IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
FEB 16 1971
JAMES R. COONEY, CLERK
BY DEPUTY Margaret Turner

CLARENCE BOREL	§	
	§	
V.	§	CIVIL ACTION NO. 6449
	§	
FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL	§	

OBJECTION OF DEFENDANTS, ARMSTRONG CORK COMPANY AND PHILIP CAREY CORPORATION, TO THE DISMISSAL OF THE CROSS-ACTIONS FOR CONTRIBUTION AGAINST THE DEFENDANTS, OWENS-CORNING FIBERGLAS CORPORATION AND STANDARD ASBESTOS MANUFACTURING AND INSULATING COMPANY

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW the defendants, Armstrong Cork Company and Philip Carey Corporation, and files this, their objection to the motion of the plaintiff and defendants, Owens-Corning Fiberglas Corporation and Standard Asbestos Manufacturing and Insulating Company, requesting that the Court enter a proposed judgment disposing of all claims and causes of action, including all cross-actions and counterclaims, against the defendants, Owens-Corning Fiberglas Corporation and Standard Asbestos Manufacturing and Insulating Company, and they also file their objections to the judgment entered by the Court on February 3, 1971, in behalf of Owens-Corning Fiberglas Corporation and to the proposed judgment in behalf of Standard Asbestos Manufacturing and Insulating Company. The interlocutory judgment on file herein reflects that Owens-Corning Fiberglas Corporation has entered into a compromise with the plaintiff and thereby have asserted they are no longer necessary or proper parties to this suit or any counterclaim or cross-action herein. An interlocutory judgment has been entered by the Court decreeing that Owens-Corning Fiberglas Corporation should be in all things dismissed from this suit, both as to plaintiff's cause of action and the cause

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of action asserted by National Surety Corporation as intervenor. It is the understanding of counsel for Armstrong Cork Company and Philip Carey Corporation that a similar judgment will be entered in behalf of Standard Asbestos Manufacturing and Insulating Company. If the order or orders of the Court can be construed as dismissing Owens-Corning Fiberglas Corporation and Standard Asbestos Manufacturing and Insulating Company from this lawsuit for all purposes, including the dismissal of the cross-action of Armstrong Cork Company and Philip Carey Corporation and the cross-action of other defendants, then Armstrong Cork Company and Philip Carey Corporation object to the dismisssal of their cross-claims against the defendants, Owens-Corning Fiberglas Corporation and Standard Asbestos Manufacturing and Insulating Company, and as grounds therefor would show:

1.

Plaintiff's second amended original complaint on file herein alleges that the defendants, Fibreboard Corporation; Combustion Engineering, Inc.; Johns-Manville Products Corporation; Owens-Corning Fiberglas Corporation, Eagle-Picher Industries, Inc.; Pittsburgh Corning Corporation; Unarco Industries, Inc.; Philip Carey Corporation; Standard Asbestos Manufacturing and Insulating Company; Ruberoid Company; and Armstrong Cork Company, were jointly guilty of negligence and breach of warranties proximately causing damage to plaintiff's decedent which resulted in his death.

Armstrong Cork Company and Philip Carey Corporation, as two of the alleged joint tort-feasors, filed cross-actions against each and all of the defendants for contribution. Each and all of the cross-defendants are before the Court on the cross-actions of Armstrong Cork Company and Philip Carey Corporation and each of said cross-defendants have filed answers to said cross-actions.

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The defendants, Owens-Corning Fiberglas Corporation and Standard Asbestos Manufacturing and Insulating Company, have entered into a compromise settlement agreement with plaintiff, where they have been dismissed from this suit; however, these defendants are not a party to such compromise settlement agreement and have in nowise entered into a compromise agreement with the co-defendants and do not agree that said cross-defendants may be dismissed.

2.

Plaintiff alleges that all of the defendants are jointly and severally liable, and if this be true, then these defendants will be entitled to contribution on their cross-actions and are entitled to have the said cross-defendants remain as cross-defendants on their cross-actions for contribution. Likewise, they are entitled to treat each of said co-defendants and cross-defendants as adverse parties on their cross-actions. Under the law, in order for these defendants to be entitled to credit for the payments heretofore made by the co-defendants and cross-defndants, it is necessary to obtain a finding that said co-defendants caused or contributed to cause the plaintiff's damage, and since said co-defendants are also cross-defendants of Armstrong Cork Company and Philip Carey Corporation, and have answered said cross-action and are before this Court, these defendants would object to the dismissal of their cross-actions, if such in fact occurred, against the cross-defendants for contribution. Under Rule 41 of the Federal Rules of Civil Procedure, there is no authority in the Court to dismiss the cross-claim or third-party claim of these defendants against the co-defendants, Owens-Corning Fiberglas Corporation and Standard Asbestos Manufacturing and Insulating Company, and these defendants object thereto and object to the judgment or judgments heretofore entered without a hearing and without evidence being heard.

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These defendants would further show that this case has been pending on this docket for some period of time, numerous depositions have been taken of various witnesses, interrogatories have been propounded to and answers made by representatives of the cross-defendants dismissed, and it would be highly prejudicial to the rights of these defendants for the Court to enter the order and dismiss the cross-defendants from this suit.

WHEREFORE, these defendants pray that the Court overrule the motion of the cross-defendants, Owens-Corning Fiberglas Corporation and Standard Asbestos Manufacturing and Insulating Company, and each of them, and that the Court decree that the dismissal of plaintiff's case against said defendants shall in nowise operate to prejudice the cross-claims of Armstrong Cork Company and Philip Carey Corporation.

Respectfully submitted,

FULBRIGHT, CROOKER, FREEMAN,
BATES & JAWORSKI

By _____
W. N. Arnold, Jr.

Bank of the Southwest Building
Houston, Texas 77002 224-7070

Attorneys for Defendants Armstrong Cork Company and Philip Carey Corporation

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing instrument was served on the following attorneys by mailing a true and correct copy thereof to their respective offices on the 12th day of February, 1971.

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

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

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

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 Jacinton 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

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

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

Mr. Frank Bean
500 Jefferson Building
Houston, Texas 77002

W. N. Arnold, Jr.

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FULBRIGHT, CROOKER, FREEMAN, BATES & JAWORSKI
ATTORNEYS AT LAW
BANK OF THE SOUTHWEST BUILDING
HOUSTON, TEXAS 77002