IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
NOV 13 1969
JAMES R. COONEY, CLERK
BY DEPUTY Imogene L Jones

CLARENCE BOREL :

VS. : CIVIL ACTION NO. 6449

FIBREBOARD PAPER PRODUCTS CORPORATION ET AL :

PLAINTIFF'S REPLY TO MOTION FOR MORE DEFINITE STATEMENT FILED BY FIBREBOARD PAPER PRODUCTS CORPORATION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the plaintiff in the above entitled cause, and in answer to the motion for more definite statement filed by defendant Fibreboard Paper Products Corporation, and would show unto the Court the following:

1.

That the allegations set out in plaintiff's original complaint are completely adequate. Under the Federal Rules of Procedure, a concise statement of the cause of action is all that is required. Evidentiary pleadings are not required nor are they desirable under the Federal Rules.

2.

That this is an occupational disease case where the plaintiff worked with the products of this defendant and many other defendants, as well as worked in areas where these products were used by others, exposing him to the dust and danger attached to the use of the products. The plaintiff worked for approximately thirty-three (33) years on hundreds of jobs, and it would be impossible for him to reproduce the dates, places and times of

67

Published by AsbestosClaims.Law
asbestosclaims.law/library/10079/1

his use or his exposure to the products of this particular defendant. That to require the plaintiff to do this would in essence defeat the cause of action.

3.

This is a jury question and the matter of his use and exposure to the product is one to be determined by the trier of facts and goes only to the weight of the testimony and is not a prerequisite to the plaintiff's cause of action.

4.

In Paragraphs I, II, III, IV, VII of said motion for more definite statement, it is alleged that the plaintiff fails to allege a date or dates of injury. This is an occupational disease case, and of course, the disease comes about slowly and is not an injury in the sense that an accident occurred on a specific date.

5.

Further, plaintiff says that he has made a general statement of his cause of action, that he has alleged sufficient grounds to state a cause of action, and that among the grounds of fault, he has alleged that this defendant was guilty of breach of warranties, and that there was no safety device made available by the defendant to use the product with safety, and that the very use of the product in itself created a hazard to health, causing the serious condition from which plaintiff is suffering.

WHEREFORE, plaintiff prays that the motion for more definite statement filed by defendant Fibreboard Paper Products Corporation be in all things denied.

STEPHENSON AND THOMPSON

By Ward Stephenson
Attorneys for Plaintiff
Stephenson Building
Orange, Texas 77630

68

Published by AsbestosClaims.Law
asbestosclaims.law/library/10079/2

CERTIFICATE OF SERVICE BY MAIL

I, Ward Stephenson, hereby certify that a true and correct copy of the foregoing instrument was on this the 12th day of November, 1969, mailed to George A. Weller, P. O. Box 350, Beaumont, Texas 77704, attorney for defendant Fibreboard Paper Products Company, by certified mail, return receipt requested.

Ward Stephenson

WARD STEPHENSON

69

Published by AsbestosClaims.Law
asbestosclaims.law/library/10079/3