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

FILED
FEB 14 1967
M. ____ 19____
James R. Cooney, Clerk, U. S. Court
By ____ DEPUTY

CLAUDE J. TOMPLAIT)
(C. A. NO. 5,402
VS.)
(
COMBUSTION ENGINEERING,)
INC., ET AL (
)

MOTION FOR MORE DEFINITE STATEMENT

Comes now the defendant EAGLE-PICHER INDUSTRIES, INC., and moves the Court, pursuant to the provisions of Rule 12(e) of the Federal Rules of Civil Procedure, for an order directing plaintiff to file a more definite statement in connection with certain allegations in plaintiff's complaint, and as grounds therefore would respectfully show:

1.

In Paragraph 15 & 16 of the plaintiff's original complaint, it is alleged that:

> "That at all times herein mentioned, the plaintiff was employed as an insulator, and in the performance of his employment as an insulator he was required to handle large quantities of the said insulation, compounded, manufactured and prepared by the defendants.
>
> "That during the period of time in which the plaintiff was employed as an insulator, in the course of his employment, due to the negligence and carelessness

Published by AsbestosClaims.Law
asbestosclaims.law/library/10615/1

of the defendants, he was caused to come in contact with the insulation produced by defendants and its chemical compounds, deleterious substances and matter and directly in consequence of said negligence and carelessness of the defendants did sustain severe, permanent and disabling injuries as hereinafter set forth."

Such allegations of the plaintiff's complaint are so vague and ambiguous that this defendant cannot reasonably be required to frame a responsive pleading. The Plaintiff's complaint alleges that he sustained injuries as the result of the negligence of the defendants, but no where are the predicates set forth to support the general allegation. The allegations are conclusions of the plaintiff, and fail to show facts sufficient to fully apprise this defendant of the manner in which the injuries occurred or the factual grounds upon which a recovery is sought. It is not shown what products Plaintiff came into contact with, the date or dates on which he came into contact with it, or places of contact by geographical location and job site. In Paragraph 14 it is alleged that Plaintiff came into contact with harmful products without alleging the specific product or what was harmful about it. Defendant moves this Honorable Court to enter an order requiring plaintiff to set forth the facts surrounding the conclusions of negligence and harmful product and injury.

WHEREFORE, PREMISES CONSIDERED, the defendant moves that an order be entered requiring the plaintiff to file a more

The Tomplait v. Combustion Engineering Case File (1962-1969), Motion for more definite statement Published by AsbestosClaims.Law
ACL Doc 10615 · Page 2 of 10 **asbestosclaims.law/library/10615/2**

definite statement, detailing the manner, dates and places in which the alleged injuries occurred, the manner in which this particular defendant was negligent and the product and manner in which the product was harmful as opposed to the numerous other defendants.

Ben L. Reynolds
Of Royston, Rayzor & Cook
877 San Jacinto Building
Houston, Texas
Attorney for Defendant

NOTICE OF MOTION

TO: Ward Stephenson
Stephenson Building
Orange, Texas

Please take notice that the undersigned will bring the above motion on for hearing before this Court on February 27, 1967, or as soon thereafter as it may be heard.

ROYSTON, RAYZOR & COOK

By Ben L. Reynolds
Ben L. Reynolds
Attorneys for Defendant
Eagle-Picher Industries, Inc.

I certify that a copy of the foregoing Motion for More Definite Statement and Notice of Motion have been mailed to the attorneys for Plaintiff, Stephenson, Thompson & Morris, Stephenson Building, Orange, Texas, on the 13th day of February, 1967.

Ben L. Reynolds
Of Royston, Rayzor & Cook

The Tomplait v. Combustion Engineering Case File (1962-1969), Motion for more definite statement Published by AsbestosClaims.Law
ACL Doc 10615 · Page 3 of 10 asbestosclaims.law/library/10615/3

C. A. NO. 5,402

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

CLAUDE J. TOMPLAIT

VS.

COMBUSTION ENGINEERING
INC., ET AL

MOTION FOR MORE
DEFINITE STATEMENT

ROYSTON, RAYZOR & COOK
ATTORNEYS AT LAW
SAN JACINTO BUILDING
HOUSTON, TEXAS

The Tomplait v. Combustion Engineering Case File (1962-1969), Motion for more definite statement
ACL Doc 10615 · Page 4 of 10
Published by AsbestosClaims.Law
asbestosclaims.law/library/10615/4

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

FILED
FEB 14 1967
M. 19
James R. Cooney, Clerk, U. S. Court
By Mildred C. Verret DEPUTY

C. A. No. 5,402

CLAUDE J. TOMPLAIT

VS.

COMBUSTION ENGINEERING, INC., ET AL

MEMORANDUM IN SUPPORT OF MOTION FOR MORE DEFINITE STATEMENT OF DEFENDANT EAGLE-PICHER INDUSTRIES, INC.

ROYSTON, RAYZOR & COOK
877 San Jacinto Building
Houston, Texas, 77002
Attorneys for Defendant

BEN L. REYNOLDS

Of Counsel

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

CLAUDE J. TOMPLAIT	(	
	)	
VS.	(	C. A. NO. 5,402
	)	
COMBUSTION ENGINEERING, INC., ET AL	(	

MEMORANDUM IN SUPPORT OF MOTION
FOR MORE DEFINITE STATEMENT OF
DEFENDANT EAGLE-PICHER INDUSTRIES, INC.

TO THE HONORABLE JUDGE OF SAID COURT:

The complaint filed charges that Defendant was negligent and that its products were harmful which was the proximate causes of the injuries complained of by the plaintiff. There is no specification as to how or wherein this Defendant was negligent or its products harmful and Defendant has accordingly moved for an order requiring Plaintiff to set forth the facts surrounding the alleged injuries, and the allegations relied upon to support the conclusions of negligence and harmful products.

Published by AsbestosClaims.Law
asbestosclaims.law/library/10615/6

ARGUMENT AND AUTHORITIES

Paragraph 15 and Paragraph 16 of Plaintiff's Complaint read as follows:

> "That at all times herein mentioned, the plaintiff was employed as an insulator, and in the performance of his employment as an insulator he was required to handle large quantities of the said insulation, compounded, manufactured and prepared by the defendants.
>
> That during the period of this time in which the plaintiff was employed as an insulator, in the course of his employment, due to the negligence and carelessness of the defendants, he was caused to come in contact with the insulation produced by defendants and its chemical compounds, deleterious substances and matter and directly in consequence of said negligence and carelessness of the defendants did sustain severe, permanent and disabling injuries as hereinafter set forth."

Further Paragraph 14 alleges that Plaintiff came into contact with harmful products.

The foregoing allegations are so vague and ambiguous that this Defendant is wholly unable to and should not reasonably be required to frame responsive pleadings. The applicable procedure is governed by Rule 9(f) and Rule 12(e) of the Federal Rules of Civil Procedure and provides as follows:

The Tomplait v. Combustion Engineering Case File (1962-1969), Motion for more definite statement Published by AsbestosClaims.Law
ACL Doc 10615 · Page 7 of 10 asbestosclaims.law/library/10615/7

"9(f) TIME AND PLACE.

For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter."

"12(e) MOTION FOR MORE DEFINITE STATEMENT.

If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order is not obeyed within ten days after notice of the order, or within such other time as the Court may fix, the Court may strike the pleading to which the motion was directed or make such order as it deems just."

It is submitted that the foregoing allegations are so vague and ambiguous that Defendant's motion for more definite statement should be granted. In the case of Bleecker vs. Drury, 3 Fed. Rules Dec. 325 (W. D. N. Y., 1944), it is held that the Federal Rules require exactitude as to averments of time and place and the Motion for More Definite Statement is the proper objection and manner for obtaining this information. Rule 9(f) provides that averments as to the time and place are material for the purpose of testing the sufficiency of a pleading.

The Tomplait v. Combustion Engineering Case File (1962-1969), Motion for more definite statement Published by AsbestosClaims.Law
ACL Doc 10615 · Page 8 of 10 asbestosclaims.law/library/10615/8

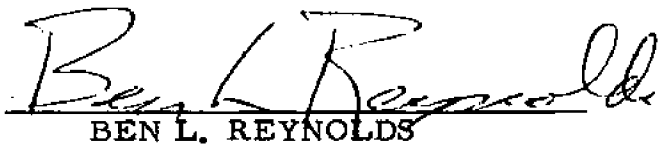
As was held in Kincheloe vs. Farmer 214 F 2d 604 (7th Cir. 1954 Cert. Denied 348 U.S. 909), the reason for "averments of time and place" is to make ascertainable whether a cause of action is barred by the statute of limitations, and that where so shown a complaint is properly dismissed on Motion. (Citing Authorities)

Where complaint sounding in tort failed to include any allegations of dates when and places where the acts complained of occurred, it was held the complaint failed to state a claim upon which relief could be granted, Cook Vs. Kuljian Corp. 137 F. Supp 833 (Dist. Penn. 1956). It is entirely plain that by merely pleading that Defendant was negligent and its products were harmful, Plaintiff has not sufficiently plead the facts about which he complains. See United States of America vs. Sonstein, 27 Fed. Rules Dec. 284 (E.D. Penn., 1961).

Defendant's motion filed herein clearly points out the defects complained of and the details desired and is in all respects sufficient. It is respectfully submitted that the allegations of the Plaintiff's Complaint are so vague and ambiguous that the Defendant cannot reasonably be required to form a responsive pleading and therefore Defendant's Motion for More Definite Statement should be in all things granted.

The Tomplait v. Combustion Engineering Case File (1962-1969), Motion for more definite statement Published by AsbestosClaims.Law
ACL Doc 10615 · Page 9 of 10 asbestosclaims.law/library/10615/9

Respectfully submitted,



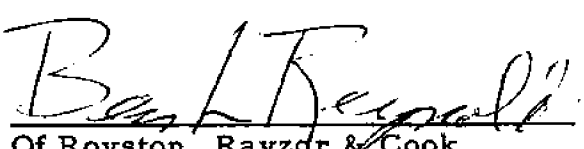
BEN L. REYNOLDS

Of Counsel:

Royston, Rayzor & Cook
877 San Jacinto Building
Houston, Texas, 77002
Attorneys for Defendant

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Memorandum in Support of Defendant's Motion for a More Definite Statement has been mailed to Attorneys for Plaintiff, Stephenson, Thompson & Morris, Stephenson Building, Orange, Texas, on this the 13th day of February, 1967.



Of Royston, Rayzor & Cook

The Tomplait v. Combustion Engineering Case File (1962-1969), Motion for more definite statement
ACL Doc 10615 · Page 10 of 10
Published by AsbestosClaims.Law
asbestosclaims.law/library/10615/10