FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
FEB 11 1971
JAMES R. COONEY, CLERK
BY DEPUTY Margaret Turner

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

CLARENCE BOREL	)	
	)	
VS.	)	CIVIL ACTION NO. 6449
	)	
FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL	)	

FIRST SUPPLEMENTAL ANSWER OF DEFENDANT, FIBREBOARD CORPORATION, AMENDING ITS FIRST AMENDED ANSWER TO PLAINTIFF'S SECOND AMENDED ORIGINAL COMPLAINT, FILED SUBJECT TO THIS DEFENDANT'S MOTION TO STRIKE CERTAIN ALLEGATIONS

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the defendant, Fibreboard Corporation, and with express permission of the Court files this, its first supplemental answer, such being filed as a supplement to this defendant's first amended answer to plaintiff's second amended original complaint on file herein, and this pleading to be considered as an addition to said first amended answer, and for such supplemental answer this defendant would show the Court:

Sixteenth Affirmative Defense

Further answering, defendant shows unto the Court that the plaintiff, Thelma Freida Borel, instituted this suit against various defendants, including Owens-Corning Fiberglas Corporation and Standard Asbestos Manufacturing and Insulating Company and the other named defendants, seeking recovery against such defendants for damages alleged to have been in the sum of $500,000. Your defendant, Fibreboard Corporation, has filed cross-actions against said Owens-Corning Fiberglas Corporation and Standard Asbestos Manufacturing and Insulating Company, asserting that if plaintiff's decedent sustained any injury as a result of any act or omission on

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the part of Fibreboard Corporation, which this defendant denies, then such was caused and proximately caused and contributed to by the acts and omissions of the remaining defendants, including Owens-Corning Fiberglas Corporation and Standard Asbestos Manufacturing and Insulating Company, and that this defendant was entitled to full indemnity, or in the alternative, contribution. Thereafter, on or about the 1st day of February, 1971, for a valuable consideration, to-wit, $4,225.55, paid by Owens-Corning Fiberglas Corporation to the said Thelma Freida Borel and intervener, National Surety Corporation, in "final compromise and settlement of all claims and causes of action asserted by the said Thelma Freida Borel," and the sum of $4,225.55 paid by Standard Asbestos Manufacturing and Insulating Company to Thelma Freida Borel and intervener, she "fully and finally released and discharged Owens-Corning Fiberglas Corporation and Standard Asbestos Manufacturing and Insulating Company of any and all claims which were or might be asserted against it"; and the said Thelma Freida Borel, in her own right and as surviving widow of Clarence Borel, for said consideration fully and finally released the said Owens-Corning Fiberglas Corporation from this suit and also released "any and every character of claim, demand, damage, cause of action and expense that she now had or might have against such concern, and acknowledged that said suit, as well as all claims, demands, damages, causes of action and expense, already accrued or which might accrue in the future were in all things fully and finally compromised, settled and released." Thelma Freida Borel likewise, for the same consideration, executed a similar release to Standard Asbestos Manufacturing and Insulating Company. Defendant shows unto the Court that having received and accepted such sums and fully and finally released said defendants,

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that such constitutes a final and complete payment and discharge of all claims and causes of action of the said Thelma Freida Borel in her own right and as surviving widow of Clarence Borel, and by virtue of the receipt and acceptance of such payments all claims for damages of the said Thelma Freida Borel have been fully and finally paid, satisfied and extinguished.

Seventeenth Affirmative Defense

In the alternative, defendant shows unto the Court that if the payment and receipt by plaintiff and intervener of said sum of $4,225.55 paid by each of said defendants above named, and the execution of such releases of all claims already accrued or which might accrue in the future does not constitute full payment and satisfaction of all claims for all of plaintiff's damages, that since Owens-Corning Fiberglas Corporation and Standard Asbestos Manufacturing and Insulating Company were guilty of negligence, breach of express and breach of implied warranty, and responsible for the injury and death of the said Clarence Borel and the damages sued for by plaintiff, that such payment constitutes a partial discharge and acquittance of plaintiff's damages, and any damages, if any, awarded plaintiff on trial hereof should be reduced by one-half (1/2) or such other proportion as may be just and proper under the evidence and verdict.

Further answering, defendant shows unto the Court that in connection with the final disposition and payment by Owens-Corning Fiberglas Corporation and Standard Asbestos Manufacturing and Insulating Company to Thelma Freida Borel, that the said Thelma Freida Borel and her attorney, Ward Stephenson, agreed to forever indemnify and save harmless the said Owens-Corning

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Fiberglas Corporation and Standard Asbestos Manufacturing and Insulating Company from any and all claims, demands, damages, causes of action or liability, which they or their successors, receivers and assigns, might have or which might be asserted against them by the various defendants named herein, including your defendant, Fibreboard Corporation. Your defendant being entitled to judgment for indemnity over and against Owens-Corning Fiberglas Corporation and Standard Asbestos Manufacturing and Insulating Company; or, in the alternative, for judgment for contribution, asserts such releases and indemnity agreements in full and final release of all claims herein asserted; or, in the alternative, partial release thereof, which releases and indemnity agreements your defendant is entitled to assert in order to avoid circuity of actions.

Your defendant further shows unto the Court that by virtue of such compromise, settlement, release and indemnity agreement there has been entered an interlocutory judgment in this cause providing that Owens-Corning Fiberglas Corporation and Standard Asbestos Manufacturing and Insulating Company have finally discharged any and all claims which were or might be asserted against them "including claims asserted by way of intervention and cross-action," and which interlocutory judgment further recites that the Court determine that the said defendants, Owens-Corning Fiberglas Corporation and Standard Asbestos Manufacturing and Insulating Company, should be in all things dismissed from this suit. Should such interlocutory judgment be construed as a dismissal of the cross-actions asserted by Fibreboard Corporation against Owens-Corning Fiberglas and Standard Asbestos Manufacturing and Insulating Company, then defendant asserts the same

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as a full and complete bar of any and all claims herein asserted by or in behalf of the said Thelma Freida Borel, individually and as the heir of Clarence Borel, deceased, because by virtue of such action your defendant and cross-plaintiff has been deprived of the right of indemnity or contribution asserted against the said Owens-Corning Fiberglas Corporation and Standard Asbestos Manufacturing and Insulating Company by way of cross-action.

WHEREFORE, premises considered, this defendant prays that this first supplemental answer be regarded as an addition to the first amended answer of the defendant, Fibreboard Corporation, to plaintiff's second amended complaint, all of which are on file herein, and if necessary said pleading is adopted by reference, and that upon trial that plaintiff take nothing against this defendant and that it recover its costs; in the alternative, that it have judgment for indemnity, or in the alternative, contribution, against the cross-defendants as above set out.

Respectfully submitted;

WELLER, WHEELUS, GREEN & BROCATO
P. O. BOX 350
BEAUMONT, TEXAS 77704

BY _____
GEO. A. WELLER,
ATTORNEY FOR DEFENDANT,
FIBREBOARD CORPORATION.

ORDER

Upon motion of the defendant, Fibreboard Corporation, it is ORDERED that this pleading entitled first supplemental answer of defendant, Fibreboard Corporation, is to be considered as a supplement to the first amended answer of Fibreboard Corporation to plaintiff's second amended complaint on file herein. This pleading

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is filed within the time heretofore directed by the Court.

DATED this 11th day of February, 1971.

CHIEF JUDGE, UNITED STATES
DISTRICT COURT

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing supplemental answer was served on the following attorneys by mailing a true and correct copy thereof to their respective offices on the 11th day of February, 1971.

Mr. Ward Stephenson
Stephenson & Thompson
Stephenson Building
Orange, Texas 77630

Mr. Gerald P. Coley
Vinson, Elkins, Searls & Connally
First City National Bank Building
Houston, Texas 77002

Mr. George E. Duncan
P. O. Box 3708
Beaumont, Texas 77704

Mr. Robert E. Barnes, Jr.
P. O. Box 5098
Beaumont, Texas 77706

Mr. Gordon R. Pate
Beaumont Savings Building
Beaumont, Texas 77701

Mr. Frank Bean
Bean & Manning
500 Jefferson Building
Houston, Texas 77002

Mr. W. N. Arnold, Jr.
Fulbright, Crooker, Freeman, Bates & Jaworski
Bank of the Southwest Building
Houston, Texas 77002

Mr. Ben L. Reynolds
Royston, Rayzor & Cook
877 San Jacinto Building
Houston, Texas 77002

Mr. Dale Dowell
707 Beaumont Savings Building
Beaumont, Texas 77701

Mr. James W. Mehaffy, Sr.
San Jacinto Building
Beaumont, Texas 77701

Mr. Charles S. Pipkin
P. O. Box 1632
Beaumont, Texas 77704

Mr. John G. Tucker
Orgain, Bell & Tucker
Beaumont Savings Building
Beaumont, Texas 77701

OF COUNSEL

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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

WELLER, WHEELUS, GREEN & BROCATO
ATTORNEYS AT LAW
BEAUMONT SAVINGS BUILDING
BEAUMONT, TEXAS 77704

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