FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
JAN 31 1972
JAMES R. COONEY, CLERK
BY DEPUTY

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

SAMUEL R. POTTER :

VS. : CIVIL ACTION NO. 6329

FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL :

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

SAMUEL R. POTTER, plaintiff, makes this his motion for partial summary judgment upon the liability of the defendants ARMSTRONG CORK COMPANY, PHILIP CAREY CORPORATION, RUBEROID COMPANY, Division of GAF CORPORATION, FIBREBOARD PAPER PRODUCTS CORPORATION, and JOHNS-MANVILLE PRODUCTS CORPORATION, and as grounds for such motion alleges as follows:

1.

That in Civil Action No. 6449 in this Court, styled CLARENCE BOREL vs. FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL, the jury made the following findings upon issues identical to those in this action, and that such findings were ultimate and essential to the judgment:

(1) That the defendants hereinabove named (with the exception of Armstrong Cork Company) were negligent in the respects contended by plaintiff, which negligence was a proximate cause of the injuries and death of the deceased, Clarence Borel.

(2) That each of the defendants hereinabove named were guilty of breach of warranties as contended by the plaintiff, Clarence

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Borel, which breach of warranties were a proximate cause of the injuries and death of the deceased,Clarence Borel.

2.

That in Civil Action No. 6449, styled CLARENCE BOREL VS. FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL, certain issues identical to some of those in the present action were fully and fairly litigated by defendants ARMSTRONG CORK COMPANY, PHILIP CAREY CORPORATION, RUBEROID COMPANY, Division of GAF Corporation, FIBREBOARD PAPER PRODUCTS CORPORATION, and JOHNS-MANVILLE PRODUCTS CORPORATION, and said defendants should be foreclosed from re-litigation by the granting of a partial summary judgment against said defendants on those issues previously decided.

3.

That in Seguros Tepeyac, S.A., Compania Mexicano v. Jernigan, 410 F.2d 718 (1969), the Court of Appeals for the Fifth Circuit, applying Texas law, made it clear that where identical issues to those in a present action have been fully and fairly litigated in a prior adjudication and plea of res judicata on those issues is asserted in the present action against a party to such prior adjudication, that party will be estopped from re-litigating those issues.

4.

For the foregoing reasons, plaintiff prays that defendants ARMSTRONG CORK COMPANY, PHILIP CAREY CORPORATION, RUBEROID COMPANY, Division of GAF Corporation, FIBREBOARD PAPER PRODUCTS CORPORATION, and JOHNS-MANVILLE PRODUCTS CORPORATION, be estopped from re-litigating those issues already decided against them in Clarence Borel vs. Fibreboard Paper

The Potter v. Fibreboard Case File (1969-1972), Motion for partial summary judgment on collateral estoppel from B... Published by AsbestosClaims.Law
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Products Corporation, Civil Action No. 6449, and that partial summary judgment in favor of the plaintiff herein be granted upon those issues.

Respectfully submitted,

STEPHENSON AND THOMPSON

By _____
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ORDER

The foregoing Motion having been duly considered, the same is hereby OVERRULED / GRANTED.

_____
JUDGE PRESIDING

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CERTIFICATE OF SERVICE BY MAIL

I, Ward Stephenson, hereby certify that a true and correct copy of the foregoing instrument, was on this the 28th day of January, 1972, mailed to the following named attorneys:

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