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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO-COURT OF UNLIMITED JURISDICTION
11

12 CHARLES HUDIBURGH, Individually and as)
successor-in-interest to ODETTA I.)
13 HUDIBURGH, deceased, and CHARLES W.)
HUDIBURGH, BRIDGET L. LUND, BRET)
14 L. HUDIBURGH, BARTH W. HUDIBURGH)
and BRADLEY P. HUDIBURGH, as legal)
15 heirs of ODETTA I. HUDIBURGH, deceased,)

Case No.: 456023

**DECLARATION OF BARRY I.
CASTLEMAN, ScD IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO
DEFENDANT TODD SHIPYARD
CORPORATION'S MOTION FOR
SUMMARY JUDGMENT**

16 Plaintiff,

17 vs.

18 A. W. CHESTERTON COMPANY, *et al*

19 Defendants.

Date: June 6, 2008

Time: 9:30 a.m.

Dept: 301, Hon. Peter Busch

Complaint Filed: September 8, 2006

Trial Date: July 7, 2008

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21 I, Barry I. Castleman, ScD declare as follows:

22 1. I am over eighteen years old and not a party to this action. The information stated
23 herein is based on my personal knowledge, and if called as a witness, I could and would testify to
24 the following.

25 2. I hold a Bachelors degree in Chemical Engineering, a Masters degree in
26 Environmental Engineering, and a Doctorate of Science from Johns Hopkins University. I have
27 more than 30 years of professional experience in the area of asbestos and other occupational and
28

1 environmental health problems. Currently, I am self-employed as an environmental health
2 consultant.

3 3. Attached hereto is a true and correct copy of my curriculum vitae. If called upon to
4 testify, I could and would testify to the qualifications contained therein.

5 4. I have studied development of state of the art with respect to medical and scientific
6 issues relating to asbestos and asbestos-related diseases for more than twenty years. I have
7 reviewed hundreds of scientific, medical, and corporate documents concerning the hazard of
8 asbestos and the development and history of the knowledge of asbestos hazards. In addition, to
9 publicly available medical and scientific literature, I have extensively researched and reviewed
10 extensive discovery from asbestos litigation, including depositions, documents, and interrogatory
11 responses from asbestos industries and their officers and other employees. I have undertaken
12 extensive research in public and private libraries in the United States, Canada, and other
13 countries.

14 5. I have been qualified as an expert on the history of the asbestos industry and the
15 development of knowledge about asbestos and its hazards, also known as "state-of-art" in
16 numerous asbestos lawsuits, including those that have been brought in California courts. I have
17 testified as a "state of art" expert in many asbestos lawsuits. I frequently testify before
18 congressional committees and serve as an expert consultant to many organizations. My expert
19 testimony is on the subject of my doctoral thesis at the Johns Hopkins School of Hygiene and
20 Public Health, "Asbestos: an Historical Case Study of Corporate Response to an Industrial
21 Health Hazard" (1985)

22 6. I am the author of Asbestos: Medical and Legal Aspects, now in its fifth edition
23 (2004). The first edition was largely identical to my doctoral thesis, which is a major
24 authoritative treatise on "state-of art." My book has been relied upon by the scientific and
25 medical communities and cited as a learned treatise by a number of courts. It is extensively
26 footnoted and annotated and is available in libraries and bookstores throughout the United States.

1 I have also published many articles on the asbestos and industry knowledge of asbestos related
2 health hazards.

3 7. Based on my studies and research, I have formed the following conclusions:

- 4 a. Health hazards from asbestos exposure were identified in the 1890s.
- 5 b. In the 1920s, the term "asbestosis" was used to describe pulmonary fibrosis
6 caused by asbestos exposure. Asbestosis was recognized as a disabling and
7 potentially fatal disease.
- 8 c. During the 1940s, it became known and recognized that asbestos exposure could
9 cause pulmonary cancers.
- 10 d. During the 1950s, mesothelioma was recognized as a separate cancer that could
11 be caused by asbestos exposure.
- 12 e. In addition, as early as the 1930's it was recognized that individuals who did not
13 work directly with asbestos products and who had relatively brief or intermittent
14 exposures to asbestos developed fatal asbestos disease including cancer. (e.g.,
15 Wood, W.B. and Gloyne, S.R., "Pulmonary Asbestosis: A Review of One
16 hundred Cases," Lancet 2: 1383-1385, 1934). By 1954, there were 20 separate
17 published case reports of asbestosis, lung cancer, and mesothelioma among
18 asbestos product users.
- 19 f. A review of relevant scientific literature, regulatory policies and corporate
20 documents reveals that as early as the 1913, it was known and recognized that
21 workers can take toxic dusts home on their clothing and cause a hazard to their
22 households. A sample of the relevant literature includes:
23 1913 - . . . By removing the working clothes before meals and
24 before leaving the factory, the poison is not carried into
25 lunchrooms or into homes of the workers. "Safety: Methods for
26 Preventing Occupational and Other Accidents and Disease."
27 William H. Tolman, Leonard B. Kendall. 1913.
28 1924 - . . . "It is desirable in all dusty occupations, that the
workmen should take off all their street clothing before beginning

work, and this is absolutely essential when the occupation involves exposure to poisonous dust. "Industrial Health." George M. Kober, Emery R. Hayhurst. 1924.

1943 - . . . "Dressing rooms should be provided for men whenever the type of work performed involves exposure to excessive dust, heat, fumes, . . . Workers should be required to change clothes completely and to take a shower both at the end of each shift. . . "Manual of Industrial Hygiene and Medical Services in War Industries." William M. Gafafer. 1943.

1948 - . . . Appropriate work clothes, . . . play a prominent part in an industrial worker's health and efficiency. This is especially true when persons are working with more or less toxic or carcinogenic materials . . . many of the more progressive industrial organizations, . . . have for years supplied their employees with work clothing and have instituted a laundry service. "Industrial Work Clothes: Their Provision and Laundering." Roy S. Bosnib. 1948.

In 1948, the National Cancer Institute recommended that workers handling carcinogens be provided with "proper sanitary measures, such as special eating quarters, washing and bathing facilities, and separate lockers for street clothes and work attire."

1951 - "Workers who handle or are exposed to harmful materials in such a manner that contact of work clothes with street clothes will communicate to the latter the harmful substances accumulated during working hours should be provided with facilities which will prevent this contact and also permit the free ventilation or drying of the work clothes while they are not in use." U.S. Department of Labor (Walsh-Healey) Publication.

1960s - In 1960, a report was published in the *British Journal of Industrial Medicine* linking environmental asbestos exposure to mesothelioma. The study involved people exposed to asbestos from living and/or working near asbestos mines or working with lagging steam pipes. This article (Wagner et al., "Diffuse Pleural Mesothelioma and Asbestos Exposure in the Northwestern Cape Province") was available in medical libraries and was widely cited. There were additional publications in the *British Medical Journal* during the early 1960s that discussed mesothelioma occurring throughout the construction trades and shipyards among individuals who did not work directly with asbestos but rather were exposed as bystanders near others working with asbestos.

8. Corporate physicians advised safeguards that would have protected families of workers at a Chrysler plant being built in 1946. The plant was to use asbestos and chemicals that

could cause toxic effects and dermatitis. Protective clothing, laundry, showers, and separate lockers for street and work clothing were recommended by the doctors.

9. Retired Monsanto chemist and industrial hygienist Jack Garrett has testified that in the 1950's, that chemical company's employee protection against asbestos from insulation products including showers and daily changes of clothes; "We went down to shoes and socks, underwear and all. We didn't want it at home." (deposition in Schmidt, District Court of Jefferson Co. TX; Dec. 16, 1993).

10. The carcinogenicity of asbestos was widely recognized in medical and scientific writings by 1954 and was noted in about 100 published articles, textbooks, and abstracts. These included *New York Times* (Jan. 7, 1948), *Business Week* (Nov. 13, 1948), *Scientific American* magazine (January, 1949), *Newsweek* (May 15, 1950), and *Encyclopedia Britannica* (1952).

11. The carcinogenicity of asbestos was well recognized in the oil industry and was repeatedly noted in reports and minutes of the American Petroleum Institute's Medical Advisory Committee in the years 1945-1954 ("Oil Industry," *Asbestos: Medical and Legal Aspects* 5th Ed., pp. 627-634, 2004).

12. On December 7-8, 1942, the U.S. Maritime Commission held a meeting for shipbuilding companies in preparation for issuance, several months later, of the publication *Minimum Requirements for Safety and Industrial Health in Contract Shipyards*. Asbestos was among the health hazards discussed at that meeting. Stenographers' minutes record that TODD SHIPYARDS CORPORATION was present at the meeting, represented by: Robert S. Moore for Todd-Hoboken Dry Docks; George Schnakenberg for Todd's Erie Basin Dry Docks; and Herbert A. Smith for Todd-Johnson Dry Docks.

13. Further, TODD SHIPYARDS CORPORATION placed a paid advertisement in the June 1944 issue of *Heating and Ventilating*. This issue contained an article titled "Dust as an Industrial Health Hazard," written by a professor at the University of California, Berkeley. Additionally, during World War II, TODD SHIPYARDS obtained shipyard survey reports, which I have reviewed. An August 1945 survey report specifically notes minimum standards for

1 asbestos. In September 1945, a survey report of a TODD shipyard referenced past
2 recommendations to ventilate the asbestos shop to control dust, and to insure proper use of
3 goggles and respirators.

4 14. Thus, it is my opinion that by the mid-1950s, it was well established by the literature
5 and well-known by the asbestos, oil, chemical, automotive, railroad, and shipyard industries that
6 asbestos dust was toxic and carcinogenic.

7 15. In addition, by the early 1950s it was recognized in the medical and scientific
8 literature that individuals could contract asbestos-related diseases as a result of relatively low
9 exposures to asbestos dust.

10 16. It is further my opinion that these industries recognized, prior to 1954, that workers
11 should be provided clothing, showers and laundry services whenever they worked with toxic and
12 carcinogenic dust, including asbestos-containing dust, in order to prevent exposures to the
13 worker's families. Therefore, it was known and knowable by 1954 at the latest that take-home
14 exposures to asbestos dust created a preventable risk and hazard for members of households of
15 workers in these industries.

16 17. In the early 1960s, information became more widespread and conclusive that workers
17 bringing home asbestos on their clothes and in other ways could contaminate the household to
18 such an extent that family and other household members developed mesothelioma. At a large
19 conference in 1964 hosted by the New York Academy of Sciences, numerous studies were
20 presented regarding household and environmental exposures. The authors of one study
21 concluded that household exposure was predominant in importance over neighborhood exposure,
22 in cases where both types occurred. In 1965, numerous publications, including the *Sunday Times*
23 and *The Guardian*, offered coverage of the Newhouse and Thompson report. This
24 epidemiological study found that occupational, household, and neighborhood asbestos exposures
25 were each statistically significantly associated with mesothelioma; that is, mesothelioma patients
26 were much more likely to have had exposure through household contact with somebody who
27 worked with asbestos than were patients in the same hospital who died from other causes.

1 18. I understand the facts of this case to be as follows: In 1960 or 1961, plaintiff
2 CHARLES HUDIBURGH worked at TODD SHIPYARD in Galveston, Texas. Mr.
3 HUDIBURGH worked onboard a decommissioned United States Navy reserve training
4 submarine that TODD was scrapping. While Mr. HUDIBURGH was onboard, TODD
5 employees removed insulation throughout the submarine, using saws and knives to cut insulation
6 loose from pipes. Mr. HUDIBURGH was exposed to asbestos as a result of this work; and he
7 wore his work clothing home, where his wife, decedent ODETTA HUDIBURGH, shook and
8 laundered it.

9 19. Based on these facts; as well as my studies, research; and experience; it is my opinion
10 that in 1960 or 1961, TODD knew or should have known that: workers like Mr. HUDIBURGH
11 would carry home asbestos-containing dust on their clothing and cause a hazard to their
12 households; and that providing separate lockers for work clothes and street clothes to workers
13 like Mr. HUDIBURGH; and warning employees like Mr. HUDIBURGH about the lethal
14 properties of asbestos was necessary to prevent workers like Mr. HUDIBURGH from being
15 exposed to asbestos and getting asbestos fibers on their clothing and carrying it home.

16 I declare under the penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct. This declaration was executed May 24, 2008 at

18 Garrett Park, Maryland

19 
20 BARRY L. CASTLEMAN, ScD