

NO. CC-99-08033-B

MALCOM LEE MURPHY, JR. AND
ANNETTE HARBERT MURPHY;

Plaintiffs,

v.

OWENS CORNING (a/k/a OWENS CORNING
CORPORATION), et al.;

Defendants,

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IN THE COUNTY COURT

AT LAW #2

DALLAS COUNTY, TEXAS

**DEFENDANT COLFAX CORPORATION'S OBJECTIONS
AND SUPPLEMENTAL RESPONSES TO PLAINTIFFS'
MASTER INTERROGATORIES AND REQUESTS FOR PRODUCTION,
SUBJECT TO SPECIAL APPEARANCE**

Defendant Colfax Corporation ("Colfax") files its objections and responses to plaintiffs' master interrogatories and requests for production, subject to its pending special appearance motion. Defendant objects to the entire set of interrogatories because they require answers which exceed in number that which is permitted under the Texas Rules of Civil Procedure ("the Rules") and the Master Asbestos Case Management Order for Dallas County. Further, defendant objects to each discovery request to the extent that it seeks trade secrets or other proprietary information.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

1. Defendant objects to all of the definitions accompanying these discovery requests as they are vague, unduly burdensome, or attempt to impose upon defendant a burden greater than that imposed upon a party under the Texas Rules of Civil Procedure. In the paragraphs below, defendant identifies additional objections to specific definitions.

2. Defendant objects to the definition of the terms "Defendant," "You," "Your," "Your company," because such definitions are ambiguous, overly broad, and unduly burdensome. The definition is inaccurate. This definition purports to include defendant's "merged, consolidated, or acquired predecessors, divisions, subsidiaries, foreign subsidiaries, foreign subsidiaries of predecessors, and/or affiliates . . . present and former officers, directors, agents, employees, and all other persons acting or purporting to act on behalf of the corporate defendant . . ." Defendant objects that the definition is overly broad and attempts to require that third-parties and other non-parties to this lawsuit provide information in response to these discovery requests. The definition exceeds the scope of permissible discovery under the Texas Rules of Civil Procedure. Similarly, the definitions of the terms "predecessors" and "subsidiaries" are confusing, ambiguous, overly broad and are objectionable for the reasons cited above. These definitions are also objectionable to the extent that they seek to impose an obligation upon Colfax for alleged acts of another. Colfax further objects to the use of "subsidiaries or predecessors" to the extent that by their use, plaintiff attaches any legal significance to their use and/or intends that Colfax's responses are an admission or concession that DeLaval Turbine, Inc. or any other entity is a subsidiary or predecessor of Colfax.

3. Defendant objects to the "instruction" which purports to require that defendant produce a schematic or diagram detailing its subsidiaries, predecessors and divisions because such request is overly broad, unlimited in time, and not reasonably calculated to lead to the discovery of admissible evidence.

4. Defendant objects to the definition of the terms "document," "documents," "written material," and "printed matter" because they are vague and ambiguous, and overly broad. To the

extent this definition is broader than or conflicts with the definition provided in the Texas Rules of Civil Procedure, defendant objects to it. Defendant objects to the request that it produce documents formerly in its possession, custody or control and the request that it produce responsive information regardless of who has custody, possession or control of the documents.

5. Defendant objects to the definition of the words "meeting" or "meetings" because such is ambiguous, overly broad, unduly burdensome, and conflicts with ordinary usage and the dictionary definition of the term.

6. Defendant objects to the definition of the terms "product containing asbestos fibers," "asbestos-containing products," or "asbestos products" because such is ambiguous, overly broad, unduly burdensome, and conflicts with ordinary usage of the term.

7. Defendant objects to the definition of the terms "design changes," and "modifications" because such is ambiguous and overly broad. Defendant objects to each discovery request containing such terms to the extent they seek trade secrets or other proprietary information.

8. Defendant objects to the definition of the terms "distribute," "distributed," "distributor," and "distribution" because such are ambiguous, overly broad, unduly burdensome, and conflicts with ordinary usage in the dictionary definition of those terms.

9. Defendant objects to the definition of the terms "marketed" and "market" because such are ambiguous, overly broad, unduly burdensome, and conflicts with ordinary usage in the dictionary definition of those terms.

10. Defendant objects to the definition of the terms “medical advisory capacity” because such is ambiguous, overly broad, unduly burdensome, and conflicts with ordinary usage and the dictionary definition of the term.

11. Defendant objects to the definition of the terms “trade organization” and “trade association” because such is ambiguous, overly broad, unduly burdensome, and conflicts with ordinary usage and the dictionary definition of the term.

12. Defendant objects to the definition of the terms “manufacture” and “manufactured” because such is ambiguous, overly broad, unduly burdensome, and conflicts with ordinary usage and the dictionary definition of the term.

13. Defendant objects to the definition of the terms “sales material” and “written sales material” because such are ambiguous, overly broad, unduly burdensome, and conflicts with ordinary usage and the dictionary definition of the term.

14. Defendant objects to the definition of the terms “research” and “research department” because such are ambiguous, overly broad, unduly burdensome, and conflicts with ordinary usage and the dictionary definition of the term.

15. Defendant objects to the definition of the term “medical department” because such is ambiguous, overly broad, unduly burdensome, and conflicts with ordinary usage and the dictionary definition of the term.

16. Defendant objects to the definition of the term “industrial hygiene surveys” because such is ambiguous, overly broad, unduly burdensome, and conflicts with ordinary usage and the dictionary definition of the term.

17. Defendant objects to the definition of the terms "potential health hazards" and "health hazards" because such are ambiguous, overly broad, unduly burdensome, and conflicts with ordinary usage and the dictionary definition of the term.

18. Defendant objects to the definition of the term "testing" because such is ambiguous, overly broad, unduly burdensome, and conflicts with ordinary usage and the dictionary definition of the term.

PRELIMINARY STATEMENT

Without waiving and subject to its special appearance, Colfax makes the following preliminary statement which is hereby incorporated by reference into each of the following interrogatory and request for production responses.

Colfax Corporation is a Delaware corporation that was formed on July 22, 1997. Colfax has no predecessor in interest and no subsidiary companies. Colfax maintains its principal place of business in Richmond, Virginia. Colfax is not engaged in any business involving or related to asbestos products. Contrary to plaintiffs' representations, Colfax is not the successor-in-interest of DeLaval Turbine, Inc. Neither DeLaval Turbine, Inc. nor Imo Industries Inc. are subsidiaries of Colfax. Colfax's only connection to Imo is that Colfax is a shareholder of Imo. Colfax has never manufactured, marketed, sold, labeled, distributed, or packaged any product containing asbestos. Colfax specifically incorporates into this preliminary statement its "Objections to Definitions and Instructions" as set forth herein. Colfax specifically incorporates objection no. 2 regarding plaintiff's definitions of "defendant", "predecessors" and "subsidiaries."

OBJECTIONS AND RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 17:

Did you or any of your predecessors, successors, or subsidiaries have any distributors or sales representatives of asbestos products in the States of Alabama, Florida, Mississippi, Oregon, Washington, Georgia, Tennessee, Texas and Virginia? If so, state:

- A. The name and address of each such distributor or sales representatives.
- B. The years in which such company or person distributed, marketed, or sold your products.
- C. What products were distributed, marketed, or sold and in what years.

ANSWER:

Defendant objects that this interrogatory is ambiguous, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in this lawsuit. The request is not properly limited in time or subject matter. Defendant objects to the inquiry about predecessors, successors, or subsidiaries. Similarly, defendant objects that the areas inquired about are not relevant to the matters in dispute in this lawsuit. The interrogatory is an impermissible fishing expedition under the Texas Rules of Civil Procedure. Subject to the foregoing and utilizing plaintiffs' definition of "you", "your" and "your company", no.

INTERROGATORY NO. 21:

Identify by name and location each plant or manufacturing facility in which the products listed in your answers to Interrogatory Nos. 3-6 were manufactured, assembled, or prepared for sale or marketing, specifying which plants produced each item, the dates each plant is or was in operation, and the time span during which each named item was produced or manufactured.

ANSWER:

Defendant objects that the interrogatory is ambiguous, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence in this lawsuit. The interrogatory lacks the level of specificity required by the Texas Rules of Civil Procedure and constitutes an impermissible fishing expedition. Further, defendant objects that the interrogatory is not properly limited in time or scope and not limited to the alleged exposure or product at issue in this lawsuit. Subject to the foregoing, utilizing plaintiffs' definition of "you", "your" and "your company", Colfax does not, and has not, owned any such plant or manufacturing facility.

INTERROGATORY NO. 37:

Do you or any of your subsidiaries, including foreign business entities, currently manufacture any products containing asbestos? If so, state:

- A. As to each product, whether such product is mined, manufactured, and/or marketed or sold.
- B. The names and addresses of the companies mining, manufacturing, marketing, and/or selling each of those products.
- C. The trade or brand name of each of those products mined, manufactured, marketed, and/or sold.
- D. The date each of the named products was placed on the market.
- E. A description of the physical (chemical) composition of each of the named products, including the type of asbestos contained in the product.
- F. A description of the physical appearance of each product and its packaging.
- G. A detailed description of the intended uses of each of the named products.
- H. Whether there are any warning labels on said products or containers regarding potential asbestos-related health hazards.

ANSWER:

Defendant objects that the interrogatory is ambiguous, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence in this lawsuit. The interrogatory lacks the level of specificity required by the Texas Rules of Civil Procedure and constitutes an impermissible fishing expedition. Further, defendant objects that the interrogatory is not properly limited in time or scope and not limited to the alleged exposure or product at issue in this lawsuit. Subject to the foregoing, utilizing plaintiffs' definition of "you", "your" and "your company," no.

INTERROGATORY NO. 38:

State whether you or any of your predecessors and/or subsidiaries maintain, from 1940 through the present or for any portion thereof, copies of invoices, shipping documents, bills of lading, purchase orders, or other documents of a similar nature relating to the mining, manufacture, marketing, sale or distribution of asbestos products. If so, state:

- A. The location of such documents.
- B. The name and address of the custodian of the documents.
- C. The format in which the documents are kept, i.e., hard copy, microfilm, microfiche, etc.
- D. In what form the documents can be accessed, i.e., by state, by product, etc., and if by product, whether kept according to asbestos or non-asbestos.

ANSWER:

Defendant objects that the interrogatory is ambiguous, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence in this lawsuit. The interrogatory lacks the level of specificity required by the Texas Rules of Civil Procedure and constitutes an impermissible fishing expedition. Further, defendant objects that the interrogatory is not properly limited in time or scope and not limited to the alleged exposure or product at issue in this lawsuit. Defendant objects to the inquiry about predecessors and/or subsidiaries. Subject to the foregoing, utilizing plaintiffs' definition of "you", "your" and "your company," no.

INTERROGATORY NO. 40:

Have Defendant or its subsidiaries or predecessors ever acquired through purchase, reorganization, or merger another corporation, company, or business which manufactured, sold, processed, distributed, or contracted or supplied products containing asbestos? If so, for each such entity, state:

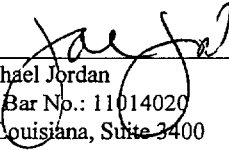
- A. Full and correct name;
- B. Principal place of business;
- C. State of incorporation;
- D. Date of acquisition by Defendant;
- E. Whether or not the business entity was ever authorized to transact business in the State of Texas;

ANSWER:

Defendant objects that the interrogatory is ambiguous, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence in this lawsuit. The interrogatory lacks the level of specificity required by the Texas Rules of Civil Procedure and constitutes an impermissible fishing expedition. Further, defendant objects that the interrogatory is not properly limited in time or scope and not limited to the alleged exposure or product at issue in this lawsuit. Defendant objects to the inquiry about predecessors and/or subsidiaries. Subject to the foregoing, utilizing plaintiffs' definition of "you", "your" and "your company," no.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to the provisions of the Texas Rules of Civil Procedure, I do hereby certify that on this the 5th day of July, 2000 a true and correct copy of the foregoing was served by certified mail, return receipt requested upon the following known counsel of record:

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