IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
JUN 15 1970
JAMES R. COONEY, CLERK
BY DEPUTY Margaret Driver

CLARENCE BOREL :

VS. : CIVIL ACTION NO. 6449

FIBREBOARD PAPER :
PRODUCTS CORPORATION :
ET AL

PLAINTIFF'S OPPOSITION TO MOTION TO SUPPRESS DEPOSITION OF CLARENCE BOREL TAKEN MAY 28, 1970

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the attorneys for Clarence Borel, deceased, his widow, heirs, legal beneficiaries, etc., and file this their opposition to the motion to suppress the deposition of Clarence Borel taken on May 28, 1970, and would show unto the Court that Clarence Borel was in a terminal state; that on the 22nd day of May, 1970, the attorneys for plaintiff sent certain interrogatories to the defendant Standard Asbestos Manufacturing & Insulating Company, a certified copy of the same being mailed to said defendant's attorney, and requesting that the interrogatories be expedited and that if there were any cross-interrogatories desired that the same be done at once because of Mr. Borel's terminal state. Said defendant's attorney did not get the letter either because they did not go to the post office or for some reason unknown to plaintiff's attorney, and the letter was returned to the plaintiff's attorney after the death of Clarence Borel. That had defendant's attorney made

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arrangements to get his mail, and had any objection to the taking of the interrogatories, there would have been at that time ample opportunity to petition the Court for immediate action on the taking of this interrogatory, because this is exactly the information requested by said defendant's attorney; and the plaintiff's attorney, in an endeavor to get this information and get it into the record at once, immediately prepared certain interrogatories, sent by United States Government Mail by certified mail, which is a proper procedure, and simply because said defendant's attorney did not get his mail or make arrangements for the same to be picked up or checked on, plaintiff was deprived of any opportunity to petition the court for expediency in the taking of the deposition.

The Post Office Department, in any event, leaves a yellow notice when delivery of certified mail cannot be made, and even if the attorney for defendant made no provision for opening his mail on Saturday, he should have certainly seen about it on Monday, but apparently did nothing.

Further, plaintiff's attorney would show to the Court that on two occasions, we took the deposition of Clarence Borel and said defendant's attorney did not even appear on either occasion and ask any questions.

Plaintiff would further say that the defendant had submitted interrogatories to the plaintiff of the same nature requesting substantially the same facts, and the defendant's attorney has not established or even contended in his motion that he was prejudiced, but to the contrary, it would appear that the very questions

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he desired answered are answered in the interrogatories which he is now complaining of.

WHEREFORE, plaintiff prays that the motion to suppress the deposition should be in all things denied.

STEPHENSON & THOMPSON

By _____
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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 12 day of June, 1970, mailed to the following named attorneys for the defendants and intervenor:

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