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Louisiana Court Denies Defense Efforts to Obtain More Definite Statement in Benzene Case

NEW ORLEANS — A Louisiana federal court has refused to order a benzene plaintiff to provide a more definite statement, saying that such efforts are disfavored when the information sought is within the defendant's own knowledge.

In a March 16 order, the U.S. District Court for the Eastern District of Louisiana said that the Shell defendants could search its own records to confirm the plaintiff's allegation that he worked at one of the defendant's facilities.

Plaintiff John Binder said in his complaint that he worked as a contract tank cleaner for Rollins Environmental, Inc. at the Shell facilities. While there, Binder said he cleaned tanks with benzene, gasoline, toluene, xylene, crude oil and diesel.

Binder said he developed non-Hodgkin's Lymphoma as a result of the exposure.

Shell Oil Co. and Shell Chemical LP, however, filed a motion for a more definite statement, saying that the plaintiff failed to identify the location of the Shell facilities where the alleged exposure occurred.

"Shell argues that it cannot make an assessment of proper venue due to the absence of the location where the alleged injury occurred and cannot properly respond to the complaint," the court noted.

In opposing the motion, the plaintiff argued that the facts in its complaint put Shell on sufficient notice and, further, that the defendant was able to answer two other recent lawsuits with "nearly identical" information as to the location and identification of the type of work.

The federal court agreed.

"Thus, the Court finds that despite the Plaintiff not specifically alleging the location of the facilities, such information is best sought through discovery," the court concluded. "Shell can easily propound an interrogatory or other discovery to obtain information on the location of the facilities, rather than compelling the plaintiff to file a more definite statement."

Further, the court explained, Rule 12(e) motions are "disfavored" when the sought information is "within defendant's own knowledge."

"Shell should have information in its possession to determine the location of Plaintiff's exposure," the court said. "Plaintiff has now identified Norco, La. as the location for the facilities he worked from 1982-1986 and

Shell can search its records to confirm Plaintiff's assertion that he worked at the Norco, La. facilities during that timeframe."

Counsel for the plaintiffs is L. Eric Williams of the Williams Law Office LLC in Metairie, La.

Binder v. Shell Oil Company, No. 15-00097 (E.D. La.).

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