FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
JAN 22 1970
JAMES R. COONEY, CLERK
BY DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

SAMUEL R. POTTER :

VS. : CIVIL ACTION NO. 6319

FIBREBOARD PAPER PRODUCTS :
CORPORATION ET AL :

MOTION TO TAKE ANSWERS TO WRITTEN
INTERROGATORIES AS CONFESSED

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW SAMUEL R. POTTER, plaintiff in the above entitled and numbered action, and files this motion to take certain answers to the written interrogatories propounded to defendants as confessed, and in support thereof, plaintiff would respectfully show unto the Court the following:

(NOTE: Hereafter all paragraphs will be numbered to coincide with the particular written interrogatory and answer by defendants:)

2.

Interrogatory No. 2 asked: "Did you ever at any time give warnings to workers of the dangerous nature of your products? If so, describe your warnings and to whom such warnings were given."

The majority of the defendants answered in generally the following fashion: "This question is objected to as argumentative and this defendant denies that the products manufactured by it were of a dangerous nature and says that each of the products manufactured by it were suitable and reasonably fit for the purpose for which the products were intended."

The plaintiff moves the Court to take these answers as evasive and unresponsive and that the objection be overruled, and that the answers be taken as confessed that the products manufactured

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by the defendants were of a dangerous nature and that the products manufactured by the defendants were not suitable and not reasonably fit for the purpose for which the products were intended.

7.

Interrogatory No. 7 asked: "Do you recognize that prolonged use of the insulating materials manufactured by you can cause or contribute to cause various occupational diseases, including asbestosis, silicosis and dermatitis?"

The majority of the defendants answered in generally the following fashion: "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."

The plaintiff moves the Court to take these answers as evasive and unresponsive and that the objection be overruled, and that the answers be taken as confessed that prolonged use of the insulating materials manufactured by defendants can cause or contribute to cause various occupational diseases, including asbestosis, silicosis and dermatitis.

9.

Interrogatory No. 9 asked: "Have you or any of your employees conducted studies designed to minimize or eliminate the inhalation of asbestos dust and fibers by those exposed to the use of your company's products? If so, give the name or names of such persons conducting such studies, attach copies of such studies, by whom they were made, and to whom they were given, and when, and state what action, if any, was taken based upon such studies in an effort to minimize or eliminate the effects of inhalation of asbestos dust or fibers upon those using or being exposed to the dust and fibers contained in such products as manufactured by your company."

Some of the defendants answered in generally the following fashion: "This interrogatory is objected to, as vague,

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ambiguous and unintellibible, since the same is so broad and general that defendant is unable to determine when or at what time plaintiff refers in propounding such interrogatory. However, assuming that plaintiff means that such studies inquired about are concerned with the product after it has left this defendant's manufacturing plants, the answer is 'no.'"

The plaintiff moves the Court to take these answers as evasive and unresponsive and that the objection be overruled, and that the answers be taken as confessed that the defendants did not conduct any studies designed to minimize or eliminate the inhalation of asbestos dust and fibers by those exposed to the use of the defendant's products.

11.

Interrogatory No. 11 asked: "Does your company recognize that as early as the year 1900 Dr. H. Montague Murray, a physician in London's Charing Cross Hospital, found spicules of asbestos in the lung tissue? If you agree with this, then state what action, if any, your company has taken since 1900 to reduce or eliminate the dangers to those using your asbestos products from inhaling the dust and fibers."

The majority of the defendants answered in generally the following fashion: "Objected to. This question is argumentative, ambiguous, irrelevant and immaterial."

The plaintiff moves the Court to take these answers as evasive and unresponsive and that the objection be overruled, and that the answers be taken as confessed that the defendants do recognize that as early as the year 1900 Dr. H. Montague Murray, a physician in London's Charing Cross Hospital, found spicules of asbestos in the lung tissue, and that the defendants since 1900 have taken no action to reduce or eliminate the dangers to those using their asbestos products from inhaling the dust and fibers.

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12.

Interrogatory No. 12 asked: "Does your company recognize that in 1924, Dr. W. E. Cook, also of England, found clear evidence of asbestosis and that such discovery was published in the British Medical Journal of July 26, 1924, and re-published in 1927? If you do, then please state what action, if any, was taken by your company based upon these studies to reduce or eliminate asbestosis in those using your products. If your answer is that you do not recognize the truth of such statement, then please state what your company has done in an effort to keep abreast of medical literature concerning the disease produced from the products which you manufacture, if in truth you have."

The majority of the defendants answered in generally the following fashion: "Objected to. This question is argumentative, ambiguous, irrelevant and immaterial."

The plaintiff moves the Court to take these answers as evasive and unresponsive and that the objection be overruled, and that the answers be taken as confessed and that the defendants took no action to reduce or eliminate asbestosis in those using their products.

13.

Interrogatory No. 13 asked: "Does your company recognize that in 1931, an English Parliament passed legislation making asbestosis a compensable disease and requesting improved methods of exhaust ventilation and dust suppression in asbestos-textile factories, and also instituted periodical medical examinations for workers engaged in particularly dusty processes in the asbestos-textile industry? If you do recognize the truth of the statement above, please state what action, if any, your company took in response to such knowledge in an effort to reduce or eliminate the effects of asbestos to those using your products. If you do not

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recognize the truth of such statement, then please state why your company did not keep in touch with legislation and programs adopted endeavoring to reduce or eliminate the disease of asbestosis in those using asbestos products."

The majority of the defendants answered in generally the following fashion: "Objected to. This question is argumentative, ambiguous, irrelevant and immaterial."

The plaintiff moves the Court to take these answers as evasive and unresponsive and that the objection be overruled, and that the answers be taken as confessed and that the defendants took no action to reduce or eliminate asbestosis in those using their products.

16.

Interrogatory No. 16 asked: "Does your company recognize that asbestos causes asbestos-induced lung cancer? If your answer is "Yes", when did you come to such realization and what action did you take in response thereto? If your answer is "No," then please state why no studies were made by your company to ascertain that this fact was indeed true and thereafter to take action to advise those exposed to your products of their dangerous nature."

The majority of the defendants answered in generally the following fashion: "This question is objected to as irrelevant and immaterial in that plaintiff does not claim he has asbestos-induced cancer."

The plaintiff moves the Court to take these answers as evasive and unresponsive and that the objection be overruled, and that the answers be taken as confessed, and that the defendants took no action to reduce or eliminate asbestosis in those using their products.

17.

Interrogatory No. 17 asked: "Does your company recognize

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there is a direct connection between the inhalation of asbestos dust and fibers and the disease mesothelioma? If your answer is "Yes" to this question, then please advise what notices were given to those exposed to your asbestos products of this fact."

The majority of the defendants answered in generally the following fashion: "This question is objected to as irrelevant and immaterial in that plaintiff does not claim he has the disease mesothelioma."

Plaintiff moves the Court to take these answers as evasive and unresponsive and that the objection be overruled, and that the answers be taken as confessed, and that the defendants did not give notice to those exposed to their asbestos products of this fact.

19.

Interrogatory #19 asked: "Do you agree that asbestos has been directly associated medically with the disease of cor pulmonale?"

The majority of the defendants answered in generally the following fashion: "Objected to. This question is irrelevant and immaterial in that plaintiff does not claim he has cor pulmonale."

The plaintiff moves the Court to take these answers as evasive and unresponsive and that the objection be overruled, and that the answers be taken as confessed.

26.

Interrogatory #26 asked: "Do you agree that the problem of asbestos dust extends further than to those merely using your products but that the exposure is shared with other construction workers as well?"

The majority of the defendants answered in generally the following fashion: "Objected to on the basis the question assumes

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a factnot in evidence; that is, the 'problem of asbestos dust.' It is also ambiguous in that the 'problem' is not defined. In addition, it is argumentative, irrelevant and immaterial."

The plaintiff moves the Court to take these answers as evasive and unresponsive and that the objection be overruled, and that the answers be taken as confessed.

28.

Interrogatory #28 asked: "Do you recognize or agree that the problems of air laden with asbestos dust is so great that possibly millions of the people in the United States are being exposed to the inhalation of asbestos dust who have nothing to do with its use or application? If your answer is 'Yes' then please advise what action your company has taken, if any, to advise the general public of the dangerous nature of asbestos and what steps have been taken to endeavor to protect the general public from the dangerous effects of the inhalation of the asbestos dust and fibers, when such action was taken, and what it consists of."

The majority of the defendants answered in generally the following fashion: "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."

The plaintiff moves the Court to take these answers as evasive and unresponsive and that the objection be overruled, and that the answers be taken as confessed and that the defendants took no action to advise the general public of the dangerous nature of asbestos, and that no steps were taken to endeavor to protect the general public from the dangerous effects of the inhalation of asbestos dust and fibers.

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33.

Interrogatory #33 asked: "If you, your company, or your company's attorneys, contend that any respirators or other breathing device is currently on the market that will prevent the inhalation of asbestos dust and fibers, give the detailed description of such respirator or other breathing device, together with how you know this will prevent the inhalation of such dust and fibers, what tests were conducted, by whom and where, with sufficient detail to enable us to obtain the results of such tests."

The majority of the defendants answered this question generally in the following fashion: "Defendant contends that respirators are currently on the market which will materially reduce (emphasis added) inhalation of asbestos dust and fibers. Such respirators are available under the United States Bureau of Mines Schedule 21B. Tests upon which said approval are based were designed and conducted by that governmental agency and are described in the Respiratory Protective Devices Manual published by the American Industrial Hygiene Association, American Conference of Governmental Hygienists, 1963. One such respirator, 'Dustfoe 77', Catalog No. 10-9600, is manufactured by the Mine Safety Appliances Company."

The plaintiff moves the Court to take these answers as evasive and unresponsive, for the reason that the question inquired as to whether or not any respirators or other breathing device is currently on the market that will prevent the inhalation of asbestos dust and fibers, and this question was evasively answered and should be taken as confessed that there are none that will prevent the inhalation of asbestos dust and fibers.

47-84

These interrogatories #47 through #84 inquired as to

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whether or not the defendants agree that various states of the United States have a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in such and such a year.

The defendants answered these interrogatories by stating that these questions were objected to as calling for conclusions and opinions on questions of law.

The plaintiff moves the Court to take these answers as evasive and unresponsive, and that each of said questions be taken as confessed. In this connection, plaintiff says that he has copies of letters from the various States' Industrial Accident Boards, advising that asbestosis is covered in their workmen's compensation laws and the dates such laws were enacted.

WHEREFORE, plaintiff prays that this motion be granted; that the various answers given by the defendants be ruled as evasive and unresponsive, and in the instances herein mentioned, that the questions are confessed.

Respectfully submitted,

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CERTIFICATE OF SERVICE BY MAIL

I, Ward Stephenson, hereby certify that a true and correct copy of the foregoing instrument was, on this the 21st day of Jan., 1970, mailed ~~by certified mail, return receipt requested,~~ to the following named attorneys:

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