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

CLARENCE BOREL

V.

FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL

CIVIL ACTION
NO. 6449

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
APR 2 - 1970
JAMES R. COONEY, CLERK
BY DEPUTY Margaret Driver

MOTION TO LIMIT AND RESTRICT PLAINTIFF'S MOTION FOR DISCOVERY

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the Defendant, Philip Carey Corporation, and files this its Motion to Limit the Plaintiff's Motion for Discovery on file herein, and as grounds therefor would show:

1.

In Paragraph 1 of the Motion for Discovery, the Plaintiff states that it is necessary that each of the Defendants produce such materials as they each manufacture for use in insulating which contains any asbestos.

This Defendant objects to this request and says that to require this Defendant to assume such burden is both expensive and onerous and that such samples of products manufactured by this Defendant are available in the trade and Plaintiff could secure samples of such product if he were willing to pay for same and went to the trouble and expense of obtaining it.

2.

In Paragraph 2 of the Motion for Discovery, Plaintiff requests that each product be identified at the time they are produced by the name of the manufacturer, the trade name of the product, together with when the product was first manufactured, so that during the trial of this case there will be a simple method of identifying the product manufactured or distributed by each of the Defendants.

This Defendant objects to said Motion for Discovery for each of the following reasons:

512

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(a) Plaintiff's counsel knows the trade name of the product and has previously been furnished with the other information requested in Paragraph 2.

(b) This Defendant would show the Court that to require this Defendant to label each and every product by the manufacturer's name and number would merely allow the Plaintiff or a witness to identify each and every product after he knows the name of the product or the trade name of the product or the manufacturer thereof, whereas the Plaintiff has heretofore testified under oath in vague and indefinite terms as to his knowledge during his years as an insulation worker of the name of the product he was working with at any particular time, and the name of the manufacturer thereof, and the identity of any particular product that he worked with on any particular job.

3.

In Paragraph 3 the Plaintiff has requested that Defendant be ordered to produce all sales literature concerning such product.

This Defendant objects to said Motion for Discovery for the following reasons:

(a) Said request is not limited as to time.

(b) Sales literature is available to Plaintiff, and this Defendant is informed that Plaintiff's counsel has heretofore acquired a catalogue of Defendant's products which is published by Defendant.

(c) The Plaintiff has not testified that he relied upon any sales literature, and, therefore, any sales literature would be irrelevant and immaterial.

4.

In Paragraph 4 the Plaintiff has requested that the Court order each Defendant to produce all engineering, scientific and research data concerning such products, its suggested use and adaptability, methods of applying, and any safety controls suggested.

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This Defendant objects to said request for each of the following reasons:

(a) Engineering, scientific and research data concerning such product is confidential and may involve patent information, trade secrets, etc., and such should not be required to be produced in a suit for damages, particularly when it is this Defendant's understanding that Plaintiff's counsel has knowledge of the name of the matter which makes up the content of the product.

(b) The product is insulating material, and the recommendation for use and adaptability in the insulation trade is found in the catalogue published by this Defendant, of which Plaintiff's counsel already has knowledge.

(c) Defendant objects to supplying any material as to the method of applying the product for the reason that the application of asbestos products is controlled by the asbestos union, of which the Plaintiff is a longtime member; and, further, Plaintiff is supposed to be an expert tradesman and technician in the application of asbestos and insulation products. Further, such products are usually installed under the direction and control of independent contractors, and this Defendant does not control the method of application, nor direct the method of application to such contractors, as the application of insulation materials is a well-known fact in the insulation industry.

(d) As to any safety controls suggested, this Defendant objects for the reason that there is no duty existing on the manufacturer of asbestos insulation products to prescribe or require any safety controls; and further, there exists no relationship between the manufacturer of the product and the insulating contractor who will contract to apply the same, such as to allow the manufacturer to require the contractor to follow any particular safety suggestions. Neither is there any relationship between the manufacturer and the technician, who is well-versed in the application of insulation to require him to

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follow any suggested safety measures or control measures in the application of the product.

5.

This Defendant objects to numbers 5 and 7 of the Motion for the reason that the requests set forth therein are not proper matters for discovery under Rule 34 of the Federal Rules of Civil Procedure.

6.

This Defendant objects to Paragraph 6 of the Motion requesting that Defendant be ordered to produce any breathing apparatus, device or other safeguards which such Defendant claims would materially reduce or completely eliminate the disease of asbestosis if used by the workers.

This Defendant objects to said request for the reason that it does not manufacture or distribute breathing apparatus, but such breathing apparatus or masks are produced by other manufacturers and the use thereof is well-known in the insulation trade and the purpose of the use of a mask or breathing apparatus is well-known to the members of the asbestos union, who are expert in the application of asbestos products, their foremen and contractors.

Further, this Defendant does not manufacture blowing devices or suction devices or fans which should be used to remove dust in tight places where workers are applying asbestos materials or any other material. This is a commonly recognized safeguard where workers are using asbestos material, silica material, foam glass, or any other product which creates a dust condition. Further, the matter of a breathing apparatus or mask is something that the Plaintiff or his attorney can purchase on the open market, and this Defendant should not be required to go outside of its own organization to produce evidence for the Plaintiff.

This Defendant would further show that working conditions of members of the asbestos union are usually prescribed

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by the contract existing between the asbestos workers' union and the insulation contractors' association, and it is common knowledge in this industry that respirators or masks are available for the use of insulators and it is usual and customary for the foreman on the job to order the same from his employer and for the employer to furnish them.

7.

This Defendant denies that it has possession, control and custody of each and all of the matters which the Plaintiff requests be produced in this Motion and feels that the Court should limit said Motion as hereinbefore outlined.

WHEREFORE, this Defendant prays that the Court set this Motion for hearing and that upon hearing the Court restrict Plaintiff's Motion for Discovery as herein set forth in this Motion.

Respectfully submitted,

FULBRIGHT, CROOKER, FREEMAN,
BATES & JAWORSKI

By _____
W. N. Arnold, Jr.
Bank of the Southwest Building
Houston, Texas 77002
Attorneys for Defendant,
Philip Carey Corporation

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion to Limit and Restrict Plaintiff's Motion for Discovery filed by the Defendant, Philip Carey Corporation, was served on Mr. Ward Stephenson, Stephenson Building, Orange, Texas, attorney for Plaintiff, by mailing a copy to said address on the 31 day of March, 1970, and a copy was likewise served on all other attorneys of record by mailing a copy to their respective addresses by regular United States ~~Mail~~ on the 31 day of March, 1970.

_____
Attorney for Philip Carey
Corporation

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C. A. NO. 6449

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DISTRICT COURT FOR THE
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FIBREBOARD PAPER PRODUCTS
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FULBRIGHT, CROOKER, FREEMAN, BATES & JAWORSKI
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The Borel v. Fibreboard Case File (1969-1972), Motion to limit plaintiff's motion for discovery
ACL Doc 10107 · Page 6 of 6
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asbestosclaims.law/library/10107/6