IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
DEC 29 1969
JAMES R. COONEY, CLERK
BY DEPUTY Maya Barton

SAMUEL R. POTTER §

VS. §

FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL §

CIVIL ACTION NO. 6329

OBJECTIONS OF DEFENDANT, UNARCO INDUSTRIES, INC., TO PLAINTIFF'S MOTION FOR DISCOVERY AND TO LIMIT AND RESTRICT SAID MOTION FOR DISCOVERY

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the defendant, Unarco Industries, Inc., and files this, its objections to plaintiff's motion for discovery and this defendant's motion to limit and restrict plaintiff's motion for discovery on file herein, and would respectfully show unto the Court the following:

1.

This defendant objects to the request contained in Paragraph 1 of the plaintiff's motion for discovery in which plaintiff states that it is necessary for each of the defendants to produce samples of such materials as they manufacture for use in insulating which contain asbestos, for the following reasons:

(a) This defendant objects to the request to produce a sample of each and every insulating product manufactured by it for the period 1940 through 1969 for the reason that this defendant has in some instances years ago sold its entire operation in certain areas and it would be an impossibility to produce the product manufactured years ago, which may or may not be in production at this

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time, and further, it would place an undue burden on this defendant to secure products manufactured by a predecessor.

(b) Defendant further objects to this request for the reason that the Federal Rules of Civil Procedure do not require that a defendant furnish a sample of all products manufactured by it for such an extended period of time and to place such a burden on this defendant would be an onerous, undue and expensive one.

(c) Defendant further objects to this request for the reason that the motion is too broad, general and indefinite and this defendant should be required only to furnish a sample which is representative of the class of insulating material or product which is presently being manufactured by this defendant. Accordingly, this defendant requests that the motion be limited as to the time period and that this defendant be required to furnish only a sample which is representative of the class of insulating material containing asbestos which is now manufactured by it.

(d) This defendant would further show that some product manufactured by it in years past is now being manufactured by one of the defendants herein and that as a practical matter it would be unnecessary to have duplicate samples.

(e) This defendant would further show that the request contained in this motion is an unreasonable and onerous one in that it would require this defendant to accumulate sample or samples of each and every product manufactured by it in various forms, shapes and sizes, some of which product has been discontinued or the manufacturing plant and process has been long since sold to another party, and further that said request covers a period of some 27 years, for all of which reasons stated in the motion this defendant would show that this discovery is oppressive, places an undue burden on the defendant and should be quashed; or in the alternative, plaintiff's motion

The Potter v. Fibreboard Case File (1969-1972), Objections to plaintiff's motion for discovery
ACL Doc 10409 · Page 2 of 9
Published by AsbestosClaims.Law
asbestosclaims.law/library/10409/2

to produce samples should be restricted to a representative class of insulating material, containing asbestos, which is presently being manufactured by this defendant.

2.

This defendant objects to Paragraph 2 of plaintiff's motion for discovery in that plaintiff requests that each of the products which are produced by the various defendants herein should be identified by the name of the manufacturer, the trade name of the product and information as to when the product was first manufactured, for the following reasons:

(a) This defendant has furnished information in answer to plaintiff's interrogatories regarding the products manufactured by it, the period of time during which it was manufactured, the description of materials and information concerning its application. In this connection, this defendant would show that it should not be required to furnish the same information once again in response to plaintiff's motion for discovery.

(b) This defendant further objects to said request contained in this motion for discovery for the reason that plaintiff has requested that the samples be identified by the manufacturer's name, trade name and date of manufacture for the reason that such information would allow the plaintiff or witness to identify the product on the basis of the information shown on the face of the exhibit rather than based upon any knowledge that the plaintiff or witness may have as to the product and its identity. Alternatively, this defendant would request that the motion be limited and restricted in requiring that such samples be marked only with a code name or number identifying the sample to the Court. In this manner, the plaintiff or witness could be tested fairly as to his ability to identify the

The Potter v. Fibreboard Case File (1969-1972), Objections to plaintiff's motion for discovery
ACL Doc 10409 · Page 3 of 9
Published by AsbestosClaims.Law
asbestosclaims.law/library/10409/3

samples furnished by the defendants and this defendant would have no objection to furnishing a representative sample of insulating material manufactured by it, identified with a code name or number and would be willing to furnish such identifying data to the Court and hereby respectfully moves that this procedure be followed as to the production of representative samples and their identification in this cause.

3.

This defendant objects to the request contained in Paragraph 3 of plaintiff's motion for discovery for the reason that plaintiff has requested all sales literature pertaining to products manufactured or distributed by each defendant, for the reason that such request contains no limitation as to time, no limitation as to insulating material containing asbestos, and it is too broad, vague, general and indefinite. In this connection, this defendant would be willing to furnish current sales literature pertaining to insulation products containing asbestos which are manufactured by this defendant and limited to current market and sales material which is available.

This defendant further objects to this discovery for the reason that such is irrelevant and immaterial to any issue herein since plaintiff has not alleged that he was familiar with such literature or that he relied upon any sales literature in any manner.

This defendant does agree to furnish such current sales literature as is available to the insulation material manufactured by it.

4.

This defendant objects to Paragraph 4 of said motion for the same reasons as set forth in its objections to Paragraph 3, i.e., that such request is too broad, general and indefinite; that it is

The Potter v. Fibreboard Case File (1969-1972), Objections to plaintiff's motion for discovery
ACL Doc 10409 · Page 4 of 9
Published by AsbestosClaims.Law
asbestosclaims.law/library/10409/4

not limited to insulating material containing asbestos, and for the further reason that the same questions have been inquired into by the interrogatories on file herein and such questions have been answered by this defendant.

This defendant further objects to the production of this information for the reason that it involves contractual agreements containing certain of its products wherein this defendant has sold its operation, trade names, patents and scientific and research data and has agreed contractually that it would not divulge such information and to require this defendant to do so would subject it to contractual liability concerning such product and the patents and scientific information concerning the same.

Defendant objects further to the request contained in this paragraph in connection with the method of application, adaptability and safety controls for the reason that this defendant is not in the business of applying the product and sells and distributes its product to expert insulation contractors and owners, who in turn employ professional applicators, such as the plaintiff herein, and the application is controlled by the asbestos union, of which plaintiff is a long-time member, and by independent insulating contractors over whom this defendant has no control or jurisdiction and further this defendant has agreed to produce its current sales literature which would have recommendations for use and application. Still further, this defendant would show that insofar as any safety control is suggested there is no duty on this defendant to require any safety controls and does not have the authority or jurisdiction over the insulation contractors or expert insulators to do so.

This defendant further objects to the production of the engineering, scientific and research data, in addition to the

The Potter v. Fibreboard Case File (1969-1972), Objections to plaintiff's motion for discovery
ACL Doc 10409 · Page 5 of 9
Published by AsbestosClaims.Law
asbestosclaims.law/library/10409/5

contractual obligations mentioned above, for the reason that such information is confidential, involves trade secrets, patent information, etc., and should not be required to be produced in a suit for damages where this defendant has disclosed the name and contents of its product in answer to plaintiff's interrogatories.

5.

This defendant does not maintain medical or scientific research departments.

6.

This defendant objects to Paragraph 6 of plaintiff's motion for discovery for the reason that this defendant has answered this inquiry in its answers to plaintiff's interrogatories and in such answer has set forth the identity and description of respirators that could be used to reduce materially the inhalation of asbestos dust and fibers and plaintiff is again asking for the same information. Defendant further objects to this request for the reason that since such respirators have been identified by catalog number and description such are equally available to plaintiff as they would be to the defendant herein.

This defendant further objects to this request for the reason that the inquiry assumes that the disease of asbestosis would be produced by the use of the product of this defendant.

7.

This defendant cannot state unequivocally the name and address of the company representative who will appear at the time of the trial of this case, and subject to change, it is anticipated that Mr. A. W. Summers, of Bloomington, Illinois, will appear.

The Potter v. Fibreboard Case File (1969-1972), Objections to plaintiff's motion for discovery
ACL Doc 10409 · Page 6 of 9
Published by AsbestosClaims.Law
asbestosclaims.law/library/10409/6

WHEREFORE, premises considered, this defendant prays that the Court rule on this defendant's objections and exceptions to plaintiff's motion for discovery.

Respectfully submitted:

VINSON, ELKINS, SEARLS & CONNALLY

By Gerald P. Coley

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Attorneys for Defendant
Unarco Industries, Inc.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing objections to plaintiff's motion for discovery and to limit and restrict said motion for discovery was served on Mr. Ward Stephenson, Stephenson Building, Orange, Texas, attorney for plaintiff, by mailing a copy of the foregoing pleading to his address on this the 22nd day of December, 1969.

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

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Beaumont, Texas 77704
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Mr. Dale Dowell
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Attorney for Owens-Corning Fiberglas Corporation

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The Potter v. Fibreboard Case File (1969-1972), Objections to plaintiff's motion for discovery
ACL Doc 10409 · Page 7 of 9
Published by AsbestosClaims.Law
asbestosclaims.law/library/10409/7

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OBJECTIONS OF DEFENDANT, UNARCO INDUSTRIES, INC. TO PLAINTIFF'S MOTION FOR DISCOVERY, AND TO LIMIT AND RESTRICT SAID MOTIONS FOR DISCOVERY, TOGETHER WITH ORDER

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