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

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
JAN 5 - 1970
JAMES N. COONEY, CLERK
BY DEPUTY

CLARENCE BOREL (
)
VS. (C. A. NO. 6449
)
FIBREBOARD PAPER PRODUCTS (
CORPORATION, et al)

MOTION FOR MORE DEFINITE STATEMENT OF
EAGLE-PICHER INDUSTRIES, INC.

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now the Defendant, Eagle-Picher Industries, Inc., and files this its Motion under Rule 12(e) for More Definite Statement, and, as grounds therefor would show the Court:

I.

In Paragraph 5 of said Complaint, the Plaintiff alleges that during the years 1936 to 1969, inclusive, a span of 33 years, he was employed as an insulator and that in the performance of his duties as such, he was required to handle large quantities of the products manufactured and distributed by the eleven named Defendants. Additionally, he alleges that the Plaintiff actually used the products manufactured by said Defendant "and many more" as an insulator and specifically many and various products containing asbestos. He further alleges that on many of the jobs, while he, himself, was not using the specific products manufactured by eleven Defendants, he was nevertheless exposed to the dangerous materials and especially asbestos dust and fibers which were used by other workers in the same area at which Plaintiff was working.

The Plaintiff does not specify the name of the alleged manufacturer of each such product that was used by the various contractors on certain construction projects, during which time he followed the work of an insulator

160

Published by AsbestosClaims.Law
asbestosclaims.law/library/10093/1

and came in contact with certain materials, nor does he specify whether this Defendant packaged and sold any one of the numerous products to which he refers therein, to any one or more of the alleged employers of Plaintiff.

Furthermore, the Plaintiff alleges that he not only used certain products manufactured by each of the eleven Defendants therein, but also that he used "many more" of such products which are unnamed, and which casts an impossible burden on this Defendant to attempt to admit or deny the vague and general allegations which are contained in said Paragraph 5.

Additionally, said allegations do not inform this Defendant of the name of the insulation or the insulation material and whether such was manufactured by this Defendant or some one of the other Defendants, or some other manufacturers, nor does he allege the date or dates on which he came in contact with the materials allegedly manufactured by this Defendant.

Said allegations fail to mention a time and a place, or the name of the material, or other means of the identification of the alleged product which he claims caused the alleged injury, and such is therefore, too vague and indefinite to apprise this Defendant of any information whereby this Defendant can affirmatively admit or deny Plaintiff's said claims.

II.

Said Complaint, in its entirety, fails to allege a date or dates of alleged injury, or date or dates of alleged contact of said product and the name of the product and it should not be incumbent upon the Defendant to answer such vague and indefinite claims.

III.

Said Complaint is too vague and indefinite as to where Plaintiff suffered any injury as alleged and more definite information as to this alleged

Published by AsbestosClaims.Law
asbestosclaims.law/library/10093/2

claim should be required of Plaintiff before this Defendant is required to answer said Complaint, either specifically admitting or denying said allegations.

IV.

In Paragraph 6 of said Complaint, the Plaintiff alleges that the Defendants were collectively guilty of negligence and carelessness during the period of which Plaintiff was employed as an insulator for the years 1936 to 1969, inclusive, and as a result thereof, he was caused to come in contact with the insulation produced and manufactured and distributed by said Defendants, which resulted in his sustaining serious disabling, permanent injuries as therein set forth. This Defendant says that such allegations are vague, general and indefinite and do not apprise this Defendant, or any Defendant, of any definite, specific act or omission complained of; and do not inform this Defendant whether the Plaintiff came in contact with any product or products manufactured by this Defendant, the name of the product, the date on which the contact was made, or otherwise. Such information should likewise be alleged as to the other named Defendants. Defendant, Eagle-Picher Industries, Inc., respectfully submits that it is entitled to know the claim or claims being made against it, which allegedly occurred over a period of some 33 years, and Defendant should not be required to speculate as to when or where the Plaintiff claims he sustained the alleged injury, nor should it be caused to answer either by admitting or denying such vague and general allegations without more specific information to be obtained from the Plaintiff.

V.

Defendant, Eagle-Picher Industries, Inc., requests the Court to require the Plaintiff to be more specific as to Paragraph 8(a) wherein

Published by AsbestosClaims.Law
asbestosclaims.law/library/10093/3

it is alleged that the Defendant knew, or in the exercise of reasonable care, ought to have known that the said insulation was defective and that said insulation was not suitable for the purposes for which it was intended, for the following reason:

Said allegations are so vague and indefinite that they do not state any claim or claims upon which recovery may be had.

VI.

This Defendant, Eagle-Picher Industries, Inc., prays the Court to require Plaintiff to be more specific as to Paragraph 8(d) wherein it is alleged that the products of the Defendant, expecially those containing asbestos, were warranted either expressly or impliedly to be merchantable, when, in truth, they were not, for the following reason:

Said allegations are too vague and indefinite and do not state any claim or claims upon which recovery may be had.

VII.

This Defendant prays the Court to require the Plaintiff to be more specific as to Paragraph 9, wherein it is alleged that at all times material therein (1936-1969), the manfacture, sale and distribution of insulation materials with which Plaintiff came in contact was under exclusive control of the Defendants, their agents, servants and employees, for the following reasons:

(a) There is no allegation regarding the time, place, the name of the product or the manufacturer with which the Plaintiff came in contact, and, since the product of this Defendant was manufactured and sold to various distributors as well as insulation contractors, 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 its own, or of the remaining ten Defendants.

Published by AsbestosClaims.Law
asbestosclaims.law/library/10093/4

(b) It is submitted that 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, if any.

WHEREFORE, this Defendant prays that this Court set this Motion for hearing and grant its Motion for More Definite Statement, in order that Defendant may 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,

ROYSTON, RAYZOR & COOK and
BEAN and MANNING

By Ben L. Reynolds
Ben L. Reynolds
Attorneys for Defendant,
Eagle-Picher Industries, Inc.

CERTIFICATE OF SERVICE

A copy of the above and foregoing Motion for More Definite Statement was mailed to Mr. Ward Stephenson, Stephenson & Thompson, Stephenson Building, Orange, Texas, Attorney for Plaintiff, by certified mail, return receipt requested on the 2nd day of January, 1970, and a copy of said Motion and proposed Order were mailed to all counsel for Defendants of record on the same date.

Ben L. Reynolds
Of Royston, Rayzor & Cook

Published by AsbestosClaims.Law
asbestosclaims.law/library/10093/5

C. A. NO. 6449

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

BEAUMONT DIVISION

CLARENCE BOREL

VS.

FIBREBOARD PAPER PRODUCTS
CORPORATION, et al

MOTION FOR MORE DEFINITE
STATEMENT

ROYSTON, RAYZOR & COOK
ATTORNEYS AT LAW
SAN JACINTO BUILDING
HOUSTON, TEXAS

Published by AsbestosClaims.Law
asbestosclaims.law/library/10093/6