GED:MB 3/16/70 0-2

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MAR 17 1970
JAMES R. COONEY, CLERK
BY DEPUTY Virginia K. Sears

CLARENCE BOREL	:	
vs.	:	
FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL	:	CIVIL ACTION NO. 6449

CROSS-ACTION OF PITTSBURGH CORNING CORPORATION AGAINST UNARCO INDUSTRIES, INC.

TO THE HONORABLE THE UNITED STATES DISTRICT COURT IN AND FOR THE EASTERN DISTRICT OF TEXAS, BEAUMONT DIVISION AND THE HONORABLE THE JUDGES THEREOF:

Comes now PITTSBURGH CORNING CORPORATION, one of the Defendants in the above-styled and numbered cause, and for a separate Cross-Action against UNARCO INDUSTRIES, INC., successor in interest to UNION ASBESTOS AND RUBBER COMPANY, named herein as one of the Defendants, alleges as follows:

I.

At all of the times herein mentioned, PITTSBURGH CORNING CORPORATION was, and still is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal offices and place of business located in the City of Pittsburgh, Pennsylvania.

II.

Unarco Industries, Inc. is the successor in interest to Union Asbestos and Rubber Company, an Illinois corporation, with principal offices and place of business located at 111 West Perry Street, Bloomington, Illinois, 61701. A copy of this Cross-Action has been served upon its counsel of record in this case, Gerald P. Coley, Esquire, Vinson, Elkins, Searles

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and Connally, First City National Bank Building, Houston, Texas 77002 by certified mail, return receipt requested.

III.

Clarence Borel, on October 20, 1969, filed his Original Complaint and on February 17, 1970, filed his First Amended Complaint, against this Defendant, Pittsburgh Corning Corporation, and other Defendants, which are named in the Original Complaint, to all of which reference is hereby made, said Complaint having been filed in the United States District Court in and for the Eastern District of Texas, Beaumont Division, claiming damages for personal injuries and for an occupational disease, in the sum of $500,000, and for exemplary damages in the sum of $500,000, alleging that said Plaintiff contracted asbestosis as a result of handling and working with insulation materials containing asbestos fibers.

IV.

Said Amended Complaint filed herein on behalf of the said Plaintiff, alleges that the personal injuries and occupational disease and other damages suffered and incurred by him, were the result of the negligence of this Defendant, Pittsburgh Corning Corporation, its agents, servants and employees, and other manufacturers of asbestos insulation materials, all of which allegations are false, and which this Defendant has denied in its Answer heretofore filed herein.

V.

This Defendant would show that at all of the times and places mentioned and set forth in the Complaint herein, Union Asbestos and Rubber Company, predecessor in interest to Unarco Industries, Inc., manufactured an insulating material having a trade name of UNIBESTOS, and that the said Complaint, particularly in Paragraphs numbered 5 and 6, specifically alleges that the said Plaintiff, while working as an insulator on certain jobs mentioned therein between the years 1936 and 1969, came in contact with certain insulation materials containing asbestos fibers.

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VI.

Defendant, Pittsburgh Corning Corporation would show this Court that on or about June 30, 1962, an Agreement of Purchase was entered into by and between Pittsburgh Corning Corporation, one of the Defendants herein, and Union Asbestos and Rubber Company, predecessor in interest to Unarco Industries, Inc., wherein Pittsburgh Corning Corporation agreed to purchase a plant located near Tyler, Smith County, Texas, from Defendant, Union Asbestos and Rubber Company, which plant produced an asbestos type high temperature insulation product with filler, the same having been marketed by Union Asbestos and Rubber Company as UNIBESTOS pipe and block insulation; that the Defendant, Union Asbestos and Rubber Company, likewise, by said contract of sale, sold to Pittsburgh Corning Corporation, all of its patents and patent applications and its trademarks "UNIBESTOS," "SUPER UNIBESTOS," and "SUPERBESTOS;" that by the terms and provisions of said contract of sale this Defendant, Pittsburgh Corning Corporation, did not take possession of said plant in Tyler, Texas, or of the above-mentioned trademarks or inventory of the said Union Asbestos and Rubber Company, until July 2, 1962; that there was a considerable backlog of orders which had been received and processed by Union Asbestos and Rubber Company, prior to the date that Pittsburgh Corning Corporation took possession of the said plant in Tyler, Texas, and of the other facilities of Union Asbestos and Rubber Company; that Defendant was required by the terms and provisions of said contract to complete and ship said orders by virtue of that certain formula which was set out in Paragraphs 8(a), (b), (c) and (d) of said Agreement of Purchase.

VII.

Defendant, Pittsburgh Corning Corporation would show that if the Plaintiff, Clarence Borel, contracted the disease of asbestosis as he alleged in his said Complaint, by reason of his having worked as an insulator as set forth in his said Complaint, that such work was performed and his exposure

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to UNIBESTOS or any of the other products of Union Asbestos and Rubber Company was at a time when the said Defendant was manufacturing and marketing said products, and that if this Court should find that the said Plaintiff did, in fact, contract said disease by virtue of his having come in contact with, or worked with UNIBESTOS, that Union Asbestos and Rubber Company, predecessor in interest to Unarco Industries, Inc., should be liable and responsible for the damages allegedly sustained by the Plaintiff, Clarence Borel.

VIII.

Defendant, Pittsburgh Corning Corporation, would further show this Court that the injuries and damages, if any, alleged to have been received or sustained by Plaintiff, were not caused by or contributed to by Pittsburgh Corning Corporation, its agents, servants and employees, but that the same were due solely to the negligence of the said Union Asbestos and Rubber Company, predecessor in interest to Unarco Industries, Inc., for all of the reasons set forth and alleged in Plaintiff's Complaint. In addition, this Defendant, Pittsburgh Corning Corporation, would show this Court that if the Plaintiff was injured and damaged as he alleges in said Complaint, by virtue of his having come in contact with UNIBESTOS, that the Defendant, Unarco Industries, Inc. is obligated, under the above-mentioned Agreement of Purchase, to indemnify and hold harmless Pittsburgh Corning Corporation, from any and all damages, which may have been sustained by the said Plaintiff by a specific provision contained in said Agreement of Purchase, dated as of June 30, 1962, which said contract provided, in part, as follows:

> "7. UNION (meaning Union Asbestos and Rubber Company, predecessor in interest to UNARCO INDUSTRIES, INC.) will indemnify PC (Pittsburgh Corning Corporation) against liability and hold it harmless from loss in respect of any claim which may be asserted against PC arising from, or as a result of, or related to UNION's conduct or operation of the H-T product business to and including the closing date thereof, whether such claim is asserted in respect to UNION's obligation under any contract or agreement, which at PC's request, it has assigned to PC pursuant to Paragraph 2 of

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this Article VI, or otherwise. UNION recognizes its responsibility to its customers for claims, if any, for damages caused by or arising out of the manufacture and sale of its H-T products which heretofore have been sold or distributed by UNION prior to closing date, and in the event of any such claim, UNION will promptly notify PC of any such claim which may be asserted against UNION in respect to the H-T products which it had made, used or sold prior to closing date. "

IX.

This Defendant, Pittsburgh Corning Corporation, therefore alleges and avers that if Plaintiff, Clarence Borel, shall obtain any award against it, it is entitled to full indemnity from the Defendant, the said UNARCO INDUSTRIES, INC., successor in interest to Union Asbestos and Rubber Company, including, without limitation, the recovery from said Defendant, of a reasonable sum as attorneys' fees and disbursements incurred, or to be incurred by the said Pittsburgh Corning Corporation, in defending said cause against the claim of the said Clarence Borel.

WHEREFORE, Pittsburgh Corning Corporation prays that process in due form of law issue against UNARCO INDUSTRIES, INC., successor in interest to Union Asbestos and Rubber Company, and that said Unarco Industries, Inc. be cited to appear and answer all and singular the matters aforesaid in the Plaintiff's Complaint set forth; that if any recovery be decreed against Pittsburgh Corning Corporation, Defendant herein, that there be a decree over against the said UNARCO INDUSTRIES, INC., requiring it to pay the amount of such recovery to PITTSBURGH CORNING CORPORATION, and to indemnify and exonerate Pittsburgh Corning Corporation against any and all liability herein, including, without limitation, the recovery from said Defendant of a reasonable sum as attorneys' fees, and disbursements incurred or to be incurred by the said Pittsburgh Corning Corporation, in defending said cause against the claim of CLARENCE BOREL; and that your Defendant, Pittsburgh Corning Corporation, have such other and further relief to which

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it may be entitled, and this Court competent to grant.

WELLS, DUNCAN, BEARD,
GREENBERG AND HUNT

By George E. Duncan
George E. Duncan
515 Beaumont Savings Building
P. O. Box 3708
Beaumont, Texas 77704

Attorneys for PITTSBURGH CORNING CORPORATION, one of the Defendants

Certificate of Service

This is to certify that a true and correct copy of the foregoing Cross-Action of PITTSBURGH CORNING CORPORATION against UNARCO INDUSTRIES, INC. has been mailed to Gerald P. Coley, Esquire, Vinson, Elkins, Searles & Connally, First City National Bank Building, Houston, on this the 16th day of March, 1970, by placing the same in a sealed envelope, postage prepaid, certified, return receipt requested, United States Mail, and to the other attorneys of record in this case.

George E. Duncan
George E. Duncan, Attorney for
PITTSBURGH CORNING CORPORATION,
One of the Defendants

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CIVIL ACTION NO. 6449

CLARENCE BOREL

vs.

FIBREBOARD PAPER
PRODUCTS CORPORATION,
ET AL

CROSS-ACTION OF PITTSBURGH
CORNING CORPORATION AGAINST
UNARCO INDUSTRIES, INC.

LAW OFFICES OF
WELLS, DUNCAN AND BEARD
BEAUMONT SAVINGS BUILDING
BEAUMONT, TEXAS
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