IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED
M. June 23 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 FOR MORE DEFINITE STATEMENT
OF JOHNS-MANVILLE PRODUCTS CORPORATION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the Defendant, Johns-Manville Products Corporation, and files this, its Motion under Rule 12 (e) for more definite statement, and as grounds therefor, would show the Court:

1.

In Paragraph 5 of Plaintiff's Original Complaint, he alleges that during the years 1940 to 1967 while employed as an insulator he was required to handle large quantities of products manufactured and distributed by the defendants. It is further alleged that in addition to the fact that plaintiff actually used the products manufactured by the defendants which contained asbestos, that on many of the jobs while not himself using the specific products manufactured by the defendants, he was nevertheless exposed to the dangerous materials and especially asbestos dust and fibers which were used by other workers in the same area at which plaintiff was working. It is further alleged in Paragraph 6 that due to the negligence and carelessness of the defendants, the plaintiff was caused to come in contact with insulation produced and manufactured and distributed by defendants and its chemical compounds deleterious substances and matters and as a consequence thereof, sustained permanent and disabling injuries.

Defendant, Johns-Manville Products Corporation, objects to each and all of said allegations and requests the Court to require

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the plaintiff to make said allegations more specific for the following reasons:

(a) Said allegations are too vague and indefinite and do not inform this defendant of the name of the insulation material with which plaintiff contends he came in contact and which he alleges and contends caused his injuries;

(b) Said allegations fail to allege a time and place of the alleged contact with a product or products containing asbestos manufactured by this defendant or any other means of identification of the time and place where he allegedly sustained injury as a result of contact or exposure to a product containing asbestos;

(c) The date, time and place of the alleged injury is too vague and indefinite and if plaintiff sustained an injury, the date, the time and place and place of employment and name of his employer should be alleged;

(d) Because the allegations leave it to speculation and conjecture as to which of the named defendants' products the plaintiff came in contact with, the time and place thereof, and this defendant is entitled to specific allegations in order that it might be informed of the specific nature of the claim or claims by the plaintiff as against this particular defendant.

2.

Said Complaint in its entirety fails to allege a date or dates of alleged injury or exposure and the name of the product or the area or job where plaintiff allegedly received his injury and it should not be incumbent upon this defendant to answer such vague and indefinite claims.

3.

Said Complaint is too vague and indefinite as to where plaintiff first suffered an injury and definite information as to

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this alleged claim and the time and place of the subsequent injury should be required of plaintiff before this defendant is required to answer this Complaint.

4.

This defendant respectfully requests the Court to require the plaintiff to be more specific in his allegations in Paragraphs 5 and 6 and allege the date or dates on which contact with the product of this defendant was had and the day or date on which he first claims that he sustained his injury and the date or dates on which he claims he first knew that he sustained an injury. This defendant is entitled to know the claim or claims being made against it which allegedly occurred over a period of years from 1940 to 1967.

5.

Defendant, Johns-Manville Products Corporation, requests the Court to require the plaintiff to be more specific as to Paragraph 8 and particularly Paragraph 8 (a) where it is alleged that defendants' knew or in the exercise of reasonable care ought to have known that their insulation was defective and that such insulation was not suitable for the purposes for which is was intended, for the following reasons:

(a) Because plaintiff does not allege how or in what manner the insulation product which contained asbestos was not suitable for the purposes for which it was intended;

(b) Because such allegations are vague and indefinite and do not state any claim or claims upon which any recovery could be had.

6.

Defendant, Johns-Manville Products Corporation, requests the Court to require the plaintiff to be more specific as to Paragraph 8 (d) wherein it is alleged that the product of the defendants especially those containing asbestos were warranted either

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expressly or impliedly to be merchantable when in truth they were not, for the following reasons:

(a) Because plaintiff does not allege how or in what manner the pipe insulation products which contained some asbestos was not suitable for the purposes for which it was intended;

(b) Because such allegations are too vague and indefinite and do not state any claim or claims upon which any recovery could be had.

WHEREFORE, Defendant, Johns-Manville Products Corporation, prays that the Court set this Motion for hearing and grant its Motion for more definite statement in order that this defendant can know the nature of the claim and have sufficient detail as to definite materials, dates, time and place; that this defendant can investigate the claim and file an appropriate answer.

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Attorney for Defendant,
Johns-Manville Products Corporation

A copy of this Motion for more definite statement was mailed to Mr. Ward Stephenson, Stephenson, Thompson & Morris, Stephenson Building, Orange, Texas, on this 20th day of June, 1969, by certified mail.

Gordon R Pate

GORDON R. PATE

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BEAUMONT DIVISION

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