IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
DEC 23 1969
JAMES R. COONEY, CLERK
BY DEPUTY Myra Barton

SAMUEL R. POTTER

VS.

FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL

CIVIL ACTION NO. 6329

ANSWERS OF THE DEFENDANT, UNARCO INDUSTRIES, INC., TO INTERROGATORIES PROPOUNDED BY THE PLAINTIFF

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

COMES NOW the Defendant, Unarco Industries, Inc., and files this its objections and answers to the interrogatories propounded by the Plaintiff herein. Said Defendant files its objections and answers to each interrogatory as numbered by Plaintiff in his request:

Interrogatory No. 1:

The following materials were manufactured previous to 1940 and were continued through the present dates unless otherwise noted:

Unibestos Pipe Insulation and Block; this product was discontinued in 1963 when the entire product line was sold to Pittsburgh Corning Corporation. The product is composed of amosite asbestos fiber bound with a silicious material (diatamaceous earth).

Insubestos felt; a thermal insulating blanket composed primarily of amosite asbestos woven with asbestos yarn

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reinforced with copper.

Asbestos gaskets; these products were mainly made from woven chrysotile asbestos textiles either with or without metallic wire cores. These gaskets were treated with natural rubber, synthetic rubber or graphite.

Packings; these packings are composed primarily of chrysotile asbestos yarn either twisted or braided and treated with various lubricants such as oil or graphite; some of these products are wrapped and formed woven asbestos cloth and have rubber cores.

Unarcoboard; this product is a calcium silicate based material with approximately 15% amosite asbestos fiber, which is introduced for reinforcement. Production of this material began in 1958.

Wovenstone; this product is a lace-on insulation composed of woven asbestos Neoprene coated jacket with an insulating filler woven from amosite asbestos fiber.

Insutape; this product is a wrap-on or spiral applied insulation medium, composed of a woven asbestos tubular jacket filled with asbestos rovings. This product is supplied with or without a Neoprene coating.

Insutube; this is a slip-on insulation consisting of a braided asbestos core, fibrous glass insulating medium and a braided asbestos jacket. This product is supplied with or without a Neoprene coating on the exterior jacket.

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Insulating cements; these products are high temperature insulating cements which were manufactured until 1959 and were composed of amosite asbestos fiber and clay filters.

Interrogatory No. 2:

Defendant objects to this interrogatory for the reason that such is argumentative, ambiguous and assumptive, and subject to such objection, Defendant denies that the products manufactured by it were of a dangerous nature and would further show that each of the products manufactured by this Defendant were suitable and reasonably fit for the purpose for which the products were intended and manufactured.

Interrogatory No. 3:

No studies have been conducted by this Defendant.

Interrogatory No. 4:

Not applicable - refer to answer to Interrogatory No. 3.

Interrogatory No. 5:

Yes. This Defendant did sell products containing asbestos fiber for the years referred to, but not knowing what is meant by the terminology "universally used throughout the United States," this Defendant is unable to answer this interrogatory further, except to state that such products were used in the plumbing and heating trade, power plants,

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commercial installations and in automobiles.

Interrogatory No. 6: The areas of application of this Defendant's product are so diversified that it would be impossible to point out any specific location or area, except as referred to in Defendant's answer to Interrogatory No. 5.

Interrogatory No. 7:

This Defendant objects to Interrogatory No. 7 for the reason that the same is argumentative, ambiguous and irrelevant to any issue in this case, however, assuming that the word "use" means the usual, customary and expected use of such materials manufactured by this Defendant, then this Defendant's answer is "No."

Interrogatory No. 8:

No such studies have been conducted directly by this Defendant.

Interrogatory No. 9:

No.

Interrogatory No. 10:

No, this Defendant does not regularly inspect the areas where workers using the products manufactured by this Defendant are being used and do not do so for the reason that such areas are not under the control and jurisdiction of this Defendant and in many instances this Defendant does not have knowledge of the locations of all of the contractor's jobs.

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Interrogatory No. 11:

Defendant objects to Interrogatory No. 11 for the reason that such is argumentative, ambiguous, irrelevant to any issue herein, calls for a conclusion and attempts to introduce hearsay evidence before the jury without the proper predicate having been laid.

Interrogatory No. 12:

This Defendant objects to Interrogatory No. 12 for the same reasons stated in its objection to Interrogatory No. 11, i.e., that such interrogatory is argumentative, ambiguous, irrelevant and immaterial to any issue in this case and for the further reason that it is vague, indefinite and attempts to introduce hearsay evidence without the proper predicate being made.

Interrogatory No. 13:

This Defendant objects to Interrogatory No. 13 for the reason that such interrogatory is argumentative, ambiguous, irrelevant and immaterial to any issue herein and for the further reason that this interrogatory is an attempt to introduce hearsay evidence before the jury as to some alleged occurrence without the proper predicate having been laid by Plaintiff.

Interrogatory No. 14:

No.

Interrogatory No. 15:

This Defendant does not conduct dust samplings in

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the field where its products are being used.

Interrogatory No. 16:

This Defendant objects to Interrogatory No. 16 for the reason that such interrogatory is argumentative, irrelevant and immaterial in that there are no pleadings on file herein that Plaintiff claims he has asbestos-induced lung cancer; Defendant further objects to the interrogatory for the reason that such is a prejudicial attempt by Plaintiff to inject lung cancer into this case to inflame the minds of the jury when there is no evidence or allegations of lung cancer being made on the part of the Plaintiff herein.

Interrogatory No. 17:

This Defendant objects to Interrogatory No. 17 for the reason that such interrogatory is argumentative, irrelevant and immaterial to any issue in this case in that the Plaintiff has not alleged or claimed that he has the disease known as mesothelioma and for the further reason that such interrogatory is a prejudicial attempt to inject the disease known as mesothelioma into this case to inflame the minds of the jurors against this Defendant when there is no such evidence of any such disease made by Plaintiff herein.

Interrogatory No. 18:

No, not during the period for which Plaintiff sues,

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1940-1967, however, such warnings have been proposed by this Defendant and may well be in use by the time these interrogatories are filed. The proposed warnings read as follows:

> "CAUTION - THIS PRODUCT CONTAINS ASBESTOS. INHALATION OF ASBESTOS DUST OVER LONG PERIODS MAY BE HARMFUL. IF EMPLOYEES ARE EXPOSED TO DUST DURING USE AND APPLICATION, THOSE EMPLOYEES SHOULD BE EQUIPPED WITH ADEQUATE PERSONAL PROTECTIVE DEVICES."

Other products may well now contain the following warning:

> "CAUTION - THIS PRODUCT CONTAINS ASBESTOS FIBER. INHALATION OF ASBESTOS IN EXCESSIVE QUANTITIES OVER LONG PERIODS OF TIME MAY BE HARMFUL. IF DUST IS CREATED WHEN THIS PRODUCT IS HANDLED, AVOID BREATHING THE DUST. IF ADEQUATE VENTILATION CONTROL IS NOT POSSIBLE, WEAR RESPIRATORS APPROVED BY THE U.S. BUREAU OF MINES FOR PNEUMOCONIOSIS PRODUCING DUSTS."

This Defendant has or will shortly use such warnings, acting on advice of the industry.

Interrogatory No. 19:

This Defendant objects to Interrogatory No. 19 for the reason that the same is argumentative, irrelevant and immaterial and for the further reason that such is a prejudicial attempt on the part of Plaintiff to inflame the minds of the jurors against this Defendant since there is no pleadings or evidence that Plaintiff alleges or claims that he has the disease known as cor pulmonale.

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Interrogatory No. 20:

No.

Interrogatory No. 21:

No.

Interrogatory No. 22:

No.

Interrogatory No. 23:

No.

Interrogatory No. 24:

No, not in the field where the products are being used. Refer to this Defendant's answer to Interrogatory No. 10.

Interrogatory No. 25:

No.

Interrogatory No. 26:

This Defendant objects to Interrogatory No. 26 for the reason that the same is argumentative, irrelevant and immaterial to any issue herein, too vague and general, assumes facts not in evidence and conclusions, is multifarious in nature and is a totally improper interrogatory.

Interrogatory No. 27:

See Defendant's answer to Interrogatory No. 26.

Interrogatory No. 28:

This Defendant objects to Interrogatory No. 28 for the reason that the same is argumentative, irrelevant and immaterial to any issue herein, too vague and general, assumes

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facts not in evidence and calls for conclusions and attempts to introduce into evidence alleged facts for which no proper predicate has been laid by Plaintiff.

Interrogatory No. 29:

Yes, it is possible in most cases to distinguish this Defendant's products by the products' general appearance, color and by labels on the package.

Interrogatory No. 30:

Yes, this Defendant would state that most of its products may have some further processing by the contractor or ultimate users, however, there are some products or parts thereof that will not require cutting, sawing, scribing, etc.

Interrogatory No. 31:

Unarco Industries, Inc. was originally incorporated as Union Asbestos and Rubber Company in 1918 in the State of Illinois.

Interrogatory No. 32:

Approximately 50 years.

Interrogatory No. 33:

This Defendant would show that there are respirators currently on the market that will materially reduce the inhalation of asbestos dust and fibers and one of such respirators is the MSA Dust Foe, No. 66, which has been approved by the United States Bureau of Mines, approval No. 2166, Catalogue No. 10 -76869. The Bureau of Mines has test data on such respirator as well as other respirators of equal effectiveness.

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Interrogatory No. 34:

This Defendant would show that its products have been manufactured for years, but such products are not placed on the open market to be purchased and used by the public generally, so to that extent the answer is "no."

Interrogatory No. 35:

No, no difficulty has been experienced in the manufacture of such products and there have been years of trouble-free use of the products by contractors and those who are expert in the application of such products and there is no reason to assume that such contractors and experts will mishandle the product.

Interrogatory No. 36:

This Defendant objects to Interrogatory No. 36 for the reason that the inquiry made is irrelevant and immaterial to any issue in this case and is not calculated to lead to any relevant or material evidence. Defendant further objects to this interrogatory for the reason that the same calls for a medical opinion as to the nature and cause of illness or death, which is not a proper inquiry. Still further, Defendant objects to this interrogatory on the grounds that inquiry is made as to persons in a class entirely different to that of the Plaintiff, one class being one who manufactures insulating products containing asbestos and the other being a class who installs the finished product.

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Further objection is made to such interrogatory on the grounds that it inquires into events totally unrelated to the work of the Plaintiff herein and involves the investigation and defense of such claim made subsequent to the filing of this suit and obtained in the course of the investigation of such claim and defense by parties employed to make such investigation and is therefore privileged communications.

Interrogatory No. 37:

This Defendant objects to Interrogatory No. 37 for the reason that the same is argumentative, irrelevant and immaterial to any issue in this case, assumes facts and conclusions not in evidence and it is too vague and general and further purports to require an answer on an invalid and incomplete assumption.

Interrogatory No. 38:

At the present time, this Defendant manufactures products that would come within only two of the seven classifications, being Nos. 2 and 5. Our Wovenstone pipe insulation would be within Classification No. 2. This is a lace-on material and the use of this particular product is highly specialized and the application of the pipe insulation requires a minimum amount of fabrication. All elbows, T's and valve covers are factory pre-formed and can be laced on the job. Only one piece would require cutting and that would be at the end of a run to give the final fit. Under Classifi-

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cation No. 5 would be our insubestos felt which is used in insulating large areas and again would require a minimal amount of fabrication. In most cases the cutting of the warped yarns and retying them is the extent of the field fabrication. Also, in this classification is our insutube and insutape, but both are of such a nature that would require only one final cut once the line or part is insulated. Defendant would assume that for what little amount of fabrication that is required the expert applicators would wear respirators as protection, if necessary, but as mentioned above, these products require such a small amount of fabrication in the field that they can be used without contributing dust to the fabricating areas to any excessive degrees and then the dust can be controlled away from the worker by air movement to collect the particles and remove them from the surroundings.

Interrogatory No. 39:

This Defendant does not have any such statistical figures.

Interrogatory No. 40:

This Defendant does not have such medical information or knowledge.

Interrogatory No. 41:

This Defendant objects to Interrogatory No. 41 for the reason that the inquiry is irrelevant and immaterial to any issue in this cause and for the further reason that it is

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not calculated to lead to any relevant or material information.

Interrogatory No. 42:

This Defendant objects to Interrogatory No. 42 for the reason that the inquiry is irrelevant and immaterial to any issue in this cause and for the further reason that it is not calculated to lead to any relevant or material information.

Interrogatory No. 43:

This Defendant objects to Interrogatory No. 43 for the reason that such inquiry inquires into the total volume of sales of all products manufactured by this Defendant for the reason that this information is irrelevant and immaterial to any issue involved in this case and is not calculated to lead to any information which would be relevant or material to this lawsuit and for the further reason that it would place an onerous burden on this Defendant to secure information regarding its sales and products in a number of divisions other than that pertaining to insulation material.

Interrogatory No. 44:

The Chairman of the Board is Mr. Kenneth F. MacLellan, 332 South Michigan Avenue, Chicago, Illinois, 60604; the President is Mr. Edwin E. Hokin, 332 South Michigan Avenue, Chicago, Illinois, 60604.

Interrogatory No. 45:

Not applicable.

Interrogatory No. 46:

This Defendant is unable to answer the inquiry made in Interrogatory No. 46 for the reason that it has no basis upon which to form an opinion, thus the answer is "no."

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Interrogatories Nos. 47-84:

This Defendant objects to Interrogatories Nos. 47 through 84 for the reason that such interrogatories call for conclusions of law and opinions on questions of law and accordingly are improper inquiries.

Respectfully submitted,

VINSON, ELKINS, SEARLS & CONNALLY

By: Gerald P. Coley

Gerald P. Coley
First City National Bank Building
Houston, Texas 77002 - 225-2411
ATTORNEYS FOR THE DEFENDANT,
UNARCO INDUSTRIES, INC.

THE STATE OF TEXAS)
)
COUNTY OF HARRIS)

BEFORE ME, the undersigned authority, on this day personally appeared GERALD P. COLEY, known to me to be the person whose name is subscribed to the foregoing objections and answers to Plaintiff's interrogatories and who, being by me first duly sworn, did depose and say that the foregoing Answers to Interrogatories are true to the best of his knowledge, information and belief; that this verification is made by him because there is no officer of Unarco Industries, Inc. within the jurisdiction of this Court; that the sources of his information used in answering such interrogatories are the files and records of Unarco Industries, Inc. furnished to him for such purposes and investigation heretofore made in this case.

Gerald P. Coley

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SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned authority, by the said GERALD P. COLEY, to certify which witness my hand and seal of office this the 22nd day of December, 1969.

Geraldine Klein
Notary Public in and for
Harris County, T e x a s

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing objections and answers to interrogatories was on the 22nd day of December, 1969, served upon Mr. Ward Stephenson, Stephenson Building, Orange, Texas, attorney for the plaintiff, by depositing the same in the United States mail, postage prepaid.

A copy was served on the following attorneys of record on the same date.

Gerald P. Coley
Gerald P. Coley

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