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 NO. 6329

FIBREBOARD PAPER PRODUCTS :
COMPANY ET AL :

PLAINTIFF'S REPLY TO MOTION FOR MORE DEFINITE STATEMENT FILED BY DEFENDANT COMBUSTION ENGINEERING, INC.

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now the plaintiff and in reply to the motion for more definite statement filed by defendant Combustion Engineering Company, Inc., and would say:

1.

That under the law, the plaintiff does not have to allege specific dates, places and names over a period of twenty-seven (27) years where he has used or come in contact with this defendant's products. The fact issue will be raised by the plaintiff's testimony, borne out by his original complaint, to the effect that he has used and been exposed to these products many, many times over a period of many years.

2.

This is an occupational disease case. It is not a case of accidental injury wherein the exact time and place of the accidental injury could be identified. In all occupational disease cases, by their very nature, the disease comes about slowly over a period of many years and does not have,

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nor is there required to be a definite identification of the time, place and date of the use of the products.

3.

Plaintiff strongly urges that this motion be overruled. If the defendant wishes to inquire into the places that the plaintiff has worked, he can do so by deposition or other discovery, but even so, if the plaintiff testifies, as he will, that he used and has been exposed to this defendant's products over a period of many years, then this can only effect the weight that the jury or the trier of the facts might give to his testimony and does not restrict its admissibility, and to require the plaintiff to have the burden of establishing every place he worked and every exposure for twenty-seven (27) years is not and cannot be contemplated under our law.

WHEREFORE, plaintiff moves that defendant's motion for more definite statement be in all things denied.

STEPHENSON, THOMPSON AND MORRIS

By Ward Stephenson
Attorneys for Plaintiff
Stephenson Building
Orange, Texas 77630

CERTIFICATE OF SERVICE BY MAIL

I, Ward Stephenson, hereby certify that a true and correct copy of the foregoing instrument was on this the 20th day of June, 1969, mailed to Charles S. Pipkin, P. O. Box 1632, Beaumont, Texas 77704, attorney for defendant Combustion Engineering Company, Inc., by certified mail, return receipt requested.

Ward Stephenson
Ward Stephenson

The Potter v. Fibreboard Case File (1969-1972), Reply to Combustion Engineering's motion to strike
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