IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED
JUL 24 1958
James R. Cooley, Clerk, U.S. District Court
By Hazel E. Stubblefield DEPUTY

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

REPLY OF DEFENDANT, FIBREBOARD PAPER PRODUCTS CORPORATION, TO PLAINTIFF'S MOTION TO STRIKE CERTAIN PORTIONS OF WRITTEN INTERROGATORIES DIRECTED TO DR. STANTON P. FISCHER

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the defendant, Fibreboard Paper Products Corporation, and files this, its reply to plaintiff's motion to strike certain written interrogatories propounded by defendants to Dr. Stanton P. Fischer, and for said reply says:

1.

Attorney for plaintiff has persisted in several pleadings in stating there was an agreement between the attorney for plaintiff and the attorneys for defendants, including this defendant. The attorney for this defendant has heretofore denied under oath that he made such agreement as alleged by plaintiff's attorney, and he had no such understanding as is stated in the plaintiff's motion to strike. Further, this defendant would not have made such an agreement for the very reason that under the Federal Rules of Civil Procedure defendant has a right to have the plaintiff examined by a physician of its selection.

Plaintiff has heretofore filed certain proceedings with the Industrial Accident Board of the State of Texas which contain admissions against interest, and certified copies of

these proceedings are available and are admissible in evidence upon the trial of this case. This includes the medical report of Dr. M. V. Leary, who was formerly associated with the Kelsey-Seybold Clinic. This report reflects that the plaintiff gave a certain history to Dr. Leary, and further reflects that certain X-rays were taken at the time of the examination by Dr. Leary.

Certainly, X-rays taken on or about October 19, 1962, would be admissible in evidence and could be read by any other physician or by another physician who purported to testify in this case. Such X-rays are certainly admissible for purposes of comparing the condition of the plaintiff as it existed on October 19, 1962, with X-rays taken at a later date. Further, X-rays taken at Orange Memorial Hospital in July or August, 1961, should be admissible for purposes of comparison with X-rays taken at a later date.

The letters referred to written by Dr. Leary are also admissible on the issue of notice to the plaintiff of his alleged condition.

The X-rays and X-ray reports made by Dr. Leary, or at his request by other physicians, are admissible, or in any event, are subject to discovery.

2.

This defendant denies that its attorney made any agreement with the attorney for the plaintiff in regard to the non-use of any testimony. Plaintiff is assuming that his agreement was made with all counsel, whereas such is not true and counsel for plaintiff cannot state under oath that he discussed this with the undersigned attorney for this defendant at any time. Any and all X-ray reports and letter reports made by Dr. M. V. Leary

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are subject to discovery and should be included in the deposition of Dr. Stanton P. Fischer. Further, Dr. Fischer should be permitted and allowed to compare the X-rays taken on prior dates with those taken on subsequent dates, and this defendant should not be restricted, hamstrung or prohibited from properly cross-examining the witness for the plaintiff, Dr. Stanton P. Fischer.

WHEREFORE, this defendant respectfully requests the Court to deny the plaintiff's motion to strike from the written interrogatory deposition of Dr. Stanton P. Fischer the above mentioned X-ray reports and letter reports, and respectfully asks the Court not to restrict counsel for the defendants from referring to the prior examinations and reports of doctors of which the plaintiff and his attorney had full knowledge and of which the plaintiff is charged with notice.

Respectfully submitted;

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FIBREBOARD PAPER PRODUCTS CORPORATION

Copies of the foregoing reply of defendant, Fibreboard Paper Products Corporation, to plaintiff's motion to strike certain portions of written interrogatories directed to Dr. Stanton P. Fischer, were mailed to the following attorneys of record:

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