IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MAY 7 1970
JAMES R. COONEY, CLERK
BY DEPUTY Myra Barton

SAMUEL R. POTTER	:	
VS.	:	CIVIL ACTION NO. 6329
FIBREBOARD PAPER PRODUCTS CORPORATION ET AL	:	

MOTION TO COMPEL ANSWERS TO FIRST SET OF INTERROGATORIES TO DEFENDANT ARMSTRONG CORK COMPANY

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now the plaintiff in the above entitled and numbered action, and says that the answers of defendant Armstrong Cork Company to the first set of written interrogatories are evasive, irrelevant and are a continuing effort to avoid facing up to the facts that the manufacturers of these products and distributors of these products have for many years, perhaps fifty or more, known that their products were dangerous and would cause death and serious disability, and the defendant is doing everything possible to prolong the interrogatories to avoid answering the questions, to require re-submission and re-wording of questions, and so forth.

Plaintiff says that this Honorable Court should issue an appropriate order stopping this, and requiring said defendant to fairly and honestly answer the questions, even though its answers show the true facts of liability and complete unconcern on the part of said defendant.

In this regard, plaintiff points to the latest answers received from defendant Armstrong Cork Company, and we point out several of these answers to show the nature of

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objections:

"Interrogatory No. 2

Did you ever at any time give warnings of the dangerous nature of your products? If so, describe your warnings and to whom such warnings were given."

"Answer to Interrogatory No. 2

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."

"Interrogatory No. 7

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?"

"Answer to Interrogatory No. 7

This defendant objects to Interrogatory No. 7 for the reason that same is wholly irrelevant and immaterial to any issue in the case at bar. Subject to said objection, and assuming that the interrogatory refers to the usual, customary and expected use of its products, the answer is that certain of our insulating products may cause dermatitis. This defendant knows of no case in which any period of use, commercial, residential or other, of its insulation materials has caused any disease."

"Interrogatory No. 10

Do you or your company have any regular inspection of areas where workers are using products manufactured by your company containing asbestos as to the dust count? If you do not, then please explain why this is not done, and if you do, please explain what action, if any, is taken by your company following the taking of dust counts at any of the locations referred to above. Also please give the dates, if any, that your company first started making this dust count."

"Answer to Interrogatory No. 10

Inasmuch as this defendant's products have been sold to insulation contractors, and/or to owners who may and do use their own insulation application employees, at various points in the United States, a regular inspection program as suggested in Interrogatory No. 10 is not feasible."

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"Interrogatory No. 11

"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."

"Answer to Interrogatory No. 11

"This defendant objects to Interrogatory No. 11 for the following reasons: (a) the interrogatory is vague and indefinite, especially as to the meaning of the term 'recognized' as used therein; (b) such interrogatory inquired as to matters which upon its face reflects that it is within the personal knowledge of this defendant and is therefore outside of the purview and intent of the federal rules of procedure, and particularly Federal Rule 33; (c) such interrogatory does not inquire as to any matter of fact as authorized by Rule 33; (d) such interrogatory inquires as to a medical opinion which is not required to be answered under Rule 33; (e) the interrogatory inquires as to a matter which is immaterial and irrelevant to any issue in this action.

Subject to the above and foregoing objections and exceptions, this defendant states that its corporate records disclose neither recognition nor non-recognition."

"Interrogatory No. 12

"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."

"Answer to Interrogatory No. 12

"This defendant objects to Interrogatory No. 12 for the same reasons specified as to Interrogatory No. 11. Subject to the above and foregoing objections and exceptions, this defendant states that it is not familiar with Dr. Cook's findings."

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"Interrogatory No. 13

"Does your company recognize that in 1931, an English Parliament passed legislation making asbestosis a compensable disease and requesting improved methods of exhault 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 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."

"Answer to Interrogatory No. 13

"This defendant objects to Interrogatory No. 13 for the following reasons: (a) such interrogatory is vague and indefinite; (b) such interrogatory does not inquire as to any matter of fact as authorized by the applicable federal rules; (c) such interrogatory inquires as to a matter of law which is not required to be answered by the federal rules of procedure; (d) such interrogatory inquires as to matters irrelevant and immaterial to any issue in this action.

"Subject to the above and foregoing objections and exceptions, this defendant states that our corporate records do not disclose either recognition or non-recognition. With respect to our own factory employees, this defendant employs health and safety experts through its own individual insurance program, and follows their recommended procedure to reduce all known health and safety hazards."

"Interrogatory No. 16

"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 explain 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."

"Answer to Interrogatory No. 16

"This defendant suggests that this interrogatory assumes its own answer, inasmuch as, if there is such a thing as 'asbestos-induced lung cancer', ex hypothesi such cancer is caused by asbestos. If any further answer is required, then this defendant objects to the interrogatory on the ground that it assumes facts not proven, and on the further ground that it is vague and indefinite."

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"Interrogatory No. 20

"Does your company recognize that asbestos fiber exists for an infinity of years? In other words, unlike some dangerous products, it does not eventually dissipate or reduce itself in danger to those who might be exposed to it?"

"

"Answer to Interrogatory No. 20

"This defendant objects and excepts to Interrogatory No. 20 for the following reasons: (a) the interrogatory is vague and indefinite; this defendant does not understand what is meant by the term 'recognize' as used therein; (b) such interrogatory does not inquire as to any matter of fact as authorized by Federal Rule 33; (c) such interrogatory inquires as to a scientific opinion not required to be answered by the applicable rules of procedure.

Subject to the above objections and exceptions, this defendant agrees that asbestos is a highly durable material, but this defendant does not agree to the statements implicit in the wording of the interrogatory."

"Interrogatory No. 21

"Does your company recognize that year-by-year, more asbestos is used in the United States, and therefore the public is thereby exposed to a greater and greater extent to the inhalation of asbestos dust and fiber? If your answer is 'yes', then please state what action your company has taken to reduce or eliminate this danger and what action, if any, you have taken to notify the public at large of this danger."

"Answer to Interrogatory No. 21

"This defendant objects and excepts to Interrogatory No. 21 for the following reasons: (a) said interrogatory is vague and indefinite; this defendant does not understand what is meant by the term 'recognize' as used therein; (b) said interrogatory is irrelevant and immaterial to any issue in this action.

"Subject to the above objections and exceptions, this defendant states that it is not familiar with all of the working conditions where asbestos products are used, and therefore cannot give a comprehensive answer to the interrogatory. We are familiar with the increasing usage of asbestos in the United States, but this defendant does not agree that this necessarily results in greater danger from exposure."

"Interrogatory No. 23

"Does your company contribute any funds to research concerning asbestos and its relation to lung and larynx

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disease? If so, please state the amount of money contributed, when and to whom, attaching any report or reports from such individual or organization to whom your funds were contributed.

"Answer to Interrogatory No. 23

"This defendant objects and excepts to Interrogatory No. 23 for the reason that the same is irrelevant and immaterial to any issue in this action. Subject to said objectin and exception, defendant answers that it has not directly made any such contribution; it is possible that such contributions may have been made by associations to which this defendant has contributed through payment of membership fees, or by governmental agencies to which this defendant may have contributed involuntarily through payment of taxes. This defendant has not received any herein-relevant report or reports from such organizations."

"Interrogatory No. 26

"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?"

"Answer to Interrogatory No. 26

"This defendant objects and excepts to Interrogatory No. 26 for the following reasons: (a) said interrogatory does not inquire as to any matter of fact as authorized by applicable rules of procedure; (b) the interrogatory inquires as to a medical or a scientific opinion which is not required to be answered under Federal Rule 33; (c) the interrogatory is immaterial and irrelevant to any issue in this action.

"Subject to the above objections and exceptions, this defendant answers 'no'."

"Interrogatory No. 27

"If your answer to the preceding Interrogatory No. 26 is 'No', then please state whether or not you have familiarized yourself with Dr. William H. Stewart, Surgeon-General of the United States, testifying before the Committee mentioned above that probably three and one-half million construction workers are being exposed to asbestos dust in addition to those workers actually using the materials containing asbestos?"

"Answer to Interrogatory No. 27

"This defendant objects and excepts to the interrogatory for the following reasons: (a) the interrogatory is vague and indefinite; this defendant does not understand what is meant by the term 'familiarized' as used therein; (b) such interrogatory does not inquire as to any matter of fact as authorized by applicable rules of procedure; (c) such interrogatory inquires as to a matter involving a medical opinion, which is not required to be answered under the applicable rules of procedure; (d) such interrogatory is immaterial and irrelevant to any issue in this action. Subject to the above objections and exceptions, this defendant answers that it does not know, and is not familiar with said testimony."

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"Interrogatory No. 34

"It is true, is it not, that your company has for many years manufactured insulating materials containing asbestos and that such products have been placed upon the open market to be purchased and used by the public?"

"Answer to Interrogatory No. 34

"It is true that our Company has for many years manufactured such materials; they have been sold to contractors who, being actively engaged in the business of installing insulation materials, are as familiar as this defendant with any dangers which may be involved in the use of such materials by said purchasers and their employees."

"Interrogatory No. 35

"Do you or your company recognize that such asbestos insulating materials are dangerous and harmful to human beings and to the health of man? If your answer to this question is 'Yes' then please explain when you came to this conclusion and what, if anything, you have done about it to notify the public. If your answer is that your products are not harmful then explain what tests were made upon which you base such conclusion."

"Answer to Interrogatory No. 35

"This defendant objects and excepts to Interrogatory No. 35 for the following reasons: (a) by reason of the use of the term 'recognize' the interrogatory is vague and indefinite; (b) the interrogatory does not inquire as to any matter of fact as authorized by Federal Rule 33; (c) the interrogatory inquires as to a medical opinion which is not required to be answered by the applicable rules of procedure; (d) said interrogatory inquires as to an ultimate fact issue to be determined solely by the finder of facts upon the trial hereof."

"Interrogatory No. 38

"If your company manufactures any insulating products which are commonly used by insulators and which contain asbestos, please describe how the following products are cut, shaped, mixed and applied on the job:
(1) Asbestos cement;
(2) Asbestos pipe covering;
(3) Asbestos bricks or blocks;
(4) Asbestos sheeting;
(5) Asbestos insulation used to cover extremes of heat as well as cold;
(6) Asbestos insulation in loose form which may be blown into homes or buildings;
(7) Asbestos in spray form,
giving particular reference as to whether or not the materials have to be sawed or cut on the job, blown into confined areas, or mixed with water into a cement or paste. Then please state if there is any way known to you that the above products can be used and applied without the worker inhaling any of the asbestos dust or fibers."

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"Answer to Interrogatory No. 38

" * * * * * * * This defendant is not engaged in the business of application of insulation materials, and therefore as to the last sentence of the interrogatory, this defendant answers that it does not know."

"Interrogatory No. 85

"Does your company recognize that asbestos causes asbestosis? 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 explain 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."

"Answer to Interrogatory No. 85

"This defendant objects and excepts to Interrogatory No. 85 for the following reasons: (a) by reason of the use of the term 'recognize' the interrogatory is vague and indefinite; (b) the interrogatory does not inquire as to any matter of fact as authorized by Federal Rule 33; (c) the interrogatory inquires as to a medical opinion which is not required to be answered by applicable rules of procedure; (d) the interrogatory inquires as to an ultimate fact issued to be determined solely by the finders of facts upon the trial hereof.

"Subject to the above objections and exceptions, this defendant states that it does not know."

The plaintiff says that in order to keep from over-encumbering the entire record because of the number of defendants involved, plaintiff feels that a blanket order of this Court directing the interrogatories be answered directly and not evasively, regardless of the consequences of the answers, should be entered.

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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 _____ day of May, 1970, mailed to the following named attorney:

Mr. W. N. Arnold, Jr.
Attorney at Law
Fulbright, Crooker, Freeman, Bates & Jaworski
Bank of the Southwest Building
Houston, Texas 77002

Attorney for Defendant
ARMSTRONG CORK COMPANY

Ward Stephenson

WARD STEPHENSON

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