IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED
DEC 26 1972
Myra Barton

S. R. POTTER I

vs I CIVIL ACTION NO. 6329

FIBREBOARD PAPER PRODUCTS CORPORATION ET AL I

DEFENDANT JOHNS-MANVILLE PRODUCTS CORPORATION'S OBJECTIONS TO PLAINTIFF'S MOTION FOR DISCOVERY AND TO LIMIT AND RESTRICT SAME

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now the Defendant, Johns-Manville Products Corporation, and files these its objections to Plaintiff's Motion for Discovery, and its Motion to Limit Same, and as grounds therefor would show the Court the following:

I.

Defendant objects to Paragraph 1 of said Motion, wherein Plaintiff states that it is necessary for this Defendant to produce samples of materials that it manufactures, containing asbestos, for the following reasons:

a) This Defendant objects to the request to produce samples which contain asbestos, because the period of time involved is 1940 through 1969, and it would place an onerous burden on this Defendant to comply with said motion.

b) To comply with said motion would put this Defendant to considerable expense, and consume considerable time in assemblying, packaging and transporting said products.

c) Rule 34 of the Federal Rules of Civil Procedure does not contemplate nor incompass the requirement that a Defendant produce samples, as requested by Plaintiff, and this burden should not be placed

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upon this Defendant.

The Court should limit the requirement for production of such product or products manufactured by this Defendant to those products, if any, which Plaintiff claims he has worked with.

II.

In Paragraph 2 of said Motion for Discovery Plaintiff requests the following:

a) Name of manufacturer;

b) Trade name;

c) That the date when the product was first manufactured be given.

This Defendant objects to Paragraph 2 for the reason that it has heretofore, in answer to Interrogatories, given the trade name of its products, together with the other information requested.

Further, this Defendant would show the Court that it should not be required to label each and every product which it manufacturers by name for the reason that to require this Defendant at this time to identify its products by name, would merely allow the Plaintiff, or a witness, to identify each and every product after he knew the name of the product or the manufacturer thereof.

Defendant would further show the Court that it would be unreasonable to require this Defendant to accumulate a sample or samples of each and every product manufactured by it as the products come in various shapes and sizes, and for this reason, said Motion for Discovery is oppressive, and should be quashed.

If any markings of any product is required by the Court, then such markings should be with a code number, which should be furnished to the Court only.

III.

Plaintiff has requested in Paragraph 3 of said Motion that Defendant be ordered to produce all sales literature concerning each product. This Defendant objects to said Paragraph for the following reasons:

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a) Said request is not limited as to time;

b) Sales literature is available to Plaintiff, and Plaintiff has heretofore acquired sales literature covering products which were manufactured by this Defendant;

c) Said literature would be irrelevant and immaterial for the reason that Plaintiff has not testified that he relied upon same;

d) Said sales literature is irrelevant, because no privity of contract exists between Plaintiff and Defendant.

IV.

By Paragraph 4 of said Motion, Plaintiff has requested that the Court enter an order requiring Defendant to produce all engineering, scientific and research data covering such products, their suggested use and adaptability, methods of applying and any safety controls suggested.

This Defendant objects to said Paragraph for each of the following reasons:

a) Engineering, scientific and research data concerning such products is confidential information, and may involve patent information and trade secrets, and such data should not be required to be produced in a damage suit;

b) The Plaintiff and his attorney have in their possession a catalog listing the products manufactured by this Defendant involving the recommendations for the use and adaptability of said products;

c) As to the application of said products, this is a matter controlled by the asbestos union of which the Plaintiff is a member.

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d) As to any safety controls suggested, this Defendant objects for the reason that there is no duty on the manufacturer of asbestos insulating products to prescribe or require safety controls.

V.

By Paragraph 5 of said Motion, Plaintiff requests the name and address of the person in charge of the Defendant's medical or scientific research department.

In this connection, Defendant would show the Court that it does not maintain a "medical research department," but does maintain a "medical department."

VI.

Defendant objects to Paragraph 6 of said Motion where it is requested that Defendant 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 material for the reason that such Paragraph assumes that the disease of asbestosis would be produced by the use of the products of this Defendant.

VII.

This Defendant does not know at this time the name and address of the company representative who will appear at the time of this case.

VIII.

This Defendant denies that it has possession, control and custody of each and all of the matters which the Plaintiff requests be produced in his Motion, and requests the Court to limit said Motion as hereinabove outlined.

WHEREFORE, premises considered, this Defendant moves and prays that the Court rule on the objections and exceptions for the said Motion for Discovery, and that the Court restrict the Plaintiff's

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Motion for Discovery as hereinabove set forth.

Respectfully submitted,

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Attorney for Defendant, Johns-Manville Products Corporation

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion to Limit and Restrict Plaintiff's Motion for Discovery filed by the Defendant, Johns-Manville Products Corporation, was served on Mr. Ward Stephenson, Stephenson Building, Orange, Texas, attorney for Palintiff, by mailing a copy to said address on the 24th day of December, 1969, and a copy was likewise served on all other attorneys of record by mailing a copy to their respective addresses by regular United States Mail on the 24th day of December, 1969.

GORDON R. PATE
Attorney for Johns-Manville Products Corporation

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