IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED

DEC 23 1969 P.M. 19

James R. Cooney, Clerk, U. S. Court

By Margaret Driver DEPUTY

SAMUEL R. POTTER §

VS. §

CIVIL ACTION NO.6329

FIBREBOARD PAPER PRODUCTS §

CORPORATION, ET AL §

OBJECTIONS OF DEFENDANT, COMBUSTION ENGINEERING, INC., TO PLAINTIFF's MOTION FOR DISCOVERY AND TO LIMIT AND RESTRICT SAID MOTION FOR DISCOVERY.

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes the defendant, Combustion Engineering, Inc., in the above-entitled and numbered cause, 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 unto the Court the following:

1.

This defendant objects to Paragraph 1 of the Motion and the matters called for therein, wherein the plaintiff is seeking to have this defendant produce samples of such materials as it manufactures for use in insulating which contain any asbestos, for the following reasons:

(1) Having to produce a sample of each and every insulating product manufactured by this defendant and its predecessors for the period of 1940 through 1969, a period of 29 years, would place an undue burden on the defendant and 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 such products manufactured by it over such a period of time, or that a defendant assume this burden which is both

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onerous and expensive.

(2) Said motion is too broad and general in scope and if defendant is required to furnish any sample or samples, it should be required only to furnish a sample of its product which is representative of a particular class of products presently manufactured by it; and defendant requests that the motion be so limited.

(3) Defendant further shows unto the Court that it would be an unreasonable demand, and oppressive to this defendant, to require it 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 of which has been discontined.

2.

Defendant objects to Paragraph 2 of the Motion and the matters called for therein, for the following reasons:

(1) Defendant has heretofore furnished information in answer to interrogatories in this case regarding the products manufactured by it and the period of time during which such was manufactured, and it should not be required to furnish such information a second time in response to the motion for discovery, same being repetitious and burdensome on this defendant and can serve no useful purpose.

(2) To require the defendant to label each and every product by the manufacturer's name would merely allow the plaintiff or a witness for him to identify each and every product after he knew the name or the product or the manufacturer thereof, and the plaintiff has testified under oath in his deposition that he did not know at any time the name of the product he was working with, nor the manufacturer thereof,

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

3.

This defendant objects to Paragraph 3 of the Motion and the matters called for therein for all of the reasons set forth above in opposition to paragraphs 1 and 2 of the Motion, and in addition for the following reasons:

(1) To be required to ;furnish a copy of all sales literature concerning the products manufactured or distributed by the defendant is too broad and general and lacking in particularity, and will be burdensome and oppressive on this defendant, in that much of the literature in connection with the various products has been revised during the years, and some of which has been superseded, and the matters sought are lacking in specificity as to time which would be material or relevant.

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

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

(4) 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.

Defendant is willing to furnish current sales literature

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concerning the products which contain some asbestos which are manufactured by this defendant.

4.

Defendants objects to paragraph 4 of the motion for each and all of the reasons set forth above in opposition to pagraphs 1 and 2 of the Motion, and in addition, for the following reasons:

(1) To furnish all engineering, scientific and research data concerning such products would take an unconscionable amount of time by many of defendant's employees, to amass the data called for, and same would be unduly cumbersome and expensive on this defendant, and much effort would go into the accumulation of such data, and it is unreasonable to require this defendant to produce all of the matters called for in such motion.

(2) Such request is too broad and general.

(3) Such motion is insufficiently specific, and no good cause is shown in connection with paragraph 4 of said Motion, and said request will result in extensive examination of documents and disorder in the proceedings, and there is no limitation placed on such matters as to either time or amount, other than "all", and "all of such material would be voluminous and much of same immaterial and irrelevant, and said motion in such respect is without merit.

(4) Engineering, scientific and research date concerning such products is confidential, and may involve patent information, trade secrets, etc., and such should not be required to be produced in this cause when the defendant has heretofore made disclosure of the names of such products and the ingredients thereof.

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(5) The products are insulating material containing a small amount of asbestos, and the recommendation for use and adaptability in the field of insulation is found in catalogues which have been published, of which the plaintiff or his attorney have knowledge.

(6) 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 workers' 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.

(7) 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 ro 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.

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5.

Defendant objects to Paragraph No. 7 of the motion, requesting defendants be ordered to produce any breathing apparatus, device or other safeguards which defendant claims would materially reduce or completely eliminate the disease of asbestosis if used by workers, for the following reasons: (1) Defendant does not manufacture nor distribute breathing apparatuses, but such breathing apparatus or masks are produced by other manufacturers and the use thereof is well known in the insulation trade and the purpose of the use of same is well known to members of the asbestos union, who are expert in the application of asbestos products, their foreman and contractors

(2) This defendant has answered this question by its answer to Interrogatory No. 33, to which reference is hereby made, and the breathing apparatus or mask or safeguard is something that the plaintiff or his attorney can obtain, and this defendant should not be required to go outside of its own organization to produce evidence for the plaintiff; and further, defendant says that it is common knowledge in the insulation industry that respirators or masks are available for the use of insulators and it is usual and customary for foremen on jobs to order the same and for the employers to furnish them.

6.

Defendant denies that it has possession, control and custody of each and all of the matters which the plaintiff requests be produced in said motion.

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Defendant further opposes and objects to said motion and says it should not be required to comply with same or any part thereof for the reason that under Rule 34 under which said motion purports to be filed, no good cause is shown for the production of such matters as called for in said motion, and said motion does not show good cause in connection with the matters requested to be produced either in paragraphs 2, 3, 4, 5, 6 and 7 and each of them as a basis for requiring this defendant to produce any or all of the matters sought in said paragraphs or either of them, and no good cause exists, and the matters called for, and the scope and age thereof are not necessary for the plaintiff to properly prepare his cause of action, if any he has, which is not admitted.

WHEREFORE, defendant prays the Court to set said motion for hearing and this opposition thereto, and that upon hearing the Court sustain the foregoing objections.

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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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