IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED
FEB 27 1970
James ... Court
By Virginia R. ... DEPUTY

SAMUEL R. POTTER	)	
	)	
V.	)	CIVIL ACTION NO. 6329
	)	
FIBREBOARD PAPER PRODUCTS CORP., ET AL	)	

O R D E R

This day came on to be considered plaintiff's motion to produce the following items:

(1) Representative samples of products manufactured by the defendants, identified as to manufacturer, trade name, and date when first manufactured, which contain asbestos and are used as insulating material.

(2) Sales literature concerning these products.

(3) All engineering, scientific and research data concerning such products, their suggested uses and adaptability, methods of applying, and suggested safety controls.

(4) Name and address of person in charge of any medical or scientific research department of each defendant.

(5) Any breathing apparatus which defendants claim would protect workers applying asbestos materials.

(6) Name and address of the representative of each defendant who will appear at the trial of this case.

Initially, it is apparent to the court that the production of the samples requested in subparagraph (1) above is well within the scope of discovery permissible under Rule 34, F.R.Civ.P. Martin v. Reynolds Metals Corp., 297 F.2d 49 (9th Cir. 1961); John Wood Mfg. Co. v. Keimer-Williams Stamping Co., 4 F.2d

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(E.D. N.Y. 1925); Neier Glass Co. v. Anchor Hocking Glass Corp., 11 F.R.D. 487 (W.D. Pa. 1951). It is also apparent that any burden on the defendant in complying with the production of these samples is outweighed by the relevancy of such samples to the subject matter of this law suit. Lucy v. Sterling Drug, Inc., 240 F.Supp. 632 (W.D. Mich. 1965); Federal Cartridge Corp. v. Olin Mathiesen Chemical Corp., 41 F.R.D. 531, (D. Minn. 1967). The possibility that the plaintiff may obtain the products in question by other means is insufficient reason to justify refusal of this motion when, as here, the items requested are more accessible to the defendants; each defendant being in a better position to produce samples of products no longer manufactured or not easily obtainable in a size suitable for courtroom identification. Turmennte v. White Consolidated Industries, Inc., 266 F.Supp. 35 (D. Mass. 1967). There is, however, little need for the production of sample of products not manufactured or on the market between the years 1940 through 1969, the period during which the plaintiff alleges he developed asbestosis. Accordingly, it is

ORDERED that plaintiff's motion to produce samples of asbestos products manufactured by the defendants be, and it is hereby, granted. It is further

ORDERED that such samples be limited to asbestos products manufactured or placed on the market by the defendants between 1940 and 1969. It is further

ORDERED that each sample be identified as to manufacturer, trade name, and dates of manufacture, in order that products which are not easily distinguishable visually may be distinguished on the basis of the names by which such products are purchased and dealt with in the market place.

In response to defendants' objection to the production of all sales literature concerning its asbestos products, it

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is apparent to the court that the scope of examination under Rule 34 permits the production of "any matter . . . which is relevant to the subject matter involved in the pending action" when the item sought "appears reasonably calculated to lead to the discovery of admissible evidence." Rule 26, F.R.Civ.P.; 4 Moore's Federal Practice ¶34.09. Since the sales literature requested here is for the products involved in this law suit and since the defendants are in a better position to provide all appropriate sales literature, thereby providing complete discovery of this information, it is

ORDERED that plaintiff's motion to produce sales literature for asbestos products manufactured by the defendants between 1940 and 1969 be, and it is hereby, granted.

In subparagraph (3) above plaintiff requests each defendant to produce all engineering, scientific, and research data on its asbestos products. That portion of the motion which would require the defendants to disclose trade secrets cannot be sustained since plaintiff has made no showing of special circumstances and necessity which would require such disclosure. United States v. United Fruit Co., 410 F.2d 553 (5th Cir. 1969); A. H. Robbins Co. v. Fadely, 299 F.2d 557 (5th Cir. 1962); Hartely Pen Co. v. United States District Court for the Southern District of California, 287 F.2d 324 (9th Cir. 1961). However, that portion of the motion which requests data concerning the suggested uses of the products in issue, methods of applying such products, and safety controls suggested in the handling of these products, inquires into matters intimately related to the subject matter of this law suit and such information should be provided to the plaintiff to facilitate complete discovery. Accordingly, it is

ORDERED that plaintiff's motion to produce engineering, scientific and research data be, and it is hereby, denied, without prejudice as to matters which would disclose any trade

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secrets of the defendants. As to such data which concerns suggested uses, methods of application, and safety controls and does not disclose trade secrets, plaintiff's motion shall be, and it is hereby, granted.

As to plaintiff's motion to produce the names and addresses of persons in charge of medical or scientific research departments operated by any of the defendants, it appears to the court that such request would be more properly directed to the defendants in the form of an interrogatory pursuant to Rule 33, F.R.Civ.P., and treating it as such, it is

ORDERED that plaintiff's motion to obtain the names and addresses of such department heads be, and it is hereby, granted.

In response to plaintiff's request that the defendants produce any breathing apparatus which they claim would materially reduce the occurrence of asbestosis in asbestos workers, it appears to the court that information as to breathing devices had already been supplied by the defendants in response to plaintiff's Interrogatory No. 33. Since such devices are available to plaintiff on the open market to the same extent they are available to the defendants, it is

ORDERED that plaintiff's motion to produce such breathing devices be, and it is hereby, denied.

None of the defendants having objected to naming its representative at the trial of this law suit, it is

ORDERED that plaintiff's motion in this respect be, and it is hereby, granted. It is further

ORDERED that each defendant will supply the name of its trial representative as soon as such representative is named.

In complying with the production of the above enumerated items, it is

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ORDERED that the samples requested in subparagraph (1) above be sent or delivered to the office of plaintiff's attorney, Ward Stephenson, Orange, Texas, by March 13, 1970. It is further

ORDERED that the sales literature and scientific data be produced for inspection and copying at the offices of the attorneys for the respective defendants by March 13, 1970.

SIGNED and ENTERED this 27th day of February, 1970.

Wm. Wayne Justice
UNITED STATES DISTRICT JUDGE

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