



NO. 89-10294-F

HELEN GRACE BOOKER and	§	IN THE DISTRICT COURT
ELZY M. BOOKER, et al.	§	
	§	
VS.	§	OF DALLAS COUNTY, TEXAS
	§	
FIBREBOARD CORPORATION, et al.	§	116TH JUDICIAL DISTRICT

UNITED STATES GYPSUM COMPANY'S ANSWERS AND
OBJECTIONS TO PLAINTIFFS' FIRST SET OF INTERROGATORIES

TO: Plaintiffs, by and through their attorney of record, Mr. Russell W. Budd, Baron & Budd, 8333 Douglas Avenue, Suite 1000, Dallas, Texas 75225.

NOW COMES, Defendant UNITED STATES GYPSUM COMPANY, and pursuant to the Texas Rules of Civil Procedure files these Answers and Objections to Plaintiffs' First Set of Interrogatories to Defendant United States Gypsum Company.

OPENING STATEMENT AND OBJECTIONS

Defendant United States Gypsum Company objects to these Interrogatories on the grounds that they are overly broad, vague, not relevant, burdensome and amount to harassment.

Without waiving any objection which it may have, this Defendant provides the following information:

Defendant, United States Gypsum Company, is engaged in the manufacture and sale of refractory products, not asbestos, asbestos-containing or insulation products. These products were designed and intended for use by heavy industry, not for building construction or insulation. During the relevant period of time, 1947 through 1976, only a small minority of the products which this

Defendant sold contained asbestos. The vast majority of its products never contained asbestos.

During such period, this Defendant maintained no records nor had any direct knowledge concerning the operations of any company acquired by this Defendant, by any means, as a subsidiary, and no information concerning such is included in its answers.

In an attempt to respond to these requests, this Defendant provides the answers given subject to the above qualifications and limitations and for the relevant period of time of this Defendant's manufacture and sale of asbestos-containing refractory products of 1947 through 1976.

Respectfully submitted,,

DeHay & Blanchard
Plaza of the Americas
600 North Pearl Street
2500 South Tower, LB 201
Dallas, Texas 75201-2880
(214) 953-1313

BY:


GARY D. ELLISTON
State Bar No. 06584700

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been forwarded to Plaintiffs' counsel, Mr. Russell W. Budd, Baron & Budd, 8333 Douglas Avenue, Suite 1000, Dallas, Texas 75225, of record by ~~Certified Mail~~, return receipt requested, on the 9 day of April, 1990.

Gary D. Elliston
GARY D. ELLISTON

PREFATORY STATEMENT

United States Gypsum Company (hereinafter "U. S. Gypsum") has, to the best of its abilities, gathered non-privileged documents into a document repository for inspection by Plaintiffs' counsel in response to requests for production served in asbestos litigation. These documents provide information that supplements and expands upon that provided in these answers to Interrogatories. Accordingly, by way of further response to these Interrogatories, U. S. Gypsum hereby offers to make available these documents at a mutually convenient time at its offices at 101 South Wacker Drive, Chicago, Illinois.

In giving its responses to Interrogatories as to asbestos-containing products, U. S. Gypsum refers to products containing commercial asbestos as part of their formulation and to the type of commercial asbestos used as part of the formulation.

OBJECTIONS

U. S. Gypsum objects to the manner in which Plaintiff has defined U. S. Gypsum to the extent that Plaintiff purports to include in its definition of U. S. Gypsum predecessor-in-interest, subsidiaries, successor-in-interest and the corporate Defendant.

In that U. S. Gypsum Company is the named Defendant, this definition is overly broad and would require U. S. Gypsum to engage in unduly burdensome research, divulge privileged information and

produce privileged documents. This Defendant, United States Gypsum Company, responds to these Interrogatories on behalf of itself.

U. S. Gypsum further objects to these Interrogatories to the extent they seek information or documents protected by the attorney-client privilege and the work product rule and to the extent they seek trial preparation or expert materials or documents.

Finally, U. S. Gypsum objects to these Interrogatories to the extent they ask for "identification" of voluminous documents on the ground that they are overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. As set forth infra, U. S. Gypsum will produce documents which are the proper subjects of an appropriate document request.

INTERROGATORY NO. 1:

State Defendant's proper legal name, the present address of Defendant's principal place of business, all states in which Defendant is incorporated, and all states in which Defendant is licensed to do business.

ANSWER TO INTERROGATORY NO. 1:

This defendant's proper legal name is United States Gypsum Company. Its principal place of business is 101 South Wacker Drive, Chicago, Illinois 60606.

With respect to the states in which this defendant is incorporated this Defendant responds as follows:

<u>Date</u> <u>Incorporated</u>	<u>Date</u> <u>Dissolved</u>	<u>Name</u>	<u>State</u>
12/27/01	08/23/20	United States Gypsum Company	NJ
08/23/20	10/14/27	Avery Gypsum Company	NJ
08/12/20	12/24/36	United States Gypsum Company	IL
12/24/36	08/--/52	United States Gypsum Company	DE
08/--/52	02/04/66	United States Gypsum Company	IL
02/04/66	07/01/66	USG Corporation	DE
07/01/66	--/--/--	United States Gypsum Company	DE

With respect to all states in which this Defendant is licensed to do business, objection. This Interrogatory is overly broad, irrelevant, immaterial, and is not reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, this Defendant has been licensed to do business in the State of Texas since 1923.

INTERROGATORY NO. 2:

Please identify by trade or brand name each asbestos-containing product manufactured and/or sold by Defendant and/or Defendant's predecessors. For each product identified, please state following:

- (a) A description of the physical appearance of the product;
- (b) The address, including city and state, of the plants at which the product was manufactured and/or packaged;
- (c) The states in which the product entered the stream of commerce;

- (d) The annual dollar amount of production of the product at each of the locations indicated in response to Interrogatory No. 2(b) from 1940 through the present;
- (e) The percentage of the total production of the product for which each plant indicated in response to Interrogatory No. 2(b) was responsible.

ANSWER TO INTERROGATORY NO. 2:

- (a) See attached Exhibit No. 1.
- (b) See attached Exhibit No. 2.
- (c) U. S. Gypsum does not possess any records maintained in the normal course of business which identify who the ultimate user of the product was or where it was installed. With that limitation, U. S. Gypsum responds as follows: Prior to 1966, U. S. Gypsum sold its construction products, some of which may have contained small amounts of asbestos, exclusively through independent dealers. Beginning in about 1966, U. S. Gypsum sold its construction products either directly to independent contractors, independent distributors or, as had previously been the custom, through independent dealers.

This Defendant has no sales records for the years prior to 1965, other than records of gross sales of individual products by plant. Sales records thereafter are contained in computer printouts. Records of products which the plaintiff can

establish were relevant to the subject matter of this lawsuit will be made available for inspection at a mutually convenient time at 101 South Wacker Drive, Chicago, Illinois 60606, pursuant to a properly filed request to produce.

(d) Objection. This Interrogatory is overly broad in scope of time. This Defendant discontinued manufacturing products with asbestos as part of their formulations in 1977. Inquiries into years, subsequent to 1977, will not lead to the discovery of admissible evidence. Without waiving this objection, non-privileged, responsive documents, to the extent they exist, will be made available to Plaintiff at a mutually convenient time through U. S. Gypsum Company's offices at 101 South Wacker Drive, Chicago, Illinois.

e) Objection. This Interrogatory is vague and ambiguous. In addition, this Interrogatory is overly broad in scope of time. This Defendant discontinued manufacturing products with asbestos as part of their formulations in 1977. Inquiries into years, subsequent to 1977, will not lead to the discovery of admissible evidence. Without waiving these objections, non-privileged, responsive documents, to the extent they exist, will be made available to Plaintiff at a mutually convenient time through U. S. Gypsum Company's offices at 101 South Wacker Drive, Chicago, Illinois.

INTERROGATORY NO. 3:

For each product identified in Answer to Interrogatory No. 2, please identify the location at which each decision was made concerning the following subjects:

- (a) Testing of the product for quality and safety;
- (b) Advertising of the product;
- (c) Marketing of the product;
- (d) Placement of warning labels on the product;
- (e) Design of the product; and
- (f) Manufacture of the product.

ANSWER TO INTERROGATORY NO. 3:

Objection. This Interrogatory is vague, ambiguous, overly broad, speculative and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection and with respect to 3(b) and (c), see attached Exhibit No. 3. With respect to 3(a), (d-f), non-privileged, responsive documents, to the extent they exist, will be made available to Plaintiff at a mutually convenient time through U. S. Gypsum Company's offices at 101 South Wacker Drive, Chicago, Illinois.

INTERROGATORY NO. 4:

For such product listed in Answer to Interrogatory No. 2, please identify the location at which each of the following activities was conducted:

- (a) Testing of the product for quality and safety;
- (b) Advertising of the product;

- (c) Marketing of the product;
- (d) Placement of warning labels on the product;
- (e) Design of the product; and
- (f) Manufacture of the product.

ANSWER TO INTERROGATORY NO. 4:

Objection. This Interrogatory is vague, ambiguous, overly broad, speculative and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection and with respect to "testing of the product for quality," such testing may have occurred at each manufacturing location. Without waiving this objection and with respect to 4(b) and (c), see attached Exhibit No. 3. With respect to 4(a) and (d) - (f), non-privileged, responsive documents, to the extent they exist, will be made available to Plaintiff at a mutually convenient time through U. S. Gypsum Company's offices at 101 South Wacker Drive, Chicago, Illinois.

EXHIBIT "1"

ASBESTOS CONTAINING PRODUCTS

Acoustical Plasters - grayish-white

Miscellaneous Specialty Plasters - white to off-white,
plus some pastels for two products

Fireproofing - grayish-white

Fireproofing Plasters - white to off-white

Ceiling Tile - white to off-white

Texture Products - white to off-white

Paste Spackling Putty, Pipecoverings, Joint Compounds,
Rigid Block Insulation, Mortar - white to off-white

Siding - white, gray, ivory, green, brown

Roofing - red, green, blue, brown, black and gray

EXHIBIT "2"

<u>Product Name</u>	<u>Product Type/Use</u>	(Dates Approximate)		<u>Manufacturing Locations</u>
		<u>First Produced</u>	<u>Last Produced</u>	
White	Acoustical Plaster	1930	1966	Fort Dodge, IA
		1930	1945	Midland, IA
		1930	1945	East Chicago, IN
		1930	1966	New Brighton, NY
		1930	1945	Gypsum, OH
White	Acoustical Plaster	1955	1972	New Brighton, NY
				Fort Dodge, IA
White	Acoustical Plaster	1955	1972	New Brighton, NY
				Fort Dodge, IA
Top Trowel Finish	Finish Plaster	1930	1935	Gypsum, OH
		1930	1935	East Chicago, IN
				Fort Dodge, IA
				New Brighton, NY
		1950	1951	Fort Dodge, IA
Interior Interior Finish Plaster	Finish Plaster	1942	1972	Oakfield, NY
		1942	1972	Fort Dodge, IA
		1942	1972	New Brighton, NY
		1942	1972	Sweetwater, TX
		1942	1944	Boston, MA
				Gypsum, OH
				Philadelphia, PA
		1949	1950	Jacksonville, FL
				Norfolk, VA
		1949	1972	Philadelphia, PA
		1942	1944	Milwaukee, WI
Top Sewer Coat	Finish Plaster	1948	1954	Southard, OK
		1948	1964	New Brighton, NY
Top Finishing Plaster	Finish Plaster	1929	1947	Gypsum, OH
				New Brighton, NY
		1942	1946	Nephi, UT
		1942	1951	Milwaukee, WI
Top Wood Fiber Plaster - Regular	Basecoat	1946	1947	South Gate, CA
		1945	1972	East Chicago, IN
		1945	1952	Heath, NY
		1945	1959	Nephi, UT
		1945	1963	Midland, CA
		1945	1963	Fort Dodge, IA
		1945	1963	Detroit, MI
		1945	1965	Sweetwater, TX
		1945	1966	Loveland, CO
		1945	1967	Southard, OK
		1945	1960	Plaster City, CA
		1948	1952	Gerlach, NV
		1948	1972	Sigurd, UT
		1952	1960	Empire, NY

have been produced until this date, but sales diminished substantially by the mid-1950's.

<u>Product Name</u>	<u>Product Type/Use</u>	(Dates Approximate)		<u>Manufacturing Locations</u>
		<u>First Produced</u>	<u>Last Produced</u>	
1 Top Wood Fiber Plaster - Machine Application	Basecoat	1959 1972	1961 1972	Plaster City, CA East Chicago, IN
2 Top Cement Plaster - Machine Application. Name changed to Gypsum Plaster 7/67; to 1 Top Gypsum Plaster 11/68.	Basecoat	1963	1967	Loveland, CO
3 Top Cement Plaster for Machine Application. Name changed to Red Top Gypsum Plaster for Machine Application 5/7.	Basecoat	1962 1962 1966	1966 1966 1966	Gypsum, OH Detroit, MI Oakfield, NY
4 Top Fucto-Lite Gypsum Plaster for Machine Application	Basecoat	1955	1962	Boston, MA Detroit, MI East Chicago, IN Fort Dodge, IA Gypsum, OH Jacksonville, FL Loveland, CO New Brighton, NY Norfolk, VA Oakfield, NY Philadelphia, PA Plasterco, IA Southard, OK Sweetwater, TX
		1955 1957 1958 1963 1971 1975	1959 1962 1962 1972 1972 1960	Milwaukee, WI Shoals, IN Plaster City, CA Fort Dodge, IA Detroit, MI Empire, NY
5 Top External Exterior Finish Stucco	Exterior Finish Stucco	1930 1930 1930 1930	1973 1944 1972 1972	Fort Dodge, IA Gypsum, OH New Brighton, NY Oakfield, NY
		1932 1932 1949 1949	1944 1944 1972 1972	Sweetwater, TX Boston, MA Philadelphia, PA Milwaukee, WI Jacksonville, FL Philadelphia, PA Norfolk, VA
6 Top Mortar Mix	Aggregated plaster	1969 1969	1970 1972	East Chicago, IN New Brighton, NY

<u>Product Name</u>	<u>Product Type/Use</u>	<u>(Dates Approximate)</u>		<u>Manufacturing Locations</u>
		<u>First Produced</u>	<u>Last Produced</u>	
Arrock Radiant Filler - Thin Application	Specialty plaster	1971	1972	Empire, NY
Acote	Basecoat	1960	1963	Midland, CA
AYCON STANDARD	Fireproofing	1966	1971	S. Plainfield, N.J. Torrance, CA
AYCON STANDARD	Fireproofing	1968	1970	S. Plainfield, N.J. Torrance, CA
AYCON THERCOTE ²	Thermal Insulation	1969	1971	Corvallis, TX
RECOTE V	Fireproofing Plaster	1966	1968	East Chicago, IN New Brighton, NY Empire, NY
RECOTE D	Fireproofing Plaster	1959	1966	New Brighton, NY East Chicago, IN Empire, NY
DUSTONE 120 ³	Ceiling Tile	1967	1973	Gypsum, OH Walworth, WI
DUSTONE 180	Ceiling Tile	1966	1976	Walworth, WI Gypsum, OH
	Texture	1966	1976	Gypsum, OH Sweetwater, TX Dallas, TX Chamblee, GA Midway, IL South Gate, CA
solite	Texture	1961	1967	Gypsum, OH Dallas, TX New Brighton, NY South Gate, CA
o-Tex	Texture	1963	1963	South Gate, CA Dallas, TX Sweetwater, TX
peral 2T	Texture	1966	1976	South Gate, CA Dallas, TX Gypsum, OH Midway, IL New Brighton, NY Chamblee, GA

Raycon - U. S. Gypsum manufactured this product pursuant to the specification of Sprayon Research Corporation.

Some of these products did not have asbestos as part of their formulation.

<u>Product Name</u>	<u>Product Type/Use</u>	(Dates Approximate)		<u>Manufacturing Locations</u>
		<u>First Produced</u>	<u>Last Produced</u>	
EE"ROCK" Texture	Texture	1966	1976	Gypsum, OH Dallas, TX Midway, IL South Gate, CA
Stone	Texture	1966	1975	Gypsum, OH Sweetwater, TX South Gate, CA Dallas, TX New Brighton, NY
1 Textone	Texture Paint	1928	1976	South Gate, CA Gypsum, OH Chamblee, GA New Brighton, NY Sweetwater, TX
1	Texture Paint	1954 1967	1966 1976	Chamblee, GA Sweetwater, TX Gypsum, OH
3 TEX	Texture Paint	1935 1959 only 1973 only	1969	Gypsum, OH New Brighton, NY Sweetwater, TX Midway, IL Chamblee, GA South Gate, CA
<u>Other Products (By generic group)</u>				
Speckling sty		1932	1975	New Brighton, NY Gypsum, OH Chamblee, GA Sweetwater, TX
Decoverings		1936	1938	Jersey City, NJ
and Compounds		1920s?	1976	Gypsum, OH Midway, IL Chamblee, GA Dallas, TX East Chicago, IN Jacksonville, FL South Gate, CA New Brighton, NY Sweetwater, TX
igid Block Insulation		1943 1970	1950 1971	East Chicago, IN Greenville, MS
ding Shingles		1937	1975	East Chicago, IN

<u>Product Name</u>	<u>Product Type/Use</u>	(Dates Approximate)		<u>Manufacturing Locations</u>
		<u>First Produced</u>	<u>Last Produced</u>	
Plaster		1937 1967 Possible other dates.	1946 1975	Jersey City, N.J. St. Paul, MN South Gate, CA
Heater	Electric Heating	1961	1965	Shoals, AL (Assembled)
Insulation Cement	Insulation purposes where sheet and block insulation would be impractical.	1936	1939	Jersey City, N.J.

E: Not all products were made at all plants at all times listed.

Some of these products (Red Top Trowel Finish; Oriental Interior Finish Plaster; Red Top Cover Coat Finish Plaster; Red Top Patching Plaster; Red Top Wood Fiber Plaster Regular Basecoat; Red Top Wood Fiber Plaster Machine Application Basecoat; Cement Plaster - Regular, Name changed to Gypsum Plaster 7/67, to Red Top Gypsum Plaster Basecoat 11/68; Red Top Cement Plaster for Machine Application - Name changed to Red Top Gypsum Basecoat for Machine Application; Red Top Structo-Lite Gypsum Plaster for Machine Application Basecoat; Oriental Exterior Finish Stucco, Pyrobar Mortar Mix; Sheetrock Radiant Heat Filler - Machine Application) did not have asbestos as part of their formulation at all manufacturing locations at all times.

Most of the products identified in this Exhibit have a shelf life of approximately six months, with some variation due to humidity and storage conditions. It is the policy of the Defendant to provide this information to all customers. Therefore, date of last production approximates date of last sale, though U. S. Gypsum is not certain whether shelf life guidelines were adhered to by its customers. Reasonable investigation continuing.

EXHIBIT "3"

Advertising for U. S. Gypsum's products has traditionally been handled in corporate headquarters.

The following persons have been identified as holding positions of primary responsibility in the area of advertising and/or promotional materials on behalf of this Defendant during the indicated periods:

1938	F. Babcock General Advertising Manager
1939-1942	M. S. Wolf
1943-1947	J. G. Maynard
1947-1948	E. W. Fish
1949	I. F. Hayman (Deceased)
1958	A. J. Watt Vice President of Advertising and Promotion
1962	V. Abnee Manager - Promotion Advertising
1963-1978	J. J. McLaughlin Vice President of Marketing Services
1979	W. S. Stuart Vice President, Director of Marketing Services
1979-9/1/87	R. Faust Vice President, Director of Corporate Marketing Services 101 South Wacker Drive Chicago, Illinois
9/1/87 - 6/1/89	R. Hopper Vice President, Marketing Services
6/1/89 - Present	J. C. Bopp Director Marketing Services, President Marstrat

The following advertising agencies have been identified as being used by Defendant in the past with respect to its products:

1950-1965	Fulton, Morrissey Co. 612 N. Michigan Avenue Chicago, Illinois
1965-1970	Geyer, Morey, Ballard (later Meyer Oswald) 645 N. Michigan Avenue Chicago, Illinois
1970-1972	Lennon & Newell/Midwest 645 N. Michigan Avenue Chicago, Illinois
1972-1976	Needham, Harper & Steers 401 N. Michigan Avenue Chicago, Illinois
1977-present	Marstrat (In-House)

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

VERIFICATION

I, F. M. Poremski, declare:

I am the Manager, Financial & Accounting Services, of United States Gypsum Company, one of the above named defendants, and am authorized to make this verification for and on behalf of said corporation;

I have read the foregoing Answers, Objections, and other Responses to Plaintiffs' Interrogatories and am informed and believe that the same is true and on that ground allege that the matters therein stated are true.

I declare, under penalty of perjury, that the foregoing is true and correct, and that this declaration was executed on April 10, 1990 in Chicago, Illinois.

F. M. Poremski
F. M. Poremski

Subscribed and sworn to before me
this 10 day of April, 1990.

Susan T. Madden
Notary Public

