IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED
MAY 27 1968
James R. Cooney, Clerk, U. S. Court
By Margaret Spiver DEPUTY

CLAUDE J. TOMPLAIT §

VS. § CIVIL ACTION NO. 5402

COMBUSTION ENGINEERING, INC., ET AL §

MOTION TO QUASH SERVICE OF SUBPOENA

TO SAID HONORABLE COURT:

COMES NOW Fibreboard Paper Products Corporation, one of the defendants in the above styled and numbered cause, and makes and files this its Motion to Quash the subpoena served upon its attorney, and for such Motion would show the Court:

1.

Plaintiff caused to be served upon the undersigned attorney for this defendant a subpoena directing said attorney to produce at 10:00 o'clock a.m., on May 27, 1968, a sample or samples at least six inches in diameter of any and all insulation products manufactured by Fibreboard Paper Products Corporation which contain asbestos, such sample or samples to be labeled with the name of the manufacturer and the trade name of such products.

2.

Said subpoena does not designate the particular product or products which plaintiff's attorney wants produced or the trade name of such product, nor does he designate that he desires a sample of one product containing asbestos, but to the contrary, he demands that this defendant produce a sample of each and every product. The plaintiff has heretofore by

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interrogatories inquired about the nature of a product produced, the trade name, and such information as he required and, therefore, he should be required to be more specific and designate specifically the product which he desires. Further, the plaintiff has access to a source or sources from which he can acquire a sample of such product or products and the burden should not be placed on this defendant to produce for the plaintiff as an exhibit each and every product which this defendant manufactures.

3.

Further, the attorney for said defendant is not the proper person or party to produce said sample or samples or to testify regarding same because this attorney has no first hand knowledge as to the composition of said product or products.

4.

Further, this defendant would show the Court that to require this defendant to label each and every product by the manufacturer's name and number would merely allow the plaintiff to identify each and every product after he knew the name of the product or the trade name of the product or the manufacturer thereof, whereas the plaintiff has heretofore testified under oath that he did not know at any time the name of the product he was with nor did he know the name of the manufacturer thereof, and he was unable to identify any particular product that he worked with on any particular job.

If any marking of any product is required by the Court, then such marking should be with a code name or number which will be furnished only to the Court.

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5.

This defendant would further show that it would be unreasonable considering the short period of time left before trial to require this defendant to accumulate a sample or samples of each and every product called for by said subpoena, and for this reason, said subpoena is oppressive and should be quashed, or in the alternative, restricted to a sample product which contains asbestos.

WHEREFORE, PREMISES CONSIDERED, this defendant prays that the subpoena be quashed.

Respectfully submitted,

WELLER, WHEELUS & GREEN
P. O. BOX 350
BEAUMONT, TEXAS

BY Geo. A. Weller
GEO. A. WELLER

ATTORNEYS FOR DEFENDANT,
FIBREBOARD PAPER PRODUCTS
CORPORATION

A copy of the foregoing Motion to Quash Service of Subpoena was mailed on the 23 day of May, 1968, to the following attorneys of record:

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