LAW OFFICES OF
WELLS, DUNCAN AND BEARD

FILED
JUN 6 1968
James R. Cooney, Clerk, U. S. D. C.
By Evelyn L. Clark
DEPUTY

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

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

MOTION TO LIMIT AND RESTRICT PLAINTIFF'S MOTION FOR DISCOVERY

TO THE HONORABLE JUDGE OF SAID COURT:

Come now Defendants, PITTSBURGH PLATE GLASS COMPANY and PITTSBURGH CORNING CORPORATION and file this their Motion to Limit and Restrict Plaintiff's Motion for Discovery on file herein, and as grounds therefor would show:

I.

Plaintiff, in Paragraph 1 of his Motion for Discovery, alleges that in the interest of a full and complete, yet speedy trial, that "it is necessary that each of the Defendants produce such materials as they each manufacture for use in insulating, which contain any asbestos."

These Defendants object to this request and say that, contrary to Plaintiff's allegation that the production requested therein would be in the interest of "a full and complete, yet, speedy trial," for the reason that the very opposite would be the effect of the request which is being made herein, and further states that such a request would place an onerous burden on these Defendants and each of them.

These Defendants allege and aver that Rule 34 of the Federal Rules of Civil Procedure do not contemplate or encompass the requirement that a Defendant furnish a sample or samples of such products requested by Plaintiff, or that Defendant assume this burden, which is both expensive and onerous.

II.

Paragraph 2 of Plaintiff's Motion for Discovery 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.

These Defendants object to Paragraph 2 of said Motion for Discovery for the following reasons:

(a) These Defendants have heretofore produced in answer to Interrogatories the trade name of the products, together with other information requested, and have likewise set forth in detail, in answer to the preceding two sets of Interrogatories served upon these Defendants, a description of the materials which are contained within each of said products.

On information and belief, and based upon said information and belief, these Defendants allege and aver that the Plaintiff's attorney has already obtained samples of the products manufactured by these Defendants and, in any event, the same are available in the trade, and Plaintiff could secure samples or such products without the harrassment involved in connection with demanding that these Defendants produce such samples.

(b) These Defendants would further show the Court that to require these Defendants to label each and every product by the manufacturer's name and number would, in effect, cast the burden of proving Plaintiff's case on these Defendants, and would shift to them Plaintiff's burden to prove that he, himself, actually worked with any one or all of the products which Plaintiff requested these Defendants to produce; that to allow this to occur would be contrary to the Federal Rules of Civil Procedure, as well as the Rules of Evidence in this Honorable Court, and would simply 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, in his deposition, 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.

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If any markings of any product are required by this Court, then, such markings should be with a code name or number which should be furnished only to the Court, and not to Plaintiff or his attorney.

(c) These Defendants would further show that it would be an unreasonable demand and would be onerous and oppressive on these Defendants to require them, or either of them, to accumulate the samples requested, and for this reason, said Motion for Discovery should be quashed.

III.

In Paragraph 3, Plaintiff has requested that Defendants be ordered to produce all sales literature, concerning each of the products set forth in Paragraphs 1 and 2 of said Motion for Discovery. These Defendants object to Paragraph 3 of 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) Such sales literature is available to Plaintiff, and upon information and belief, and based upon such information and belief, these Defendants allege and aver that Plaintiff and his attorney have heretofore acquired all sales literature of Defendants' products, which are published by the Defendants.

(c) To require these Defendants to assemble all sales literature regardless of the time when published, would be an onerous and oppressive procedure, which would have the effect only of lengthening the trial of this case, and confusing and cluttering up the record.

(d) The said request contained in Paragraph 3 of Plaintiff's Motion for Discovery should be denied, for the reason that the Plaintiff has not testified that he relied upon any sales literature, and therefore any sales literature would be irrelevant and immaterial.

IV.

In Paragraph 4 the Plaintiff has requested that the Court order each Defendant to produce all engineering, scientific and research data concerning such products, suggested use and adaptability, and methods of applying, and any safety controls suggested. These Defendants object to said Paragraph 4 of Plaintiff's Motion for Discovery, for each of the following reasons:

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(a) Said request is contrary to the letter and spirit of the Federal Rules of Civil Procedure, and particularly, to Rule 30(b) thereof, for the reason that the engineering, scientific and research data concerning such products is confidential; may involve patent information and trade secrets, and the same should not be required to be produced in a suit for damages, when these Defendants have heretofore disclosed the trade names and the materials which are incorporated into its product.

(b) This Court is authorized under Rule 30(b) of the Federal Rules of Civil Procedure to refuse to allow the disclosure of the very things which Plaintiff is requesting in Paragraph 4 of his Motion for Discovery, in that said Rule provides, in part:

> "* * * That secret processes, developments or research need not be disclosed * * *."

(c) The products of which Plaintiff requests, concern insulating materials and the recommendation for use and adaptability in the insulation trade is found in the literature published by these Defendants, and on information and belief, and based on such information and belief, these Defendants allege and aver that Plaintiff already has knowledge of the contents of said literature published by these Defendants.

(d) Defendants object to supplying any material 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; that Plaintiff is an expert tradesman and technician, in the application of asbestos and insulation materials; that such products are usually installed under the direction and control of independent contractors, and these Defendants do not control the method of application, nor direct the method of application for such contractors, as the application of insulation materials is a well-known art in the insulation industry.

(e) As to any safety controls suggested, these Defendants object to such request for the reason that there is no duty existing on the manufacturer of such products to prescribe or require any safety controls; that there exists no

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relationship between the manufacturer of the products and the insulating contractor, who will contract with some third party to apply the same; that the manufacturer has no control over said contractor, or those employed by said Contractor, including the Plaintiff, which would allow the manufacturer to control or require the Contractor to follow any particular safety suggestions. Further, there is no relationship between the manufacturer and the employee of an independent Contractor, including the Plaintiff, 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 products.

V.

These Defendants deny that they have possession, control or custody of each and all of the matters which the Plaintiff requests be produced in this Motion and prays the Court to limit said Motion as hereinabove outlined.

WHEREFORE, these Defendants pray that the Court set this Motion for hearing, and that upon hearing the Court restrict the Plaintiff's Motion for Discovery as hereinabove set forth in this Motion.

Respectfully submitted,

WELLS, DUNCAN AND BEARD

By _____

515 Beaumont Savings Building
Beaumont, Texas 77701

Attorneys for Defendants
PITTSBURGH PLATE GLASS COMPANY and
PITTSBURGH CORNING CORPORATION

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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing instrument of Defendant was on the 7th day of June, 1968, served upon counsel for each of the other parties herein by depositing the same in the United States Mail, in correctly addressed, stamped and sealed envelopes to:

Mr. Ben L. Reynolds
Royston, Rayzor & Cook
877 San Jacinto Building
Houston, Texas 77002

Mr. Ward Stephenson
Stephenson Building
Orange, Texas 77630

Mr. John G. Tucker
Orgain, Bell & Tucker
Beaumont Savings Building
Beaumont, Texas 77701

Mr. John Rienstra
Beaumont Savings Building
Beaumont, Texas 77701

Mr. George A. Weller
P. O. Box 350
Beaumont, Texas

Mr. Charles S. Pipkin
P. O. Box 1632
Beaumont, Texas 77704

Mr. Gordon R. Pate
Beaumont Savings Building
Beaumont, Texas 77701

Mr. James W. Mebaffy
San Jacinto Building
Beaumont, Texas 77701

George E. Duncan
Attorney for Defendants
PITTSBURGH CORNING CORPORATION
PITTSBURGH PLATE GLASS COMPANY

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LAW OFFICES OF
WELLS, DUNCAN AND BEARD
BEAUMONT SAVINGS BUILDING
BEAUMONT, TEXAS

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