GED:mva 12/24/60 O/1/f

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
DEC 24 1969
JAMES R. COONEY, CLERK
BY DEPUTY Rosalie M. Graham

SAMUEL R. POTTER	(	
	(	
VS.	(	CIVIL ACTION NO. 6329
	(	
FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL	(	

ANSWERS OF THE DEFENDANT, PITTSBURGH CORNING CORPORATION TO INTERROGATORIES PROPOUNDED BY THE PLAINTIFF

TO THE PLAINTIFF, SAMUEL R. POTTER, AND MR. WARD STEPHENSON, STEPHENSON & THOMPSON, STEPHENSON BUILDING, ORANGE, TEXAS, HIS ATTORNEY OF RECORD:

Defendant, Pittsburgh Corning Corporation, in response to interrogatories propounded under Rule 33, of the Federal Rules of Civil Procedure, served herein upon this Defendant's counsel, files this, its answers to such interrogatories. Such answer to each interrogatory bears the same number as the interrogatory propounded:

1.

Since August, 1962, Pittsburgh Corning Corporation has manufactured UNIBESTOS insulation. Unibestos contains amosite asbestos fiber, sodium silicate and diatomaceous earth.

2.

This question is objected to as argumentative and this Defendant denies that the products manufactured by it were of a dangerous nature and further says that said product manufactured by it is suitable and reasonably fit for the purpose for which such product is manufactured and used.

3.

This Defendant says that no studies to determine the effect of the

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above-named product on the lungs and physical condition of persons employed as insulators and asbestos workers who used the materials manufactured by this Defendant were made. However, this Defendant says that employees of Pittsburgh Corning Corporation's Unibestos Manufacturing Plants are given pre-employment and annual chest X-rays, which have failed to reveal any evidence of a dust-related pulmonary disease. On this basis, this Defendant states that the above-named product manufactured by it is suitable and reasonably fit for the purpose for which the product is manufactured and used. This Defendant further states that studies have been made by scientists engaged by the United States Government and others.

4.

See answer to No. 3.

5.

Yes. Since August, 1962, this Defendant has sold its product to distributors, contractors and agencies of the United States Government. The product was packaged in cartons. The product was not sold universally throughout the United States but is sold in various parts of the United States.

6.

This product was sold to various distributors, contractors and agencies of the United States and it is understood that in turn it was used in new construction and repair of various manufacturing facilities requiring the use of the insulation materials.

7.

This question is objected to, as argumentative ambiguous, unintelligible and irrelevant to the issues in this case. Assuming the word "use" is being utilized in its normal usage, the answer is "No."

8.

No studies have been made directly by this Defendant. There are studies of it available which have been made by scientists engaged by the United States Government and others.

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9.

This interrogatory is objected to, as vague, ambiguous and unintelligible, since the same is so broad and general that this Defendant is unable to determine when or at what time the Plaintiff refers in propounding such interrogatory. However, assuming that the Plaintiff means that such studies inquired are concerned with the product after it has left this Defendant's manufacturing plants, the answer is "No."

10.

This Defendant does not regularly inspect the area or areas where workers are using products manufactured by it, assuming that the Plaintiff refers to in-the-field inspection. The reason such inspections are not made is that this Defendant (1) has no jurisdiction or control over the area or areas in which it may be used; (2) it has no way of knowing where its product is being applied; and (3) has no control over the manner of installation by the individual insulator or contractors. Scientists engaged by the United States Government and others, as well as published literature, indicate that in areas where workers were using this Defendant's products, dust counts have been below the threshold limit value set by the American Conference of Governmental Industrial Hygienists.

11.

This Defendant objects to answering interrogatory No. 11 because of the fact that the same is irrelevant and immaterial to this law suit, is argumentative and inflammatory and, above all, is ambiguous.

12.

This Defendant objects to answering interrogatory No. 12 because of the fact that the same is irrelevant and immaterial to this law suit, is argumentative and inflammatory and, above all, is ambiguous.

13.

This Defendant object to answering interrogatory No. 13 because of the fact that the same is irrelevant and immaterial to this law suit, is argumentative and inflammatory and, above all, is ambiguous.

14.

No.

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15.

None. See answer to interrogatory No. 10 above.

16.

This Defendant objects to answering interrogatory No. 16 because it is irrelevant and immaterial as well as being inflammatory, since the Plaintiff does not claim he has asbestos-induced lung cancer.

17.

This Defendant objects to answering interrogatory 17 because the same is irrelevant and immaterial and inflammatory in that the Plaintiff does not claim he has the disease mesothelioma.

18.

Yes. Since 1968 containers of the product Unibestos have had the following warning labels on them: "This product contains asbestos fibers. If dust is created when this product is handled avoid breathing the dust. If adequate ventilation is not possible, wear respirators approved by U. S. Bureau of Mines." This Defendant was of the opinion that such information should be transmitted to workers using the product if such workers did not already have such information. The use of same has commenced at the suggestion of an industry wide committee.

19.

This Defendant objects to answering interrogatory No. 19 for the reason that the same is irrelevant, immaterial and inflammatory and for the further reason that the Plaintiff does not claim he has cor pulmonale.

20.

Nothing exist for an infinity of years. Asbestos is a durable material. This Defendant recognizes that more asbestos is being used, but answers "No" to the remainder of the question.

21.

No.

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22.

No.

23.

Not directly.

24.

No. See answer to No. 10.

25.

No.

26.

This Defendant objects to answering interrogatory No. 26 for the reason that the same is ambiguous, conjectural, speculative, irrelevant and immaterial and that the phrase "problem of asbestos dust" is unintelligible and not subject to any answer by this Defendant. Additionally, the word "problem" is not defined and the entire question is argumentative, inflammatory, irrelevant and immaterial to this law suit.

27.

See answer to No. 26.

28.

This Defendant objects to answering interrogatory No. 28 for the reason that the same is vague, indefinite, conjectural and inflammatory and is irrelevant to this law suit.

29.

It is possible in most cases to distinguish Unibestos from other products manufacured by competitors by color and appearance.

30.

No.

31.

State of Pennsylvania with offices in the City of Pittsburgh, Pennsylvania. This Defendant's counsel does not have the date of incorporation at this time, but if relevant, the same will be supplied to the Plaintiff's counsel at a later time.

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32.

Since August 1962.

33.

Defendant answers that respirators are currently on the market which will materially reduce the inhalation of asbestos dust and fibers. Such respirators are available under the U. S. Bureau of Mines Schedule 21B. Tests upon which said approvals are based were designed and conducted by that governmental agency and/or described in the Respiratory Protective Devices Manual published by the American Industrial Hygiene Association, American Conference of Governmental Industrial Hygienists, 1963. One such respirator, "Dustfo 77" Catalog No. N-9600 is manufactured by the Mines Safety Appliance Company.

34.

No. This Company has manufactured Unibestos since August, 1962 and this product is not placed on the open market to be purchased and used by the public.

35.

This Defendant does not believe that Unibestos is harmful or dangerous in and of itself. The product, if safely used, by contractors and their employees, for its intended purposes, is not harmful. Therefore, no tests are necessary from the standpoint of this Defendant. However, a test conducted by the American Conference of Governmental Industrial Hygienists and scientists employed by the United States Government and others are available to the public as well as to this Defendant.

36.

There are no known cases of deaths or serious lung disease among the employees of this Defendant.

37.

This Defendant objects to Interrogatory No. 37 for the reason that the same is argumentative, inflammatory, ambiguous, irrelevant and immaterial to any issue in this lawsuit and assumes facts not in evidence.

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38.

Unibestos is for the most part applied in the field as it is taken out of the shipping carton. When it becomes necessary to cut the pipe-covering this is done in two ways. The insulation contractor will cut for mitreing or tees short sections, etc. on a band saw in a shop where any dust is controlled by suction fans. If it becomes necessary to cut on the job at the point of application, the applicator will use a hand saw for this operation.

39.

Current statistics are not presently available but when ascertained will be furnished Plaintiff. However, it can be stated that annual chest X-rays have been given to all employees of this Defendant. No significant findings of asbestos exposure have been encountered, which includes employees who have worked at Defendant's plant since 1954.

40.

No.

41-45.

This Defendant objects to answering interrogatories 41 through 45 for the following reasons: (a) The same inquire as to matters of fact which are of public record and are equally available to Plaintiff as to this Defendant (b) The same inquires into matters of a highly prejudicial nature which would result in a comparison of the relative financial resources of this Defendant with that of the Plaintiff.

46.

This Defendant has no basis upon which to form an opinion regarding this question.

47-84.

This Defendant objects to interrogatories No. 47-84, inclusive for the following reasons: (a) The same do not inquire as to any matter of fact authorized under Federal Rule 33; (b) The same inquires as to matters of law and are not required to be answered under Federal Rule 33; (c) The same inquires into the matters requiring considerable legal research which

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would be unfairly and unduly onerous upon this Defendant; (d) The same inquired into matters which are equally available to the Plaintiff as to this Defendant; (e) The same call for conclusions and opinions on questions of law which are not properly the subject of the discovery process set forth in Federal Rule 33.

DATED THIS 24th DAY OF DECEMBER, 1969.

WELLS, DUNCAN, BEARD
GREENBERG AND HUNT

By: George E. Duncan
George E. Duncan
515 Beaumont Savings Bldg.
P. O. Box 3708
Beaumont, Texas 77704

Attorneys for Defendant -
Pittsburgh Corning Corporation

STATE OF TEXAS

COUNTY OF JEFFERSON

BEFORE ME, the undersigned authori ty on this day personally appeared George E. Duncan, attorney of record for the Defendant in the above-styled and numbered cause, duly authorized to make this affidavit, and having been duly sworn states that the answers contained in the above and foregoing answers to interrogatories are true and correct.

George E. Duncan
George E. Duncan

SWORN TO AND SUBSCRIBED BEFORE ME THIS 24 DAY OF DECEMBER, 1969.

Martha J. Bennett
Notary Public in and for
Jefferson County, Texas

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CERTIFICATE

I, George E. Duncan, attorney of record for the Defendant, Pittsburgh Corning Corporation, in the above-styled and numbered cause do hereby certify that a true and correct copy of the above and foregoing Answers to Interrogatories was on this 24th day of December, 1969, served upon the Plaintiff by depositing the same in the United States mail, postage prepaid addressed to Mr. Ward Stephenson, Stephenson Building, Orange, Texas, attorney of record for the Plaintiff; and that true copies of said interrogatories were on this 24th day of December, 1969, served upon all other Defendants in this ation by mailing copies of the same to said attorneys at their respective addressed.

George E. Duncan

George E. Duncan

Attorney for Defendant
Pittsburgh Corning Corporation

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ANSWERS OF THE DEFENDANT, PITTSBURGH CORNING CORPORATION TO INTERROGATORIES PROPOUNDED BY THE PLAINTIFF

LAW OFFICES OF
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