IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS, BEAUMONT DIVISION.

FILED
JUN 5 1968
M ____ 19___
James R. Cooney, Clerk, U. S. Court
By _____ DEPUTY

CLAUDE J. TOMPLAIT, PLAINTIFF, §

VS. §

COMBUSTION ENGINEERING, INC., ET AL, §

DEFENDANTS. §

CIVIL NO. 5402

OBJECTIONS OF DEFENDANTS, COMBUSTION ENGINEERING, INC., AND R & I REFRACTORY AND INSULATION CORPORATION, IN OPPOSITION TO MOTION FOR DISCOVERY.

Now come the defendants, Combustion Engineering, Inc., and R & I Refractory and Insulation Corporation, in the above-entitled and numbered cause, and make and file the following objections in opposition to the Motion for Discovery filed by the plaintiff herein, and as grounds for such objections would show unto the Court as follows:

1.

These defendants object to Paragraph 1 of the Motion and the matters called for therein, because the plaintiff is seeking to have these defendants produce "such materials as they each manufacture for use in insulating which contain any asbestos", and said motion is not confined to the production of materials during any time material or relevant to this lawsuit, and these defendants should not be required to produce materials which they manufacture at this time, nor at any time prior to the time or times which are material to this suit.

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Further, these defendants object to the request in Paragraph 1 of the Motion for Discovery, and say that for these defendants to have to produce a sample of each and every insulating product manufactured by R & I Refractory&Insulation Corporation which contains asbestos would place an undue burden on the defendants, in that it would take considerable time and effort on the part of defendant's employees and cause it to go to considerable expense in assembling, packing and mailing such products, and Rule 34 of the Federal Rules of Civil Procedure does not comtemplate or encompass the requirement that a defendant furnish a sample or samples of such product or that the defendants assume such burden, which is both expensive and onerous.

Further, the defendants have furnished alist by trade name and by description, as to the composition of each product manufactured by R & I Refractory and Insulation Corporation, in answer to the first set of Interrogatories, which gives the plaintiff all material and relevant information required in connection with the insulation products of R & I Refractory and Insulation Corporation, and the physical presence of such samples on the trial of this cause is immaterial and irrelevant, and to require the defendants to produce same is an onerous, expensive, and useless burden.

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2.

These defendants object to Paragraph 2 of the Motion and the matters called for therein, for the following reasons:

(a) The products referred to in paragraph 2 are those sought to have the defendants produce by paragraph 1, and said motion is not confined to the production of materials during any time material or relevant to this lawsuit, and these defendants should not be required to produce materials or products which they manufacture at this time, nor at any time prior to the time or times which are material to this suit.

(b) To produce the information as to when defendants' various products were first manufactured will work an undue hardship and burden on these defendants, as they will have to search their records to determine such matters, and the files of the defendants with reference to the various products so manufactured.

(c) Said matters sought to be produced do not restrict the inquiry as to time, but refers to all times during which the defendants or either of them may have manufac-tured any insulating products containing asbestos, and same could not be material or relevant to any issue in this cause.

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(d) Further, the defendants have heretofore produced, in answer to the first set of interrogatories, the name and trade name of all products manufactured by R & I Refractory and Insulation Corporation, with details as to the constituents of each, and when same were manufactured, and samples of the products manufactured by said defendant are available in the trade and the plaintiff himself could obtain same, if he were willing to pay for same and went to the trouble and expense of obtaining same.

(e) To require the defendants to label each and every product by the manufacturer's name would merely allow the plaintiff or a witness for him to identify each and every product after he knew the name or the product or the manufacturer thereof, and the plaintiff has testified under oath in his deposition that he did not know at any time the name of the product he was working with, nor the manufacturer thereof, and he was unable to identify any particular product that he worked with on any particular job, and if any markings of any product be required by the Court, then such markings should be witha code name or number which will be furnished only to the Court.

(f) It would be unreasonable to require the defendants to accumulate samples of the products referred to, and said motion is oppressive and should be quashed.

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3.

These defendants object to Paragraph 3 of the Motion and the matters called for therein for all of the reasons set forth above in opposition to paragraphs 1 and 2 of the motion, and in addition, for the following reasons:

(1) To be required to "produce all sales literature concerning each product," is too broad and general and lacking in particularity, and will be burdensome and oppressive on these defendants, in that much of the literature in connection with the various products has been revised during the years, and some of which has been superseded, and the matters sought are lacking in specificity as to time which would be material or relevant.

4.

Defendants object to paragraph 4 of the motion for each and all of the reasons set forth above in opposition to paragraphs 1 and 2 of the motion, and in addition, for the following reasons:

(a) To furnish all engineering, scientific and research data concerning such products would take an unconscionable amount of time by many of defendants' employees, to amass the data called for, and same would be unduly cumbersome and expensive on these defendants, and much effort would go into the accumulation of such data, and it is unreasonable to require these defendants to produce all of the matters called for in such motion.

(b) Such motion is insufficiently specific, and no good cause is shown in connection with paragraph 4 of said Motion, and said request will result in extensive examination of documents and disorder in the proceedings, and there is no limitation placed

on such matters as to either time or amount, other than "all", and "all of such material would be voluminous and much of same immaterial and irrelevant, and such motion does not state with particularity what is called for; and plaintiff's motion requesting that "all of such matters be produced is without merit.

(c) The matters called for by such motion are not readily available in convenient form, but would have to be amassed, at great effort and time on the part of many of defendants' employees, and same will be expensive, if not in fact, impossible to re-produce, and to require the defendants to produce same will be a difficult and expensive task, and would involve the examination of many documents and much data, all of which is unreasonable and unconscionable and imposes an undue burden upon the defendants and amounts to an harassment of these defendants.

(d) Engineering, scientific and research data concerning such products is confidential, and may involve patent information, trade secrets, etc., and such should not be required to be produced in this cause when the defendants have heretofore made disclosure of the names of such products and the ingredients thereof.

(e) The products referred to are insulating material, and the recommendation for use and adaptability in the insulation trade is found in catalogues and brochures published by the defendants, R & I Refractory and Insulation Corporation, of which the plaintiff already has knowledge.

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(f) Defendants object to supplying any information as to the method of applying the products 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 plaintiff is supposed to be an expert technician in the application of asbestos and insulation products; and further such products are usually installed under the direction and control of independent contractors, and these defendant do not control the method of application, as the application of insulation materials is a well known fact in the insulation industry.

5.

Defendant objects to Paragraph No. 6 of the motion, requesting defendants be ordered to produce any breathing apparatus, device or other safeguards which defendants claim would materially reduce or completely eliminate thedisease of asbestosis if used by workers, for the following reasons:

(a) Neither of the defendants manufacture or distribute breathing apparatuses, but such breathing apparatus or masks are produced by other manufacturers and the use thereof is well known in the insulation 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 foreman and contractors.

Further, this defendant does not manufacture any other devices which should be used to remove dust in tight places where workers are applying asbestos materials or any other materials, and this is a commonly recognized safeguard where workers are using insulating material.

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(b) The breathing apparatus or mask is something that the plaintiff or his attorney can purchase on the open market, and these defendants should not be required to go outside of their own organizations to produce evidence for the plaintiffs; and further defendants say that it is common knowledge in the insulation industry that respirators or masks are available for the use of insulators and it is usual and customary for foremen on jobs to order the same and for the employers to furnish them.

6.

Defendants deny that they have possession, control and custody of each and all of the matters which the plaintiff requests be produced in said motion.

WHEREFORE, defendants pray the Court to set said motion and this opposition thereto for hearing, and that upon hearing the Court sustain the foregoing objections.

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

CERTIFICATE OF SERVICE.

I certify that a copy of the foregoing objections was served upon the plaintiff and his attorneys of record, by mailing a true and correct copy thereof to Messrs. Stephenson, Thompson & Morris, Stephanson Building, Orange, Texas, attorneys for plaintiff, this 5th day of June, 1968, and a copy was likewise served on all other attorneys of record by mailing same to their respective postoffice addresses by regular United States Mail.

ATTORNEY FOR SAID DEFENDANTS.

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