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 Driver

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

OBJECTION OF DEFENDANT, COMBUSTION ENGINEERING, INC., TO THE DISMISSAL OF THE CROSS-ACTIONS FOR CONTRIBUTION AGAINST THE DEFENDANTS, OWENS-CORNING FIBERGLAS CORPORATION AND STANDARD ASBESTOR MANUFACTURING AND INSULATING COMPANY

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now the defendant, Combustion Engineering, Inc., and files this, its 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 it also files its 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.

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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 asserted by National Surety Corporation as intervenor. It is the understanding of counsel for Combustion Engineering, Inc., 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 Combustion Engineering, Inc., and the cross-actions of other defendants, then Combustion Engineering, Inc., objects to the dismissal of its cross-claim 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.

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Combustion Engineering, as one of the alleged joint tort-feasors, filed a cross-action against each and all of the defendants for contribution. Each and all of the cross-defendants are before the Court on the cross-action of Combustion Engineering, Inc., and each of said cross-defendants has filed answer to said cross-action.

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, this defendant is not a party to such compromise settlement agreement and has in nowise entered into a compromise agreement with the co-defendants and does 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 this defendant will be entitled to contribution on its cross-action and is entitled to have the said cross-defendants remain as cross-defendants on its cross-action for contribution. Likewise, it is entitled to treat each of said co-defendants and cross-defendants as adverse parties on its cross-action. Under the law, in order for this defendant to be entitled to credit for the payments heretofore made by the co-defendants and cross-defendants, 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 Combustion Engineering, Inc., and have answered said cross-action

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and are before this Court, this defendant would object to the dismissal of its cross-action, if such has 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 thire-party claim of this defendant against the co-defendants, Owens-Corning Fiberglas Corporation and Standard Asbestos Manufacturing and Insulating Company, and this defendants objects thereto and objects to the judgment or judgments heretofore entered without a hearing and without evidence being heard.

3.

This defendant 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 this defendant for the Court to enter the order and dismiss the cross-defendants from this suit.

WHEREFORE, this defendant prays the Court to consider the motion of the cross-defendants, Owens-Corning Fiberglas Corporation and Standard Ashestos Manufacturing and Insulating Company, and each of them, and that the Court

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decree that the dismissal of plaintiff's case against said defendants shall in nowise operate to prejudice the cross-claim of Combustion Engineering, Inc.

Respectfully submitted,

ATTORNEY FOR DEFENDANT,
COMBUSTION ENGINEERING, INC.,
1014 San Jacinto Bldg.,P.O.Box 1632,
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CERTIFICATE OF SERVICE

I hereby certify that on this 15 day of February, 1971 ~~1970~~ a true and correct copy of the foregoing instrument was mailed to the following named attorneys of record:

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