IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
DEC 22 1969
JAMES R. COONEY, CLERK
BY DEPUTY Myra Barton

SAMUEL R. POTTER

VS.

FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL

CIVIL ACTION NO. 6329

OBJECTIONS OF DEFENDANT, FIBREBOARD CORPORATION, TO PLAINTIFF'S MOTION FOR DISCOVERY AND TO LIMIT AND RESTRICT SAID MOTION FOR DISCOVERY

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the defendant, Fibreboard Corporation, and files this, its objections to plaintiff's motion for discovery, and its motion to limit the motion for discovery on file herein, and as grounds therefor would show:

1.

In Paragraph 1 of the motion for discovery, plaintiff states that it is necessary that each of the defendants produce samples of such materials as they each manufacture for use in insulating which contain any asbestos.

This defendant objects to this request for each and all of the following reasons:

(a) This defendant objects to the request to produce a sample of each and every insulating product manufactured by it and its predecessors which contain asbestos because the period of time involved is 1940 through 1969, and in some instances it would be impossible to produce the product manufactured by a predecessor, and it would place an onerous burden on this defendant.

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(b) Because Rule 34 of the Federal Rules of Civil Procedure does not contemplate or encompass the requirement that a defendant furnish a sample or samples of all products manufactured by it over a period of 29 years, or that a defendant assume this burden which is both onerous and expensive.

(c) Because the motion is too broad and general and the defendant should only be required to furnish a sample of its product which is representative of a particular class of product presently manufactured by it.

This defendant requests that the motion be limited as to time and that defendant be required to furnish only a sample or samples which are representative of the product or products manufactured by it.

(d) This defendant would further show that it would be an unreasonable demand and requirement to require this defendant to accumulate a sample or samples of each and every product manufactured by it, as the product can come in various shapes and sizes, and the manufacture of some products has been discontinued, and since the motion encompasses a period of some 29 years, for all of the reasons stated the motion for discovery is oppressive and should be quashed; or in the alternative, should be restricted to a representative sample of the product which contains asbestos.

2.

In Paragraph 2 of the motion for discovery, plaintiff states that each of the products which are produced should be identified by the name of the manufacturer and the trade name of the product, together with information as to when the product was first manufactured, in order that there would be a simple

The Potter v. Fibreboard Case File (1969-1972), Objections to plaintiff's motion for discovery
ACL Doc 10398 · Page 2 of 10
Published by AsbestosClaims.Law
asbestosclaims.law/library/10398/2

method of identifying the product manufactured or distributed by each of the defendants.

This defendant objects to such procedure for the following reasons:

(a) Because this defendant has heretofore furnished information in answer to interrogatories in this case regarding the product manufactured by it and the period of time during which such product was manufactured, and therefore it should not be required to furnish such information a second time in response to the motion for discovery.

(b) This defendant objects to placing the name of the manufacturer and the trade name of the product, plus dates of manufacture on each sample, because if this defendant was required to label each and every product by the manufacturer's name, trade name and date of manufacture, such information on the exhibit would allow the plaintiff or a witness to identify the product on the basis of the information contained on the exhibit rather than based upon knowledge of the plaintiff or the witness. The plaintiff has heretofore testified under oath that in many instances he could not distinguish the name of the product or the manufacturer of the product he was working with.

If any markings on any exhibit of a product is required by the Court, then such marking should be with a code name and number which would be furnished only to the Court. This defendant is willing to furnish representative samples of its product and to identify the same with a code name and number and to furnish such information to the Court, and it respectfully requests that this procedure be followed as to the products of all defendants which are required to be produced in this case.

The Potter v. Fibreboard Case File (1969-1972), Objections to plaintiff's motion for discovery
ACL Doc 10398 · Page 3 of 10
Published by AsbestosClaims.Law
asbestosclaims.law/library/10398/3

3.

In Paragraph 3 of the motion, plaintiff requests that defendants be ordered to furnish a copy of all sales literature concerning the products manufactured or distributed by each defendant.

This defendant objects to such request for the following reasons:

(a) Because there is no time limitation, and said request is too vague and indefinite and too broad.

(b) Because any sales literature should be limited to products containing asbestos.

(c) Because such request should be limited to current market materials and sales literature.

(d) Because such literature would be irrelevant and immaterial because it has not been alleged that the plaintiff was familiar with such literature or that he relied upon the sales literature in any manner.

This defendant is willing to furnish current sales literature concerning the products which contain some asbestos which are manufactured by this defendant.

4.

This defendant objects to Paragraph 4 of said motion wherein plaintiff states that each defendant should be ordered to produce all engineering, scientific and research data concerning such products, its suggested use and adaptability, method of applying, and safety controls suggested.

This defendant objects to such request for each and all of the following reasons:

The Potter v. Fibreboard Case File (1969-1972), Objections to plaintiff's motion for discovery
ACL Doc 10398 · Page 4 of 10
Published by AsbestosClaims.Law
asbestosclaims.law/library/10398/4

(a) Because its engineering, scientific and research data concerning its product is confidential, involves patents, patent agreements, and such could have no relevancy to the issue or issues in this case.

(b) Because this defendant has contractual agreements concerning certain of its products wherein it agrees that it will not divulge the scientific and research data conerning such product, and to disclose the same would violate this contractual agreement concerning such product and the patents concerning same.

(c) Because such request is too broad and general.

(d) Because the same questions have been asked by interrogatories and such questions have been answered under oath. In this connection, this defendant is willing to produce a copy of its sales manual which shows the suggested use of its product and adaptability. This defendant is not in the business of applying said product but is merely a manufacturer and distributes its product to insulation contractors and owners, who, in turn, employ professional experienced applicators.

(e) Engineering, scientific and research data concerning products containing asbestos manufactured by defendant is confidential and involves patent information, trade secrets, etc., and such should not be required to be produced in a suit for damages for alleged personal injury when this defendant has heretofore disclosed the content of such product in answer to interrogatories.

(f) The product is insulating material containing a small amount of asbestos, and the recommendation for use and

The Potter v. Fibreboard Case File (1969-1972), Objections to plaintiff's motion for discovery
ACL Doc 10398 · Page 5 of 10
Published by AsbestosClaims.Law
asbestosclaims.law/library/10398/5

adaptability in the field of insulation is found in the catalogue published by this defendant, of which the plaintiff or his attorney have knowledge.

(g) Defendant objects to supplying any material as to the method of applying the product for the reason that the application of asbestos products in the field is controlled by the asbestos union, of which plaintiff is a long time member; and by independent insulation contractors over whom this defendant has no control; and further, plaintiff is supposed to be an expert tradesman and technician in the application of asbestos insulation products.

(h) As to any safety control suggested, this defendant objects for the reason there is no duty existing on the manufacturer of insulation products containing some asbestos to prescribe or require any safety controls; and further, there exists no relationship between the manufacturer of the product and the insulating contractor who will contract to apply the same, such as to allow the manufacturer to require the contractor to follow any particular safety suggestions. Neither is there any relationship between the manufacturer and the technician or mechanic, who is well versed in the application of insulation products, to require him to follow any suggested safety measures or to control safety measures in the application of the product.

5.

This defendant objects to Paragraph 6 of said motion wherein it is requested that defendants be ordered to produce any breathing apparatus, device or other safeguards which defendants claim would materially reduce or completely eliminate the disease of asbestosis if used by the workers applying asbestos materials.

The Potter v. Fibreboard Case File (1969-1972), Objections to plaintiff's motion for discovery
ACL Doc 10398 · Page 6 of 10
Published by AsbestosClaims.Law
asbestosclaims.law/library/10398/6

Defendant objects to such motion for each of the following reasons:

(a) Because such paragraph of the motion assumes that the disease of asbestosis would be produced by use of the product of this defendant.

(b) Because defendant has answered this question by its answer to Interrogatory No. 33, which states:

> "33. Defendant contends that respirators are currently on the market which will materially reduce inhalation of asbestos dust and fibers. Such respirators are available under the United States Bureau of Mines Schedule 21B. Tests upon which said approval are based were designed and conducted by that governmental agency and are described in the Respiratory Protective Devices Manual published by the American Industrial Hygiene Association, American Conference of Governmental Hygienists, 1963. One such respirator, 'Dustfoe 77', Catalog No. 10-9600, is manufactured by the Mine Safety Appliances Company."

6.

Subject to the foregoing objections to plaintiff's motion for discovery, this defendant makes the following answers to Paragraph 5 and Paragraph 7 of such request:

Answer to Paragraph 5:

This defendant does not maintain any medical research department. Its scientific research department in connection with its product is under the direction of Mr. Harry Hoopes, Fibreboard Corporation, San Francisco, California, and others in his department.

Answer to Paragraph 7:

The defendant does not know at this time the name and address of the company representative who will appear at the time of the trial of this case.

The Potter v. Fibreboard Case File (1969-1972), Objections to plaintiff's motion for discovery
ACL Doc 10398 · Page 7 of 10
Published by AsbestosClaims.Law
asbestosclaims.law/library/10398/7

WHEREFORE, this defendant prays that the Court rule on the objections and exceptions to said motion for discovery.

Respectfully submitted;

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BEAUMONT, TEXAS

BY Geo. A. Weller
GEO. A. WELLER,
ATTORNEYS FOR DEFENDANT,
FIBREBOARD CORPORATION.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing objections to plaintiff's motion for discovery and to limit and restrict said motion for discovery, was served on Mr. Ward Stephenson, Stephenson Building, Orange, Texas, attorney for plaintiff, by mailing a copy to his address by certified mail on the 19 day of December, 1969.

A copy was served on the following attorneys of record by regular mail on the 19 day of December, 1969:

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The Potter v. Fibreboard Case File (1969-1972), Objections to plaintiff's motion for discovery
ACL Doc 10398 · Page 8 of 10
Published by AsbestosClaims.Law
asbestosclaims.law/library/10398/8

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The Potter v. Fibreboard Case File (1969-1972), Objections to plaintiff's motion for discovery
ACL Doc 10398 · Page 9 of 10
Published by AsbestosClaims.Law
asbestosclaims.law/library/10398/9

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