FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
APR 1 - 1970
JAMES R. COONEY, CLERK
BY DEPUTY Margaret Stover

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	§	

OBJECTIONS OF DEFENDANT, UNARCO INDUSTRIES, INC. TO PLAINTIFF'S MOTION FOR DISCOVERY AND TO LIMIT AND RESTRICT SAID MOTION FOR DISCOVERY

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the Defendant, UNARCO INDUSTRIES, INC., and files this its Objections to Plaintiff's Motion for Discovery, and this Defendant's Motion to Limit and Restrict Plaintiff's Motion for Discovery on file herein, and would respectfully show unto the Court the following:

1.

This Defendant objects to the request contained in Paragraph 1 of the Plaintiff's Motion for Discovery in which Plaintiff states that it is necessary for each of the Defendants to produce samples of such materials as they manufacture for use in insulating which contain asbestos, for the following reasons:

(a) This Defendant objects to the request to produce a sample of each and every insulating product manufactured by it for the reason that such burden would be both expensive and onerous and such samples are available to the Plaintiff if he was willing to

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pay for the same and went to the trouble and expense of obtaining samples.

(b) Defendant further objects to this request for the reason that the Motion is too broad, general, and indefinite and this Defendant should be required only to furnish a sample which is representative of the class of insulating material or product which is presently being manufactured by this Defendant. Accordingly, this Defendant requests that the Motion be limited as to the time period and that this Defendant be required to furnish only a sample which is representatives of the class of insulating material containing asbestos which is now manufactured by it.

(c) This Defendant would further show that some product manufactured by it in years past is now being manufactured by one of the Defendants herein, and that as a practical matter it would be unnecessary to have duplicate samples.

2.

This Defendant objects to Paragraph 2 of Plaintiff's Motion for Discovery in that Plaintiff requests that each of the products which are produced by the various Defendants herein should be identified by the name of the manufacturer, the trade name of the product, and information as to when the product was first manufactured, for the following reasons:

(a) This Defendant has furnished information in answer to Plaintiff's Interrogatories regarding the products manufactured by it, the period of time during

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which it was manufactured, the description of materials, and information concerning its application. In this connection this Defendant would show that it should not be required to furnish the same information once again in response to Plaintiff's Motion for Discovery.

(b) This Defendant further objects to said request contained in this Motion for Discovery for the reason that Plaintiff has requested that the samples be identified by the manufacturer's name, trade name, and date of manufacture for the reason that such information would allow the Plaintiff or witness to identify the product on the basis of the information shown on the face of the exhibit rather than based upon any knowledge that the Plaintiff or witness may have as to the product and its identity. Alternatively, this Defendant would request that the motion be limited and restricted in requiring that such samples be marked only with a code name or number identifying the sample to the Court. In this manner, the Plaintiff or witness could be tested fairly as to his ability to identify the samples furnished by the Defendants and this Defendant would have no objection to furnishing a representative sample of insulating material manufactured by it, identified with a code name or number, and would be willing to furnish such identifying data to the Court and hereby respectfully moves that this procedure be followed as to the production of representative samples and their identification in this cause.

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3.

This Defendant objects to the request contained in Paragraph 3 of the Plaintiff's Motion for Discovery for the reason that Plaintiff has requested all sales literature pertaining to products manufactured or distributed by each Defendant, for the reason that such request contains no limitation as to time, no limitation as to insulating material containing asbestos, and it is too broad, vague, general and indefinite. In this connection, this Defendant would be willing to furnish current sales literature pertaining to insulation products containing asbestos which are manufactured by this Defendant and limited to current market and sales material which is available.

This Defendant further objects to this discovery for the reason that such is irrelevant and immaterial to any issue herein since Plaintiff has not alleged that he was familiar with such literature or that he relied upon any sales literature in any manner.

This Defendant does agree to furnish such current sales literature as is available to the insulation material manufactured by it.

4.

This Defendant objects to Paragraph 4 of said Motion for the same reasons as set forth in its objections to Paragraph 3: i.e., that such request is too broad, general and indefinite; that it is not limited to insulating material containing asbestos, and for the further reason that the same

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questions have been inquired into by the interrogatories on file herein and such questions have been answered by this Defendant.

This Defendant further objects to the production of this information for the reason that it involves contractual agreements containing certain of its products wherein this Defendant has sold its operation, trade name, patents and scientific and research data and has agreed contractually that it would not divulge such information and to require this Defendant to do so would subject it to contractual liability concerning such product and the patents and scientific information concerning the same.

Defendant further objects to the request contained in this paragraph in connection with the method of application, adaptability and safety controls for the reason that this Defendant is not in the business of applying the product and sells and distributes its product to expert insulation contractors and owners, who in turn employ professional applicators, such as the Plaintiff herein, and the application is controlled by the asbestos union of which Plaintiff is a long-time member, and by independent insulating contractors over whom this Defendant has no control or jurisdiction, and further this Defendant has agreed to produce its current sales literature which would have recommendations for use and application. Still further, this Defendant would show that insofar as any safety control is suggested there is no duty on this Defendant to require any safety controls and does not have the authority or jurisdiction

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over the insulation contractors or expert insulators to do so.

This Defendant further objects to the production of the engineering, scientific and research data, in addition to the contractual obligations mentioned above, for the reason that such information is confidential, involves trade secrets, patent information, etc., and should not be required to be produced in a suit for damages where this Defendant has disclosed the name and contents of its product in answer to Plaintiff's interrogatories.

5.

This Defendant does not maintain medical or scientific research departments.

6.

This Defendant objects to Paragraph 6 of Plaintiff's Motion for Discovery for the reason that this Defendant has answered this inquiry in its Answers to Plaintiff's Interrogatories and in such answer has set forth the identity and description of respirators that could be used to reduce materially the inhalation of asbestos dust and fibers and Plaintiff is again asking for the same information. Defendant further objects to this request for the reason that since such respirators have been identified by catalog number and description such are equally available to Plaintiff as they would be to the Defendant herein.

This Defendant further objects to this request for the reason that the inquiry assumes that the disease of

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asbestosis would be produced by the use of the product of this Defendant.

7.

This Defendant cannot state unequivocally the name and address of the company representative who will appear at the time of the trial of this case, and subject to change, it is anticipated that Mr. A. W. Summers of Bloomington, Illinois, will appear.

WHEREFORE, premises considered, this Defendant prays that the Court rule on this Defendant's Objections and Exceptions to Plaintiff's Motion for Discovery.

Respectfully submitted,

VINSON, ELKINS, SEARLS & CONNALLY

By: Gerald P. Coley

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Attorneys for Defendant,
Unarco Industries, Inc.

Certificate of Service

I certify that a copy of the foregoing Objections to Plaintiff's Motion for Discovery and to limit and restrict said Motion for Discovery was served on Mr. Ward Stephenson, Stephenson Building, Orange, Texas, attorney for Plaintiff, by mailing a copy of the foregoing pleading to his address on this the 30th day of March, 1970.

A copy was also served on the following attorneys of record on the same date:

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