IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED
JUN 4 1962
James R. Gourley, Clerk, U. S. Court
By Virginia R. Adams DEPUTY

CLAUDE J. TOMPLAIT		
VS.		CIVIL ACTION NO. 5402
COMBUSTION ENGINEERING, INC., ET AL		

MOTION TO LIMIT AND RESTRICT
PLAINTIFF'S MOTION FOR DISCOVERY

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the defendant, Fibreboard Paper Products Corporation, and files this, its motion to limit the plaintiff's motion for discovery on file herein, and as grounds therefor would show:

1.

In Paragraph 1 of the motion for discovery, the plaintiff states that it is necessary that each of the defendants produce such materials as they each manufacture for use in insulating which contains any asbestos.

This defendant objects to this request and says that a request of this defendant to produce a sample of each and every insulating product manufactured by it which contains asbestos would place an onerous burden on this defendant and cause it to go to considerable expense in assembling, packing and mailing such product, and Rule 34 of the Federal Rules of Civil Procedure does not contemplate or encompass the requirement that a defendant furnish a sample or samples of such product or that the defendant assume this burden, which is both expensive and onerous.

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In this connection, this defendant's attorney was served with a subpoena requiring that he produce at the time of trial a sample of all materials containing asbestos manufactured by this defendant. This defendant filed its motion to quash said subpoena. In this connection, this defendant would request the Court to limit the requirement for production of a sample product to one product manufactured by this defendant containing asbestos.

2.

In Paragraph 2 of the motion for discovery, plaintiff requests that each product be identified at the time they are produced by the name of the manufacturer, the trade name of the product, together with when the product was first manufactured, so that during the trial of the case there will be a simple method of identifying the product manufactured or distributed by each of the defendants.

This defendant objects to said motion for discovery for each of the following reasons:

(a) This defendant has heretofore produced in answer to interrogatories the trade name of the product, together with the other information requested, save and except that a sample of the product was not produced. Samples of products manufactured by this defendant are available in the trade and plaintiff could secure samples of such product if he was willing to pay for same and went to the trouble and expense of obtaining it.

(b) This defendant would show the Court that to require this defendant to label each and every product by the manufacturer's

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name and number would merely allow the plaintiff or a witness 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 working 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 markings of any product is required by the Court, then such markings should be with a code name or number which will be furnished only to the Court.

(c) This defendant would further show that it would be an unreasonable demand and requirement to require this defendant to accumulate a sample or samples of each and every product manufactured by it, as the products come in various shapes and sizes, and for this reason said motion for discovery is oppressive and should be quashed; or in the alternative, should be restricted to one sample product which contains asbestos.

3.

In Paragraph 3, the plaintiff has requested that defendant be ordered to produce all sales literature concerning such product. This defendant objects to said motion for the following reasons:

(a) Said request is not limited as to time, and the Court has heretofore restricted the answers to interrogatories to products manufactured since 1959.

(b) Sales literature is available to plaintiff, and this defendant is informed that plaintiff has heretofore acquired

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a catalogue of defendant's products which is published by defendant.

(c) The plaintiff has not testified that he relied upon any sales literature, and therefore any sales literature would be irrelevant and immaterial.

4.

In Paragraph 4, the plaintiff has requested that the Court order each defendant to produce all engineering, scientific and research data concerning such products, its suggested use and adaptability, methods of applying, and any safety controls suggested.

This defendant objects to said interrogatory for each of the following reasons:

(a) Engineering, scientific and research data concerning such product is confidential, and may involve patent information, trade secrets, etc.,and such should not be required to be produced in a suit for damages when this defendant has heretofore disclosed the name of the matter which makes up the content of its product.

(b) The product is insulating material, and the recommendation for use and adaptability in the insulation trade is found in the catalogue published by this defendant, of which the plaintiff already has knowledge.

(c) Defendant objects to supplying any material as to the method of applying the product for the reason that the application of asbestos products is controlled by the asbestos union, of which the plaintiff is a long time member; and further, plaintiff is supposed to be an expert tradesman and technician

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in the application of asbestos and insulation products. Further, such products are usually installed under the direction and control of independent contractors, and this defendant does not control the method of application, nor direct the method of application to such contractors, as the application of insulation materials is a well known fact in the insulation industry.

(d) As to any safety controls suggested, this defendant objects for the reason that there is no duty existing on the manufacturer of asbestos insulation products to prescribe or require any safety controls; and further, there exists no relationship between the manufacturer of the product and the insulating contractor who will contract to apply the same, such as to allow the manufacturer to require the contractor to follow any particular safety suggestions. Neither is there any relationship between the manufacturer and the technician, who is well versed in the application of insulation, to require him to follow any suggested safety measures or control measures in the application of the product.

5.

This defendant objects to Paragraph No. 6 of the motion, requesting that defendant be ordered to produce any breathing apparatus, device or other safeguards which such defendant claims would materially reduce or completely eliminate the disease of asbestosos if used by the workers.

This defendant objects to said request for the reason that it does not manufacture or distribute breathing apparatuses, but such breathing apparatus or mask are produced by other manufacturers and the use thereof is well known in the insulation

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trade and the purpose of the use of a mask or breathing apparatus is well known to the members of the asbestos union, who are expert in the application of asbestos products, their foremen and contractors.

Further, this defendant does not manufacture blowing devices or suction devices or fans which should be used to remove dust in tight places where workers are applying asbestos materials, or any other materials. This is a commonly recognized safeguard where workers are using asbestos material, silica material, foam glass, or any other product which creates a dust condition. Further, the matter of a breathing apparatus or mask is something that the plaintiff or his attorney can purchase on the open market, and this defendant should not be required to go outside of its own organization to produce evidence for the plaintiff.

This defendant would further show that working conditions of members of the asbestos union are usually prescribed by the contract existing between the asbestos workers' union and the insulation contractors' association, and it is common knowledge in this industry that respirators or masks are available for the use of insulators and it is usual and customary for the foreman on the job to order the same from his employer and for the employer to furnish them.

6.

This defendant denies that it has possession, control and custody of each and all of the matters which the plaintiff requests be produced in this motion, and feels that the Court should limit said motion as hereinbefore outlined.

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WHEREFORE, this defendant prays that the Court set this motion for hearing, and that upon hearing that the Court restrict the plaintiff's motion for discovery as hereinbefore set forth in this motion.

Respectfully submitted;

WELLER, WHEELUS & GREEN
P. O. BOX 350
BEAUMONT, TEXAS 77704

BY _____
GEO. A. WELLER,
ATTORNEY FOR DEFENDANT,
FIBREBOARD PAPER PRODUCTS
CORPORATION.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing motion to limit and restrict plaintiff's motion for discovery filed by the defendant, Fibreboard Paper Products Corporation, was served on Mr. Ward Stephenson, Stephenson, Thompson & Morris, Stephenson Building, Orange, Texas, attorney for plaintiff, by mailing a copy to said address by Certified Mail on the 4 day of June, 1968, and a copy was likewise served on all other attorneys of record by mailing a copy to their respective addresses by regular United States Mail on the 4 day of June, 1968.

_____
GEO. A. WELLER

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