IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS,

BEAUMONT DIVISION.

FILED
M. June 18 1969
James R. Cooney, Clerk, U. S. Court
By Myra Barton DEPUTY

SAMUEL R. POTTER	§	
VS.	§	CIVIL ACTION NO. 6329.
FIBREBOARD PAPER PRODUCTS	§	
CORPORATION ET AL.	§	

MOTION OF DEFENDANT, COMBUSTION ENGINEERING, INC., FOR A MORE DEFINITE STATEMENT.

Now comes Combustion Engineering, Inc., named as one of the defendants in the above-entitled and numbered cause, and makes and files this, its Motion for More Definite Statement, and as grounds therefor would show unto the Court the following:

1.

The Plaintiff's Complaint herein is so vague and ambiguous in the respects hereinafter set out that this defendant cannot reasonably be required to frame a responsive pleading thereto, the plaintiff having sued ten defendants whom he alleges to have been and are engaged in the manufacture of materials used for insulation containing asbestos; it being alleged that the said defendants manufactured, compounded and prepared and placed on the market the products referred to; and the allegations of plaintiff's complaint are without sufficient definiteness or particularity to enable the defendant to properly prepare its defensive pleading, and plaintiff should be required to file a more definite statement with respect to the following matters, to-wit:

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(1) Plaintiff's Complaint, in paragraph 5 thereof, and elsewhere in said Complaint, alleges generally that during the years 1940 to 1967, he was employed as an insulator, and in the performance of his employment as an insulator he was required to handle large quantities of the products manufactured and distributed by the defendants named in said suit; and that in addition to the fact that the plaintiff actually used the products manufactured by said defendants, and many more, as an insulator, and many and various products containing asbestos, plaintiff further alleges that on many of the jobs, while not using himself the specific products manufactured by the defendants, he was nevertheless exposed to alleged dangerous materials, and especially asbestos dust and fibers which were used by other workers in the same area where plaintiff was working.

In paragraph 6 of his Complaint, the plaintiff alleges that due to the negligence and carelessness of the defendants, of whom he names ten (10) in said Complaint, he was caused to come in contact with insulation produced, manufactured and distributed by the defendants, and chemical compounds, deleterious substances and matter.

The Complaint fails to set forth or specify in any manner the following:

(a) The date or dates upon which the plaintiff claims to have been exposed to any product produced, manufactured and distributed by this defendant; plaintiff alleging only that he was employed as an insulator during the years 1940 to 1967.

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(b) The time, place or circumstances under which plaintiff claims to have used or to have been exposed to or received injury from any product manufactured, compounded and prepared by this defendant.

(c) The job on which plaintiff was working, the name of his employer, and place where he was working, at the various times, and date or dates thereof, or any other facts sufficient to identify or inform this defendant as to any of the facts as to times, places or circumstances of plaintiff's use of or alleged exposure to or injury from defendant's alleged product or products.

(d) Plaintiff does not allege any city, town, county or State where he claims he was working at the times of his alleged use of or exposure to any product of this defendant, or in what locations he claims to have been working.

(e) Plaintiff does not allege the name of any product or products of this defendant which he claims to have been using or to wh c h he claims to have been exposed.

(f) In regard to other workers in the same area who, he alleges, were using products of this defendant, he does not allege who such employees were or the names of their employers, or the places or place or date or dates, or any other fact or facts sufficient to enable this defendant to admit or deny the allegations of his Complaint.

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(g) There is not alleged in the complaint any means of identification of defendant's product or products which plaintiff will claim he used or to which he was exposed, or which caused his alleged injury, and said allegations are too vague, indefinite and ambiguous to apprise this defendant of any information whereby defendant can affirmatively admit or deny plaintiff's allegations, or to formulate a responsive pleading thereto.

Defendant cannot reasonably be expected to file a responsive pleading to such general allegations, which fail to inform the defendant of any of the facts, circumstances, time, place or dates of the alleged exposure, use or injury, and plaintiff should be required to file a more definite statement informing the defendant of the time, place, date and circumstances under which he is alleged to have used or been exposed to or come in contact with or been injured by any product allegedly manufactured and distributed by this defendant.

2.

Said complaint is too vague, ambiguous and indefinite as to when and where the plaintiff first suffered any injury made the basis of this suit, and this defendant is entitled to have the plaintiff allege such before this defendant is required to answer the Complaint by specifically admitting or denying the allegations; and plaintiff does not relate any injury which he claims to have received to any product manufactured, sold, delivered or furnished by this defendant.

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WHEREFORE, defendant moves and prays the Court that upon hearing hereof the plaintiff be required to file a more definite statement in the respects aforesaid, and for such other relief in the premises as it may be entitled to receive.

ATTORNEY FOR DEFENDANT,
COMBUSTION ENGINEERING, INC;
1014 San Jacinto Bldg.,P.O.Box 1632,
Beaumont,Texas.

CERTIFICATE OF SERVICE.

I hereby certify that the above and foregoing Motion for More Definite Statement has been served on the plaintiff and his attorneys of record, by placing a true and correct copy thereof in a correctly addressed, stamped and sealed envelope, addressed to Messrs. Stephenson,Thompson & Morris, Attorneys at Law, Stephenson Building, Orange,Texas, plaintiff's attorneys of record, and by depositing same in the United States Mail at Beaumont,Texas, this 17th day of June, 1969.

ATTORNEY FOR DEFENDANT

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