IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS,

BEAUMONT DIVISION.

FILED
NOV 9 - 1967
M.
James R. Cousins, Clerk
By Emelyn G. Walker DEPUTY

CLAUDE J. TOMPLAIT, PLAINTIFF, §

VS. §

CIVIL ACTION NO. 5402.

COMBUSTION ENGINEERING, INC., ET AL, §

DEFENDANTS. §

OBJECTIONS OF DEFENDANTS, COMBUSTION ENGINEERING, INC., AND R & I REFRACTOR AND INSULATION CORPORATION, TO INTERROGATORIES UNDER RULE 33, AND MOTION TO STRIKE.

Now come the defendants, Combustion Engineering, Inc., and R & I Refractor and Insulation Corporation, in the above-entitled and numbered cause, and without waiving but still insisting on their Motion for a More Definite Statement, and subject to such Motion, object to the entire set of Interrogatories served on said defendants, and move that same be stricken and that these defendants be not required to answer such interrogatories, upon the following grounds.

A.

These defendants should not be required to answer the interrogatories becuase there is pending a Motion for More Definite Statement pertaining to the allegations of Plaintiff's First Amended Original Complaint, and said Motion is directed to said Amended Complaint.

1.

Said entire set of Interrogatories, Nos. 1, 2, 3, 4, 5, 6, 7 and 8 go beyond the permissible limits of interrogatories in that said interrogatories are an attempt by the plaintiff to have defendants to make investigation for him and prepare his case for him, which is improper under the rules and not within the contemplation of Rule 33 of the Federal Rules of Civil Procedure.

In this connection, defendants would show unto the Court that when the plaintiff originally filed his Complaint in this cause, all of the defendants therein filed Motions for More Definite Statements in regard to such Complaint, which Motions were by the Court granted. Thereafter, the plaintiff purported to amend his Complaint and filed a First Amended Original Complaint, to which Motions for More Definite Statement have likewise been filed, the plaintiff having, in his First Amended Original Complaint, as in his Original Complaint, made such indefinite and ambiguous allegations that these defendants could not reasonably be expected to formulate a responsive pleading thereto, and none has yet been filed by these defendants. Said Motions for More Definite Statements have not yet been acted upon by the Court, as filed to the First Amended Original Complaint.

The plaintiff in his suit has alleged wrongful conduct on the part of eleven defendants, including these two defendants, and having done so, should be in possession of sufficient specific facts to support such allegations, and he should not be permitted, by such interrogatories, to require these defendants to investigate and prepare his case for him.

The plaintiff cannot obtain, under the provisions and within the contemplation of Rule 33 of the Federal Rules of Civil Procedure, information by such interrogatories preliminary to the formation of his pleadings, but interrogatories may be utilized for the purpose of obtaining information after the pleadings have been formulated, which they have not in this case.

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Defendants further object to the entire set of interrogatories, Nos. 1, 2, 3, 4, 5,6, 7 and 8, for the following reasons:

(a) Said interrogatories are too broad, general and ambiguous and lacking in specificity that they are burdensome and oppressive, and will require these defendants to examine its own records in detail, covering a period of some 17 years time, and compile and correlate data, including analyses, which would involve an undue hardship on the defendants.

(b) Such interrogatories call for information to be accumulated by the defendants for the benefit of the plaintiff, and are an attempt by the plaintiff to seek information from the defendants upon which to prepare his own case, and are an attempt to place the burden upon defendants of establishing the plaintiff's case, if any he has.

(c) The information called for by such interrogatories is not presently available to these defendants, but many of its employees would have to spend an unconscionable amount of time and effort to accumulate such information and will have to pefform burdensome labors and execute a difficult and expensive task in order for the defendants to answer same, and it is unreasonable to require this defendant to furnish to the plaintiff the minute details called for by such interrogatories .

The Tomplait v. Combustion Engineering Case File (1962-1969), Objections to interrogatories and motion to strike Published by AsbestosClaims.Law
ACL Doc 10724 · Page 3 of 11 asbestosclaims.law/library/10724/3

(d) Said interrogatories amount solely to a fishing expedition beyond the permissible scope and utilization of interrogatories under Rule 33, which cannot be indulged in to the extent that the plaintiffseeks to do, in that it is an attempt by the plaintiff to obtain, by burdensome labor and expense on the part of the defendants, information to support the allegations of a complaint which he has already filed in this Court, involving 22 separate injuries alleged by him, which he claims to have occurred during a period of time from 1959 to and including the year 1964, while working for ten different contractors; and the plaintiff is seeking to have the defendants furnish him information based on work which would be burdensome and expensive to support the allegations of his scatter-barrel petition, and is an attempt by the plaintiff to have the defendants do the plaintiff's investigation for him and to prepare his case for him, which is not permitted, authorized or contemplated by Rule 33 of the Federal Rules of Civil Procedure.

2-A.

Defendants further object to Interrogatory No. 1, requiring the defendants to furnish certain information as to materials manufactured by it, starting in 1950, for the reason that said Interrogatory is completely irrelevant and immaterial to any issue in this cause, as any period of time back of the year 1959, during which the plaintiff claims to have sustained the first alleged injury for which he sues, is not relevant or material to this cause; and nowhere in this cause does the year 1950 (or any years previous to 1959) have any bearing on any issue in this cause.

The Tomplait v. Combustion Engineering Case File (1962-1969), Objections to interrogatories and motion to strike Published by AsbestosClaims.Law
ACL Doc 10724 · Page 4 of 11 asbestosclaims.law/library/10724/4

Defendant further objects to Interrogatory No. 1, for the following reasons:

(a) Said interrogatory is too broad, general and indefinite and is too remote in time to be relevant or material to any issue in this cause, in that the same refers to "all types of insulating materials manufactured by defendants, beginning with the year 1950, and to include a description of the materials and what they contain", and the information called for by such interrogatory could not be relevant or material herein, nor lead to the discovery of relevant or material information, because of the remoteness of the time inquired about.

(b) Unless the plaintiff were in some manner exposed to insulating materials, if any, manufactured by this defendant, the composition thereof could have no bearing upon the issues in this case but would be irrelevant and immaterial to any issue in this cause.

(c) Said interrogatories are a request for irrelevant matters and are unnecessarily burdensome in requiring investigation and compilation of data and statistics on the part of this defendant.

(d) Any information in regard to any insulating materials, if any, manufactured by these defendants, would be immaterial and irrelevant to any issue in this cause, because any cause of action arising out of any alleged exposure to same, occurring more than two years prior to the occurrence of this suit, would be barred by the statute of limitations of the State of Texas.

The Tomplait v. Combustion Engineering Case File (1962-1969), Objections to interrogatories and motion to strike Published by AsbestosClaims.Law
ACL Doc 10724 · Page 5 of 11 asbestosclaims.law/library/10724/5

4.

Defendants object to Interrogatory No. 2 because it is too broad and general, and refers to time which would be too remote to be material or relevant as regards the products or materials referred to; and by the use of the terms "ever at any time" and "to workers" is too broad and all-inclusive to require an answer under Rule 33, and so muchly so as to be irrelevant and immaterial to any issue in this cause.

5.

Defendants further object to Interrogatories Nos. 3 and 4 for the following reasons:

(a) Said interrogatories are improper because they request the defendants to state evidence on which it intends to rely to prove particular facts, upon the trial of this cause, and in advance of the trial, which it is not required to do and which is not contemplated, intended or permitted by Rule 33.

(b) Interrogatory No. 4 calls for the names of witnesses and persons, by the use of the words, "Who made such studies", whom the defendants might propose to introduce at the trial, and requires the defendant to furnish details of its evidence which it is not required to do under the law nor said Rule.

(c) Interrogatory No. 4 is in fact a Request for Production of Documents, which is not within the permissive scope of Rule 33, and not within the contemplation of Rule 33.

The Tomplait v. Combustion Engineering Case File (1962-1969), Objections to interrogatories and motion to strike Published by AsbestosClaims.Law
ACL Doc 10724 · Page 6 of 11 asbestosclaims.law/library/10724/6

Defendants further object to Interrogatories Nos. 5 and 6 for the following reasons:

(a) Said interrogatories are too broad and all-inclusive, in that it refers to the "products named in plaintiff's first amended original complaint", of which there are some twenty named therein.

(b) To answer said interrogatory would require detailed research and investigation into its records to enable defendants to furnish the information sought by said interrogatories; and defendants would have to make investigation of minute details to determine whether these products referred to were universally used and whether or not there were specific locations or areas in which they were primarily used.

(c) Said interrogatories call for conclusions on the part of the defendants, and for opinions on their part, and they will have to give conclusions and opinions as to what is considered "universally used" and "specific locations or areas" and "primarily used", and same call for irrelevant and immaterial matters, because whether the products referred to, or any one of them, or any number of them, were universally used or primarily used in specific locations or areas throughout the United States could have no bearing or be material or relevant to any issue in this cause.

(d) Further, said interrogatories call for affirmative action on the part of the defendants, to, so-to-speak, make a survey of where in the United States such products referred to were used, whether universally or in specific locations or areas, and as to whether same are primarily used, and such is not within the contemplation of Rule 33.

The Tomplait v. Combustion Engineering Case File (1962-1969), Objections to interrogatories and motion to strike Published by AsbestosClaims.Law
ACL Doc 10724 · Page 7 of 11 asbestosclaims.law/library/10724/7

7.

Defendants further object to Interrogatory No. 7, for the reason that said interrogatory calls for a conclusion of law and fact, and an opinion on the part of these defendants, which is not within the contemplation of Rule 33 of the Federal Rules of Civil Procedure.

8.

Defendants further object to Interrogatory No. 8 for the following reasons:

(a) Said interrogatory refers to some 10 contractors and employers, covering a period of from 1900 to date; and such interrogatory is too general and broad and remote in time as not to be relevant or material in this cause, and imposes upon these defendants an oppressive burden of checking into their records for a period of some 17 years in regard to some ten contractors, who are located throughout the United States, and as to whether or not they, these defendants, manufactured or sold any insulating products which were used by said contractors, and involves minute factual details which are unreasonable and unconscionable and imposes an undue burden upon the defendants, and amounts to an harassment of the defendants.

(b) Said interrogatory is irrelevant and unnecessarily burdensome in requiring investigation and research and compilation of data which are not contemplated by Rule 33 of the Federal Rules of Civil Procedure.

The Tomplait v. Combustion Engineering Case File (1962-1969), Objections to interrogatories and motion to strike Published by AsbestosClaims.Law
ACL Doc 10724 · Page 8 of 11 asbestosclaims.law/library/10724/8

WHEREFORE, defendants pray that the foregoing objections be sustained, and that said entire set of interrogatories be stricken and that defendants be not required to answer same, and for such further relief as it may show itself justly entitled to receive.

ATTORNEY FOR DEFENDANTS,
COMBUSTION ENGINEERING, INC., AND
R & I REFRACTOR AND INSULATION
CORPORATION;
1014 San Jacinto Bldg.,P.O.Box 1632,
Beaumont,Texas.

CERTIFICATE OF SERVICE.

I hereby certify that the foregoing Objections and Motion have been served upon the plaintiff and his attorneys of record, by placing a true and correct copy thereof in a correctly addressed, stamped and sealed envelope addressed to Messrs. Stephenson,Thompson and Morris, Attorneys at Law, Stephenson Building, Orange,Texas, plaintiff's attorneys of record, and by depositing same in the United States Mail at Beaumont, Texas, this 9th day of November, 1967; and a true and correct copy of same has likewise been furnished to each of the attorneys for the respective defendants, as follows:

Mr. Ben L. Reynolds, 877 San Jacinto Bldg., Houston,Texas, Attorney for Defendant, Eagle-Picher Industries, Inc;
Mr. John D. Rienstra, 707 Beaumont Savings Bldg., Beaumont,Texas, Attorney for Defendant, Owens-Corning Fiber Glass Corporation;
Mr. John D. Tucker, Orgain, Bell and Tucker, Beaumont Savings Bldg., Beaumont,Texas, Attorney for Defendant, Gustin-Bacon Manufacturing Company;
Mr. George A. Weller, P.O.Box 350, Beaumont,Texas, Attorney for Defendant, Fiberboard Paper Products Corporation;
Mr. George E. Duncan, Beaumont Savings Bldg., Beaumont, Texas, Attorney for Defendants, Pittsburgh Plate Glass Company and Pittsburgh Corning Corporation; and
Mr. Gordon R.Pate, Beaumont Savings Bldg., Beaumon t,Texas, Attorney for Defendants, Johns-Manville Sales Corporation, Johns-Manville Products Corporation, and Johns-Manville Fiber Glass, Inc.

ATTORNEY FOR DEFENDANTS,
Combustion Engineering, Inc., and R and I'
Refractor and Insulation Corporation.

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CLAUDE J. TOMPLAIT, PLAINTIFF, §

VS. §

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COMBUSTION ENGINEERING, INC., §

ET AL, DEFENDANTS. §

NOTICE OF HEARING OF OBJECTIONS TO INTERROGATORIES AND MOTION TO STRIKE.

TO:

Messrs. Stephenson,Thompson & Morris, Stephenson Bldg., Orange, Texas, Attorneys of record for Plaintiff;
Mr. Ben L. Reynolds, Royston,Rayzor and Cook, 877 San Jacinto Bldg., Houston, Texas, attorney for Defendant, Eagle-Picher Industries, Inc;
Mr. John D. Rienstra, 707 Beaumont Savings Bldg., Beaumont, Texas, Attorney of record for defendant, Owens-Corning Fiber Glass Corporation;
Mr. John D. Tucker, Orgain, Bell and Tucker, Beaumont Savings Bldg., Beaumont,Texas, Attorney of record for defendant, Gustin-Bacon Manufacturing Company;
Mr. George A. Weller, P.O.Box 350, Beaumont,Texas, Attorney of record for Defendant,Fiberboard Paper Products Corporation;
Mr. George E. Duncan, Beaumont Savings Building, Beaumont,Texas, Attorney of record for defendants, Pittsburgh Plate Glass Company and Pittsburgh Corning Corporation; and
Mr. Gordon R. Pate, 1119 Beaumont Savings Bldg., Beaumont,Texas, Attorney of record for Defendants, Johns-Manville Sales Corporation, Johns-Manville Products Corporation, and Johns-Manville Fiber Glass, Inc:

PLEASE TAKE NOTICE that the undersigned will bring the annexed objections and motion on for hearing before the Court at the Courtroom of the United States District Court for the Eastern District of Texas, at the United States Courthouse in Beaumont, Texas, on the 20th day of November, 1967, at 2:00 o'clock P M., or as soon thereafter as counsel can be heard.

This 9th day of November, 1967.

ATTORNEY FOR DEFENDANTS,
Combustion Engineering, Inc., and
R & I Refractor and Insulation Corporation;
1014 San Jacinto Bldg.,P.O.Box 1632,
Beaumont,Texas.

CERTIFICATE OF SERVICE.

I hereby certify that the above and foregoing notice has been served on the parties to this cause, by mailing true and correct copies thereof to the respective attorneys for the defendants, hereinabove named, at their correct postoffice address, above shown, this 9th day of November, 1967.

ATTORNEYS FOR DEFENDANTS,
Combustion Engineering, Inc., and
R & I Refractor and Insulation Corporation.

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