IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED

JUN 7 1968 19

James R. Cooney, Clerk, U. S. Court

By Virginia R. Sena DEPUTY

CLAUDE J. TOMPLAIT

VS

COMBUSTION ENGINEERING, INC., ET AL

CIVIL ACTION NO. 5402

DEFENDANT, JOHNS-MANVILLE PRODUCTS CORPORATION'S OBJECTIONS TO PLAINTIFF'S MOTION FOR DISCOVERY AND MOTION TO LIMIT AND RESTRICT SAME

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the defendant, Johns-Manville Products Corporation, and files these its Objections to Plaintiff's Motion for Discovery and its Motion to Limit same, and as grounds therefor, would show the Court the following:

1.

Defendant objects to paragraph 1 of said Motion wherein Plaintiff states that it is necessary for this defendant to produce a sample of each and every insulating product which it manufactures containing asbestos, for the following reasons:

(a) This defendant manufactures several products containing asbestos, as shown by its answers to interrogatories heretofore filed, and to require it to produce a sample of each and every product, would place an onerous burden on this defendant;

(b) To comply with said Motion would put this defendant to considerable expense and consume considerable time in assembling, packaging, and transporting said products;

(c) Rule 34 of the Federal Rules of Civil Procedure does not contemplate nor encompass the requirement that a defendant produce samples as requested by plaintiff, and this burden should not be placed upon this defendant.

The Court should limit the requirement for production of such product or products manufactured by this defendant to those products, if any, which plaintiff claims he has worked with.

Published by AsbestosClaims.Law
asbestosclaims.law/library/10672/1

2.

In paragraph 2 of said Motion for Discovery, plaintiff requests the following:

(a) Name of manufacturer;

(b) Trade Name;

(c) That the date when the product was first manufactured be given.

This defendant objects to paragraph 2 for the reason that it has heretofore, in answer to interrogatories, given the trade name of its products, together with the other information requested, and samples of its products are available in the trade and can be obtained by plaintiff. Further, this defendant would show the Court that it should not be required to label each and every product which it manufactures by name for the reason that plaintiff has heretofore testified upon deposition that he is unable to identify any particular product that he worked with on any particular job, and to require this defendant at this time to identify its products by name would merely allow the plaintiff or a witness to identify each and every product after he knew the name of the product or the manufacturer thereof. Defendant would further show the Court that it would be unreasonable 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. If any markings of any product is required by the Court, then such markings should be with a code number which should be furnished to the Court only.

3.

Plaintiff has requested in paragraph 3 of said Motion, that defendant be ordered to produce all sales literature con-

Published by AsbestosClaims.Law
asbestosclaims.law/library/10672/2

cerning each product. This defendant objects to said paragraph for the following reasons:

(a) Said request is not limited as to time;

(b) Sales literature is available to plaintiff and plaintiff has heretofore acquired sales literature covering products which were manufactured by this defendant;

(c) Said literature would be irrelevant and immaterial for the reason that plaintiff has not testified that he relied upon same;

(d) Said sales literature is irrelevant because no privity of contract exists between plaintiff and defendant.

4.

By paragraph 4 of said Motion, plaintiff has requested that the Court enter an Order requiring defendant to produce all engineering, scientific and research data concerning such products, their suggested use and adaptability, methods of applying and any safety controls suggested. This defendant objects to said paragraph for each of the following reasons:

(a) Engineering, Scientific and research data concerning such products is confidential information and may involve patent information and trade secrets, and such data should not be required to be produced in a damage suit;

(b) The plaintiff and his attorney have in their possession a catalog listing the products manufactured by this defendant, including the recommendations for the use and adaptability of said products;

(c) As to the application of said products, this is a matter controled by the Asbestos Union, of which the plaintiff is a member;

(d) As to any safety controls suggested, this defendant objects for the reason that there is no duty on the manufacturers of asbestos insulating products to prescribe or require safety controls.

5.

By paragraph 5 of said Motion, plaintiff requests the name and address of the person in charge of the defendant's medi-

cal or scientific research departments. In this connection, defendant would show the Court that it does not maintain a "Medical Research Department" but does maintain a "Medical Department".

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 his Motion, and requests the Court to limit said Motion as herein above outlined.

WHEREFORE, PREMISES CONSIDERED, this defendant prays that the Court set this Motion for hearing and that upon hearing, the Court restrict the plaintiff's Motion for Discovery as herein above set forth.

Gordon Pate

GORDON R. PATE
1119 Beaumont Savings Building
Beaumont, Texas 77701
Attorney for Defendant, Johns-Manville Products Corporation

CERTIFICATE OF SERVICE

A true copy of the above and foregoing Defendant, Johns-Manville Products Corporation's Objections to Plaintiff's Motion for Discovery and Motion to Limit and Restrict Same was on this the 2nd day of June, 1968, served upon counsel for each of the other parties herein by depositing the same in the United States Mail, addressed to Mr. Ben L. Reynolds, Royston, Rayzor & Cook, 877 San Jacinto Building, Houston, Texas 77002; Mr. Ward Stephenson, Stephenson Building, Orange, Texas; Mr. John G. Tucker, Beaumont Savings Building, Beaumont, Texas 77701; Mr. George A. Weller, P. O. Box 350, Beaumont, Texas 77704; Mr. Charles S. Pipkin, P. O. Box 1632, Beaumont, Texas 77704; Mr. George Duncan, Beaumont Savings Building, Beaumont, Texas 77701, and Mr. John Rienstra, Beaumont Savings Building, Beaumont, Texas 77701.

Gordon Pate

Attorney for Johns-Manville Products Corporation

Published by AsbestosClaims.Law
asbestosclaims.law/library/10672/4

CIVIL ACTION NO. 5402

CLAUDE J. TOMPLAIT

VS

COMBUSTION ENGINEERING, INC., ET AL

DEFENDANT, JOHNS-MANVILLE PRODUCTS CORPORATION'S OBJECTIONS TO PLAINTIFF'S MOTION FOR DISCOVERY AND MOTION TO LIMIT AND RESTRICT SAME

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

GORDON R. PATE
ATTORNEY AT LAW
1119 BEAUMONT SAVINGS BUILDING
BEAUMONT, TEXAS 77701

Published by AsbestosClaims.Law
asbestosclaims.law/library/10672/5