

NO. A-920,967-C

ROBERT L. ABERNATHY, ET AL § IN THE DISTRICT COURT OF
VS. § ORANGE COUNTY, TEXAS
A. C. & S., INC., ET AL § 128TH JUDICIAL DISTRICT.

NO. A-920,961-C

INA SUE BAILEY, ET AL § IN THE DISTRICT COURT OF
VS. § ORANGE COUNTY, TEXAS
A. C. & S., INC., ET AL § 128TH JUDICIAL DISTRICT

NO. A-930,553-C

EDSEL DEWELL CARDWELL, ET AL § IN THE DISTRICT COURT OF
VS. § ORANGE COUNTY, TEXAS
ACANDS, INC. et al § 128TH JUDICIAL DISTRICT

NO. A-930,810-C

BEN GRADY GILBERT, ET UX § IN THE DISTRICT COURT OF
VS. § ORANGE COUNTY, TEXAS
A. C. & S., INC., ET AL § 128TH JUDICIAL DISTRICT

THE LINCOLN ELECTRIC COMPANY'S RESPONSE TO DISCOVERY

TO: Plaintiffs, by and through their attorney of record, Glen
Morgan, Reaud, Morgan & Quinn, 801 Laurel, Beaumont, Texas
77701.

COMES NOW The Lincoln Electric Company (hereinafter
"Lincoln"), one of the Defendants in the above-entitled and
numbered cause, and makes the following statements in response to
discovery served upon them by Plaintiffs dated February 29, 1996.

21021/89779

LOCATION:8432169440

RX TIME 04/15 '02 09:48

DISCOVERY REQUEST NO. 1: Admit or deny that asbestos fiber exposure is a causative factor in the incidence of the following diseases.

A. Pleural thickening.

RESPONSE: See response below.

B. Pleural Plaque

RESPONSE: See response below.

C. Asbestosis

RESPONSE: See response below.

D. Lung Cancer

RESPONSE: See response below.

E. Mesothelioma

RESPONSE: See response below.

F. Laryngeal Cancer

RESPONSE: See response below.

G. Oropharyngeal Cancer

RESPONSE: Defendant Lincoln objects to this request as exceeding the scope of Rule 169 as it will not limit nor eliminate issues to be presented to the jury. Defendant Lincoln objects to this Request for the reasons that it is vague and ambiguous and, as a result, will be misleading and confusing to the jury resulting in undue prejudice to the Defendant. Specifically, the Request does not specify the size of the fibers and does not define the dose (quantity over a period of time) of the exposure.

Without waiving said objections, Defendant Lincoln admits that exposure in sufficient amounts over a sufficient period of time of respirable asbestos can cause pleural thickening, pleural plaque, asbestosis, some lung cancers, and mesothelioma; however, Defendant Lincoln denies that use of its products can cause any of these asbestos related diseases. Defendant Lincoln denies that laryngeal cancer and/or

oropharyngeal cancer are caused by exposure to asbestos.

If you deny any of the above requests for admissions, please state all facts which support your contention that asbestos fiber exposure is not a causative factor in the incidence of the diseases listed above, and if you feel you have in your possession or know of any documents which support said contention, please produce all such documents.

RESPONSE: Defendant Lincoln objects to this discovery Request to the extent that it is overly broad, unduly burdensome, and an inappropriate request in that it requires that Defendant Lincoln to "state all facts". Requiring Defendant Lincoln to detail, at Defendant Lincoln's peril, all relevant information, place an impossible burden on Defendant Lincoln. Such a Request exceeds the scope of discovery. *See: Housing Authority of the City of El Paso v. Rodriguez-Yepes*, 828 S.W.2d 499 (Tex. App. -- El Paso 1992), *error denied*, 843 S.W.2d 475 (Tex. 1992). Defendant Lincoln further objects to this Request as it exceeds the scope of Texas Rules of Civil Procedure 168 and 169. Specifically, an interrogatory and/or a request for admissions cannot be used to seek production of documents. *See also: Limas v. de Delgado*, 770 S.W.2d 953, 954 (Tex. App. -- El Paso, no writ). Finally, Defendant Lincoln objects to this Request to the extent that it is unduly burdensome and harassing to the extent that it requires Defendant to list, and produce copies, of all medical and scientific literature concerning asbestos and laryngeal and/or oropharyngeal cancer, all of which is in the public domain and equally accessible to Plaintiffs.

Without waiving said objection, Defendant Lincoln would show that, taken as a whole, the scientific and medical literature does not support a conclusion that laryngeal cancer and/or oropharyngeal cancer are caused by asbestos. Defendant Lincoln generally refers Plaintiffs to the medical and scientific literature on this subject, as well as the testimony of experts presented by Defendant or its co-Defendants. Finally, Defendant Lincoln's products either do not contain asbestos or do not release asbestos.

DISCOVERY REQUEST NO. 2: Admit or deny that the following plaintiffs suffer from one or more of the following diseases which have been reported to be caused by asbestos fibers.

Paso v. Rodriguez-Yepetz, 828 S.W.2d 499 (Tex. App. -- El Paso 1992), *error denied*, 843 S.W.2d 475 (Tex. 1992). Furthermore, Defendant Lincoln objects to this Request as strict compliance with this Request would exceed the number of interrogatory answers required by Texas Rule of Civil Procedure 168(5). *See also: Owens v. Wallace*, 821 S.W.2d 746 (Tex. App. -- Tyler 1992, orig proceeding).

Without waiving said objections, Plaintiffs have not permitted Defendants an opportunity to develop the medical evidence in this case by blocking Defendants' efforts to obtain medical records, independent medical examinations, pathological studies, radiographic studies, etc. Until Defendants have had an opportunity to conduct independent medical examinations, provide their medical experts with all medical records, all radiographic studies, all pathological studies, etc., Defendants cannot admit or deny this Request.

With regard to medical reasons or opinions, Defendant Lincoln anticipates that the Defendants' medical experts will produce reports and such reports will provide a brief synopsis of the medical reason or opinion. Therefore, the reports are incorporated herein by reference, the same as if set forth at length.

With regard to documents, Defendant Lincoln generally identifies all medical records obtained through discovery in this case, a radiographic studies, all pathological studies, and all independent medical examination reports provided by Defendants' medical experts. Furthermore, Defendant Lincoln refers Plaintiffs to the medical and scientific literature, generally.

DISCOVERY REQUEST NO. 3: Admit or deny that products containing asbestos that you manufactured and/or distributed, marketed, sold and/or you have been held responsible for either by contract, corporate merger, asset acquisition, stock swap, buy-out, or any other corporate or legal maneuver were present in the following work sites in the matrix decades.

A. USX Fairfield

For the years of:

1930s RESPONSE: See response below.

1940s RESPONSE: See response below.
1950s RESPONSE: See response below.
1960s RESPONSE: See response below.
1970s RESPONSE: See response below.
1980s RESPONSE: See response below.
1990s RESPONSE: See response below.

B. Pullman Standard

For the years of:

1930s RESPONSE: See response below.
1940s RESPONSE: See response below.
1950s RESPONSE: See response below.
1960s RESPONSE: See response below.
1970s RESPONSE: See response below.
1980s RESPONSE: See response below.
1990s RESPONSE: See response below.

C. U.S. Pipe North Birmingham

For the years of:

1930s RESPONSE: See response below.
1940s RESPONSE: See response below.
1950s RESPONSE: See response below.
1960s RESPONSE: See response below.
1970s RESPONSE: See response below.
1980s RESPONSE: See response below.
1990s RESPONSE: See response below.

D. Alabama by-products

For the years of:

1930s RESPONSE: See response below.
1940s RESPONSE: See response below.
1950s RESPONSE: See response below.
1960s RESPONSE: See response below.
1970s RESPONSE: See response below.
1980s RESPONSE: See response below.
1990s RESPONSE: See response below.

RESPONSE: Defendant Lincoln objects to the use of the term "asbestos-containing product" because it does not consider that it either manufactured or sold such products in as much as any asbestos in any electrode it manufactured and sold was encapsulated in the rod and consumed in the arc thereby preventing any release to the environment.

Without waiving said objections, after 1981, denied as to all facilities; however, after reasonable inquiry and upon information known or easily obtainable by Defendant Lincoln, it has insufficient information with which to either admit or deny this Request to the extent it seeks information about sales prior to 1991 and, if response is due at this time, the same is also denied.

If you admit any of the above requests for admissions, please list by decade, site and product the asbestos-containing products you contend were at said sites along with the amount of said asbestos-containing products with as reasonable a particularity as you can estimate.

RESPONSE: Defendant objects to this Request as strict compliance with this Request would exceed the number of interrogatory answers required by Texas Rule of Civil Procedure 168(5). See also: *Owens v. Wallace*, 821 S.W.2d 746 (Tex. App. -- Tyler 1992, orig proceeding). Defendant Lincoln objects to the use of the term "asbestos-containing product" because it does not consider that it either manufactured or sold such products in as much as any asbestos in any electrode it manufactured and sold was encapsulated in the rod and consumed in the arc thereby preventing any release to the environment.

Without waiving said objections, not applicable.

Without waiving said objections, Defendant Lincoln does not, at this time, have records indicating which, if any, of its welding rods or electrodes containing asbestos were sold to the facilities at the times requested. However, after 1981, Defendant Lincoln no longer manufactured any welding rods or electrodes containing asbestos.

DISCOVERY REQUEST NO. 6: If you believe, or it is your position that any asbestos-containing products you manufactured, marketed, distributed, sold or are responsible for contractually or otherwise, that you admit being on the premises as listed in Discovery Request No. 5, or that plaintiffs have identified as being on the premises during the matrix years were not unreasonably dangerous in (sic) that term as defined by (1) Texas and (2) Alabama pattern jury charges, please state with all particularity

- A. All facts which support your belief or position.
- B. All studies, papers, pamphlets, treatises, learned or otherwise that you rely upon which support said position or belief.
- C. A synopsis of any and all lay or expert opinions which you rely upon to support said belief or position (a reference to a specific report will suffice).
- D. If you have any document regarding your products or any other products manufactured, distributed, sold or marketed by any of the defendants which you believe supports your position or belief regarding the dangerousness of said asbestos-containing product, please produce same.

RESPONSE: Defendant Lincoln objects to the use of the term "asbestos-containing product" because it does not consider that it either manufactured or sold such products in as much as any asbestos in any electrode it manufactured and sold was encapsulated in the rod and consumed in the arc thereby preventing any release to the environment. Defendant Lincoln objects to this discovery Request to the extent that it is overly broad, unduly burdensome, and an inappropriate request in that it requires that Defendant Lincoln to "state with all particularity" and requires Defendant Lincoln to detail, at Defendant Lincoln's peril, all relevant information, thereby placing an impossible burden on Defendant Lincoln. Such a Request exceeds the scope of discovery. See: *Housing Authority of the City of El Paso v. Rodriguez-Yepes*, 828 S.W.2d 499 (Tex. App. -- El Paso

1992), *error denied*, 843 S.W.2d 475 (Tex. 1992). Defendant further objects to this Request as strict compliance with this Request would exceed the number of interrogatory answers required by Texas Rule of Civil Procedure 168 and 169. *See also: Owens v. Wallace*, 821 S.W.2d 746 (Tex. App. -- Tyler 1992, orig proceeding). With regard to subparagraph d, Defendant Lincoln objects to this Request because it requests documents to be produced, which is not required by Texas Rules of Civil Procedure 168 and 169. *See also: Limas v. de Delgado*, 770 S.W.2d 953, 954 (Tex. App. -- El Paso no writ).

Without waiving said objections, Defendant Lincoln would show that at various times from the 1930s through 1981, Defendant Lincoln manufactured and sold certain electrodes which contained a small amount of asbestos, which was encapsulated in the flux of the rod and consumed in the welding arc. As a result, there was no release to the environment of the users or by-standers.

With regard to opinion testimony, Defendant Lincoln adopts herein by reference, the same as if set forth at length, its designation of expert witnesses and the synopsis, reports, and depositions of its experts.

DISCOVERY REQUEST NO. 7: Admit or deny that the following plaintiffs were exposed to asbestos fibers for a sufficient length of time and in a sufficient quantity to cause the plaintiff to suffer from one or more of the following reported asbestos-related diseases.

1. Cole, General Lee

Asbestosis	RESPONSE: See response below.
Pleural Plaques	RESPONSE: See response below.
Pleural Thickening	RESPONSE: See response below.

2. Fitzhugh, Alexander

Asbestosis	RESPONSE: See response below.
Pleural Plaques	RESPONSE: See response below.
Pleural Thickening	RESPONSE: See response below.

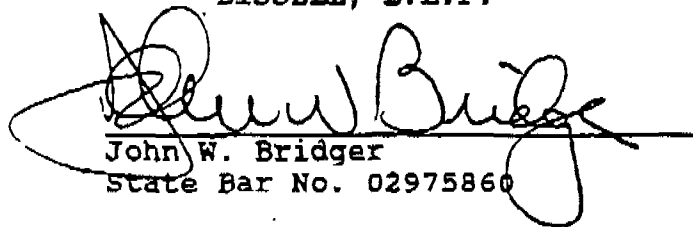
DISCOVERY REQUEST NO. 8: Admit or deny that asbestosis is caused by the body's reaction to the inhalation of asbestos fibers.

ADMIT _____ DENY _____

RESPONSE: Defendant Lincoln denies that inhalation of asbestos fibers necessarily results in asbestosis; however, Defendant Lincoln admits that some individuals exposed to significant amounts of respirable asbestos fibers over a lengthy period of time may develop asbestosis.

Respectfully submitted,

STRONG, PIPKIN, NELSON &
BISSELL, L.L.P.



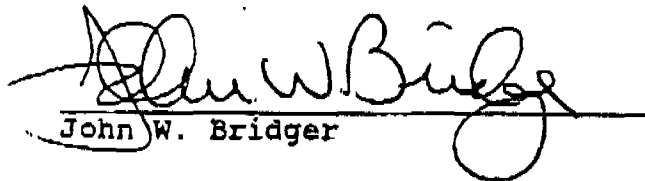
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ATTORNEYS FOR DEFENDANT,
THE LINCOLN ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been furnished to all counsel of record, this the 11th day of March, 1996.



John W. Bridger