IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED
MAY 2 1969
James R. Cooney, Clerk, U. S. Court
By Virginia K. Sims DEPUTY

CLAUDE J. TOMPLAIT

VS.

COMBUSTION ENGINEERING, INC., ET AL

CIVIL ACTION NO. 5402

MOTION TO DECLARE PLAINTIFF'S ANSWERS TO DEFENDANT'S REQUESTS FOR ADMISSIONS ADMITTED AND TO STRIKE ANSWERS TO DEFENDANT'S INTERROGATORIES

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the defendant, Fibreboard Paper Products Corporation, and files this, its request of the Court to decree that the plaintiff's answers to certain requests for admissions of fact are evasive and in effect no answer, and to declare said requests admitted and to prohibit the plaintiff from attempting to change or alter his answers to said requests for admissions, and as grounds therefor would show:

1.

This defendant served requests for admissions upon the plaintiff on August 13, 1968, and the plaintiff filed his sworn answers on September 19, 1968. Such answers would not be admissible in evidence because they are neither admissions nor denials but are based upon vague speculation and hearsay.

2.

Defendant submitted Request No. 6, which reads: "That in the amended claim dated February 24, 1962, plaintiff asserted a claim against Armstrong Contracting and Supply Company and its workmen's compensation carrier, The Aber Company, Industrial Insulating and Johns-Mansfield (this should have

read Johns-Manville)," which plaintiff denied. A copy of said amended claim is attached to the requests.

3.

Plaintiff likewise denied Request No. 7, which contained a letter of plaintiff's attorney dated June 18, 1962, filed June 19, 1962, which was attached, and said request was denied.

4.

In Request No. 23, plaintiff was asked to admit or deny - "That Claude J. Tomplait cannot identify any particular product as the product which caused him harm." Such request was denied.

5.

Request No. 37 - "That the plaintiff, Claude J. Tomplait, does not know of any date on which he worked with any product manufactured by Fibreboard Paper Products Corporation." - denied.

6.

Requests Nos. 38 through 60 made reference to specific jobs on which the plaintiff, Tomplait, worked, and this defendant requested the plaintiff to admit or deny that this defendant did not supply any insulation products to said job in the year designated in the requests. The plaintiff's answer to said requests 38 through 60 reads: "In reply to Requests for Admissions Nos. 38 through 60, plaintiff refers the defendant to the deposition already given and to answers to written interrogatories and says that this is a duplication of questions submitted previously in oral questioning, and written questioning, but plaintiff says

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that whether or not the defendant directly supplied its products to these jobs is not known to him in every instance, but presumably the products could have been brought in by subcontractors and others, xxx." Such answers are evasive and do not comply with the rules requiring the plaintiff to admit or deny under oath. The plaintiff has alleged and charged that numerous defendants supplied insulation products to the various jobs listed in Requests 38 through 60, but the plaintiff has not admitted or denied any of said requests but has merely avoided answering them.

7.

This defendant likewise submitted interrogatories directed to the plaintiff referring to Paragraphs 15 through 37 of his third amended complaint and asked to state with reference to each job if he worked with any product manufactured by Fibreboard Paper Products Corporation on said job and to specify the name of his employer and the job on which he worked.

By reference to the plaintiff's answers to said interrogatories, the plaintiff states: "I do not recall that Pabco products were used by me or other employees working around me on this job."

Other answers consist of: "I could well have worked with Pabco products on this job and probably did. Other employees working for other employers may have also used these particular products."

"I know that I worked around magnesium and it could have been Pabco products."

Again, "I do not specifically recall working with Pabco products on this job but I remember there were lots of other

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workers on this job and I believe they were working with Pabco products." This answer is not responsive to the question.

Again, plaintiff states: "I cannot be positive whether or not I worked with Pabco products on these jobs or not. I could well have worked around Pabco products on this job."

8.

Interrogatories 2, 3, 4 and 5 were propounded, inquiring as to whether Tomplait in the year 1959, 1960, and 1961 worked with any product manufactured by Fibreboard Paper Products Corporation, and if so, he should specify the time, the place and name the employer and the job. "If you did not work with any product manufactured by Fibreboard then state you did not work with such product." The answers to each of the interrogatories was vague and indefinite, stating that he could have worked around or with Pabco products or that others could very well have been using Pabco products on said job. Such answers do not meet the test or requirements of the answers required to interrogatories under Rule 33 or the answers to the requests for admissions of fact and said answers should be stricken and the plaintiff prohibited from offering any evidence to the effect that he did work with such products on such occasions.

9.

Interrogatories Nos. 6, 7 and 8 make inquiry in regard to the years 1962, 1963 and 1964, and the plaintiff likewise gave evasive answers and such answers should be stricken and the interrogatories admitted.

The plaintiff admits that when he gave his deposition in December, 1967, he testified that he did not know the name or trade names of any of the materials with which he worked, nor

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the name of the manufacturer and was unable to identify any of said materials. The plaintiff filed this suit in December, 1966, and the case has been pending on the docket for approximate two and a half years. The plaintiff alleged and charged that he was working on various jobs and worked with products manufactured by the defendants on these jobs. When asked specifically to admit or deny and to specify the job on which he worked with a particular product manufactured by a particular defendant, be obviously did not know as shown in his sworn testimony which was given in his deposition of December, 1967. Still, in the interrogatories which were submitted to the plaintiff on August 13, 1968, he either did not know or the answers to the interrogatories and the requests for admissions of fact were purposely evasive.

WHEREFORE, this defendant prays that the Court consider this motion and upon consideration order that the plaintiff's answers to the requests for admissions of fact be stricken because they are evasive and not responsive and that said interrogatories be construed as answered, "I did not work with products manufactured by Fibreboard on said job."

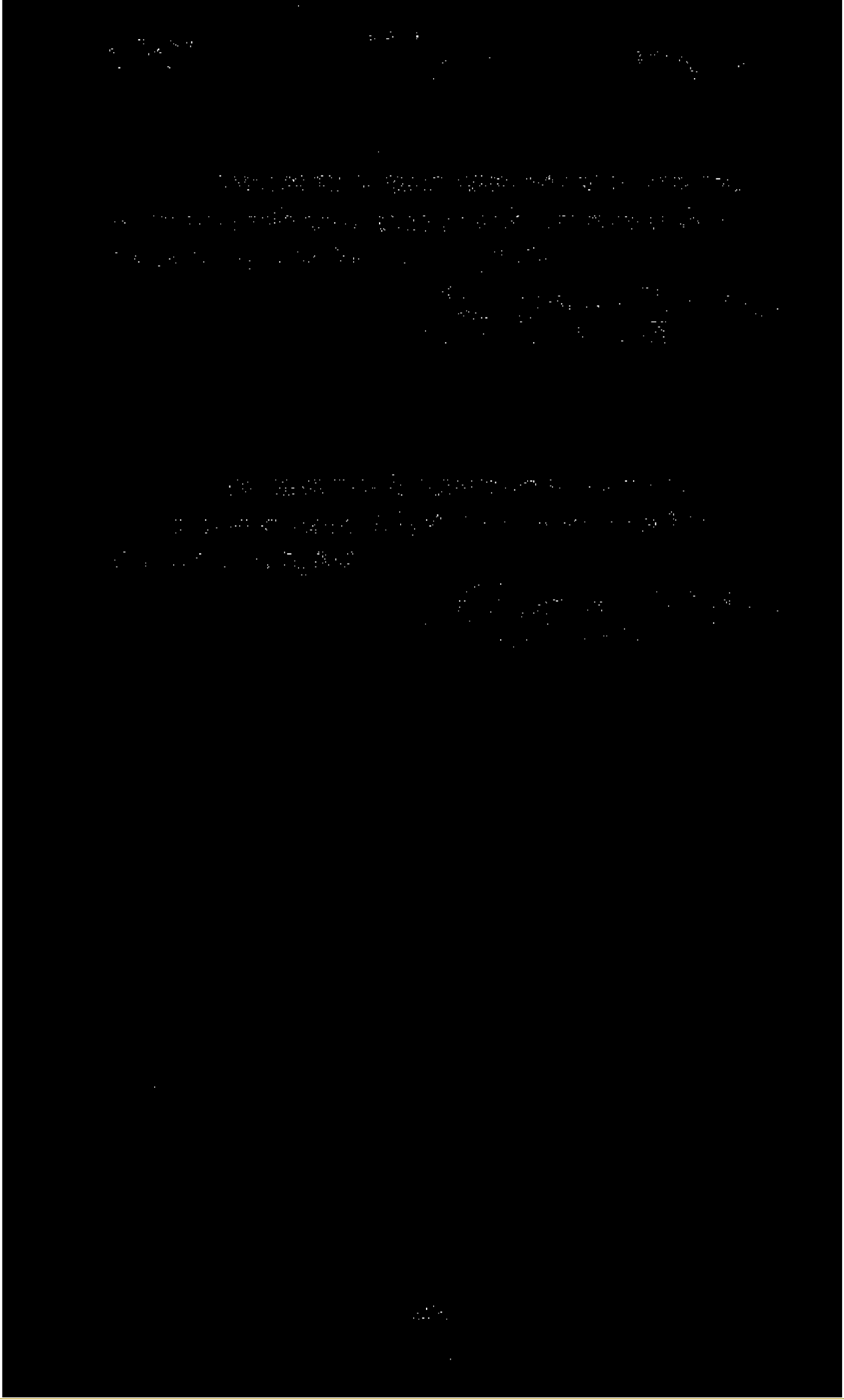
The answers to the interrogatories are obviously based upon hearsay and speculation and would not be admissible before the jury and are not affirmative answers to said interrogatories. The plaintiff should be prohibited upon the trial of this case from attempting to change or alter his answers to said interrogatories, therefore the answers should be stricken as not responsive.

Respectfully submitted;

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