

CAUSE NO. B-143,539

SHARON BOWEN ELLIS,	§	IN THE DISTRICT COURT OF
Individually and as	§	
Administratrix of the	§	
Estate of THOMAS RAY ELLIS,	§	
Deceased; and ALICIA D. ELLIS,	§	
Surviving Child of Deceased	§	
	§	
VS.	§	JEFFERSON COUNTY, TEXAS
	§	
A. C. & S., ET AL	§	60TH JUDICIAL DISTRICT

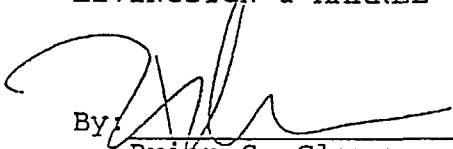
DEFENDANT BIRD INCORPORATED'S ANSWERS
TO PLAINTIFFS' SECOND SET OF INTERROGATORIES

TO: Plaintiff SHARON BOWEN ELLIS, Individually and as Administratrix of the Estate of THOMAS RAY ELLIS, Deceased; and Alici D. Ellis, Surviving Child of Deceased, by and through her attorney of record, Mr. Martin Dies, Law Offices of Martin Dies, 1009 West Green Avenue, Orange, Texas 77630.

NOW COMES, BIRD INCORPORATED, one of the defendants in the above-styled and numbered cause, and pursuant to the Texas Rules of Civil Procedure, makes and files the following answers to Plaintiffs' Second Set of Interrogatories.

Respectfully submitted,

LIVINGSTON & MARKLE

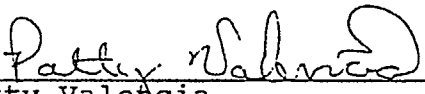
By: 

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ATTORNEYS FOR DEFENDANT
BIRD INCORPORATED

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been forwarded to all known counsel of record either by certified mail, return receipt requested, hand delivery, and/or by U.S. regular mail on or about March 28, 1994.



Patty Valencia
Secretary to Brian S. Clary

DEFENDANT BIRD INCORPORATED'S ANSWERS
TO PLAINTIFFS' SECOND SET OF INTERROGATORIES

PREAMBLE

Defendant Bird Incorporated (now known as Bird Corporation) traces its roots to 1795. Bird & Son, inc. was incorporated in 1918 and was known as Bird & Son, inc. until 1983. Hereafter, the foregoing corporations are referred to collectively as "Bird":

<u>Location</u>	<u>Year Opened</u>	<u>Year Closed</u>	<u>Disposition</u>
Norwood, MA	1904 (or earlier)	--	Continuing
Chicago, IL (76th Street)	1928 (or earlier)	1971	Sold to Sheldon Simborg
Shreveport, LA	1937	1984	Sold to Genstar
Charleston, SC	1954	1984	Sold to Genstar
Perth Amboy , NJ	1962	1981	Plant closed. Sold real estate.
			Sold to Genstar
Portland, OR	1968	1984	Sold to Genstar
Martinez, CA	1968	1984	Sold to Genstar
Wilmington, CA	1968	1984	Sold to IKO Sales Ltd. (Toronto)
Chicago, IL (South Central Avenue)	1976	1981	Sold to IKO Sales Ltd. (Toronto)
Franklin, OH	1976	1981	

When the foregoing roofing plants were sold, custody of their business records passed on to their respective purchasers. Accordingly, Bird presently has access to roofing plant documents only from: (i) the Norwood roofing plant, to the extent that they

were retained in the ordinary course of business; and (ii) the Perth Amboy roofing plant, to the extent that they were transferred to the Norwood roofing plant in 1981.

Bird's corporate headquarters were maintained at East Walpole, Mass. from 1817 until 1986 at which time the number of headquarters personnel was reduced from around 200 employees to about 20 employees and relocated to Dedham, Mass. At the time of that relocation, some, but not all, of the files maintained at East Walpole were transferred to Dedham or to Norwood.

By reason of the foregoing, the only remaining documents relevant to the manufacturing and sale of asbestos-containing products are located in Dedham and in Norwood. The answers to the following interrogatories are based upon those documents and upon the memories of the persons referred to below. If additional information should become available, these answers will be amended accordingly.

ANSWERS

1. Identify each and every person who participated in the preparation of answers or responses to these Interrogatories. For each person so identified state such person's name, title or position, business address, and length of time employed by Defendant, state by year all other positions, titles, or jobs each such person has held with this Defendant, and identify the Interrogatories with which he/she assisted.

ANSWER: Richard Maloof, President, Roofing Division
Thomas J. Hartnett, Vice-President, Sales
William F. McGonagle, Personnel Manager
John F. Hardy, Manufacturing Manager
Clifford J. Patenaude, Research & Development and Quality Control Manager
Dennis Kennedy, Division Controller
Frank S. Anthony, Vice-President and General Counsel

In addition, legal counsel for Defendant, in this lawsuit, assisted in compiling the information, and preparing the reponses.

2. Identify any and all persons who, acting on your behalf or with funding supplied, whether directly or indirectly, in whole or in part, by you, ever conducted any research, testing, studies or analyses concerning the quality, performance, and/or field success or failure of your asbestos-containing product.

ANSWER: Bird had a Research & Development Department for the purpose of research on product performance prior to 1968; any information relating to the date of its formation and persons who directed the Department prior to 1968 is not readily available to Bird. Comparative performance tests may have been conducted of certain Bird products and products made by outside vendors. If they were, information concerning those tests would be in laboratory reports, which, if Bird still has, it will make available for plaintiff's inspection and copying. Bird further states that from 1968-1981, Leonard Weaver was head of Research & Development. From 1981-1982, John Arnold was head of Research & Development. From 1982-1985, Jim Jackson was head of Research & Development. In or about 1985, the Research & Development Department, which had been located in the East Wallpole Facilities of Bird, was terminated. A Research & Development laboratory was created in Norwood at that time, and Clifford Patenaude has headed that laboratory since its creation.

3. Identify any and all persons who, acting on your behalf or with funding supplied by you, whether directly or indirectly, in whole or in part, ever conducted any research, testing, studies or analyses of any kind with regard to the health effect on animals and/or humans of exposure to asbestos, asbestos dust, and/or asbestos-containing products.

ANSWER: Bird Corporation conducted testing within its plants relating to varied occupational exposure issues. Any testing, including asbestos-related, is set forth in Exhibit "D" of the responses to Requests for Production.

4. Identify any and all persons who, acting on your behalf or with funding supplied by you, whether directly or indirectly, in whole or in part, ever conducted any research, testing, studies or analysis of any kind with regard to whether either the presence of your specific asbestos-containing products or the presence of asbestos fibers in the air posed any hazards or dangers to the health or safety of those persons who would use, apply, maintain, replace, repair, install, or otherwise handle those products.

ANSWER: See answer to Interrogatory No. 3.

5. Identify all asbestos products manufactured, distributed and/or sold by you that either contained, were accompanied by or were followed by with any warning, caution, or special instruction concerning the health consequences of the use of the product or the breathing of asbestos dust or fibers, or safety procedures to be employed by persons using or handling these products (quote specifically or produce the warnings, caution or instruction given; describe whether the warning was placed on the product, in or on the product container, or was mailed or otherwise transmitted; and give the dates that each such warning, caution or instruction was first placed on the product, in or on the product container or mailed or otherwise transmitted).

ANSWER: As far as can be determined, Bird gave no such warnings because all asbestos-containing products Bird sold were encapsulated and not friable.

6. Identify the date, the manufacturer and asbestos product involved and describe the circumstances under which you first became aware that any warnings of the kind described in Interrogatory No. 5 above were placed on asbestos products distributed by other manufacturers or distributors of asbestos products.

ANSWER: Bird received notice of an Asbestos Corporation Limited warning which is attached as Exhibit "U," as well as those warnings in other documents attached to Defendant's response to Requests for Production.

7. Identify and describe all asbestos-containing construction products installed at any time at your Shreveport, Louisiana facility.

ANSWER: Bird has no knowledge of these products; such records, if any, would have passed from Bird's control upon sale of the Shreveport facility. To the extent they may contain relevant documents, refer to the product specification sheets attached as Exhibit "A" to the Requests for Production, for products made at the Shreveport, Louisiana plant, though no information exists to reflect products installed at the facility.

8. For each product identified in your Answer to Interrogatory No. 7, state the date of purchase; the supplier of the product (i.e., the vendor or other source from which the product was acquired); the manufacturer of the product; the trade or brand name of the product; the date of installation of the product; and the place of installation of the product in your facility.

ANSWER: See answer to interrogatory no. 7.

9. Identify and describe all policies, cautions, warnings, instructions, training, notification, and/or information that you have provided to employees concerning asbestos and/or the hazards of asbestos and/or precautions or procedures to be followed by employees engaged in the mixing, manufacture, packaging, or handling of asbestos and/or asbestos-containing products.

ANSWER: Bird implemented a respiratory program which is reflected in documents attached as Exhibit "E" to the Request for Production. Bird discussed quality control issues with its employers and managers as reflected in Exhibit "J" attached to Request for Production.

10. Identify and describe all policies, cautions, warnings, instructions, training, notification, and/or information that you have provided to contractors and/or subcontractors, or employees thereof, performing work at your facilities concerning asbestos and/or the hazards of asbestos and/or precautions or procedures to be followed while working in the vicinity of your asbestos mixing and manufacturing process.

ANSWER: See answer to Interrogatory No. 9.

11. Identify and describe all policies, cautions, warnings, instructions, training, notification, and/or information that you have provided to contractors and/or subcontractors or employees thereof, performing construction, renovation, and/or maintenance work at your facilities concerning asbestos and/or the hazards of asbestos, the presence and/or location of asbestos-containing construction products in your buildings, and any and all precautions or procedures to be followed in connection with work performed on or near such asbestos-containing construction products.

ANSWER: See answer to Interrogatory No. 9. For further answer, see Exhibit "Y" attached which details an abatement project at the Norwood, Mass. plant.

12. Identify and describe all work performed at your Shreveport, Louisiana facilities at any time by Pelican Roofing and Metal Works of Shreveport, Louisiana ("Pelican") and Industrial Roofing and Sheet Metal of Shreveport, Louisiana ("Industrial").

ANSWER: Defendant requires further definition of the term "all work" in order to properly respond. To Bird's knowledge, it no longer has control of such information, to the extent it existed. If such information becomes available, Bird will supplement this answer. The only information Defendant has, at this time, would be contained in the fact witness depositions taken in this case, and Defendant would direct Plaintiff to these transcripts for guidance in this area.

13. For each job identified in your Answer to Interrogatory No. 12 above, identify the date(s) the work was performed; the general contractor involved, if any; all employees of the general contractor, if any, and of industrial and/or Pelican who worked on the job; your employee(s) or representative(s) responsible for requesting, planning, contracting, directing, overseeing, and/or approving the work; and all instructions and directives concerning the work provided by you to the general contractor and/or to Pelican or Industrial, including but not limited to any cautions, warnings, instructions, or notice of the type referred to in Interrogatories Nos. 9, 10 and 11 above.

ANSWER: See answer to interrogatory no. 12 above.

14. State the date when you first knew of allegations that there is a causal connection between the inhalation of asbestos and asbestosis, lung cancer and/or mesothelioma and identify the source of such allegations.

ANSWER: The sources of these allegations are reflected within the documents attached as Exhibit "C" to the Requests for Production, as well as the documents attached to the Request for Production response, reflecting allegations of asbestos-related disease by workers.

15. Identify every periodical, journal, magazine, newspaper, catalogue, industry publication, or other publication in which the asbestos-containing products of this Defendant have been advertised from 1940 to the present. For each publication identified, provide the brand of trade name of the products advertised and the dates of such advertisements.

ANSWER: Bird has no knowledge of the existence of such information.

16. List or produce each notice, claim, allegation, or statement - by name and most recent known address of each claimant; date; and description of the claim and product involved - that you have ever received that an injury, or disease resulted from exposure to or use of any asbestos or asbestos product manufactured, distributed and/or sold by you.

ANSWER: For further claimaint information, see Exhibit "I" attached to the Requests for Production, including the personnel files of workers alleging harm from asbestos.

17. Identify by describing the date(s), location(s), results and identifying the person(s) involved, an dust and/or fiber count studies of any of your asbestos product manufacturing facilities; any such studies relating to the actual use, application, maintenance, replacement, repair, installation, and/or handling of any of your products; and any tests relating to the quantity, quality, or threshold limit values of asbestos dust or particles to which workers and other users or consumers were or are exposed while using, applying, maintaining, replacing, repairing, installing, or otherwise handling your asbestos-containing products.

ANSWER: See Exhibit "D" attached to the Requests for Production.

18. Identify each inquiry, complaint, study, investigation or request for information pertaining to any asbestos product which you received from any federal, state or local government body; identify the response made and the person responsible for making such response.

ANSWER: Subject to previously filed objections, Bird answers that the Commonwealth of Massachusetts' Department of Environmental Quality Engineering issued a Notice of Intent to Assess a Civil, Administrative penalty to Bird upon belief that a contractor demolishing a Bird facility had failed to properly dispose of certain asbestos-containing materials. Bird responded to the complaint, and the matter was settled by the parties. Although this complaint was not directed at Bird products, only one particular facility, Plaintiff may refer to Exhibits "X" and "Y" attached for the circumstances of this action.

19. Identify all associations or groups in which you are or were a member, including, but not limited to the Asbestos Information Association, the Asbestos Cement Products Association (ACPA), Quebec Asbestos Miners Association (QAMA), Asbestos Textile Association, Thermal Insulation Manufacturers Association, Inc. (NIMA), Asbestos Insulation Association, Industrial Hygiene Foundation of America or its successor, Industrial Health Foundation, the Asphalt Roofing Manufacturers Association (ARMA), the National Roofing Contractors Association (NRCA), The American Society for Testing and Materials (ASTM), or any other association in which asbestos was either studied, sampled or discussed.

ANSWER: National Safety Council
Massachusetts Safety Council
Asphalt Roofing Manufacturers Association
National Roofing Contractors Association

20. Identify all asbestos surveys and inspections performed for the purpose of locating, quantifying, identifying, and/or assessing the condition of any and all asbestos-containing construction products located in any building, facility, office, factory, plant or other structure owned, rented, occupied, or otherwise controlled by this Defendant, and for each such survey and/or inspection, identify the date the survey or inspection was performed; and the individual or entity performing the survey or inspection.

ANSWER: See Exhibit "Y" attached.

21. Identify all asbestos management plans, response action recommendations, operations and maintenance plans, and awareness and/or training programs developed at or for any building, facility, office, factory, plant or other structure owned, rented, occupied, or otherwise controlled by this Defendant, and for each such plan, recommendation, and/or program, identify the date and plan, recommendation, or program was developed; and the individual or entity developing the plan, recommendation or program.

ANSWER: Bird implemented a respiratory protection program in its plant(s) pertaining to any airborne dust. See Exhibit "E" attached to Bird's responses to Requests for Production.

22. Identify all employee(s), or other persons responsible for the abatement, replacement, removal, encapsulation, or other management of any asbestos-containing construction product installed in any building, facility, office, factory, plant, or other structure owned, rented, occupied, or otherwise controlled by this Defendant, and identify the facilities involved, and the dates thereof.

ANSWER: Based on information currently available, Defendant states that it knows of no person having specific responsibilities regarding asbestos products as such.