IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MAR 31 1970
JAMES R. COONEY, CLERK
BY DEPUTY

CLARENCE BOREL

VS.

FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL

CIVIL ACTION NO. 6449

OBJECTIONS TO INTERROGATORIES PROPOUNDED TO THE DEFENDANT, FIBREBOARD CORPORATION

TO: PLAINTIFF, CLARENCE BOREL, AND MR. WARD STEPHENSON, STEPHENSON & THOMPSON, STEPHENSON BUILDING, ORANGE, TEXAS, HIS ATTORNEY OF RECORD:

Defendant, Fibreboard Corporation, sued herein as Fibreboard Paper Products Corporation, in response to interrogatories propounded under Rule 33, Federal Rules of Civil Procedure, served on defendant's counsel on or about March 21, 1970, herein files its objections to certain interrogatories. Such objection to each interrogatory bears the same number as the numbered interrogatory:

INTERROGATORY NO. 2:

Did you ever at any time give warnings to workers of the dangerous nature of your products? If so, describe your warnings and to whom such warnings were given.

OBJECTION:

2. This question is objected to as argumentative on the grounds that this defendant does not recognize that its products are "dangerous" and this defendant denies that the products manufactured by it were of a dangerous nature, and says that each of the products manufactured by it which contain

385

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some asbestos were suitable and reasonably fit for the purpose for which the products were intended.

INTERROGATORY NO. 7:

Do you recognize that prolonged use of the insulating materials manufactured by you can cause or contribute to cause various occupational diseases, including asbestosis, silicosis and dermatitis?

OBJECTION:

7. This question is objected to as argumentative, ambiguous, unintelligible and irrelevant to the issues in this case. Further, the word "use" is too vague, ambiguous and broad to be meaningfully understood in the context. The term "insulating materials" is too broad, irrelevant and immaterial.

Defendant further objects to this interrogatory insofar as it relates to diseases other than those alleged by plaintiff in his complaint because it is too broad, immaterial and irrelevant.

Assuming the word "use" has reference to the normal and customary use of this defendant's insulating products which contain some asbestos, the answer to the interrogatory is no.

INTERROGATORY NO. 11:

Does your company recognize that as early as the year 1900 Dr. H. Montague Murray, a physician in London's Charing Cross Hospital, found spicules of asbestos in the lung tissue? If you agree with this, then state what action, if any, your company has taken since 1900 to reduce or eliminate the dangers to those using your asbestos products from inhaling the dust and fibers.

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OBJECTION:

11. Defendant objects to this interrogatory on the grounds that no proper predicate has been laid, and any finding made by Dr. Murray would constitute hearsay and would be irrelevant and immaterial and would not lead to the discovery of admissible evidence.

Defendant further objects to the question because it is argumentative, ambiguous, irrelevant and immaterial. The question posed in the second sentence of the interrogatory is further objected to because it assumes facts and theories which would be irrelevant and immaterial insofar as this defendant is concerned.

INTERROGATORY NO. 12:

Does your company recognize that in 1924, Dr. W. E. Cook, also of England, found clear evidence of asbestosis and that such discovery was published in the British Medical Journal of July 26, 1924, and re-published in 1927? If you do, then please state what action, if any, was taken by your company based upon these studies to reduce or eliminate asbestosis in those using your products. If your answer is that you do not recognize the truth of such statement, then please state what your company has done in an effort to keep abreast of medical literature concerning the disease produced from the products which you manufacture, if in truth you have.

OBJECTION:

12. Defendant objects to this interrogatory on the grounds that no proper predicate has been laid for the interrogatory. Defendant further objects on the grounds that said

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publication asked about would constitute hearsay and such publications would be argumentative, irrelevant and immaterial and would not lead to the discovery of admissible evidence.

INTERROGATORY NO. 13:

Does your company recognize that in 1931, an English Parliament passed legislation making asbestosis a compensable disease and requesting improved methods of exhaust ventilation and dust suppression in asbestos-textile factories, and also instituted periodical medical examinations for workers engaged in particularly dusty processes in the asbestos-textile industry? If you do recognize the truth of the statement above, please state what action, if any, your company took in response to such knowledge in an effort to reduce or eliminate the effects of asbestos to those using your products. If you do not recognize the truth of such statement, then please state why your company did not keep in touch with legislation and programs adopted endeavoring to reduce or eliminate the disease of asbestosis in those using asbestos products.

OBJECTION:

13. Defendant objects to this question because it is argumentative, ambiguous, irrelevant and immaterial.

Further, the question posed in the first sentence of this interrogatory is objectionable on the grounds that it asks defendant for a conclusion of law and would require this defendant to research the law and formulate an opinion. Defendant further objects because the question is irrelevant and immaterial and not designed to lead to the discovery of admissible evidence.

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Defendant objects to the question posed in the subsequent portions of the interrogatory on the same grounds, because they are predicated upon defendant's responses to the question posed in the first instance.

INTERROGATORY NO. 16:

Does your company recognize that asbestos causes asbestos-induced lung cancer? If your answer is "Yes", when did you come to such realization and what action did you take in response thereto? If your answer is "No", then please explain why no studies were made by your company to ascertain that this fact was indeed true and thereafter to take action to advise those exposed to your products of their dangerous nature.

OBJECTION:

16. This question is objected to as improper, irrelevant and immaterial in that plaintiff does not claim that he has lung cancer.

INTERROGATORY NO. 17:

Does your company recognize there is a direct connection between the inhalation of asbestos dust and fibers and the disease mesothelioma? If your answer is "Yes" to this question, then please advise what notices were given to those exposed to your asbestos products of this fact.

OBJECTION:

17. This question is objected to as improper, irrelevant and immaterial in that plaintiff has not alleged and does not claim that he has the disease mesothelioma.

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INTERROGATORY NO. 19:

Do you agree that asbestos has been directly associated medically with the disease of cor pulmonale?

OBJECTION:

19. Defendant objects to this question because it is improper, irrelevant and immaterial in that plaintiff does not allege in his complaint or claim that he has the disease of cor pulmonale.

INTERROGATORY NO. 26:

Do you agree that the problem of asbestos dust extends further than to those merely using your products but that the exposure is shared with other construction workers as well?

OBJECTION:

26. Defendant objects to this interrogatory on the basis that the question assumes a fact not in evidence; that is, the "problem of asbestos dust" with respect to those merely using defendant's products which contain some asbestos, and on the additional ground that it is argumentative in nature, irrelevant and immaterial. Also, the interrogatory is too vague, broad and ambiguous.

INTERROGATORY NO. 27:

If your answer to the preceding Interrogatory No. 26 is "No", then please state whether or not you have familiarized yourself with Dr. William H. Stewart, Surgeon-General of the United States, testifying before the Committee mentioned above that probably three and one-half million construction workers are being exposed to asbestos dust in addition to those workers actually using the materials containing asbestos?

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OBJECTION:

27. Defendant has objected to Interrogatory No. 26 and would likewise object to this interrogatory on the same grounds, and further, on the grounds that testimony of Dr. Stewart would constitute hearsay and would not lead to discoverable evidence.

INTERROGATORY NO. 28:

Do you recognize or agree that the problems of air laden with asbestos dust is so great that possibly millions of the people in the United States are being exposed to the inhalation of asbestos dust who have nothing to do with its use or application? If your answer is "Yes" then please advise what action your company has taken, if any, to advise the general public of the dangerous nature of asbestos and what steps have been taken to endeavor to protect the general public from the dangerous effects of the inhalation of the asbestos dust and fibers, when such action was taken, and what it consists of.

OBJECTION:

28. This defendant makes the same objections to Interrogatory No. 28 as to Interrogatory No. 26. Defendant further objects on the grounds that this interrogatory is too vague, irrelevant and immaterial and argumentative.

INTERROGATORY NO. 37:

Assume for the purpose of this question that it has been known for many years that asbestos dust and fibers have been dangerous to human beings: Assuming the truth of such statement, has your company done anything prior to 1966 to notify any segment of the American population of such danger? If so, please explain what.

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OBJECTION:

37. Defendant objects to this interrogatory as argumentative, ambiguous, irrelevant and immaterial.

Defendant further objects to this interrogatory on the grounds that it assumes facts not in evidence, it is improper because it asks this defendant to describe what it did in respect to a state of affairs which is hypothetical and speculative which this defendant does not recognize as fact.

INTERROGATORIES NOS. 47 THROUGH 84:

These interrogatories pose the question that certain states had a Workmen's Compensation Law covering the occupational disease of asbestosis on certain dates.

OBJECTION TO INTERROGATORIES NOS. 47 THROUGH 84:

This defendant objects to each of these interrogatories as calling for conclusions and opinions on questions of law and because the plaintiff does not attach or produce the foreign law upon which the question is based.

INTERROGATORY NO. 85:

Does your company recognize that asbestos causes asbestosis? If your answer is "Yes," when did you come to such realization, and what action did you take in response thereto? If your answer is "No," then please explain why no studies were made by your company to ascertain that this fact was indeed true and thereafter to take action to advise those exposed to your products of their dangerous nature.

OBJECTION:

85. Defendant objects to this interrogatory because the plaintiff is inquiring into medical facts and medical theory which

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will necessarily have to be developed through expert testimony at the time of the trial, and further, the question is too general and is not limited to the products manufactured by this defendant but deals with asbestos as a general term, whereas the product containing asbestos manufactured by this defendant is different from straight asbestos and contains a different kind of asbestos as opposed to some types of asbestos, and therefore this interrogatory is argumentative and improper. This defendant should not be called upon to answer a question which calls for a medical conclusion and may also be one of the ultimate issues to be tried in this case because there is a wide difference of medical and expert opinion.

Defendant further objects to this interrogatory on the ground that the question posed in the first sentence, although superficially "simple," is so broad and general and such a gross over-simplification as to render it not only scientifically meaningless, but actually incapable of being meaningfully responded to.

DATED this 31st day of March, 1970.

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BY Geo. A. Weller
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ACL Doc 10152 · Page 9 of 11 asbestosclaims.law/library/10152/9

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing instrument was served on the following attorneys by mailing a true and correct copy thereof to their respective offices, this 31st day of MARCH, 1970.

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393

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VS.

FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL

OBJECTIONS OF DEFENDANT, FIBREBOARD CORPORATION, TO PLAINTIFF'S MOTION FOR DISCOVERY AND TO LIMIT AND RESTRICT SAID MOTION FOR ~~DISCOVERY.~~

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The Borel v. Fibreboard Case File (1969-1972), Objections to interrogatories
ACL Doc 10152 · Page 11 of 11
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