handwritten signature in black ink, appearing to read "Rodney R. Handel", is written over a horizontal line.

Rodney R. Handel

**ASARCO INCORPORATED'S RESPONSE TO
PLAINTIFF'S REQUEST FOR DISCLOSURE**

Rule 194.2(a): the correct names of the parties to the lawsuit.

RESPONSE:

ASARCO Incorporated, formerly known as American Smelting and Refining Company. ASARCO has no knowledge with regard to whether other parties have been correctly named.

Rule 194.2(b): the name, address and telephone number of any potential parties.

Based upon the limited information Plaintiff has provided thus far, ASARCO is not aware of any potential parties to this action. As ASARCO's investigation of Plaintiff's claims is ongoing, ASARCO expressly reserves its right to amend and supplement this response.

Rule 194.2(c): the legal theories and, in general, the factual bases of the responding party's claims or defenses.

RESPONSE:

ASARCO denies that its conduct toward Plaintiff was in any way negligent and denies responsibility for the injuries alleged by Plaintiff in the original petition and all subsequent amended pleadings. ASARCO denies that it failed to maintain a safe workplace and denies that Plaintiff was exposed to any asbestos and/or asbestos-containing products at its Corpus Christi facility.

Further, even if Plaintiff could establish that he was exposed to asbestos and/or asbestos-containing products at the Corpus Christi facility, such exposure was not the cause of Plaintiff's alleged injuries. Even if ASARCO is found to be negligent, Plaintiff's alleged injuries were not proximately related to or caused by ASARCO's conduct. ASARCO denies that Plaintiff's injuries and/or death were caused by an asbestos-related disease.

Further, even if Plaintiff did suffer from an asbestos-related disease, he failed to assert a claim for such injuries within the applicable limitations period. In addition, Plaintiff was himself negligent and/or assumed the risk of injury by failing, on occasions, to avail himself of or use safety equipment, respirators, and other protective devices that could have reduced or prevented his exposure to industrial dusts and/or chemicals. If Plaintiff was a cigarette smoker, Plaintiff was negligent and otherwise caused or contributed to his alleged injuries by continuing to smoke cigarettes in the face of knowledge and/or warnings that cigarette smoking was hazardous to health.

Further, with regard to the work he performed at the Corpus Christi facility, Plaintiff's employers were knowledgeable and sophisticated contractors who had a duty to safeguard and protect their employees from actual and potential workplace hazards, and, therefore, ASARCO had no direct duty to Plaintiff to ensure that Plaintiff's employment was free from hazards encountered under the direction of his employers.

Further, Plaintiff's damages, if any, were caused by negligent acts or omissions or breach of warranty by third parties or other defendants and/or exposure to certain products manufactured or distributed by said third parties or defendants. Accordingly, pursuant to applicable law, ASARCO is entitled to a comparative apportionment of fault, if any, as to the other defendants and/or third parties and is entitled to a judgment against them for contribution and/or indemnity or a percentage reduction in accordance with the apportionment of fault.

In addition, ASARCO asserts that it is not liable to Plaintiff under Section 95.033 of the Texas Civil Practice and Remedies Code.

Finally, ASARCO refers Plaintiff to the Special Exceptions, General Denial and Affirmative Defenses set forth in its Answer to Plaintiffs' Original Petition and any subsequent Petition. As ASARCO's investigation of Plaintiff's claim is ongoing, ASARCO reserves the right to amend and/or supplement this response.

Rule 194.2(d): the amount and any method of calculating economic damages.

RESPONSE:

Not applicable to Defendant.

Rule 194.2(e): the name, address and telephone number of persons having knowledge of relevant facts and a brief statement of each identified person's connection with the case.

RESPONSE:

1. All individuals named or to be named as medical witnesses, lay, expert, product identification, liability, and other non-medical witnesses by Plaintiffs in this action.
2. All individuals named or to be named as medical witnesses, lay, expert, product identification, liability, and other non-medical witnesses by any other defendant or other party to this action.
3. All individuals named or to be named in any party's answers to interrogatories.
4. Any individual heretofore named as an expert witness by ASARCO.
5. Individuals who were employed as plant managers, industrial hygienists, and/or safety personnel at the Corpus Christi facility during the relevant time period.
6. **Michael O. Varner**, c/o ASARCO Incorporated, 3422 South West, Salt Lake City, Utah (801) 263-5220. Mr. Varner was employed by ASARCO from 1971 through approximately 1999 and he held various positions in the Environmental Sciences, Technical Services and Environmental Operations departments.

7. **John B. Richardson**, c/o ASARCO Incorporated, 3422 South West, Salt Lake City, Utah (801) 263-5220. Mr. Richardson has been employed by ASARCO since approximately 1973, and he has held various positions in the Environmental Sciences and Technical Services departments.

8. **James P. Sieverson**, c/o ASARCO Incorporated, 3422 South West, Salt Lake City, Utah (801) 263-5220. Mr. Sieverson was employed by ASARCO from approximately 1972 through 1990 in various positions in the Environmental Sciences department.

9. **Donald A. Robbins**, c/o ASARCO Incorporated, 3422 South West, Salt Lake City, Utah (801) 263-5220. Mr. Robbins is currently employed by ASARCO as the Director of Environmental Services.

10. **Marvin Kushner, M.D.**, SUNY Health Science Center, Pathology, Stony Brook, NY. By videotape taken in *Everett v Owens-Corning Fiberglas, et al.*, Supreme Court of New York, Niagara County, Index No. 086198. Dr. Kushner is a pathologist and was a member of the Scientific Committee of the Institute of Occupational and Environmental Health ("IOEH") from 1966 to 1981. Dr. Kushner will testify by prior testimony concerning his involvement with the Scientific Committee, its autonomy, and the value of the scientific research funded by the IOEH.

11. **Philip C. Pratt, M.D.**, deceased, by deposition testimony. Dr. Pratt received his M.D. degree from Johns Hopkins Medical School in 1944. In 1944 and 1945, he completed an internship in pathology and between 1945 and 1946 was an assistant in pathology at Johns Hopkins Hospital. He served as a pathologist at the Saranac Laboratory, Saranac Lake, New York, between 1946 and 1952, and as assistant director of the Saranac Laboratory in 1952 to 1955. Dr. Pratt has personal knowledge of the facts surrounding Dr. Leroy Gardner's animal experiments conducted at Saranac Laboratory from the late 1920's until his death in 1946. Dr. Pratt continued to work on these experiments after Dr. Arthur J. Vorwald was appointed as Dr. Gardner's successor as Director of the Saranac Laboratory and of the Trudeau Foundation. Dr. Pratt will testify with regard to the facts and circumstances surrounding these experiments, including his microscopic examination of tissue slides from the sacrificed animals, his review of Dr. Gardner's experimental notes, and drafting the portions of the literature published as a result of these studies, including the article entitled "Experimental Studies of Asbestosis" which was published in the A.M.A. Archives of Industrial Hygiene and Occupational Medicine in January 1951 as well as the document entitled "Asbestosis Experimental Studies, Report of the Johns-Manville Corporation, by the Saranac Laboratory" dated September 30, 1948.

12. **Robert Brown**, 1169 Pointevue Road, Chapin, South Carolina. Mr. Brown was a charter member and organizer of the National Conference of Governmental and Industrial Hygienists (NCGIH), established in or around 1938. This organization later changed its name to the American Conference of Governmental and Industrial Hygienists (ACGIH). Mr. Brown served as a member of this organization's Executive Committee, Constitutional Review Committee and Industrial Hygiene Codes Committee. The latter committee was responsible for establishing maximum allowable concentrations (MAC) and threshold limit values (TLV). In 1946, the Subcommittee on Threshold Limits of the ACGIH recommended a MAC for asbestos of 6 million particles per cubic foot of air.

Mr. Brown was also a member of the American Industrial Hygiene Association (AIHA). This organization also proposed TLV's and MAC's which were published as Hygiene Standards in the April, 1958 issue American Industrial Hygiene Association Journal and recommended maximum atmospheric concentrations for asbestos over 8 hours of 5 million particles per cubic foot of air. This publication also listed potential hazards of asbestos which noted that in addition to asbestosis there had been reports of an increased risk of lung cancer.

On the basis of Mr. Brown's personal knowledge of the facts surrounding the adoption of asbestos exposure standards, his training and experience in the areas of industrial hygiene and his review of the literature, Mr. Brown will testify by videotape or deposition, with regard to the composition of the membership of the ACGIH and its predecessors, the NCGIH and the AIHA. Mr. Brown will also testify by videotape or deposition, with regard to the facts and circumstances surrounding the proposal and adoption of the asbestos standards and his involvement in these processes. In addition, Mr. Brown may testify by videotape or deposition, with regard to the state of industrial hygiene knowledge during the 1930s, 1940s and 1950s.

13. **Leonard J. Bristol, M.D.**, Hull Road, Rainbow Lake, NY. Dr. Bristol received his M.D. in 1944 from the Long Island College of Medicine. From 1944 to 1945 he had a general rotating internship at St. Catherine's Hospital in Brooklyn, New York. From July 1945 to April 1946, he was a resident in radiology at the Long Island College Hospital. From 1946 to 1948, Dr. Bristol was a radiologist at the United States Naval Hospital, National Naval Medical Center in Bethesda, Maryland. During that period of time, he also served as a full-time fellow in the Department of Radiology at the Johns Hopkins University Medical School. He was certified by the American College of Radiologists in 1949. In 1949, he assumed a full-time position as a radiologist at the Trudeau Sanatorium and the Saranac Lake Laboratory where he remained through the end of 1978. Dr. Bristol has been engaged in the practice of radiology at the General Hospital in Saranac Lake, the Placid Memorial Hospital in Lake Placid, the Alice Hyde Hospital in Malone, New York and was a member of the Department of Radiology at the Edward L. Trudeau Foundation through 1978.

Since 1949, approximately 50 percent of Dr. Bristol's practice involved chest diseases and 25 to 30 percent of his overall practice involved occupational lung disease. He has reviewed several hundred thousand films of workers with occupational lung disease. Dr. Bristol was instrumental in the development of the ILO/UICC classifications for asbestos-related diseases.

On the basis of Dr. Bristol's knowledge, training and experience as a radiologist and his personal knowledge of the research and experiments conducted by the Trudeau Foundation and Saranac Laboratories, Dr. Bristol may testify by deposition or videotape as to the general radiological characteristics and diagnosis of asbestos-related diseases.

Dr. Bristol will further base his testimony on the available medical and scientific literature, applicable statutes and regulations, his own training and experience, the opinions and reports of other experts named or to be named by ASARCO or any other party, whether live or by deposition, the testimony of all other witnesses named or to be named by ASARCO or any other party, whether live or by deposition, and any documents introduced into evidence or otherwise used by any party at the time of trial.

The fact witnesses designated herein should only be contacted through counsel for ASARCO.

At this point in the case, Plaintiffs have not provided sufficient information regarding their claims for ASARCO to determine every person who may have knowledge of relevant facts. ASARCO reserves the right to call additional fact witnesses for the purpose of rebuttal or impeachment, if necessary, at the time of trial. ASARCO also reserves the right to amend and/or supplement this response up to the time of trial.

Rule 194.2 (f): for any testifying expert:

- (1) the expert's name, address and telephone number;**
- (2) the subject matter on which the expert will testify;**
- (3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;**
- (4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:**
 - (A) all documents, tangible things, reports, models or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and**
 - (B) the expert's current resume and bibliography.**

RESPONSE:

ASARCO may call the following expert witnesses at trial:

1. All individuals designated or to be designated as expert witnesses by Plaintiffs, whether live or by deposition testimony.
2. All individuals designated or to be designated as expert witnesses by any other defendant or third-party defendant to this action, whether live or by deposition testimony, and without regard to that party's presence at the time of trial.
3. All physicians who have prior to trial examined Plaintiffs' medical records, hospital records, laboratory test results, x-ray or other diagnostic imaging films and/or any other information of whatever kind relating to the health of Plaintiffs, on behalf of any party, without regard to that party's presence at the time of trial, who will testify as to the Plaintiffs' clinical course and causation of any illness either live or by deposition testimony.
4. All physicians or other health care practitioners who have treated Plaintiffs at any time and for any condition and whose names, addresses, and qualifications are already known to Plaintiffs, may be called to testify whether live or by deposition testimony.
5. Allen R. Gibbs, M.D., Department of Pathology, Llandough Hospital, South Glamorgan, Penarth CF, 61XX, United Kingdom, is a pulmonary pathologist who received his medical degree from Newcastle Upon Tyne. He is a Fellow of the Royal College of Pathologists.

He is a consultant pathologist to South Glamorgan Health Authority and is an honorary clinical teacher to the University of Wales College of Medicine. Dr. Gibbs is also an honorary consultant to the MRC external staff team on occupational lung diseases at Llandough Hospital. He was a senior lecturer in pathology at the University of Wales College of Medicine. He has special expertise in the diagnosis of asbestos-related diseases and the pathogenicity of the various forms of asbestos for pulmonary and pleural diseases and has reviewed over 2,000 lung samples involving asbestos-related changes. Additionally, Dr. Gibbs has authored or co-authored over 45 articles, papers and chapters in the field of pathology, many of which relate to asbestos-related disease.

Dr. Gibbs will testify generally as to his background, training and experience. Dr. Gibbs will testify as to his knowledge of pathology and asbestos-related diseases. He will further testify as to the general medical issues concerning the development, cause and diagnosis of asbestos-related disease and/or other diseases that mimic asbestos-related diseases.

On the basis of Dr. Gibbs' personal research into issues concerning asbestos-related disease, his knowledge of the medical literature and knowledge of the facts of this case as they are known to date, Dr. Gibbs may testify generally as to the dangers posed by the inhalation of asbestos fibers, the relative risks associated with exposure to low levels of airborne asbestos dust in the general environment, and the risks posed to Plaintiff from his alleged exposure to airborne asbestos dust. Dr. Gibbs may also testify concerning asbestos fiber counts in the lung tissue of different populations and their significance with regard to dose-response relationships and causation. Dr. Gibbs may also testify generally about his background, training, and experience, clinical and anatomical pathology, the pathology associated with various asbestos related diseases, and other conditions which may mimic asbestos-related diseases. Dr. Gibbs may also address thresholds of exposure below which there is no measurable increased risk of contracting an asbestos-related disease and the latency periods required for the development of the various asbestos-related diseases.

Dr. Gibbs may review the pathological evidence in this case, if any, and testify concerning whether it is diagnostic of an asbestos-related disease.

Dr. Gibbs may offer such other opinions as may become necessary to rebut the opinions of Plaintiff's experts.

Dr. Gibbs may base his testimony on the available medical and scientific literature, his own training and experience, the opinions and reports of other experts named or to be named by ASARCO or any other party, whether presented live or by deposition, the testimony of all other witnesses named or to be named by ASARCO or any other party, whether presented live or by deposition, and any documents introduced into evidence or otherwise used by any party at the time of trial.

6. Jeremiah Lynch, C.I.H., 25 Waterman Avenue, Rumson, New Jersey. Mr. Lynch is a Certified Industrial Hygienist. Mr. Lynch will testify generally as to his background, training and experience. Mr. Lynch will testify as to the methods and procedures involved in industrial hygiene, the methods and procedures utilized in the collection of airborne asbestos samples, including fiber measurement and counting techniques, and the use of industrial hygiene methods to control worker exposure to airborne asbestos dust. Mr. Lynch will further testify concerning threshold limit values, the various threshold limit values for asbestos exposure, the basis for the original threshold limit value

and its subsequent changes. Mr. Lynch will further testify concerning the setting and implementation of asbestos exposure limits by OSHA, and the subsequent changes to those limits, and OSHA regulations pertaining to Plaintiffs' workplace at various times.

Mr. Lynch may also testify concerning the industrial hygiene programs implemented by Plaintiff's employers at various times, and how those programs compared to the industrial hygiene standards at various times. Mr. Lynch will further testify with regard to the effectiveness of the industrial hygiene program at ASARCO as compared to the various standards applicable at different times. Mr. Lynch may also testify as to the asbestos exposures which Plaintiff would have had at various times during his employment history. Mr. Lynch will also testify with regard to environmental exposures to airborne asbestos experienced by millions of Americans for which there is no epidemiological evidence of disease. Mr. Lynch may offer such other opinions as may become necessary to rebut the opinions of Plaintiff's experts.

Mr. Lynch will base his testimony on the available medical and scientific literature, applicable statutes and regulations, his own training and experience, the opinions and reports of other experts named or to be named by ASARCO or any other party, whether presented live or by deposition, the testimony of all other witnesses named or to be named by ASARCO or any other party, whether presented live or by deposition, and any documents introduced into evidence or otherwise used by any party at the time of trial.

7. Ernest Mastromatteo, M.D., 19 Carey Road, Toronto, Ontario, Canada M4S 1N9. Dr. Ernest Mastromatteo is a medical doctor specializing in occupational and environmental health. He is currently Professor Emeritus, Occupational and Environmental Health, University of Toronto and self-employed as a consultant in Occupational and Environmental Health. Dr. Mastromatteo received his Doctor of Medicine degree from the University of Toronto in 1947. He received a Diploma in Public Health from the University of Toronto in 1950 and a Diploma in Industrial Health from the University of Toronto in 1958. In 1958, Dr. Mastromatteo was certified in Occupational Medicine by the American Board of Preventive Medicine. In 1981, Dr. Mastromatteo was certified in Occupational Medicine by the Canadian Board of Occupational Medicine.

From 1949 to 1952, Dr. Mastromatteo served as the Medical Director of the Virden Local Health Unit, Virden, Manitoba. In 1952, Dr. Mastromatteo commenced employment as a physician and consultant with the Ontario Ministry of Health. In 1968, he became the Director of the Division of Occupational and Environmental Health of the Ontario Ministry of Health. He remained in that position until 1974. From 1966 to 1974, Dr. Mastromatteo also served as a Consultant in Occupational Diseases to the Ontario Workers' Compensation Board. From 1968 to 1974, Dr. Mastromatteo was a part-time professor at the University of Toronto and from 1972 to 1974, he was Professor and the Head of the Department of Occupational and Environmental Health of the University of Toronto.

In 1974, Dr. Mastromatteo became Chief of the Occupational Health and Safety Branch of the International Labour Office ("ILO") in Geneva, Switzerland. He remained in that position until 1976. From 1976 to 1985, Dr. Mastromatteo was employed as Director of Occupational Health for Inco Limited, Toronto, Canada. From 1985 to 1994, Dr. Mastromatteo was employed as the Program Director, Occupational and Environmental Health, of ORC Canada Inc., Toronto, Canada. During that period, from 1985 to 1990, Dr. Mastromatteo also served as a consultant to the Occupational Health Policy Branch of

the Ontario Workers' Compensation Board. From 1976 to the present, Dr. Mastromatteo has served as an Honorary Consultant to the Occupational Health Clinic of St. Michael's Hospital, Toronto, Canada.

Dr. Mastromatteo is a member of the Ontario Medical Association and Chaired the Section on Occupational Health and the Committee on Public Health. He is a member of the Canadian Medical Association. Dr. Mastromatteo was elected to the Ramazzini Medical Society in 1968 and has been a member of the International Commission on Occupational Health since 1968. Dr. Mastromatteo is an Honorary Lifetime Member of the American Conference of Governmental Industrial Hygienists ("ACGIH"). Dr. Mastromatteo has served as a member of the ACGIH Threshold Limit Value ("TLV") Committee since 1964. He was Chair of the TLV Committee from 1985 to 1990 and President of the ACGIH for the 1969-1970 term. Dr. Mastromatteo has received numerous honors and awards in the field of occupational medicine. Among his other awards, in 1981 he received the Stokinger Award for Scientific Contributions to Occupational Toxicology in the United States. In 1986, he received the Yant Award for Scientific Contributions to Industrial Hygiene in the United States. In 1987, Dr. Mastromatteo received the Knudsen Award for his contributions to Occupational Medicine in the United States. In 1987 he was also inducted into the Safety and Health Hall of Fame International.

Dr. Mastromatteo will further testify that as a long-standing member of the American Conference of Governmental Industrial Hygienists Threshold Limit Value Committee, he is familiar with that organization's criteria for establishing threshold limit values. In setting those thresholds, the ACGIH examines all of the available evidence and bases its decision on the weight of evidence. As such, the ACGIH examines the studies and evaluates those studies based on their methodology and scientific reasoning. Based on its review of the best medical evidence, the ACGIH set its first threshold limit value for asbestos in 1946 and has changed it from time to time where the medical evidence has warranted such a change. Dr. Mastromatteo will testify as to the threshold limit value at different points in time and the medical knowledge that was available to the ACGIH concerning the health effects of asbestos.

Dr. Mastromatteo will further testify that the Occupational Safety and Health Administration ("OSHA") does not rely on the weight of evidence but sets its PEL based on a different control strategy. OSHA determines a safe level then sets the permissible exposure limit ("PEL") by adding factors of between ten (10) and one hundred (100) times. OSHA has set the PEL for all types of asbestos at 0.1 f/cc. That level of exposure is many times below the level of exposure which one would expect to cause disease in the average worker.

Dr. Mastromatteo will base his testimony on the available medical and scientific literature, applicable statutes and regulations, his own training and experience, the opinions and reports of other experts named or to be named by ASARCO or any other party, whether presented live or by deposition, the testimony of all other witnesses named or to be named by ASARCO or any other party, whether presented live or by deposition, and any documents introduced into evidence or otherwise used by any party at the time of trial.

8. Howard E. Ayer, C.I.H., 2812 Linwood Avenue, Cincinnati, Ohio. Mr. Ayer is a Certified Industrial Hygienist and a Certified Safety Professional. He is Emeritus Professor of Environmental Health, Division of Environmental Hygiene and Safety, University of Cincinnati. Mr. Ayer received his Bachelor degree in Chemical Engineering in 1948 from the University of Minnesota. He received a Masters of Science in Industrial Hygiene Engineering from Harvard University in 1955.

Mr. Ayer was employed by the United States Public Health Service ("USPHS") from 1948 to 1972. During that time period he served with the National Institute for Occupational Safety and Health, and its predecessor organizations (Division of Occupational Health, Occupational Health Program and Bureau of Occupational Safety and Health). He was assigned by the USPHS to the Kansas State Board of Health, the Occupational Health Field Station in Salt Lake City, Utah, and the Occupational Health Field Headquarters in Cincinnati, Ohio. Mr. Ayer was Assistant Chief of the Engineering Section from 1961 to 1964, Chief from 1964 to 1967 and Assistant Director of the Division of Field Studies from 1967 to 1972. Mr. Ayer has been with the University of Cincinnati, Institute of Environmental Health (Kettering Laboratory) as a Professor and Emeritus Professor since 1972. From 1982 to 1983, Mr. Ayer took a sabbatical year in safety engineering at Texas A&M.

Mr. Ayer has served on numerous committees in the field of industrial hygiene. As a member of the ACGIH, Mr. Ayer served on the Air Sampling Instruments Committee, the Energy Committee, the Ventilation Committee, and the Committee on Environmental Factors in the Pneumoconioses (which he chaired for three years). Mr. Ayer also chaired the ad hoc joint AIHA-ACGIH Committee on Uniform Methods in Impinger Counting. Mr. Ayer has authored over 40 published papers on matters of industrial hygiene.

Mr. Ayer's testimony will be based on his knowledge, training and experience in the field of industrial hygiene as it relates to asbestos and asbestos-containing products. Mr. Ayer will also testify as to the state of industrial hygiene at various points in time.

Mr. Ayer may also testify as to the asbestos exposures which Plaintiff would have had at various times during his employment history. Defendant ASARCO reserves the right to supplement this information based on documents or testimony concerning exposure levels which to date have not been discovered.

Mr. Ayer will base his testimony on the available medical and scientific literature, applicable statutes and regulations, his own training and experience, the opinions and reports of other experts named or to be named by ASARCO or any other party, whether presented live or by deposition, the testimony of all other witnesses named or to be named by ASARCO or any other party, whether presented live or by deposition, and any documents introduced into evidence or otherwise used by any party at the time of trial.

9. Arthur M. Langer, Ph.D., Director, Environmental Sciences Laboratory of the Institute of Applied Sciences, Brooklyn College of the City University of New York, Brooklyn, New York 11210. Dr. Langer received his Bachelor of Arts degree in Geology from Hunter College, City University of New York in 1956. In 1962, Dr. Langer received his Master of Arts in Petrology (geology) from Columbia University. Dr. Langer received his Ph.D. in Mineralogy from Columbia in 1965.

Dr. Langer may testify as to his background, training, experience, fellowships, memberships and other professional activities, honors and awards, editorial board service, appointments, publications in peer reviewed journals, abstracts and symposia proceedings, contributions to books, monographs and reports, national, international and regional committees and consultations, national and international invited seminars, lectures, meetings and conferences, and his participation in post-graduate education courses as fully set forth on his C.V. Dr. Langer may further testify as to his extensive study and experimentation with

regard to the family of minerals commonly referred to as asbestos. Dr. Langer may also offer testimony concerning the state-of-the-art as it pertains to what various manufacturers of asbestos-containing products knew or should have known in regard to the potential hazards of asbestos at various times.

Dr. Langer will base his testimony on the available medical and scientific literature, applicable statutes and regulations, his own training and experience, the opinions and reports of other experts named or to be named by ASARCO or any other party, whether presented live or by deposition, the testimony of all other witnesses named or to be named by ASARCO or any other party, whether presented live or by deposition, and any documents introduced into evidence or otherwise used by any party at the time of trial.

10. Robert Murray, M.D., South Hill, Church Road, Newton Green, Sudbury, Suffolk, C010 0QP, United Kingdom. Dr. Murray was an occupational health consultant. He qualified in medicine in 1939 at Glasgow University. From 1941 to 1946 he served in the R.A.M.C. in West Africa, India and Burma and was mentioned in despatches. Dr. Murray received his Diploma in Public Health in January, 1947. In April 1947, he became one of only 12 of Her Majesty's Medical Inspectors of Factories and was assigned to the East Lancashire Division based in Manchester where he remained until 1956. While there, his Chief was E.R.A. Merewether. Dr. Murray regularly visited the asbestos factories within his jurisdiction including Turner Brother's Asbestos, British Belting and Asbestos, and Cape Asbestos.

As a Medical Inspector, Dr. Murray's duties included assisting the District Inspector in the implementation of those parts of the Acts and Regulations dealing with occupational health. This included the Asbestos Industry Regulations of 1931.

In 1949 he received the Diploma in Industrial Health of the Society of Apothecaries and lectured in Professor Lane's Department of Occupational Health in Manchester.

Dr. Murray joined the International Labour Office ("ILO") in Geneva in 1956 and remained there until 1961. Dr. Murray then became Medical Advisor to the TUC in London, a post which he held until 1974. During the 1960's and 1970's he assisted the TUC in its actions against asbestos which led to the Asbestos Regulations of 1969. In 1974, Dr. Murray began independently consulting in occupational health. He consulted with a number of firms and organizations including the Asbestos Information Association. He served as the Convenor of the Medical Advisory Panel and Scientific Advisory Panel until 1992. In 1975 he became Secretary-Treasurer of the Permanent Commission on Occupational Health, now known as the International Commission on Occupational Health, and from 1981 to 1987 he was its President.

Dr. Murray's other qualifications include Membership (1963) and later Fellowship (1970) of the Royal College of Physicians of Glasgow, honorary Doctor of Technology of the University of Bradford, honorary Fellowship of the Institution of Occupational Safety and Health, Fellowship of the Faculty of Occupational Medicine of the Royal College of Physicians of Ireland, Fellowship of the corresponding Faculty of the Royal College of Physicians of London, honorary Fellowship of the Royal Society of Medicine, honorary Fellowship of the Institute of Occupational Hygienists and honorary Doctor of Science of the University of Glasgow.

Dr. Murray kept in close touch with the increasing amount of literature concerning asbestos. He assisted the Asbestos Institute in Montreal in its efforts to ensure the safe use of asbestos. He participated in the ILO discussions in 1985 and 1986 which resulted in the Convention and Recommendation on the Safe Use of Asbestos and participated in seminars in Turkey, Malaysia, Thailand and Taiwan.

On the basis of Dr. Murray's personal knowledge and experience concerning issues regarding the health hazards of asbestos, and the historical developments relating to the development of knowledge concerning asbestos-related diseases and his knowledge of the medical literature, Dr. Murray has testified by way of a videotaped deposition as to the state of knowledge concerning what an employer could have and should have known during particular time periods with regard to both the dangers of asbestos use and methods of minimizing those dangers via proper hygiene measures.

11. John E. Craighead, M.D., 1845 Four Winds Road, Ferrisburgh, VT 05456. Dr. Craighead is a clinical and anatomical pathologist specializing in pulmonary pathology. Dr. Craighead will testify generally as to his background, training and experience. Dr. Craighead will testify as to his knowledge of pathology and asbestos-related diseases. He will further testify as to the general medical issues concerning the development, cause, and diagnosis of asbestos-related disease and/or other diseases that may mimic asbestos-related diseases.

On the basis of Dr. Craighead's personal research into issues concerning asbestos-related disease, his knowledge of the medical literature and knowledge of the facts of this case as they are known to date, Dr. Craighead may testify generally as to the dangers posed by the inhalation of asbestos fibers, the relative risks associated with exposure to low levels of airborne asbestos dust in the general environment, and the risks posed to Plaintiff from his alleged exposure to airborne asbestos dust. Dr. Craighead may also testify concerning asbestos fiber counts in the lung tissue of different populations and their significance with regard to dose-response relationships and causation. Dr. Craighead may also testify generally about his background, training, and experience, clinical and anatomical pathology, the pathology associated with various asbestos related diseases, and other conditions which may mimic asbestos-related diseases. Dr. Craighead may also address thresholds of exposure below which there is no measurable increased risk of contracting an asbestos-related disease and the latency periods required for the development of the various asbestos-related diseases.

Dr. Craighead may review the pathological evidence in this case, if any, and testify concerning whether it is diagnostic of asbestos-related disease.

Dr. Craighead may offer such other opinions as may become necessary to rebut the opinions of Plaintiff's experts.

Dr. Craighead may base his testimony on the available medical and scientific literature, his own training and experience, the opinions and reports of other experts named or to be named by ASARCO or any other party, whether presented live or by deposition, the testimony of all other witnesses named or to be named by ASARCO or any other party, whether presented live or by deposition, and any documents introduced into evidence or otherwise used by any party at the time of trial.

12. Frederick David Pooley, Ph.D., M.I.M.M., M.A.I.M.E., is a Professor in Minerals Engineering, Department of Mining & Minerals Engineering, School of Engineering, University of Wales, College of Cardiff, Newport Road, Cardiff, Wales. Dr. Pooley will testify generally as to his background, training and experience. Dr. Pooley will further testify as to his extensive study and experimentation with regard to the family of minerals commonly referred to as asbestos.

Dr. Pooley will testify regarding the mineralogy of asbestos generally. Dr. Pooley may also testify concerning the methodology and procedures involved in undertaking a mineral analysis of lung tissue, and the results of any mineral analysis of Plaintiff's lung tissue to the extent Plaintiff offers such evidence. Dr. Pooley will further testify concerning the levels of asbestos found in the lungs of different populations of individuals exposed to asbestos and within the general population and how those levels may relate to disease and the threshold fiber burden levels associated with various disease states. Dr. Pooley will further testify as to the interaction between lung fiber burdens and dose-response relationships.

Dr. Pooley may base his testimony on the available medical and scientific literature, applicable statutes and regulations, his own training and experience, the opinions and reports of other experts named or to be named by ASARCO or any other party, whether presented live or by deposition, the testimony of all other witnesses named or to be named by ASARCO or any other party, whether presented live or by deposition, and any documents introduced into evidence or otherwise used by any party at the time of trial.

13. John M. G. Davis, Ph.D., Sc.D., Pathology, Institute of Occupational Medicine, 8 Roxburgh Place, Edinburgh, E88 9SU, Scotland. By deposition testimony taken in *Hunt v. Turner & Newall, et. al.*, Supreme Court of British Columbia, No. c885383, November 30, December 1, 1994. Dr. Davis is an experimental pathologist specializing in animal studies. Dr. Davis has testified generally as to his background, training and experience. Dr. Davis has testified as to his knowledge of experimental pathology and animal studies as they relate to the human health effect of the various forms of asbestos.

Dr. Davis has testified as to the general medical issues surrounding asbestos-related diseases. He has addressed latency, dose response relationships and differences in asbestos fiber types, including their durability in biological tissues, as they relate to the development of asbestos-related diseases. His testimony is based on his extensive personal research into the pathological effects of asbestos on animals and his knowledge of the relevant scientific and medical literature. His testimony has addressed the disease mesothelioma and his opinions as to its causation, development and rate of occurrence. Dr. Davis has also testified as to the state-of-the-art as it pertains to experimental studies involving animal exposure to various forms of asbestos.

Dr. Davis has also testified by deposition as to the relevance of animal experiments conducted at Saranac Lake under the direction of Dr. Gardner during the 1940's and later by Dr. Vorwald in the 1950's, as well as subsequent experiments undertaken by Dr. Lynch. Dr. Davis has testified by deposition that problems with experimental design, controls and the inherent characteristics of the tested animals rendered Gardner's and Vorwald's studies inconclusive. He has testified that although Lynch's study was properly designed, there was no significant difference in the incidence of pulmonary tumors between test and control animals. Hence, Dr. Davis has testified by deposition that

the animal experiments of Gardner, Vorwald and Lynch gave no reliable information that asbestos was carcinogenic, and it was not until 1967 that Gross demonstrated a positive relationship using specific Pathogen Free Rats. Dr. Davis has testified that by the time of Gross' experiments in 1967, the association between asbestos exposure and lung cancer had been demonstrated by human epidemiology.

14. Robert N. Jones, M.D., Tulane University Medical Center, Pulmonary Disease, Box SL-9, 1430 Tulane Avenue, New Orleans, LA. Dr. Jones is a medical doctor who is board certified in the specialties of internal medicine and pulmonary disease. his research career has been in the epidemiology of occupational lung diseases. Dr. Jones will testify generally as to his background, training and experience. Dr. Jones may testify generally concerning the anatomy and physiology of the pulmonary system, the methods and procedures involved in pulmonary medicine and epidemiology generally and specifically with regard to asbestos-related diseases, the potential dangers posed by the inhalation of asbestos fibers, the potential dangers associated with exposure to low levels of airborne asbestos dust. Dr. Jones will further address the dose response curves associated with the various asbestos-related diseases. Dr. Jones's testimony may also address the disease mesothelioma, its relation to asbestos exposure, and its incidence among the general population. He will further testify as to the general medical issues concerning the development, cause, and diagnosis of mesothelioma and/or other asbestos-related disease. Dr. Jones will further testify concerning other conditions and/or malignancies that may complicate or confound the diagnosis of asbestos-related diseases and the clinical diagnosis of asbestos-related diseases. Dr. Jones will also address thresholds of exposure below which there is no measurable increased risk of contracting an asbestos-related disease and the latency periods required for the development of the various asbestos-related diseases.

Dr. Jones will also testify with regard to quantitative risk assessment as it pertains to the risk of contracting mesothelioma. Dr. Jones will testify that the risk of contracting mesothelioma increases at a rate proportional to a power of time since first exposure. Based on these statistical models Dr. Jones will testify with regard to plaintiff's quantitative risk assessment, the risk accumulated at different points in time, and the probabilities that plaintiff would have contracted mesothelioma as a result of different exposures.. Dr. Jones will offer such other opinions as may become necessary to rebut the opinions of plaintiff's experts.

Dr. Jones may base his testimony on the available medical and scientific literature, applicable statutes and regulations, his own training and experience, the opinions and reports of other experts named or to be named by ASARCO or any other party, whether presented live or by deposition, the testimony of all other witnesses named or to be named by ASARCO or any other party, whether presented live or by deposition, and any documents introduced into evidence or otherwise used by any party at the time of trial.

15. Kyle B. Dotson, CIH, CSP, PE, 15817 Telge Road, Suite 200, Cypress, Texas 77429. Mr. Dotson is a Certified Industrial Hygienist and Certified Safety Professional. He is also registered as a Professional Safety Engineer by the Commonwealth of Massachusetts and a Diplomate Environmental Engineer in the American Academy of Environmental Engineers. He received a Masters of Science degree in Environmental Science from the University of Texas at Dallas and a Bachelors of Science degree from McMurry University in Abilene, Texas.

Mr. Dotson has been a member of the American Industrial Hygiene Association ("AIHA") since 1987 and presently serves on its national board of directors. He is a past recipient of the Kusnetz Outstanding Professional in Industry Award, bestowed by the AIHA. He also serves on the editorial board of the *Industrial Safety and Hygiene News Magazine*.

Mr. Dotson's employment history includes service with Broken Hill Proprietary Company, Ltd. ("BHP"), a global natural resources corporation that conducts mining, petroleum and steel-making operations in some fifty countries. Mr. Dotson held the position of Vice President for Health, Safety and Environmental matters for several BHP business groups. As Vice President for BHP's copper mining group, his responsibilities included environmental affairs related to copper mining, milling, smelting, refining and exploration operations.

Before joining BHP, Mr. Dotson was employed by Phelps Dodge Corporation and with Maxim Environmental Engineers, Inc. Phelps Dodge is a diversified, international mining and manufacturing company and Mr. Dotson was Director of its Occupational, Safety and Health Department. His responsibilities included publication of corporate health and safety management standards and site conformance with industry "best practices". Maxim Engineers is one of the largest environmental laboratories in the United States. At Maxim Engineers, Mr. Dotson was a Manager and Vice President of its Industrial Hygiene Group. His work included conducting EPA/OSHA compliance audits, asbestos abatement management for school districts, occupational disease investigations and exposure risk assessments.

Mr. Dotson's work experience also includes positions with Northern Telecom, Inc. as Safety Coordinator for Meridian Business Systems and with Hartford Insurance Group as an Industrial Hygienist.

Mr. Dotson will testify generally as to his background, training and experience. He will testify as to the methods and procedures involved in industrial hygiene, including fiber measurement and counting techniques. He will testify as to the methods and procedures utilized in the collection of airborne asbestos samples and the use of industrial hygiene methods to control worker exposure to airborne asbestos dust. He will further testify concerning threshold limit values, the various threshold limit values for asbestos exposure, the basis for the original threshold limit value and its subsequent changes.

Mr. Dotson will also testify concerning the setting and implementation of asbestos exposure limits by OSHA, the subsequent changes to those limits and OSHA regulations pertaining to Plaintiffs' workplace at various times. He may also testify concerning the industrial hygiene programs implemented by ASARCO and/or Plaintiffs' employers at various times, and how those programs compared to the industrial hygiene standards in effect at various times.

Mr. Dotson will further testify with regard to the effectiveness of the industrial hygiene program at ASARCO as compared to the various standards applicable at different times, the asbestos exposures which Plaintiff would have had at various times during his employment history and the environmental exposures to airborne asbestos experienced by millions of Americans for which there is no epidemiological evidence of disease. He may offer such other opinions as may become necessary to rebut the opinions of Plaintiff's experts.

Mr. Dotson will base his testimony on the available professional, medical and scientific literature, applicable statutes and regulations, his own training and experience, the opinions and reports of other experts named or to be named by ASARCO or any other party, whether presented live or by deposition, the testimony of all other witnesses named or to be named by ASARCO or any other party, whether presented live or by deposition, and any documents introduced into evidence or otherwise used by any party at the time of trial.

16. Janet Hughes, Ph.D. Department of Biostatistics, SL-18, Tulane School of Public Health, 1501 Canal Street, New Orleans, LA, 70112. Dr. Hughes is a statistician and professor of biostatistics at Tulane University Medical Center, Section of Environmental Medicine. Dr. Hughes will testify as to the statistical methods used in epidemiological analyses and quantitative risk assessment. Dr. Hughes will further testify as to the different models used by investigators and the United States Environmental Protection Agency for predicting mesothelioma incidence and risk. In addition Dr. Hughes may be called to testify as to the probabilities that decedent's alleged mesothelioma was proximately caused by exposures from different time periods.

17. Steven M. Koenig, M.D. Box 800546, Division of Pulmonary and Critical Care, University of Virginia Health Systems, Charlottesville, Virginia. Dr. Koenig is board certified in pulmonology. Dr. Koenig is an internist specializing in pulmonary diseases. Dr. Koenig will testify generally as to his background, training and experience. Dr. Koenig will testify as to his knowledge of pulmonology and asbestos-related diseases. He will further testify as to the general medical issues concerning the development, cause, and diagnosis of asbestos-related disease and/or other disease that may mimic asbestos-related diseases.

Dr. Koenig will testify as to his examination of the non-malignant Plaintiffs and his findings based upon those examinations, upon his review of Plaintiffs' medical records and diagnostic testing. He will testify concerning whether plaintiffs suffer from asbestos-related disease, including asbestosis and other asbestos-related pleural conditions. Dr. Koenig may offer such other opinions as may become necessary to rebut the opinions of Plaintiffs' experts.

Dr. Koenig may base his testimony on the available medical and scientific literature, his own training and experience, the opinions and reports of other experts named or to be named by ASARCO or any other party, whether presented live or by deposition, the testimony of all other witnesses named or to be named by ASARCO or any other party, whether presented live or by deposition, and any documents introduced into evidence or otherwise used by any party at the time of trial.

ASARCO reserves the right to seek leave of court to call experts who are substituted for experts on this list who become unavailable. ASARCO further reserves the right to call additional expert witnesses for the purpose of rebuttal or impeachment, if necessary at the time of trial.

The general description of the area of expertise of each expert's anticipated testimony is not intended to limit such testimony, but is merely an indication of the broad area in which they may offer testimony. ASARCO reserves the right to supplement or revise this designation up to the time of trial.

Rule 194.2(g): any indemnity and insuring agreements described in Rule 192.3(f).

RESPONSE:

Until ASARCO learns more about Plaintiff's alleged exposures at its Corpus Christi facility, a meaningful response cannot be made to this request. Once such exposure information is received, ASARCO will investigate further, and responsive information, if any, will be supplied if, and when, it is obtained.

As ASARCO's investigation of Plaintiff's claims is ongoing, ASARCO reserves the right to amend and/or supplement this response.

Rule 194.2(h): any settlement agreements described in Rule 192.3(g).

RESPONSE:

None at this time. As ASARCO's investigation of Plaintiff's claims is ongoing, ASARCO reserves the right to amend and supplement this response.

Rule 194.2(i): any witness statements described in Rule 192.3(h).

RESPONSE:

ASARCO states that its representatives have made statements, in the form of deposition testimony, throughout the years. Once ASARCO learns more about Plaintiff's alleged exposures to asbestos-containing products, ASARCO will provide transcripts containing statements which are relevant to this action.

Rule 194.2(j): in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills.

RESPONSE:

Not applicable to the Defendant.

Rule 194.2(k): in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party.

RESPONSE:

None at this time. As ASARCO's investigation of Plaintiff's claims is ongoing, ASARCO reserves the right to amend and supplement its response to this request.

CAUSE NO. 00-5325-D

JOHN H. RISLEY, ET AL.	§	IN THE DISTRICT COURT
	§	
VS.	§	105 TH JUDICIAL DISTRICT
	§	
GAF CORPORATION, ET AL.	§	NUECES COUNTY, TEXAS

CERTIFICATE OF DISCOVERY

Pursuant to the Texas Rules of Civil Procedure, the undersigned does hereby certify that on January 29, 2002, the following discovery: Defendant ASARCO Incorporated's Responses to Plaintiff's Requests for Disclosure, was served on the following counsel of record:

Ms. Elizabeth R. Schick
Baron & Budd, P.C.
3102 Oak Lawn Avenue, Suite 1100
Dallas, Texas 75219

Respectfully submitted,

HUNTER & HANDEL, P.C.
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By: 
Rodney R. Handel
State Bar No. 08897460
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ASARCO INCORPORATED f/k/a AMERICAN
SMELTING AND REFINING COMPANY

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(973) 538-5146 Facsimile

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served on all counsel of record via facsimile and/or Certified Mail, Return Receipt Requested on this 29th day of January, 2002, in accordance with the Texas Rules of Civil Procedure.



Rodney R. Handel