19.

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SEP 29 1971
JAMES R. COONEY, CLERK
BY DEPUTY Hazel E. Studdard

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

CLARENCE BOREL

VS.

FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL

CIVIL ACTION NO. 6449.

RUBEROID'S SPECIALLY REQUESTED INSTRUCTION NO. 1.

You are further instructed that a manufacturer of a product that contains no defect and is intended for industrial use by specialized contractors, and which product does not create any new risk not already inherent in the constituent parts comprising such product, has no duty to warn regarding the risks and dangers involved in the use of such product. Therefore, if you find from a preponderance of the evidence that the product or products of any one or more of the Defendants contained no defect, and that such product or products created no new risks not already inherent in the constituent parts of such products, then you will find for such Defendant and against the Plaintiffs.

Respectfully submitted,

Robert E. Barnes

ROBERT E. BARNES,
P. O. Box 5098,
Attorney for the Defendant
Ruberoid Company.

GIVEN

~~REFUSED~~

Judge Presiding.

1635

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EASTERN DISTRICT OF TEXAS
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JAMES R. COONEY, CLERK
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CLARENCE BOREL

VS.

FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL

CIVIL ACTION NO. 6449.

RUBEROID'S SPECIALLY REQUESTED INSTRUCTION NO. 2.

You are further instructed that it is the sole duty of the asbestos contractors to protect their workers or warn them of risks and dangers of which such contractors could be expected to be as fully informed as the makers of the asbestos containing products used by such contractors. Therefore, if you believe from a preponderance of the evidence that the asbestos contractors employing Clarence Borel could be expected to be as fully aware of the risks involved in using products containing some asbestos as could the manufacturers thereof, then you will find in favor of the Defendants and against the Plaintiffs.

Respectfully submitted,

Robert E. Barnes

ROBERT E. BARNES,
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Attorney for the Defendant
Ruberoid Company.

GIVEN

~~REFUSED~~

Judge Presiding.

1636

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

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SEP 28 1971
JAMES R. COONEY, CLERK
BY DEPUTY Hazel E. Sheddard

CLARENCE BOREL

VS.

FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL

CIVIL ACTION NO. 6449.

RUBEROID'S SPECIALLY REQUESTED INSTRUCTION NO. 3.

You are further instructed that employers specializing in the use of asbestos containing products applied under different and varying conditions are considered to be in a better position to appreciate and find out the potential risks involved in their process and the ways and means to minimize such risks, especially when the magnitude of the danger varies because of a variety of processes and conditions under which asbestos contining products are used. Therefore, if you find from a preponderance of the evidence that the asbestos products of the Defendantsin this case are applied under varying conditions and in a variety of processes peculiarly known to the insulation contractors, and if you further find from a preponderance of the evidence that such contractors were in a better position to know and appreciate the potential risks involved in their process, then you will find in favor of the Defendants and against the Plaintiffs.

Respectfully submitted,

Robert E. Barnes

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GIVEN

REFUSED

Judge Presiding.

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FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SEP 29 1971
JAMES R. COONEY, CLERK
BY DEPUTY Hazel E. Studdard

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

CLARENCE BOREL (
)
VS. (
)
FIBREBOARD PAPER PRODUCTS (
CORPORATION, ET AL.)

CIVIL ACTION NO. 6449.

RUBEROID'S SPECIALLY REQUESTED INSTRUCTION NO. 5.

You are further instructed that a manufacturer cannot be regarded as selling an unreasonably dangerous product if such product is designed in a universally accepted or customary manner, unless there is expert testimony that safer products could have been made feasibly, or that in the manufacture of such products some regulatory measure has been violated, or unless some manufacturers of such products made them safer. Therefore, if you find from a preponderance of the evidence that anyparticular Defendant's products were manufactured in a universally accepted or customary manner and that there is no expert testimony that a safer such product could be made feasibly, and that such product does not violate some regulatory measure, and that no manufacturer made a safer such product, then you will find in favor of such Defendant and against the Plaintiffs.

Respectfully submitted,

Robert E. Barnes

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Ruberoid Company.

GIVEN

REFUSED

Judge Presiding.

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

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SEP 28 1971
JAMES R. COONEY, CLERK
BY DEPUTY Hazel E. Studdard

CLARENCE BOREL (
)
VS. (
)
FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL (

CIVIL ACTION NO. 6449.

RUBEROID'S SPECIALLY REQUESTED INSTRUCTION NO. 6.

You are further instructed that a manufacturer of a product to be used by specialized contractors is not liable to the employees of such contractors for risks or dangers involved in the use of such products if such product reaches the hands of such specialized contractor in the condition that the ordinary such contractor would expect such product to be in. Therefore, if you find from a preponderance of the evidence that any Defendant's products reached the hands of the purchaser thereof in the condition that such purchaser contemplated that such product would be in, and that such product was not dangerous beyond the extent that was contemplated by the purchaser of such product, then you will find in favor of such Defendant and against the Plaintiffs.

Respectfully submitted,

Robert E. Barnes

ROBERT E. BARNES,
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Attorney for Defendant
Ruberoid Company.

GIVEN

REFUSED

Judge Presiding.

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FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SEP 29 1971
JAMES R. COONEY, CLERK
BY DEPUTY Hazel E. Studdard

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

CLARENCE BOREL (
)
VS. (
)
FIBREBOARD PAPER PRODUCTS (
CORPORATION, ET AL)

CIVIL ACTION NO. 6449.

RUBEROID'S SPECIALLY REQUESTED INSTRUCTION NO. 8.

You are further instructed that the Plaintiffs have the burden of proving by a preponderance of the evidence that Clarence Borel's employers did not know of the danger involved in the use of insulation products containing some asbestos. Therefore, unless you find from a preponderance of the evidence that Clarence Borel's employer did not know of the risks or dangers involved in the use of any particular Defendant's products, then you will find in favor of such Defendant and against the Plaintiffs.

Respectfully submitted,

Robert E. Barnes

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Ruberoid Company.

GIVEN

REFUSED

Judge Presiding.

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

FILED
SEP 28 1971
M. ____ 19____
James R. Cooney, Clerk, U. S. Court
By Hazel E. Studdard DEPUTY

CLARENCE BOREL (
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VS. (
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FIBREBOARD PAPER PRODUCTS (
CORPORATION, ET AL)

CIVIL ACTION NO. 6449.

RUBEROID'S SPECIALLY REQUESTED INSTRUCTION NO. 9.

You are further instructed that it is undisputed that insulation products containing some asbestos serve a useful purpose in industry and have a peculiar utility making such products suitable for use as insulation materials. And you are further instructed that if you find from a preponderance of the evidence that such utility outweighs the hazard or risk of danger involved in the industrial use of such product, that you will find in favor of the Defendants and against the Plaintiffs.

Respectfully submitted,

Robert E. Barnes

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GIVEN

REFUSED

Judge Presiding.

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