IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
APR 17 1970
JAMES R. COONEY, CLERK
BY DEPUTY Margaret Lowe

CLARENCE BOREL

VS.

FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL.

CIVIL ACTION NO. 6449.

ANSWER OF THE DEFENDANT
RUBEROID COMPANY TO FIRST SET OF
INTERROGATORIES PROPOUNDED BY PLAINTIFF

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

Defendant Ruberoid Company, in response to Interrogatories propounded under Federal Rule 33, served on this Defendant's counsel, herein files its Answers to such Interrogatories. Such Answers to such Interrogatories bear the same number as the Requests:

INTERROGATORY NO. 1.

a. Calsilite - A high Timberate pipe covering and Block. This product has been manufactured since the late 1940's and contains 10% asbestos and the balance is composed of diatamaceous earth and Hydrous Lime Silicate.

b. 7M Cement and Asbestos Insulating and Finishing Cement. This product has been manufactured since 1936 and is composed almost entirely of asbestos fibers.

c. T/ na100 - A Tedlar neoprine asbestos insulating jacketting. This product has been manufactured since 1961 and contains 40% asbestos and the remainder consists of Tedlar (poly vinyl floride) and neoprine.

INTERROGATORY NO. 2.

We do not have any contact with workers installing asbestos insulating products. However, we do recommend to our own employees who are in regular contact with asbestos in high dust areas to wear respirators.

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INTERROGATORY NO. 3.

Ruberoid Company, itself, has made no such studies. However, this Company is familiar with the studies made by various other agencies, including the United States Government.

INTERROGATORY NO. 4.

See Answer to Interrogatory No. 3.

INTERROGATORY NO. 5.

Yes - These products were sold to contractors, building material, wholesalers, retailers and to other manufacturers. These products are packaged in corrugated cartons or paper bags. These products are sold throughout the United States, except only on a limited basis west of the Rockies.

INTERROGATORY NO. 6.

See Answer to No. 5.

INTERROGATORY NO. 7.

This Interrogatory is objected to as being argumentative, ambiguous, unintelligible, and irrelevant to the issues in this case. Subject to the foregoing objection, this Defendant says that assuming the word "use" means the normal intended usage as insulation products, the answer is No.

INTERROGATORY NO. 8.

Ruberoid Company, itself, has made no such studies. However, this Company is familiar with the studies made by various other agencies, including the United States Government.

INTERROGATORY NO. 9.

No, but see the Answers to Interrogatories No. 3 and No. 8.

INTERROGATORY NO. 10.

We have no control over the working areas where the products which this Company manufactures are being installed by asbestos insulation workers,

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nor do we have any right to go upon such premises for the purpose of making any inspection. Scientists and others engaged by the United States Government, as well as published literature familiar to this Defendant, indicate that in the areas where insulation workers are installing and using our products, the dust counts have been below the threshold limit values set by the American Conference of Governmental Industrial Hygienists.

INTERROGATORY NO. 11.

This Defendant has no information or independent knowledge of the matters referred to or inquired about in said Interrogatory. This Defendant is generally aware of the report made the subject matter of said Interrogatory, but does not recognize this report as applicable to the use of asbestos products by construction workers engaged in installing such products who are exposed only some of the time to asbestos dust and then to dust counts which should be below the threshold limit values published by the American Conference of Governmental Industrial Hygienists.

INTERROGATORY NO. 12.

This Defendant has no information or independent knowledge of the matters referred to or inquired about in said Interrogatory. This Defendant is generally aware of the report made the subject matter of said Interrogatory, but does not recognize this report as applicable to the use of asbestos products by construction workers engaged in installing such products who are exposed only some of the time to asbestos dust and then to dust counts which should be below the threshold limit values published by the American Conference of Governmental Industrial Hygienists.

INTERROGATORY NO. 13:

This Defendant has no information or independent knowledge of the matters referred to in said Interrogatory, but it is aware at this time of this legislative history. This legislation related to workers in asbestos-textile factories, where dust was extremely heavy and consisted of a 100% asbestos fibers and where exposure was continuous. There is no reason for a correla-

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tion of this legislation with the use of asbestos products by insulation workers who are exposed only part of the time to asbestos fiber dust and even then to counts which should be below the threshold limit values published by the American Conference of Governmental Industrial Hygienists.

INTERROGATORY NO. 14.

No.

INTERROGATORY NO. 15.

This Defendant has no right to enter upon any premises where its materials are being installed in the field; hence, it can make no dust samplings where such products are being installed.

INTERROGATORY NO. 16.

This question is objected to as being irrelevant and immaterial, in that the Plaintiff does not claim he has asbestos-induced lung cancer. Subject to such objection, this Defendant says that although it is not in itself a medical expert, that it understands from its contacts with medical experts that the etiology of cancer is unknown.

INTERROGATORY NO. 17.

This Defendant does not know whether or not or by whom asbestos may have been directly associated medically with the disease of cor pulmonale.

INTERROGATORY NO. 18.

Approximately five years ago the company began placing a warning on the packaging containing calsilite. The warning states as follows:

> CAUTION "This product contains asbestos fiber! Inhalation of asbestos in excessive quantities over long periods of time may be harmful. If dust is created when this product is handled, avoid breathing the dust. If adequate ventilation control is not possible, wear respirators approved by the U.S. Bureau of Mines for pneumoconiosis producing dust."

The warning was given at the time it became known to this Defendant that there might be a possibility of harm from long time exposure to high concentration of asbestos dust fibers.

INTERROGATORY NO. 19.

This question is objected to as being irrelevant and immaterial in that Plaintiff does not claim he has the disease of cor pulmonale.

INTERROGATORY NO. 20.

Asbestos fiber is relatively durable. Nothing exists for an infinity of years.

INTERROGATORY NO. 21.

Insofar as this Interrogatory asks about the increase in the use of asbestos, this Defendant says that it is aware of that, but the rest of the Interrogatory is answered No.

INTERROGATORY NO. 22.

No.

INTERROGATORY NO. 23.

No direct contributions of this type are made.

INTERROGATORY NO. 24.

No, but see the Answer to Interrogatory No. 10.

INTERROGATORY 25.

No.

INTERROGATORY NO. 26.

This Defendant does not agree that construction workers other than asbestos insulators share the same exposure to asbestos dust.

INTERROGATORY NO. 27.

Although as worded no answer is required to Interrogatory No. 27, this Defendant says that it is familiar with the testimony of Dr. William H. Stewart, and this Defendant is familiar with the type of products which he was discussing, but this Defendant does not manufacture such products.

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INTERROGATORY NO. 28.

No.

INTERROGATORY NO. 29.

Yes. Our products can always be identified when still in the container. The name of our Company is placed on the containers. In many instances, experts can distinguish the products themselves by their general physical characteristics.

INTERROGATORY NO. 30.

No.

INTERROGATORY NO. 31.

Delaware, April 26, 1929; New York.

INTERROGATORY NO. 32.

Approximately 45 years.

INTERROGATORY NO. 33.

This Defendant contends that respirators are currently on the market which will materially reduce inhalation of asbestos dust and fibers. Such respirators are available under the United States Bureau of Mines Schedule 21B. Tests upon which said approval are based were designed and conducted by that governmental agency and are described in the respiratory protective devices manual published by the American Industrial Hygiene Association, American Conference of Governmental Hygienist 1963. One such respirator, "Dust Foe 77" catalogue No. 10-9600, is manufactured by the Mine Safety Appliance Company.

INTERROGATORY NO. 34.

Such products have been manufactured for years, but are not placed on the open market to be purchased and used by the public generally.

INTERROGATORY NO. 35.

We do not believe that our insulation products are harmful or dangerous when used for their intended purpose. We rely on tests and

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studies conducted by the American Conference of Governmental Industrial Hygienists and the work of Scientists employed by the United States Government, as well as others. We are aware of two cases of respiratory disease among our Vermont Asbestos Mining employees. The exact medical cause of each lung disease is a matter of conjecture. No cases of respiratory illness have been reported in any of our manufacturing plants.

INTERROGATORY NO. 36.

1. Mr. Reed C. Manosh - Montgomery Center, Vt. 05471 - Dr. L. E. Judd - Enosburg Falls, Vt. 05450.

2. Mr. Arthur J. Lumbra - Montgomery Center, Vt. 05471 - Dr. Thomas G. Howrigan - 67 Fairfield Street, St. Albans, Vt. 05478.

INTERROGATORY NO. 37.

Assuming the truth of such a statement, which this Defendant does not admit to be true but says is not true, the answer to said Interrogatory is Yes. By way of explanation, see this Defendant's answer to Interrogatory No. 18.

INTERROGATORY NO. 38.

Our Calsilite is packaged pre cut in various lengths and is attached by the use of a metal band. Very little cutting is necessary. When it becomes necessary to cut on the job at the point of application, the applicator can use either a hand or power saw for this operation.

Our 7M Cement is poured into a pail, mixed with water, stirred and then applied with a trowel.

Our T/ na100 produces little if any dust during its application as it is saturated with neoprine. Any cutting would usually be done on a band saw and due to the nature of the product, it will not result in any appreciable dust.

INTERROGATORY NO. 39.

See Answer to Interrogatory No. 36.

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INTERROGATORY NO. 40.

No.

INTERROGATORIES NO. 41-44.

Plaintiff has been furnished a copy of our 1967 and 1968 Annual Reports containing the information inquired about.

INTERROGATORY NO. 45.

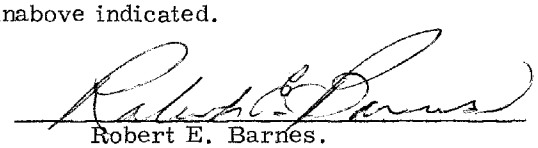
No Answer required.

INTERROGATORY NO. 46.

This Defendant objects to Interrogatory No. 46 on the basis that it inquires about a matter of opinion as opposed to a matter of fact. Subject to the foregoing objection, this Defendant would say that it has no basis upon which to form an opinion regarding the matter inquired about.

INTERROGATORIES NO. 47-84.

Although this Defendant does not have independent knowledge of the contents of the workmen's compensation laws of all of the states, it does have knowledge as to content of the laws of some states. As to the states whose workmen's compensation laws are within the knowledge of this Defendant, it recognizes that such compensation laws do cover asbestosis. However, this Defendant understands that under the law of some states, occupational disease is specifically recognized, but its identification as asbestosis would be a matter of interpretation to be made by some Industrial Accident Board or some Court. Other states specifically list asbestosis as an occupational disease. Other than by making a complete study of the workmen's compensation statutes of all of the states inquired about in Interrogatories No. 47 through 84, this Defendant cannot predicate a sworn statement in reply to said Interrogatories except as hereinabove indicated.



Robert E. Barnes.

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Sworn to and subscribed before me, the undersigned authority, on this the 15 day of April, 1970.

Justice L Engel
Notary Public in and for
Jefferson County, Texas.

Respectfully submitted,

BARNES & BARNES

BY Robert E. Barnes

2315 Calder - P. O. Box 5098,
Beaumont, Texas,
Telephone 833-8601,
Attorneys for Ruberoid Company.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon Mr. Ward Stephenson, Stephenson Building, Orange, Texas, Attorney for Plaintiff, by mailing the same to his address on the 16 day of April, 1970, and a copy was served on each and all other counsel of record by depositing the same in the United States mail properly addressed, with postage paid, on the 16 day of April, 1970.

Robert E. Barnes
Robert E. Barnes.

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