FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
NOV 12 1969
JAMES R. COONEY, CLERK
BY DEPUTY

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

CLARENCE BOREL		
VS.		CIVIL ACTION NO. 6449
FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL		

MOTION FOR MORE DEFINITE STATEMENT OF FIBREBOARD CORPORATION, ERRONEOUSLY ENTITLED FIBREBOARD PAPER PRODUCTS CORPORATION

TO SAID HONORABLE COURT:

COMES NOW the defendant, Fibreboard Corporation, and files this, its motion under Rule 12(e) for more definite statement, and as grounds therefor would show the Court:

I.

Plaintiff in Paragraph 5 of his original complaint alleges that during the years 1936 to 1969, a span of some 33 years, while he was employed as an insulator, he was required to handle large quantities of the products manufactured and distributed by the eleven named defendants. It is further alleged that in addition to the fact that plaintiff actually used the products manufactured by the above named defendants which contained asbestos, that on many of the jobs, while not himself using the specific products manufactured by the defendants, he was nevertheless exposed to the dangerous materials and specifically asbestos dust and fibers which were used by other workers in the same area at which plaintiff was working. In Paragraph 6, it is then alleged that during the period of time in which plaintiff was employed as an insulator from the years 1936 to 1969, inclusive, in the course of his employment,

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in violation of the Commercial Code, and alternatively due to the negligence and carelessness of the defendants, he was caused to come in contact with the insulation products produced and manufactured and distributed by defendants, and as a consequence thereof sustained permanent and disabling injuries.

The defendant objects to each and all of said allegations and asks the Court to require the plaintiff to make said allegations more specific for the following reasons:

(a) Said allegations are too vague and indefinite and do not inform this defendant of the name of the insulation or insulation material or the manufacturer of the material with which plaintiff contends he came into contact with, and which he alleges and contends caused injury to his body.

(b) Said allegations wholly fail to allege a time and place of each alleged contact with a product containing asbestos manufactured by this defendant or any other means of identification of the time and place where he allegedly sustained injury as a result of contact or exposure to a product containing asbestos.

(c) The date and time and place of the alleged injury is too vague and indefinite and if plaintiff sustained an injury in the year 1936 or any other date, the date, the time and place and the place of employment and the name of the employer should be alleged.

(d) Because the allegations leave it to speculation and conjecture as to which of the defendants' products the plaintiff came in contact with, the time and place thereof, and this defendant is entitled to specific allegations in order that it might be informed of the specific nature of the claim

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or claims by the plaintiff as against this particular defendant.

(e) The plaintiff fails to allege the dates, time, place of employment, the name of his employer and the name of the product with which he allegedly came in contact with after the date the Commercial Code was adopted in the State of Texas or the state where the alleged exposure occurred. The Uniform Commercial Code was not effective in Texas until midnight, June 30, 1966, and was not retroactive.

II.

Said petition in its entirety fails to allege a date or dates of alleged injury, a date or dates of alleged contact with a specific product, and the name of the product, or the area or job where plaintiff allegedly received his injury, and it should not be incumbent upon this defendant to answer such vague and indefinite claims.

III.

Said petition is too vague and indefinite as to where plaintiff first suffered any injury as alleged, and definite information as to this alleged claim and the time and place of any subsequent injury should be required of plaintiff before this defendant is required to answer this complaint.

IV.

In Paragraph 6 of said complaint it is alleged that during the period of time in which plaintiff was employed as an insulator from the years 1936 to 1969, inclusive, due to the negligence and carelessness of the defendants he was caused to come into contact with the insulation produced and manufactured and distributed by the defendants and as a result thereof sustained

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severe permanent disabling injuries as hereinafter set forth.

This defendant respectfully requests the Court to require the plaintiff to be more specific and to allege the date or dates on which contact with the product of this defendant was had and the day or date on which he first claims that he sustained an injury and the date or dates on which he claims he first knew that he had sustained an injury; such information should likewise be alleged as to the other named defendants. This defendant is entitled to know the claim or claims being made against it which allegedly occurred over a period of some thirty-three years, and defendant should not be required to speculate as to when or where the plaintiff claims he sustained an alleged injury.

V.

This defendant requests the Court to require the plaintiff to be more specific as to Paragraph 8(a) wherein it is alleged that defendants knew or in the exercise of reasonable care ought to have known that their insulation was defective and that such insulation was not suitable for the purposes for which it was intended, for the following reasons:

(a) Because pipe insulation is intended solely and alone as a heat insulation product, and plaintiff does not allege how or in what manner the pipe insulation product which contained some asbestos was not suitable for the purposes for which it was intended.

(b) Because such allegations are too vague and indefinite and do not state any claim or claims upon which any recovery could be had.

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VI.

This defendant requests the Court to require the plaintiff to be more specific as to Paragraph 8(d), wherein it is alleged that the products of the defendant, especially those containing asbestos, were warranted either expressly or impliedly to be merchantable when in truth they were not, etc., for the following reasons:

(a) Because pipe insulation is intended solely and alone as a heat insulation product, and plaintiff does not allege how or in what manner the pipe insulation product which contained some asbestos was not suitable for the purposes for which it was intended.

(b) Because such allegations are too vague and indefinite and do not state any claim or claims upon which any recovery could be had.

VII.

This defendant requests the Court to require the plaintiff to be more specific as to Paragraph 9, wherein it is alleged that at all times material hereto (1936 to 1969) the manufacture, sale and distribution of insulation materials with which plaintiff came in contact was under the exclusive control of defendants, their agents, servants and employees, etc., for the following reasons:

(a) Because it is not alleged with any degree of definiteness the time, the place, the name of the product, nor the manufacturer with which the plaintiff came in contact, and it is obvious that this defendant was not at all times in the exclusive control of the manufacture, sale and distribution of insulation materials of the remaining ten defendants.

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(b) The Court should require the plaintiff to be specific as to the time and place when this defendant was allegedly in control of the distribution of insulation products relative to the alleged time and place of his alleged injury.

WHEREFORE, this defendant prays that the Court set this motion for hearing and grant its motion for more definite statement in order that defendant can know the nature of the claim and have sufficient detail as to definite materials, dates, time and place that this defendant can investigate the claim and file an appropriate answer.

Respectfully submitted;

WELLER, WHEELUS & GREEN
P. O. BOX 350
BEAUMONT, TEXAS 77704

BY Geo. A. Weller
GEO. A. WELLER,
ATTORNEYS FOR DEFENDANT,
FIBREBOARD CORPORATION.

CERTIFICATE OF SERVICE

A copy of this motion for more definite statement and proposed order was mailed to Mr. Ward Stephenson, Stephenson Building, Orange, Texas, attorney for plaintiff, by certified mail on the 14th day of November, 1969, and a copy of the motion and proposed order was mailed to all other counsel for defendants of record on the same date.

Geo. A. Weller
OF COUNSEL

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