IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED
DEC 23 1969
James R. Cooney, Clerk, U. S. Court
By Margaret Lowe DEPUTY

S. R. POTTER §

VS. §

FIBREBOARD PAPER PRODUCTS §

CORPORATION ET AL §

CIVIL ACTION NO. 6329

ANSWERS OF DEFENDANT, COMBUSTION ENGINEERING, INC., TO PLAINTIFF'S INTERROGATORIES UNDER RULE 33, FEDERAL RULES OF CIVIL PROCEDURE.

Now comes the defendant, Combustion Engineering, Inc., in the above-entitled and numbered cause, and makes and files the following answers to Interrogatories heretofore served upon said defendant under Rule 33, Federal Rules of Civil Procedure, as follows:

1.

Defendant, Combustion Engineering, Inc., did not manufacture any type of insulating materials prior to December 31, 1967.

However, R & I Refractory and Insulation Corporation, which was acquired by Combustion Engineering, Inc., by purchase in June, 1963, but which was operating as a separate entity until December 31, 1967, at which time it was merged with Combustion Engineering, Inc., began, on or about April 2, 1964, to manufacture the following insulating materials:

(1) Griptex, a mineral fiber block insulation, consisting of mineral wool, packaged in cardboard cartons of about 3 cubic feet capacity.

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(2) Detrick Blanket insulation, being spun mineral fibers felted in large flat sheets and encased between metal fabrics, consisting of mineral wool and wire facings, packaged in cardboard cartons of about 12 cubic feet capacity.

(3) Detroc Asbestos Board, being asbestos board insulating material, comprised of asbestos Portland cement, packaged in crates of 10 sheets per crate.

(4) Detrick Easy Seal Cement, insulating cement comprised of asbestos and clay, packaged in 40 pound bags.

(5) Detrick Bonding Cement, insulating cement, comprised of mineral wool, asbestos and clay, packaged in 50 pound bags.

(6) Detrick Thinsuliner cement, insulating cement, comprised of clay, asbestos and Portland cement, packaged in 50 pound bags.

(7) Detrick Pyroscat, light-weight fire-proofing protective treatment for structural steel, being a preblended mixture of high temperature aggregates, asbestos fibers, hydraulic binder and other materials.

(8) Detrick casing cement, comprised of asbestos and Portland cement, packaged in 50 pound bags.

(9) Detrick T-60 Insulating Finish, insulating finish cement, comprised of mineral wool, asbestos and Portland cement and clay, packaged in 50-pound bags.

(10) Detrick MHD Finishing Cement, finishing cement, consisting of asbestos and Portland cement, packaged in 50 pound bags.

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(11) Detrick No. 7 Asbestos Cement, straight asbestos fiber cement, comprised of asbestos, packaged in 100-pound bags.

(12) Detrick Asbestos Ropes, consisting of two types, blue fiber rope and white fiber rope, comprised of long fiber amosite, finished in 100 foot coils 1/2 to 2 inches in diameter.

(13) Loose wool, comprised of wool fibers, packaged in 40-pound bags.

(14) Granulated wool, comprised of wool fibers, packaged in 40-pound bags.

(15) Slag Fiber, which is the material of which all mineral wool is made.

(16) Super No. 711 Mineral Wool Cement, insulating cement, comprised of asbestos, wool and clay, packaged in 50-pound bags.

(17) Utility Thermal Finish Cement, thermal finishing cement, comprised of asbestos, wool, Portland cemand and clay, packaged in 50-pound bags.

(18) Hilite, insulating and finishing cement, comprised of mineral wool, asbestos, Portland cement and clay, packaged in 50-pound bags.

Prior to the year 1940 and until the year 1959, but not since the year of 1959, the said R & I Refractory and Insulation Corporation manufactured the following insulating blocks:

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(1) No. 12 insulating blocks, comprised of expanded perlite, cement binder, 5% amocite fiber, packaged in cardboard coartons of about 3 cubic feet capacity.

(2) No. 18 insulating Block, comprised of expanded vermiculite, cement, and diatomaceous clay, packaged in cardboard cartons of about 3 cubic feet capacity.

(3) No. 19 insulating blocks, comprised of expanded vermiculite, cement and diatomaceous clay, packaged in cardboard cartons of about 3 cubic feet capacity.

Prior to its acquisition by and merger with Combustion Engineering, Inc., and beginning prior to the year 1940, R & I Refractory and Insulation Corporation manufactured and still manufactures (now operating as C-E Refractory Division of Combustion Engineering, Inc.) the following insulating materials:

(1) Super Stic Tite, an insulating cement comprised of asbestos, wool and clay, packaged in 50-pound bags.

(2) Super Finish Stic Tite, finishing insulating cement, comprised of asbestos, wool, Portland cement and clay, packaged in 50-pound bags.

(3) R & I Insulated Felt (Blankets), laminated sheets secured with galvanized wire, comprised of mineral wool, packaged in cardboard cartons of about 12 cubic feet capacity.

(4) Loose wool, comprised of mineral wool, packaged in 40 pound bags.

(5) Stic Tite, insulating cement, comprised of asbestos, wool and clay, packaged in 50-pound bags.

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(6) Super Finish, insulating finish cement, comprised of asbestos,wool, Portland cement and clay, packaged in 40 pound bags.

(7) Pourinsul, granulated fibrous material, consisting of clay, wool and Portland cement, packaged in 40-pound bags.

(8) Packinsul, granulated mineral fibers, comprised of wool, packaged in 40-pound bags.

(9) Finish Stic Tite, insulating finish cement, comprised of wool, asbestos, Portland Cement and clay, packaged in 25 and 50 pound bags.

(10) Guninsul, insulating seal material, comprised of wool, banded vermiculite and clay, packaged in 50 pound bags.

(11) Casabloc, insulating pouring cement, comprised of wool, vermiculite and cement, packaged in 50 pound bags.

(12) Mix A, semi-expansion insulation, comprised of asbestos, mineral wool and clay, packaged in 50 pound bags.

As stated, on December 31, 1967, R & I Refractory and Insulation Corporation merged with Combustion Engineering, Inc., and has since that time operated as a Division of Combustion Engineering, Inc.

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2.

This defendant objects to Interrogatory No. 2 and says the same is argumentative; and defendant denies the products manufactured by it were of a dangerous nature, and says that each of the products manufactured by it were suitable and reasonably fit for the purpose for which the products were intended.

3.

Defendant has not made the studies referred to.

4.

See answer to Interrogatory No. 3.

5.

Defendant, Combustion Engineering, Inc., did not, prior to December 31, 1967, package and sell any products containing asbestos. However, R and I Refractory and Insulation Corporation, which was formerly owned by Combustion Engineering, Inc., and which merged with Combustion Engineering, Inc., on December 31, 1967, packaged and sold the products listed in answer to Interrogatory No. 1 to contractors throughout the United States, through representatives, distributors and direct salesmen, some of which products, as shown by the answer to Interrogatory No. 1, contained asbestos and other materials, and the answer to Interrogatory No. 1 is here referred to; and in addition, sold, but did not package, the following products:

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(1) Duriseal, a blend of asphalt mastics, comprised of asphalt and asbestos fibers, obtained pre-packaged in drums of 5, 30 and 55 gallon capacity.

(2) Permiseal, insulating sealer and weather-coating, comprised of asphalt and asbestos fibers, obtained pre-packaged in drume os 5, 30 and 35 gallon capacity.

(3) Weathercoat, protective coating, comprised of asphalt and asbestos fibers, packaged in 5, 10 and 55 gallon drums, and obtained pre-packaged.

6.

Defendant's products were used generally throughout the United States.

7.

Defendant objects to interrogatory No. 7 because same is argumentative and ambiguous, unintelligible and irrelevant to any issue in this case. Subject to such objection, defendant answers same No.

8.

No studies have been made directly by this defendant.

9.

No.

10.

No, defendant's experience has not indicated the need for doing so, and defendant does not regularly inspect the areas where workers are using products manufactured by defendant, and does not have any control over such work areas or sites where such products are used, and defendant does not make surveys in the field where such products are used.

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11.

Defendant objects to Interrogatory No. 11 for the reason that same is argumentative, ambiguous, immaterial and irrelant, and is not within the purview of the Rule relating to Interrogatories to a Party, and is not a proper matter for discovery and cannot lead to the discovery of matters which are relevant, or to proper matters of discovery.

12.

Defendant objects to Interrogatory No. 12 for the reason that same is argumentative, ambiguous, immaterial and irrelevant, and is not within the purview of the Rule relating to Interrogatories to a Party, and is not a proper matter for discovery and cannot lead to the discovery of matters which are relevant or to proper matters of discovery.

13.

Defendant objects to Interrogatory No. 13 for the reason that same is argumentative, ambiguous, immaterial and irrelevant, and is not within the purview of the Rule relating to Interrogatories to a Party, and is not a proper matter for discovery and cannot lead to the discovery of matters which are relevant or to proper matters of discovery.

14.

No.

15.

See answer to No. 10. Defendant does not make dust samplings in the field.

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16.

Defendant objects to Interrogatory No. 16 on the grounds that same are irrelevant and immaterial in that plaintiff does not claim he has asbestos-induced cancer, and subject to this objection answers said interrogatory No. 16 no.

17.

Defendant objects to Interrogatory No. 17 on the grounds that same is immaterial and irrelevant in that plaintiff does not claim he has the disease of mesothelioma.

18.

Beginning in 1969, the following warning has been placed on this defendant's products containing asbestos, such warning being to all who use such products: "CAUTION: This product contains asbestos fibers. Excessive inhalation of asbestos may be harmful. If adequate ventilation is not possible, wear respirators approved by the U. S. Bureau of Mines." This was done because there was much discussion about the matter and acting on the advise of industry spokesmen it was decided to transmit this information to workers using the product if they did not already have this information

19.

Interrogatory No. 19 is objected to on the grounds that it is irrelevant and immaterial in that plaintiff does not claim he has cor pulmanale.

20.

Defendant recognizes that asbestos is a durable material but does not recognize that asbestos fiber exists for an infinity of years.

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21.

Defendant recognizes that year by year more asbestos is used in the United States, but the remainder of the interrogatory No. 21 is answered no.

22.

No.

23.

No.

24.

See answer to No. 10 above.

25.

No.

26.

Defendant objects to Interrogatory No. 26 for the reason that same is ambiguous, argumentative, irrelevant and immaterial and assumes a fact not in evidence.

27.

See answer to Interrogatory No. 26 above.

28.

See answer to Interrogatory No. 26 above.

29.

Yes, these products can be distinguished by their appearance.

30.

Yes, generally speaking.

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31.

Combustion Engineering, Inc., was incorporated under the laws of the State of Delaware October 25, 1912, and Windsor, Connecticut, is one of its domiciles.

32.

Combustion Engineering, Inc., has been engaged in the manufacture of products containing asbestos and which are commonly used by insulators and asbestos workers since December of 1967. However,it acquired by purchase, in June, 1963, R and I Refractory and Insulation Corporation, which had manufactured insulation containing asbestos, the latter having begun the manufacture of such products in about the year 1938.

33,

Defendant contends respirators are currently on the market which will materially reduce inhalationof 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 Productive 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.

34.

See answer to No. 32 above. Further answering such interrogatory No. 34, defendant says such products have not been placed "upon the open market to be purchased and used by the public" but are sold within a specific trade for a specific use.

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35.

No; no tests have been made, but defendant has had no harmful effects on personnel involved with the manu= facture of these products.

36.

Not to the knowledge of this defendant.

37.

Defendant objects to Interrogatory No. 37 in that it is not within the purview of the Rule relating to Interrogatories to a party, calls for an opinion and an assumption, and is argumentative, ambiguous, irrelevant and immaterial, and assumes facts not in evidence.

38.

(1) Generally mixed with water.

(2) Defendant does not manufacture.

(3) Defendant manufactures no bricks or blocks of all asbestos. Asbestos containing pro-blocks are generally scribed or cut with a saw or knife.

(4) Defendant does not manufacture.

(5) Generally mixed with water.

(6) Defendant does not manufacture.

(7) Defendant does not manufacture.

The worker can avoid inhalation of asbestos dust or fibers by working in properly ventilated places and by wearing face masks and inhalators, if there is any asbestos dust or fibers. Insofar as defendant's products are concerned, after the cements are mixed with water, there is no dust present and can be used without contributing dust to the environment.

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39.

The number of employees who have worked for this defendant for 20 years or more and had any indication of lung disease was three, and upon reexamination in November, 1968, no evidence of asbestosis was indicated.

40.

Defendant does not have the medical information or knowledge referred to.

41.

Defendant objects to Interrogatory No. 41 for the reason that the matter called for therein is immaterial and irrelevant to any issue in this cause, and same is not the subject of discovery nor within the purview of the Rule in regard to interrogatories to a party, and cannot lead to matters which are the subject of discovery, and said interrogatory is irrelevant and immaterial to any issue in this cause.

42.

Defendant objects to Interrogatory No. 42 for the reason that the matter called for therein is immaterial and irrelevant to any issue in this cause, and same is not the subject of discovery nor within the purview of the rule in regard to interrogatories to a party, and cannot lead to matters which are the subject of discovery.

43.

Defendant objects to Interrogatory No. 43 for the reason that the matter called for therein is immaterial and irrelevant to any issue in this cause, and same is not the subject of discovery nor within the purview of the rule in regard to interrogatories to a party, and cannot lead to matters which are the subject of discovery.

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44.

President of Combustion Engineering, Inc., - Arthur J. Santry, Jr., 62 Vineyard Lane, Greenwich, Connecticut.

There is at present no Chairman of the Board.

45.

No answer required.

46.

Defendant objects to Interrogatory No. 46 for the reason that same calls for a conclusion and an opinion, and such matter is not within the purview of the rule relating to interrogatories, and is an attempt by the plaintiff to bolster the witness and lead to the introduction of medical articles, and defendant should not be required to pass on the qualifications of Dr. Selikoff.

47.

Defendant objects to Interrogatories Nos. 47 to 84, Inc., and each of them for the reason that same call for conclusions and opinions on questions of law.

Attorney for Defendant,
Combustion Engineering, Inc.,
1014 San Jacinto Bldg., P.O.Box 1632,
Beaumont,Texas.

THE STATE OF TEXAS, §
COUNTY OF JEFFERSON. §

Charles S. Pipkin, being duly sworn, on oath deposes and says that he is attorney for the defendant, Combustion Engineering, Inc., in the above cause and as such is duly authorized to make, file and serve the foregoing answers to interrogatories and this affidavit, and that he does so acting on such authority and authorization; that he has read over the foregoing answers and the same are true and correct.

SUBSCRIBED AND SWORN TO before me, the undersigned authority, this 22 day of December, 1969, to certify which witness my hand and seal of office.

NOTARY PUBLIC IN AND FOR
JEFFERSON COUNTY, TEXAS.

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CERTIFICATE OF SERVICE.

I hereby certify that the above and foregoing instrument has been served upon the interested parties by mailing true and correct copies thereof to the following named attorneys of record for the respective parties, this 23 day of December, 1969:

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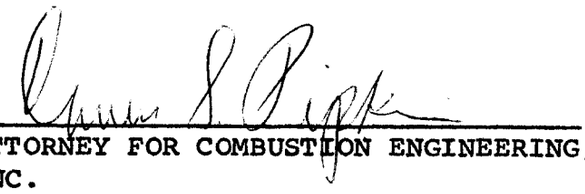
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