IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
APR 9 - 1970
JAMES R. COONEY, CLERK
BY DEPUTY Margaret Turner

CLARENCE BOREL :

VS. : CIVIL ACTION NO. 6449

FIBREBOARD PAPER PRODUCTS :
CORPORATION ET AL :

MEMORANDUM BRIEF AND REPLY TO MOTIONS TO LIMIT AND RESTRICT PLAINTIFF'S MOTION FOR DISCOVERY

TO THE HONORABLE JUDGE OF SAID COURT:

In reply to the motions to limit and restrict plaintiff's motion for discovery filed by the defendants herein, the plaintiff says that each matter sought in the motion for discovery is necessary to the plaintiff's case, and would not place any burden on the defendants and could readily be done, and further that the information sought is probably available to all the salesmen of these companies if these companies wanted to make any money in selling their products; and plaintiff further shows to the Court:

1.

That this is another effort on the part of the defendants to hamstring the investigation of the plaintiff and should not be allowed. The introduction of each item manufactured by the defendants containing asbestos, and the identifying trade names, should be required, so that the products can be readily identified by the various witnesses who will testify concerning these products. That to do what the defendants wish the Court to do would make a farce of the trial of this case.

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2.

That sales literature concerning the asbestos products manufactured by the defendants is certainly not difficult for said defendants to obtain, and that such sales literature has necessary descriptive material dealing with the percentage of asbestos fibers in the products, the use to which it is to be put, with other information such as photographs helpful to the parties on the trial of the case, and in some instances shows the method of application, sawing, banding, cutting, etc.

3.

The plaintiff objects to any effort to restrict the plaintiff's discovery of research data, use, adaptability, and methods of applying and safety controls, because this is the very basis of this lawsuit. Such could not be and should not be confidential. That for these defendants to say so is an affront to humanity and a suggestion to which all reasonable persons should be indignant.

4.

The fact that the plaintiff has certain information should not prevent the defendants from identifying the products they manufacture, and bringing them into court through discovery, so that all of these matters can be done in advance of trial; and, therefore, the volume of proof required would be greatly reduced and justice would be better served.

5.

The plaintiff states that his information is that there is no breathing apparatus made today that is suitable to stop the disease of asbestosis, and that the defendants know this to be true and are trying to practice a sham on the plaintiff by saying there is such an apparatus when there is not, and therefore, they should be required to produce it and upon the production of

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The Borel v. Fibreboard Case File (1969-1972), Reply to defendants' motions to limit
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such apparatus, the plaintiff will then have the same tested by qualified testing laboratory to conclusively establish the inadequacy of the apparatus, if in truth the defendants produce any such apparatus.

6.

Under the Federal Rules of Procedure, full discovery is to be encouraged. The law is no longer a game of hide and seek.

7.

The trial of this case will be lengthy enough indeed if all discovery is accomplished in advance, if all exhibits are marked in advance, and if all facts available to the parties pertinent to the case are exchanged in advance.

8.

Most of the defendants have answered that their products could be identified by trained technicians or scientists, but not by the average worker, and therefore, it would only expedite the trial of this case to have all the products labeled and identified so that they can be demonstrated to the jury, and so that the jury can then observe the products manufactured by each defendant, and to see the dust that each product generates when it is handled, and to have these products marked by code would be cumbersome, useless and a form of trickery which could only antificipate that the labeling of the products would be for the purpose of having the plaintiff perjure himself, which is false.

9.

The plaintiff says that he has no objection to the defendants agreeing that all samples of insulating materials and sales literature which have heretofore been furnished to plaintiff's counsel in the case of S. R. Potter vs. Fibreboard

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Paper Products Corporation, et al, may be used in this cause of action, if the Court grants this Motion for Discovery filed by plaintiff.

WHEREFORE, plaintiff prays that said defendants' motions to limit and restrict the plaintiff's motion for discovery be overruled by this Court; and that plaintiff's motion for discovery be granted.

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CERTIFICATE OF SERVICE BY MAIL

I, Ward Stephenson, hereby certify that a copy of the foregoing instrument was on this the 8 day of April, 1970, mailed to the following named attorneys for the defendants and intervenor:

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