

County Court at Law No. 2
In the District and County Courts of El Paso
El Paso County, Texas

MARY HERMOSILLO, Ind., and
Personal Representative of the Heirs
of EDMUNDO I. HERMOSILLO

v.

OWENS-CORNING FIBERGLAS
CORP., et al

Cause No. 98-1338

**ASARCO, INCORPORATED'S ANSWERS TO
PLAINTIFF'S SECOND SET OF INTERROGATORIES**

TO: PLAINTIFF MARY HERMOSILLO, Ind., and personal Representative of the Heirs of EDMUNDO I. HERMOSILLO, by and through her attorney of record, Patrick Haines, BARON & BUDD 3102 Oak Lawn Avenue, Suite 1100, Dallas, Texas 75219-4281.

Comes now ASARCO, Incorporated ("ASARCO"), a Defendant in the above entitled and numbered cause, and pursuant to Tex. R. Civ. P. 168 hereby submits its Answers to Plaintiff's Second Set of Interrogatories. Defendant's Answers are attached hereto as Exhibit "A".

Respectfully submitted,

RAY, McCHRISTIAN & JEANS, P.C.
A Professional Corporation
5822 Cromo, Suite 400
El Paso, Texas 79912
(915) 832-7230 Telephone
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By: 

DAVID S. JEANS
State Bar No. 10597400
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was mailed, by certified mail, faxed or otherwise served on all attorneys of record on this 7th day of December, 1998.

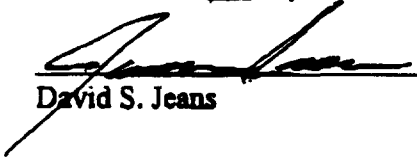

David S. Jeans

EXHIBIT "A"

GENERAL OBJECTIONS

1. ASARCO, Incorporated ("ASARCO") objects to Plaintiff's Second Set of Interrogatories on the ground that service of a second set of discovery is in violation of the Standing Order adopted by this Court that requires the Plaintiff to first reach agreement with this Defendant regarding the service of a set of discovery in addition to the Master Discovery. Plaintiff relieved ASARCO of the obligation to answer the Master Discovery adopted by this Court. Insofar as no agreement was obtained regarding the service of this set of discovery, the discovery violates the Standing Order because it was served without leave of Court.
2. ASARCO, Incorporated ("ASARCO") generally objects to any interrogatory, document request, definition, or instruction that purports to require ASARCO to respond to any discovery request in a manner or to an extent not required by the Texas Rules of Civil Procedure.
3. ASARCO objects to any interrogatories or document requests which seek information protected by any privilege, including the attorney-client and/or attorney work product privileges.
4. ASARCO objects to any interrogatory or document request to the extent that they seek information regarding trade secrets, confidential financial data, or other proprietary information.
5. ASARCO objects to any interrogatory or request to produce to the extent that it seeks information that is not within the personal knowledge of ASARCO or its current employees.

6. ASARCO objects to any interrogatory or request for documents which seeks information that is not relevant to the subject matter involved in the pending action, that is not reasonably calculated to lead to the discovery of admissible evidence, that was prepared in anticipation of litigation or for trial by or for ASARCO's representatives, including attorneys, consultants, and agents, or that are otherwise beyond the scope of discovery permitted by the Texas Rules of Civil Procedure.

7. ASARCO generally objects to any interrogatory or document request to the extent that it seeks information concerning a time period other than that during which ASARCO was an incorporated entity on the grounds that such interrogatories and requests are overly broad, unduly burdensome, and seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

8. ASARCO generally objects to any interrogatories and document requests seeking information as to entities other than ASARCO on the grounds that such interrogatories and requests are overly broad, unduly burdensome and seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

9. ASARCO generally objects to the phrase "at any time" which is used throughout plaintiff's interrogatories and document requests, on the grounds that such language makes each such interrogatory and request overly broad and unduly burdensome.

10. ASARCO objects to answering any interrogatory or producing any documents other than those pertaining to its El Paso, Texas facility at issue in this case on the grounds that any such interrogatory or request for such documents is overly broad, unduly burdensome, and seeks information and documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

11. Where ASARCO otherwise responds to an interrogatory or a document request, it does so by incorporating each of these General Objections by reference into each individual response, without waiving any of its stated objections.

OBJECTIONS TO DEFINITIONS

ASARCO objects to plaintiff's definition of "Defendant", "You", "Your", and "Your company" to the extent that it includes entities who are not parties to this case. ASARCO further objects to this definition to the extent it includes former officers, directors, agents and employees over whom ASARCO no longer has dominion and control. By way of further objection, the use of these definitions transforms plaintiff's interrogatories and requests for documents into a fishing expedition and is, therefore, in violation of the Texas Rules of Civil Procedure.

ANSWERS TO INTERROGATORIES

INTERROGATORY NO. 1:

Do you contend that chrysotile asbestos does not cause the disease mesothelioma in humans? If the answer is anything other than "no", identify each and every fact which supports this contention.

ANSWER:

ASARCO states that the available medical literature, although inconsistent in its conclusions on causation, supports the contention that in very rare circumstances chrysotile asbestos can cause pleural mesothelioma in susceptible individuals who have had a sufficient exposure over a sufficient period of time and with a sufficient latency period. The medical literature suggests that chrysotile asbestos does not cause the development of peritoneal mesothelioma in humans.

INTERROGATORY NO. 2:

Do you contend that Plaintiff's Decedent's injuries and damages, as alleged in this lawsuit, were the result of Decedent's own actions and/or alleged negligence? If the answer is anything other than "no", identify each and every fact which supports this contention.

ANSWER:

Plaintiff's decedent failed to consistently wear protective equipment, including but not limited to a mask or a respirator, while working with or in close proximity to asbestos-containing products, as evidenced by the deposition testimony offered by his widow and personal representative, Mary Hermosillo, and his co-workers in this matter. In this manner, Edmundo Hermosillo contributed to his own injuries. Additionally, defendant reserves the right to amend its answer to this interrogatory as discovery continues.

INTERROGATORY NO. 3:

Do you contend that Plaintiff's Decedent's injuries and damages, as alleged in this lawsuit, were solely the result of the actions of other entities, over whom Defendant had no right of control? If the answer is anything other than "no", identify each and every fact which supports this contention.

ANSWER: Yes. See answer to Supplemental Interrogatory No. 2. ASARCO further contends that it had no control over the manufacturers of the asbestos-containing products with which Mr. Hermosillo may have worked. Defendant reserves the right to amend its answer to this interrogatory as discovery continues.

INTERROGATORY NO. 4:

Do you contend that Defendant specifically warned Edmundo Hermosillo about the hazards of asbestos and asbestos-containing products? If the answer is anything other than "no", identify each and every fact which supports this contention.

ANSWER: No.

INTERROGATORY NO. 5.:

Identify all past and/or current employees, officers and/or directors of ASARCO, Inc. that were at any time an employee of Lake Asbestos of Quebec and/or an officer or director of Lake Asbestos of Quebec.

ANSWER: Objection. This interrogatory is overly broad and unduly burdensome as it is not limited in time or scope. It is also objectionable as it seeks the disclosure of information which is not relevant to this action. Without waiving these objections, ASARCO responds that since September 1952 it has had over 30,000 employees approximately. Out of this group of individuals, 99.9% of them have never been employees, officers or directors of Lac d'Amiante du Quebec, Ltee ("LAQ"), improperly identified as "Lake Asbestos of Quebec" in Plaintiff's Interrogatory No. 5. The following past and/or current employees, officers and/or directors of ASARCO were at some time employees and/or officers or directors of LAQ:

1. Robert Richter
2. Francis J. Goldthwait
3. Morris B. Hecox, Jr.
4. John F. Hornbestel, Jr.
5. Homer Q. Stringham
6. Robert J. Plumb, Jr.
7. Hyman Shapiro
8. W. T. Reed
9. George W. Mead
10. M. M. Rosenberg
11. George A. Breckington
12. Harold L. Goedenough
13. Harold Howe
14. W. F. Herberg
15. Charles E. Prior
16. Clement P. Pollack
17. Harry Smith
18. Victor I. Mann
19. Lyman H. Hart

20. Darwin J. Pope
21. Robert J. Muth
22. Ralph D. Williams
23. Thomas C. Osborne
24. Michael J. Messel
25. Charles E. Stiefken
26. R. Worth Vaughn
27. Edward McL. Tittmann
28. Simon D. Strauss
29. Oscar S. Straus
30. Richard deJ. Osborne
31. John D. MacKenzie
32. Ralph L. Hennebach
33. Forrest G. Hamrick
34. Alexander J. Gillespie, Jr.
35. Kenneth C. Brownell
36. Robert D. Bradford
37. Charles F. Barber

ASARCO's investigation is continuing and therefore it reserves the right to amend and/or supplement its answer to this interrogatory.

INTERROGATORY NO. 6:

Were any asbestos products containing either amosite or crocidolite asbestos ever used, installed, removed and/or manipulated at Defendant's El Paso facility between the years 1940-1975? If so, please identify all such products.

ANSWER:

Defendant objects to the use of the term "manipulated" as vague, unclear and ill-defined in this interrogatory. Without waiving this objection, ASARCO responds as follows: According to documents previously produced by ASARCO in response to plaintiff's request for the production of documents, specifically Bates numbers HER 0001950 through HER 0001971, some asbestos-containing materials that were in place in certain locations of the plant contained some amount of amosite or crocidolite. ASARCO is not in possession of any information which would allow it to determine when such materials may have been installed or repaired. Despite this absence of information, ASARCO does not contend that asbestos-containing materials containing either amosite or crocidolite were never used, installed, removed and/or worked on at its El Paso facility between the years 1940 to 1975.

INTERROGATORY NO. 7:

Do you contend that Edmundo Hermosillo was not exposed to asbestos while working at the ASARCO facility in El Paso? If the answer is anything other than "no", identify each and every fact which supports this contention.

ANSWER:

No.

INTERROGATORY NO. 8:

Please identify all current and/or past employees, agents, retained experts, consultants and/or representatives of Defendant, LAQ and/or CAPCO who attended the October 1964 Conference on the Biological Effects of Asbestos held in New York.

ANSWER:

No current and/or past employees, agents, retained experts, consultants and/or representatives of LAQ or CAPCO attended the October 1964 Conference on the Biological Effects of Asbestos held in New York. The following ASARCO employees attended: Sherman Pinto and Kenneth Nelson.

INTERROGATORY NO. 9:

Do you contend that Defendant, Defendant's representatives, insurance carriers and/or agents performed any measurements and/or studies prior to 1970 to determine the quantity of asbestos fibers in the air at the El Paso facility? If the answer is anything other than "no", identify each and every fact which supports this contention.

ANSWER:

At this time, ASARCO is not in possession of any evidence to support a contention that ASARCO, its representatives, insurance carriers and/or agents performed any measurements and/or studies prior to 1970 to determine the quantity of asbestos fibers in the air at the El Paso facility. ASARCO reserves the right to supplement this answer throughout the continuing course of discovery.

INTERROGATORY NO. 10:

Please identify all current and/or past employees, agents, retained experts, consultants and/or representatives of Defendant, LAQ and/or CAPCO who attended the Seventh Saranac Symposium in 1952.

ANSWER:

No current and/or past employees, agents, retained experts, consultants and/or representatives of ASARCO, LAQ or CAPCO attended the Seventh Saranac Symposium in 1952.

INTERROGATORY NO. 11:

Do you contend that Defendant provided dust masks and/or respirators to Edmundo Hermosillo, specifically for the purpose of protection from the hazards of asbestos and asbestos-containing products? If the answer is anything other than "no", identify each and every fact which supports this contention.

ANSWER:

At this time, ASARCO has no specific evidence that it ever provided dust masks and/or respirators to Edmundo Hermosillo. ASARCO reserves the right to supplement this interrogatory answer throughout the continuing course of discovery.

INTERROGATORY NO. 12:

Do you contend that Edmundo Hermosillo did not suffer from mesothelioma? If the answer is anything other than "no", identify each and every fact which supports this contention.

ANSWER: ASARCO does not contend that Mr. Hermosillo did not suffer from peritoneal mesothelioma.

INTERROGATORY NO. 13:

Do you contend that at no time during the time frame between 1940-1975, Defendant did not have the right to advise or, if necessary, control the activities of employees of contractors, working on the premises of the El Paso facility, who were engaged in activities which could be potentially hazardous to either themselves or ASARCO, Inc. employees? If the answer is anything other than "no", identify each and every fact which supports this contention.

ANSWER:

Defendant objects to this Interrogatory on the basis that the term "controls" used therein is vague, and difficult to define and further that the subjects inquired about in this interrogatory are over broad and call for legal conclusions. Without waiving these objections, the deposition testimony of the plaintiff's decedent's co-workers supports ASARCO's contention that generally it did not intervene in the work performed by independent contractors and their employees except to ensure that the work was being done properly or to submit change orders. The interactions were generally between the independent contractors' foremen on the site and a representative of ASARCO. No one at

ASARCO ever interacted directly with employees of independent contractors regarding work quality, safety and the like. The contractors were considered experts in their respective fields and were therefore left to implement proper safety measures commensurate with the requirements and responsibilities of their job assignments at given sites.

INTERROGATORY NO. 14:

Do you contend that Edmundo Hermosillo's exposure to asbestos at ASARCO's El Paso facility was not a substantial contributing factor in causing his mesothelioma and/or his death? If the answer is anything other than "no", identify each and every fact which supports this contention.

ANSWER: ASARCO objects to this interrogatory as it calls for a medical opinion which this defendant is not qualified to render. To the extent that ASARCO does contend that Edmundo Hermosillo's exposure to asbestos at ASARCO's El Paso facility was not a substantial contributing factor in causing his mesothelioma and/or his death, it will rely upon the testimony of Mr. Hermosillo's co-workers concerning the relative time spent by Mr. Hermosillo at various work-sites.

INTERROGATORY NO. 15:

Did Defendant enter into any contracts with the Federal Government or any of its agencies between 1960 and 1972, wherein the amount of said contract exceeded \$10,000?

ANSWER: ASARCO objects to this interrogatory as burdensome, overly broad, and irrelevant. It seeks detailed information which is not reasonably calculated to lead to the discovery of admissible evidence. As such, this discovery request constitutes a fishing expedition which is prohibited by the Texas Rules of Civil Procedure and *Loftin v. Martin*, 776 S.W.2d 145 (Texas 1989) and *Able Supply Co. v. Moye*, 898 S.W.2d 766 (Texas 1995). Without waiving said objections, ASARCO responds that it has been unable to determine whether it has entered into any contracts with the Federal Government or any of its agencies between 1960 and 1972, wherein the amount of said contract exceeded \$10,000. ASARCO reserves the right to amend and/or supplement this interrogatory answer throughout the continuing course of discovery.

INTERROGATORY NO. 16:

If the answer to Interrogatory No. 15 is "yes", did any of the materials, supplies, articles or equipment manufactured or furnished under said contracts originate from the El Paso facility?

ANSWER: Inapplicable. See answer to Interrogatory No. 15.

INTERROGATORY NO. 17:

For each individual ASARCO employee or former employee listed below, please identify all trade and/or professional organizations to which said individual belonged at any time.

- (a) K.W. Nelson
- (b) Michael O. Varner
- (c) John B. Richardson
- (d) Douglas H. Soutar
- (e) Dr. Charles H. Hines

ANSWER:

ASARCO objects to this interrogatory to the extent it seeks information which pertains to former and/or deceased employees and, as such, is no longer in ASARCO's possession or control. Without waiving these objections, the following is a list of trade and/or professional organizations to which ASARCO belonged and/or in which some of the above-referenced individuals may have participated:

American Industrial Hygiene Association ("AIHA"), International Lead and Zinc Research Organization ("ILZRO"), American Institute of Mining and Metallurgical Engineers ("AIME"), National Association of Secondary Materials Industries ("NASMI"), Lead Industries Association, American Mining Association, Cadmium Council, Smelter Environmental Research Association, American Academy for the Advancement of Science, American Academy of Industrial Hygiene, American Chemical Society, American Institute of Mining & Metallurgical Engineers, British Occupational Hygiene Society, and New York Academy of Sciences, and Air and Waste Management Association.

ASARCO's investigation is continuing and it therefore reserves the right to amend and/or supplement its answer to this interrogatory.

INTERROGATORY NO. 18:

Please identify all employees of ASARCO, CAPCO and/or LAQ who attended meetings of and/or received minutes of the meetings of QAMA, the Asbestos Information Association, the Asbestos Textile Institute and/or the Asbestosis Research Council.

ANSWER:

Kenneth W. Nelson, Roland P. Gagnon, Edward A. Farrell, Michael J. Menzel, Lionel C. Pinse, E.L. Rimbault, Charles E. Stiefken, Ronald W. Godfrey, Andre Gauthier, Raymond LeFebvre, Robert J. Muth, John Gifford, Peter Bucholtz, Jean Dupere, Harold F.X. Plate, Gaston Verreault, Victor Puskar, J. Philip Wiser, Yvonne Belduc, Ralph L. Hennebach, W.H. Soutar, Michael O. Varner, S. D. Weaver, William Horace Beasley, Charles H. Hine, Stanley G. Cothrin, Warren T. Whitley, Rex Beckstead, Charles Z. Carroll-Portcynski, and William R. Whitener.

INTERROGATORY NO. 19:

Please identify the date when Defendant first provided any warnings to its own employees regarding the potential health hazards associated with asbestos.

ANSWER:

ASARCO is not capable of determining exactly when it first provided any warnings to its own employees regarding the potential hazards of asbestos. ASARCO has never engaged in the mining or milling of asbestos or the manufacture of asbestos-containing products. ASARCO has long known that inhalation of excessive quantities of asbestos over prolonged periods of time could be hazardous to the health of certain susceptible individuals. ASARCO states that by the 1930s governmental and private industrial hygienists, occupational physicians and sophisticated manufacturing concerns were aware of the possibility that susceptible persons who are exposed to excessive amounts of asbestos fibers over a prolonged period of time might develop the disease asbestosis. Medical and scientific literature on the potential dangers of asbestos had been published in a variety of medical and scientific periodicals, textbooks and other publications which were readily available to any interested entity or individual. ASARCO is and was aware that by the 1950s contradictory articles on whether there was an association between asbestosis and an increased incidence of lung cancer appeared in the medical literature. Most authors who reported the possibility of such an association recognized that both the methodology of the studies and limited number of cases reported prevented any firm conclusion. Further, many researchers had reported a lack of association between asbestos exposure and lung cancer and asbestosis and lung cancer. Additionally, ASARCO is and was aware that throughout the 1960's new studies regarding the health effects of asbestos inhalation were published. Certain of those studies suggested that persons exposed to asbestos-containing products might have an increased risk of developing lung cancer, mesothelioma and certain gastro-intestinal cancers. ASARCO would have provided at least a verbal warning to any of its workers who were engaged in an activity that resulted in prolonged exposures to excessive concentrations of asbestos dust at or about the time that ASARCO became aware of such hazards.

CERTIFICATION

STATE OF NEW YORK

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COUNTY OF NEW YORK

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BEFORE ME, the undersigned authority, on this the 9th date of December, 1998,
personally appeared Carmon D. Gonzalez, who on his oath deposed and said that he has read the
foregoing Answers to Plaintiff's Second Set of Interrogatories and verifies that they are true and
correct.

Carmon D. Gonzalez

SWORN AND SUBSCRIBED TO BEFORE ME, on the 9th date of December, 1998.

Bruce E. Stanton

NOTARY PUBLIC

BRUCE E. STANTON
Notary Public, State of New York
No. 4750-02
Qualified in Westchester County and New York County
Commission Expires April 1, 2000

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December 9, 1998

* Board Certified
Personal Injury Trial Law
Texas Board of Legal Specialization
* Also Licensed in New Mexico

via FACSIMILE

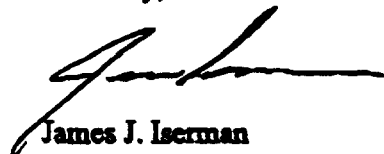
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RE: *Hermosillo v. ASARCO*
County Court at Law No. Two
Cause Number 98-1338
RMJ Number 390-18

Dear Ms. Haff:

Enclosed, please find ASARCO Incorporated's Answers to Plaintiff's Second Set of Interrogatories, filed with the District Clerk in El Paso County today.

Sincerely,



James J. Iserman

cc: All Counsel of Record
F. Fazio

encl.