

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ERNEST CROTTEAU,

Plaintiff,

MEMORANDUM AND ORDER

v.

06-C-672-S

DYNEGY, PROCTOR & GAMBLE PAPER PRODUCTS,
INTERNATIONAL PAPER, GEORGIA-PACIFIC CORPORATION,
A.W. CHESTERTON CO., CBS CORPORATION, VIACOM, INC.,
WESTINGHOUSE ELECTRIC CO., CERTAIN-TEED CORP.,
DRESSER INDUSTRIES, INC., CHAMPION INTERNATIONAL
CORPORATION, ENPRO INDUSTRIES, GARLOCK, INC.,
UNION CARBIDE CHEMICALS AND PLASTICS CO., INC.,
FOSTER WHEELER CORPORATION, FOSTER WHEELER ENERGY
CORPORATION, GENERAL ELECTRIC COMPANY, GENERAL
REFRATORIES COMPANY, LINDBERG CORPORATION, OLGEBAY-
NORTON ENGINEERED MATERIALS, INC., OWENS-ILLINOIS CORP.,
OWENS-CORNING CORP., PFIZER, RAPID AMERICAN CORP. and
AFC-HOLCROFT,

Defendants.

Presently pending before the Court in the above entitled matter is defendant Oglebay Norton Company's motion to dismiss the complaint for its failure to identify any of the products to which plaintiff was allegedly exposed, the dates and locations of exposure and failure to plead sufficient facts under Rule 12(b)(6), Federal Rules of Civil Procedure. The Court after examining the allegations of the complaint determines that the motion will be denied.

Count 2 of the complaint relating to product liability alleges at paragraphs 19 and 20 that:

The defendants' above-described asbestos products were manufactured, supplied and installed in an

unreasonably dangerous condition presenting dangers to the life and health of the ultimate user thereof and to persons in the position of plaintiff.

At all relevant times, the defendants placed their asbestos products on the market knowing that they would be used without inspection for such unreasonably dangerous defects and defendants expected such asbestos products to reach plaintiff without substantial change in the condition they were in when sold.

Admittedly the products are not extensively identified, however, paragraph 7 generally advises that:

Plaintiff during the course of his employment at various job sites was exposed to asbestos dust or fibers emanating from the asbestos products which were either sold, manufactured, distributed, packaged, installed or otherwise placed into commerce by the product defendants or at the premises of the premises defendants.

Plaintiff became aware of the asbestos related condition thereafter.

It is not unusual that a plaintiff would have difficulty in determining with specificity the product which was manufactured. These concerns may be further addressed during the course of discovery.

Accordingly,

ORDER

IT IS ORDERED that defendant Oglebay Norton Company's motion to dismiss is DENIED.

Entered this 7th day of February, 2006.

BY THE COURT:

s/

JOHN C. SHABAZ
District Judge